

TOWN OF SWAMPSCOTT



ZONING BY-LAW

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ARTICLE I. PURPOSE AND AUTHORITY.

These regulations are enacted to:

- (a) promote the general welfare of the Town of Swampscott;
- (b) protect the health and safety of its inhabitants;
- (c) encourage the most appropriate use of land throughout the town;
- (d) preserve the cultural, historical and agricultural/maritime heritage of the community;
- (e) promote the natural, scenic and aesthetic qualities of the town;
- (f) increase the amenities of the town; and
- (g) reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them; and
- (h) reduce the hazard from flooding, including the long-term effects of sea level rise and storm surge, by regulating the location and use of buildings and the are of open space around them.

all as authorized by the provisions of the Zoning Act, G.L. c. 40A, as amended, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

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ARTICLE II. USE, DIMENSIONAL AND TIMING REGULATIONS.

2.1.0.0. Districts.

2.1.1.0. *Establishment of districts.* For the purposes of this By-Law, the Town of Swampscott is hereby divided into the following districts:

2.1.1.1. Residence A-1 District (A1 District).

2.1.1.2. Residence A-2 District (A2 District).

2.1.1.3. Residence A-3 District (A3 District).

2.1.1.4. Residence A-4 District (A4 District).

2.1.1.5. Business B-1 District (B1 District).

2.1.1.6. Business B-2 District (B2 District).

2.1.1.7. Business B-3 District (B3 District).

2.1.1.8. Business B-4 District (B4 District)

2.1.1.9. Planned Development Districts (PDD). For the purposes of this By-Law, the Town of Swampscott is hereby divided into the following districts:

2.1.1.9.1. Phillips Fire Station PDD.

2.1.1.9.2. Burrill Senior Center PDD.

2.1.1.9.3. Greenwood PDD.

2.1.1.9.4. Temple PDD.

2.1.1.10. Industrial District (I District).

2.1.1.10.1 Location of District. The Industrial Districts includes the following lots and is mapped as follows:

Assessor's Map 9, Lot 646

Assessor's Map 11, Lots 686, 732 and 769

Assessor's Map 12, Lots 99, 100, 101, 101A, 101B, 101C and 101E

2.1.2.0. *Establishment of Overlay Districts.* For the purposes of this By-Law, the Town of Swampscott also establishes the following overlay districts:

2.1.2.1. Flood Plain/Wetland Protection Overlay District.

2.1.2.2. Coastal Flood Area Overlay District.

- 2.1.2.3. Wireless Communications Facilities Overlay District.
- 2.1.2.4. Smart Growth (MGL 40R) Zoning Overlay District
- 2.1.2.5. Humphrey Street Overlay District
- 2.1.2.6. Tourist Lodging Overlay District

2.1.3.0. *Official Zoning Map.* The districts set forth above are shown on the official zoning map(s), entitled "Zoning Map of the Town of Swampscott, prepared under the direction of the Planning Board," on file with the Town Clerk. Overlay, Planned Development Districts and the Industrial District are mapped as set forth herein. Such maps, together with all explanatory material thereon, are hereby incorporated by reference and declared to be part of this By-Law.

2.1.4.0. *Rules for Interpretation of Zoning District Boundaries.* Where uncertainties exist as to the boundaries of districts as shown on the official zoning maps the following shall apply:

- 2.1.4.1. Where the boundary lines as shown upon said map approximately follow the street lines of public and private ways or railways, the centerlines of such ways shall be the boundary lines.
- 2.1.4.2. Where the boundary lines are shown approximately on the location of property lot lines, and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the boundary lines.
- 2.1.4.3. Boundary lines located outside of street lines and shown approximately parallel thereto shall be regarded as parallel to such street lines, and dimensions shown in figures placed upon said map between such boundary lines and street lines are the distance in feet of such boundary lines from such street lines; such distances being measured at right angles to such street lines unless otherwise indicated.
- 2.1.4.4. In all cases which are not covered by other provisions of this section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said map, by the use of identifications as shown on the map, or by the scale of the map.
- 2.1.4.5. Where the district boundary line follows a stream, lake or other body of water, said boundary line shall be constructed to be at the thread or channel of the stream; or at the limit of the jurisdiction of the Town of Swampscott, unless otherwise indicated.

2.1.4.6. Where a district boundary line divides any lot existing at the time such line is adopted, the regulations of any district in which the lot has frontage on a street may be extended by special permit from the board of appeals not more than thirty (30) feet into the other district.

2.1.4.7. Where physical or cultural features existing on the ground are at variance with those shown on the official map, or in other circumstances not covered by the above subsections, the board of appeals shall interpret the district boundaries.

2.2.0.0. Use Regulations.

2.2.1.0. General. No structure shall be erected or used or land used except as set forth in Section 2.2.3.0., "Table of Principal Uses", or as otherwise provided in this By-Law or by statute. Uses not expressly provided for herein are prohibited. Not more than one principal structure shall be placed on a lot, except in accordance with Section 2.3.4.0. Multiple principal uses shall be allowed in a single structure subject to the provisions of Section 2.2.3.0. below.

Symbols employed below shall mean the following:

Y - A permitted use as a matter of right.

N - An excluded or prohibited use.

SP - A use authorized under special permit from the Board of Appeals in accordance with Section 5.3.0.0. of this By-Law.

2.2.2.0. Applicability. When an activity might be classified under more than one of the following uses, the more specific classification shall govern; if equally specific, the more restrictive shall govern.

2.2.3.0. Table of Principal Uses. See definitions in Article VI.

	<u>PRINCIPAL USE</u>	<u>A-1</u>	<u>A-2</u>	<u>A-3</u>	<u>A-4</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>B-4</u>	<u>I</u>	<u>Off-Street Parking Group (See Art. 3.1.2.0)</u>
A.	<u>RESIDENTIAL</u>										
1.	Single-family dwelling	Y	Y	Y	Y	SP	N	N	N	N	A
2.	Two-family dwelling	N	N	Y	Y	SP	N	N	N	N	A
3.	Multi-family dwelling containing not more than 8 dwelling units	N	N	N	SP	SP	SP	SP	SP	N	A-MF
3A.	Multi-family dwelling containing more than 8 dwelling units	N	N	N	N	SP	SP	SP	SP	N	A-MF

	<u>PRINCIPAL USE</u>	<u>A-1</u>	<u>A-2</u>	<u>A-3</u>	<u>A-4</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>B-4</u>	<u>I</u>	<u>Off-Street Parking Group (See Art. 3.1.2.0)</u>
3B.	Multi-family dwelling containing not more than 3 dwelling units	N	N	SP	SP	SP	SP	SP	SP	N	A-MF
4.	Bed and Breakfast Establishment	SP	SP	SP	SP	SP	N	N	N	N	C
5.	Accessory Apartment (See §5.11.0.0.)	SP	SP	SP	SP	SP	SP	SP	SP	N	A
6.	Assisted Living Facility or Independent Living Facility	SP	SP	SP	SP	N	N	N	N	N	SEE §3.1.2.4
7.	Group Residence	SP	SP	SP	SP	SP	SP	SP	SP	N	SEE §3.1.2.4
8.	Home Occupation As of Right	Y	Y	Y	Y	Y	Y	Y	Y	N	None
9.	Home Occupation by Special Permit	SP	SP	SP	SP	SP	SP	SP	SP	N	A-HO
B.	<u>EXEMPT USES</u>										
1.	Use of land or structures for religious purposes	Y	Y	Y	Y	Y	Y	Y	Y	Y	SEE §3.1.2.4
2.	Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y	Y	Y	Y	Y	Y	Y	Y	Y	SEE §3.1.2.4
3.	Childcare facility	Y	Y	Y	Y	Y	Y	Y	Y	Y	SEE §3.1.2.4
4.	Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y	Y	Y	Y	Y	Y	Y	Y	Y	SEE §3.1.2.4
5.	Facilities for the sale of produce, wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	Y	Y	Y	Y	Y	Y	Y	Y	Y	SEE §3.1.2.4
C.	<u>INSTITUTIONAL USES</u>										
1.	Club, lodge or fraternal organization (profit or not for profit)	N	N	N	N	SP	SP	N	N	N	F

	<u>PRINCIPAL USE</u>	<u>A-1</u>	<u>A-2</u>	<u>A-3</u>	<u>A-4</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>B-4</u>	<u>I</u>	<u>Off-Street Parking Group (See Art. 3.1.2.0)</u>
2.	Educational uses, schools (non-exempt)	N	N	N	N	SP	SP	SP	SP	N	SEE §3.1.2.4
3.	Educational uses (non-exempt) containing less than 1,500 s.f. of gross floor area	N	N	N	N	Y	Y	Y	Y	N	SEE §3.1.2.4
4.	Educational uses (non-exempt) containing 1,500 s.f. of gross floor area to 5,000 s.f. of gross floor area	N	N	N	N	SP	SP	Y	Y	N	SEE §3.1.2.4
5.	Educational uses (non-exempt) containing more than 5,000 s.f. of gross floor area	N	N	N	N	SP	SP	SP	SP	N	SEE §3.1.2.4
6.	Family day care / Adult day care (non-exempt)	SP	SP	SP	SP	SP	SP	SP	SP	N	SEE §3.1.2.4
7.	Outpatient medical center or clinic	N	N	N	N	N	SP	SP	SP	N	H
8.	Theatre; museum; performing, cultural or arts facility; or hall for public gathering	N	N	N	N	SP	SP	SP	SP	N	D
D.	<u>LOCAL GOVERNMENT</u>										
1.	Administrative Offices	SP	SP	SP	SP	SP	SP	SP	SP	SP	SEE §3.1.2.4
2.	Police/ Fire / Ambulance	SP	SP	SP	SP	SP	SP	SP	SP	SP	SEE §3.1.2.4
3.	Municipal Library	SP	SP	SP	SP	SP	SP	SP	SP	SP	SEE §3.1.2.4
4.	Municipal Service Facility	SP	SP	SP	SP	SP	SP	SP	SP	SP	SEE §3.1.2.4
5.	All other municipal uses	SP	SP	SP	SP	SP	SP	SP	SP	SP	SEE §3.1.2.4
E.	<u>COMMERCIAL</u>										
1.	Nursing or convalescent home	N	N	N	N	N	N	SP	SP	N	SEE §3.1.2.4
2.	Retail containing less than 2,000 s.f. of gross floor area	N	N	N	N	Y	Y	Y	Y	N	G
3.	Retail containing 2,000 s.f. of gross floor area to 10,000 s.f. of gross floor area (including storage and sales space, and accessory space)	N	N	N	N	SP	SP	Y	Y	N	G
4.	Retail containing more than 10,000 s.f. of gross floor area (including storage and sales space, and accessory space)	N	N	N	N	SP	SP	SP	SP	N	G
5.	Selling of animals and pets	N	N	N	N	SP	SP	SP	SP	N	G

	<u>PRINCIPAL USE</u>	<u>A-1</u>	<u>A-2</u>	<u>A-3</u>	<u>A-4</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>B-4</u>	<u>I</u>	<u>Off-Street Parking Group (See Art. 3.1.2.0)</u>
6.	Bakery containing less than 2,000 s.f. of gross floor area (where at least 75% of all goods sold at retail on premises)	N	N	N	N	Y	Y	Y	Y	N	G
7.	Bakery containing 2,000 s.f. of gross floor area or more (where at least 25% of the premises is used for retail sales on premises)	N	N	N	N	SP	SP	SP	SP	N	G
8.	Motor vehicle sales and rental	N	N	N	N	N	SP	N	N	N	G
9.	Motor vehicle general or body repair, or automatic automobile / vehicle washing facility	N	N	N	N	N	SP	SP	SP	N	G
10.	Motor vehicle filling / fueling station	N	N	N	N	SP	SP	SP	SP	N	G
11.	Self-service automobile / vehicle washing facility	N	N	N	N	N	N	N	N	N	N/A
12.	Motor vehicle light service	N	N	N	N	SP	SP	SP	SP	N	G
13.	Restaurant or coffee shop containing less than 2,000 s.f. of gross floor area	N	N	N	N	Y	Y	Y	Y	N	E
14.	Restaurant or coffee shop containing 2,000 s.f. of gross floor area to 7,500 s.f. of gross floor area	N	N	N	N	SP	SP	Y	Y	N	E
15.	Restaurant or coffee shop containing more than 7,500 s.f. of gross floor area	N	N	N	N	SP	SP	SP	SP	N	E
16.	Restaurant or coffee shop abutting one or more residentially zoned properties that are being used for residential purposes	N	N	N	N	SP	SP	SP	SP	N	E
17.	Restaurant including entertainment (dancing, live music, DJ, live entertainment.) (not including televisions or background music)	N	N	N	N	SP	SP	SP	SP	N	E
18.	Restaurant providing delivery service (using more than one delivery vehicle per shift)	N	N	N	N	SP	SP	SP	SP	N	E
19.	Restaurant – with curbside pick-up / curbside delivery	N	N	N	N	N	SP	SP	SP	N	E
20.	Catering establishment (establishment primarily for the preparation and sale of food for off-premises sale or consumption)	N	N	N	N	SP	SP	SP	SP	SP	SEE §3.1.2.4
21.	Business, medical or professional office - large	N	N	N	N	SP	SP	SP	SP	N	I

	<u>PRINCIPAL USE</u>	<u>A-1</u>	<u>A-2</u>	<u>A-3</u>	<u>A-4</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>B-4</u>	<u>I</u>	<u>Off-Street Parking Group (See Art. 3.1.2.0)</u>
22.	Business, medical or professional office - medium	N	N	N	N	Y	Y	Y	Y	N	I
23.	Business, medical or professional office - small	N	N	N	N	Y	Y	Y	Y	N	I
24.	Personal service establishment containing less than 2,000 s.f. of gross floor area	N	N	N	N	Y	Y	Y	Y	N	G
25.	Personal service establishment containing 2,000 s.f. of gross floor area to 5,000 s.f. of gross floor area	N	N	N	N	SP	SP	Y	Y	N	G
26.	Personal service establishment containing more than 5,000 s.f. of gross floor area	N	N	N	N	SP	SP	SP	SP	N	G
27.	Animal grooming (no overnight boarding of animals)	N	N	N	N	SP	SP	SP	SP	SP	G
28.	Bank or financial institution containing less than 2,000 s.f. of gross floor area	N	N	N	N	Y	Y	Y	Y	N	G
29.	Bank or financial institution containing 2,000 s.f. of gross floor area to 5,000 s.f. of gross floor area	N	N	N	N	SP	SP	Y	Y	N	G
30.	Bank containing more than 5,000 s.f. of gross floor area	N	N	N	N	SP	SP	SP	SP	N	G
31.	Automatic teller machine (freestanding)	N	N	N	N	SP	SP	SP	SP	N	K
32.	Automatic teller machines (integrated/inline or attached to other structure)	N	N	N	N	Y	Y	Y	Y	N	K
33.	Outdoor vending machines, kiosks and booths	N	N	N	N	SP	SP	SP	SP	N	SEE §3.1.2.4
34.	Nursery / greenhouse	N	N	N	N	N	N	N	N	SP	SEE §3.1.2.4
35.	Veterinary Establishment	N	N	N	N	SP	SP	SP	SP	N	H
36.	Kennel	N	N	N	N	N	N	N	N	SP	SEE §3.1.2.4
37.	Drive-Through in connection with any lawfully existing use (See §5.12.0.0.)	N	N	N	N	N	N	SP	SP	N	N/A
38.	Any Permitted Use open before 7:00 a.m. or later than 10:00 p.m.	N	N	N	N	SP	SP	SP	SP	SP	N/A
39.	Bar, Tavern or Lounge	N	N	N	N	SP	SP	SP	SP	N	E

	<u>PRINCIPAL USE</u>	<u>A-1</u>	<u>A-2</u>	<u>A-3</u>	<u>A-4</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>B-4</u>	<u>I</u>	<u>Off-Street Parking Group (See Art. 3.1.2.0)</u>
2.	One Storage Container that is not maintained for more than 180 days in any 12 consecutive month period	SP	SP	SP	SP	SP	SP	SP	SP	SP	N/A
3.	One Storage Container, not to exceed 1,700 cubic feet, for the storage of personal property and construction materials and equipment, provided such Storage Container is required as a result of ongoing construction at the property which is being undertaken in accordance with a lawfully issued building permit, provided, however, such Storage Container shall be removed from the property upon the earlier of (i) cessation of construction work on the property for any 10 consecutive day period, (ii) final sign-off of the building permit; and (iii) 150 days following issuance of the building permit permitting such construction	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
3.	All other Storage Containers	N	N	N	N	N	N	N	N	SP	N/A
4.	Adult Uses (See §5.10.0.0.)	N	N	N	N	N	N	N	N	SP	SEE §3.1.2.4

2.2.3.1. *Change in Ownership.* A change of ownership of the commercial use without a corresponding change or expansion in the use shall not require a new Special Permit under this Section 2.2.3.0. unless an express condition of the Special Permit approving such commercial use requires that the Special Permit is personal and issued to a particular person or entity.

2.2.4.0. *Residential Accessory Uses.* Accessory uses described herein are permitted in residential districts only in accordance with lawfully existing principal uses.

2.2.4.1. *Accessory Scientific Uses.* Uses, whether or not on the same parcel as activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Board of Appeals, provided that the Board finds that the proposed use does not substantially derogate from the public good.

2.2.4.2. *Major Recreational Equipment.* No major recreational equipment shall be stored on any lot in the Residence A-1, A-2, A-3, or A-4 Districts other than in a carport or enclosed building or behind the building line of the principal building, provided however that such equipment may be parked or stored anywhere on residential premises for a period not to

exceed seventy-two (72) hours. No such equipment shall be used for living or housekeeping purposes when stored on a residential lot, or in any location not approved for such use.

2.2.4.3. *Unregistered Motor Vehicles.* No person shall permit more than one (1) unregistered motor vehicle, or major parts thereof, to remain ungaraged on his premises at any time unless under a class 1 or class 2 license for the sale of motor vehicles. In no event shall such a vehicle be permitted to remain for more than six (6) months.

2.2.4.4. *Commercial Motor Vehicles and Equipment.* No person shall permit any commercial vehicle or piece of equipment to remain ungaraged anywhere on his/her premises in any Residential District with the following exceptions: Commercial vehicles and pieces of equipment belonging to contractors providing services to the premises may be parked outside on the premises only while such services are being actively performed. Each dwelling unit may have one truck of less than nine thousand five hundred (9,500) pounds manufacturer's GVW rating which has not been decorated with letters or signage greater than that required by the United States Department of Transportation or the Massachusetts Registry of Motor Vehicles parked on any area of the premises.

2.2.4.5. *Family Day Care and Adult Day Care.* Family Day Care may be permitted as an accessory use. Adult Day Care may be permitted as a principal or an accessory use upon the issuance of a special permit by the Board of Appeals. Providers shall comply with all applicable federal, state, and local laws.

2.2.4.6. *Intentionally omitted.*

2.2.4.7. *Garage.* One (1) garage for not more than three (3) automobiles belonging to residents of the property on which it is located is a permitted accessory use in a Residence A-1, A-2, A-3, or A-4 District. Garages for additional automobiles belonging to residents of the property on which it is located shall only be permitted by special permit pursuant to Section 5.3.0.0.

2.2.4.8. *Radio Antenna.* The construction or use of a radio antenna by a federally licensed amateur radio operator is a permitted accessory use; provided, however, that no such antenna shall exceed the height reasonably necessary to accommodate effective communication.

2.2.5.0. *Non-Residential Accessory Uses.* Any use permitted as a principal use is also permitted as an accessory use in non-residential districts provided such use is customarily incidental to the main or principal building or use of the land. Any use authorized as a principal use by special permit may also be authorized as an accessory

use by special permit provided such use is customarily incidental to the main or principal building or use of the land. Any use not allowed in the district as a principal use is also prohibited as an accessory use. Accessory uses are permitted only in accordance with lawfully existing principal uses. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section 5.4.0.0., shall also require site plan review and approval.

2.2.6.0. *Home Occupations.* Home occupations, as defined in Article VI, are permitted as of right or by special permit as follows:

2.2.6.1. *Home Occupations as of Right.* Businesses or professions subordinate to and customarily associated with the principal residential use of premises may be engaged in as an accessory use by the owner of that dwelling, provided, however, that all of the following conditions shall be satisfied:

- a. The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto which has been in existence at least five (5) years, without extension thereof.
- b. Not more than twenty-five (25%) percent of the gross square footage of the residence and any qualified accessory structures shall be used in the home occupation; provided, however, that no exterior alteration of the building shall be permitted to accommodate the home occupation.
- c. The building or premises occupied shall not be rendered objectionable or detrimental to the residential character of the neighborhood due to the exterior appearance, emissions of odor, gas, smoke, dust, noise, electrical disturbance or in any other way. No disturbance, as defined in Section 3.4.1.0., shall be caused, nor shall the home occupation use or store hazardous materials in quantities greater than associated with normal household use. In a structure containing more than one (1) dwelling unit, the use shall in no way become objectionable or detrimental to any residential use within the structure.
- d. Traffic generated shall not exceed volumes normally expected in a residential neighborhood.
- e. The business or profession shall apply for and obtain a business certificate and obtain an annual certification from the Inspector of Buildings confirming that the home occupation complies with all of the requirements of this Section 2.2.6.1.

- f. There shall be no display of goods or wares visible from beyond the boundaries of the premises or sale of merchandise from the premises.
- g. Any such building shall include no feature of design not customary in buildings for residential use.
- h. No exterior storage of materials, and no other exterior indication of the home occupation, or other variation from the residential character of the premises.
- i. No person not a member of the household shall be employed on the premises in the home occupation, except one subordinate employee on site at any one time.
- j. The home occupation, except for music teachers and tutors, shall not serve clients, customers, salespersons, or the like on the premises.
- k. There shall be no sign, exterior display, or other advertising device visible from off the lot.

2.2.6.2. *Home Occupations by Special Permit.* Businesses or professions incidental to and customarily associated with the principal residential use of premises may be engaged in as an accessory use by the owner of that dwelling upon the issuance of a special permit by the Board of Appeals provided, however, that in addition to the criteria set forth in Section 5.3.2.0. below, all of the following conditions shall be satisfied:

- a. All of the requirements of Sections 2.2.6.1.a-h.
- b. Not more than two (2) persons not members of the household shall be employed on the premises in the home occupation at any one (1) time.
- c. No sign, exterior display or other advertising device visible from beyond the boundaries of the premises shall be permitted, except for one (1) unlighted, exterior sign advertising the home occupation shall not exceed one (1) square foot in area attached flush to the building in which the home occupation is located and constructed to be in keeping with the character of the neighborhood.
- d. Parking generated by the home occupation shall be accommodated off-street, but in no event shall such parking be located in the required front, side or rear yard of a property.
- e. No disturbance, as defined in Section 3.4.1.0., shall be caused. The use or storage of hazardous materials in quantities greater than

associated with normal household use shall be subject to design requirements to protect against discharge to the environment.

- f. Hours of operation shall be determined by special permit based upon the nature of the home occupation.

2.2.7.0. *Improved Lots - Nonconforming Uses and Structures.* This Zoning By-Law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, § 5 at which this Zoning By-Law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

2.2.7.1. *Nonconforming Uses.* The Board of Appeals may award a special permit to change or extend a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Only the following types of changes or extensions to nonconforming uses may be considered by the Board of Appeals:

- a. Change or substantial extension of the nonconforming use, provided a nonconforming use may not be extended to include more than the lesser of (i) one hundred twenty-five (125%) percent of the area dedicated to such nonconforming use as of the date such use first became nonconforming, and (ii) one hundred twenty-five (125%) percent of the area presently dedicated to such nonconforming use.
- b. Change from one nonconforming use to another, less detrimental, nonconforming use.

2.2.7.2. *Nonconforming Structures, Other Than Single and Two-Family Structures.* The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. Only the following types of changes to nonconforming structures may be considered by the Board of Appeals:

- a. Reconstructed, extended or structurally changed; and
- b. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

The reconstruction, extension or structural change of such nonconforming structures so as to increase an existing nonconformity, or create a new nonconformity, including, for example, the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a dimensional special permit or variance, as applicable, from the Board of Appeals.

2.2.7.3. *Nonconforming Single and Two-Family Structures.*

(a) Nonconforming single and two-family residential structures may be extended, altered, reconstructed or structurally changed upon a determination by the Inspector of Buildings that such proposed extension, alteration, reconstruction or change does not increase the nonconforming nature of said structure, which determination shall only be made by the Inspector of Building if one or both of the following two (2) circumstances exist:

1. In the case of a lot that does not comply with the existing minimum lot area and/or minimum lot frontage requirements: (i) there has been no alteration, extension, reconstruction or structural change to the exterior of the structure within the past five (5) years, and (ii) the existing structure complies with all current setback, open space, lot coverage, and building height requirements, and (iii) the proposed alteration, extension, reconstruction or structural change will also comply with all said current setback, open space, lot coverage and height requirements, and (iv) the cost to complete the proposed alteration, extension, reconstruction or structural change does not exceed one-third (1/3) of the assessed cost of the entire existing structure, and (v) such alteration, extension, reconstruction or structural change does not increase the gross floor area of the structure by more than fifteen (15%) percent, or increase the height of the building by more than fifteen (15%) percent, or increase the size of any lateral dimension by more than fifteen (15%) percent of the aggregate lateral dimension, or increase lot coverage by more than fifteen (15%) percent, or decrease the open space by more than fifteen (15%) percent; and/or

2. In the case where the existing structure presently encroaches or otherwise does not comply with one or more setback, open space, lot coverage or building height requirements: (i) there has been no alteration, extension, reconstruction or structural change to the exterior of the structure within the past five (5) years, and (ii) the proposed alteration, extension, reconstruction or structural change will comply with all current setback, open space, lot coverage and building height requirements, and (iii) the cost to complete the proposed alteration, extension, reconstruction or structural change does not exceed one-third (1/3) of the assessed cost of the entire

existing structure, and (iv) such alteration, extension, reconstruction or structural change does not increase the gross floor area of the structure by more than fifteen (15%) percent, or increase the height of the building by more than fifteen (15%) percent, or increase the size of any lateral dimension by more than fifteen (15%) percent of the aggregate lateral dimension, or increase in lot coverage by more than fifteen (15%) percent, or decrease the open space by more than fifteen (15%) percent.

(b) In the event the Inspector of Buildings does not make the determination required in Section 2.2.7.3.(a) above, such extension, alteration, reconstruction or change may only be permitted by special permit issued by the Board of Appeals (so-called “Section 6 Special Permit”) upon a determination that such extension, alteration, reconstruction or change is not substantially more detrimental than the existing nonconforming structure to the neighborhood. A Section 6 Special Permit shall only permit conforming changes to non-conforming structures and/or conforming changes to non-conforming lots. Extensions, alterations, reconstruction or changes that will not comply with the current setback, open space, lot coverage or building height requirements shall only be permitted, if at all, upon issuance by the Board of Appeals, as applicable, of a Dimensional Special Permit in accordance with Section 2.3.6.0. below or a Dimensional Variance in accordance with Section 5.2.2.2. below.

2.2.7.4. *Abandonment or Non-Use.* A nonconforming use or structure which has been abandoned, or not used for a period of two (2) years, shall lose its protected status and be subject to all of the provisions of this Zoning By-Law.

2.2.7.5. *Reconstruction of Nonconforming Structures.* Notwithstanding anything herein to the contrary, any nonconforming structure may be reconstructed after a fire, explosion, or other accident, provided that such reconstruction is completed within twelve (12) months after such fire, explosion, flooding, or other accident, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure, and further provided that reconstruction is, as applicable, approved by the Site Plan Special Permit Granting Authority pursuant to Section 5.4.0.0. Such time for reconstruction may be extended for up to an additional twelve (12) months, if the request is made before the expiration of the original 12-month period, by the Board of Appeals for good cause.

A nonconforming structure which has been demolished or removed as a result of other than by fire, explosion, flooding, or other accidental cause shall not be rebuilt except as a conforming structure unless a

special permit is granted by the Board of Appeals in accordance with Sections 2.2.7.1., 2.2.7.2, or 2.2.7.3, as applicable.

2.2.7.6. *Reversion to Nonconformity.* No nonconforming use or structure shall, if changed to a conforming use or structure, revert to a nonconforming use or structure.

2.2.7.7. *Non-Conforming Signs in Residential Districts.* The extension, alteration, reconstruction or change of non-conforming signs for professional offices in residential districts may only be permitted by special permit issued by the Board of Appeals (so-called “Section 6 Special Permit”) upon a determination that such extension, alteration, reconstruction or change is not substantially more detrimental than the existing nonconforming sign to the neighborhood; provided, however, that the extension, alteration, reconstruction or change of non-conforming signs authorized under this Section 2.2.7.7. shall be in conformity with the provisions of Section 3.2.4.1.(a)(i),(iii), (iv), and (v). Or take any other action relative thereto.

2.2.8.0. *Planned Development Districts.* For allowed principal and accessory uses in a Planned Development District, see Section 4.5.2.0.

2.2.9.0. *Medical Marijuana Treatment Center:* A non-profit facility or location that has been registered by the Department of Public Health where medical marijuana is grown, processed and/or made available to a qualifying patient or a personal caregiver, provided that:

2.2.9.1. A medical marijuana treatment center shall not be located within one thousand feet (1,000’) of an elementary school, middle school, high school, or public library in existence at the time of enactment of the Zoning By-Law amendment establishing this use.

Site Plan Approval Required. (ATM 5/5/2014)

2.2.10.0. *Property Redevelopment.*

2.2.10.1. Properties in the B-4 District that have existing commercial space that is proposed to be eliminated as part of a proposed project shall replace in the proposed project such commercial space in the same or greater amount than the existing commercial space being eliminated. Such commercial space shall be provided for on the same floor as it existed prior to construction of the new project. For the purposes of this Section 2.2.10.1, “existing commercial space” shall include occupied or vacant areas within an existing space that is currently or most recently has been used for a commercial purpose.

2.2.11.0. Temporary Outdoor Seating – Restaurants

The purpose of this section is to aid restaurants and the public recovering from the COVID-19 Pandemic and to provide the Town with sufficient time to evaluate, address and regulate outdoor seating at restaurants.

Notwithstanding anything in this By-Law to the contrary, all restaurants in Town, whether permitted as of right or by special permit, may provide outdoor seating as of right, including liquor service, from the period of June 22, 2020 to December 31, 2022, whereupon this provision shall expire. Subject to all other applicable legal requirements, such outdoor seating may be located off premises.

During that time-period, Section 4.7.3.2 of this By-Law shall be suspended as to any existing restaurant use. Such temporary outdoor restaurant seating use shall not require the amendment of any existing site plan.

The area to be used for such outdoor restaurant seating shall not be included in the calculation of size for determining if a special permit is required for the restaurant use or in the calculation of required parking. Additionally, such outdoor seating may be located within required setbacks.

The Board of Selectmen may enact regulations applicable to outdoor restaurant seating.

Effective January 1, 2023 and unless and until this By-Law is further amended, or this Section is extended, no restaurant operating outdoor seating shall continue to offer outdoor seating without the required special permit, design review approval and site plan approval, if any. (6/22/2020 ATM)

2.3.0.0. Dimensional Regulations.

2.3.1.0. General. No structure shall be erected or used, premises used, or lot changed in size or shape except in conformity with the requirements of this section, unless otherwise provided in this By-Law or by statute.

2.3.2.0. Table of Dimensional Requirements. The dimensional requirements set forth in Appendix A, as otherwise modified by the provisions of By-Law shall apply in all districts.

2.3.3.0. Accessory Buildings and Structures.

2.3.3.1. An accessory building which is detached and not part of the main building may be built in the rear yard area, provided that not more than twenty-five (25%) percent of the required rear yard area is occupied by the accessory building. A detached accessory building shall not be located nearer than ten (10) feet to the principal building, nor nearer to the rear or side lot line than the greater of (i) five (5) feet and (ii) fifty

(50%) percent of the relevant prescribed minimum set-back distance, nor nearer to the front street line than the prescribed minimum set-back distance of the respective districts.

- 2.3.3.2. Garage or carport for not more than three (3) private automobiles is a permitted accessory use in a Residence A-1, A-2, A-3, or A-4 District. Such garage shall not be nearer to any side or rear lot line than the greater of (i) five (5) feet and (ii) fifty (50%) percent of the relevant prescribed minimum set-back distance, nor nearer to the front street line than the prescribed minimum set-back distance of the respective districts.
- 2.3.3.3. An accessory building shall not exceed fifteen (15) feet in height above the ground level.
- 2.3.3.4. No more than one (1) accessory building may be located on lot without first obtaining a special permit from the Board of Appeals in accordance with Section 5.3.0.0. below.
- 2.3.3.5. All pools or self-contained spas shall be subject to the setback limitations of an accessory structure, with the exception of the required distance to the principal building.

2.3.4.0. *Multiple Principal Structures.* Except in the residential districts, more than one (1) principal nonresidential structure may be erected on a lot, pursuant to a special permit issued by the Board of Appeals in accordance with Section 5.3.0.0. herein and the following conditions:

- 2.3.4.1. No principal building shall be located in relation to another principal building on the same lot, or on an adjacent lot, so as to cause danger from fire;
- 2.3.4.2. All principal buildings on the lot shall be served by access ways suitable for fire, police, and emergency vehicles as approved by the Inspector of Buildings; and
- 2.3.4.3. All of the multiple principal buildings on the same lot shall be accessible via pedestrian walkways connected to the required parking for the premises, and to each principal building.

2.3.4.4. Notwithstanding anything to the contrary contained within this Section 2.3.4.0., for purposes of construction of Renewable and Alternative Energy Research and Development Facilities (RE/AE R&D Facilities) within the I District under Section 2.1.1.8. and Section 2.2.3.0. of this By-Law, more than one (1) principal nonresidential structure may be erected on a lot in accordance with the conditions set forth in this Section 2.3.4.0. without the requirement of a special permit from the Board of Appeals, or take any action relative thereto.

2.3.5.0. *Unimproved Lots - Grandfathered or Undersized Lots.* Any unimproved lot that does not conform to the lot area or frontage requirements of this Section 2.3.0.0. shall be governed by the provisions of G.L. c. 40A, § 6, ¶ 4.

2.3.6.0. *Dimensional Special Permit.* The Board of Appeals may grant a special permit to reduce otherwise applicable requirements for yard, height, open space, or lot coverage restrictions upon a finding that:

2.3.6.1. There is no practical alternative to the proposed structure that is capable of complying with the dimensional requirement(s) for which relief is being sought and which achieves the same or more consistency with the architectural scale and style of other structures in the immediate area; and

2.3.6.2. Such reduction may be accomplished without substantial detriment to the neighborhood; and

2.3.6.3. The proposed structure is consistent with the architectural scale and style of those in the immediate area; and

2.3.6.4. The benefit to the town and the neighborhood outweigh the adverse effects of the proposed structure, taking into account the characteristics of the site and of the proposal in relation to that site, including consideration of the items set forth in Sections 5.3.2.1. through 5.3.2.6., inclusive; and

2.3.6.5. The resulting structure will not exceed a dimensional requirement by up to twenty (20%) percent of the underlying minimum yard setback requirement, up to ten (10%) percent or up to twenty percent (20%) height relief only in an area located in the CFAOD vulnerable to coastal flooding for the purpose elevating the building above the base flood elevations of the underlying lot coverage or height requirement and up to fifty (50%) percent of the underlying minimum open space requirement (for example, without limitation, where the underlying dimensional requirement allows a maximum lot coverage of twenty-five (25%) percent, a dimensional special permit may only be issued to allow up to a twenty-seven and one-half (27.5%) percent maximum lot coverage; where the underlying dimensional requirement allows a

minimum side yard setback of fifteen (15) feet, a dimensional special permit may only be issued to reduce the minimum side yard setback to twelve (12) feet; where the underlying dimensional requirement allows a maximum height of thirty-five (35) feet, a dimensional special permit may only be issued to increase the maximum height to thirty eight and one-half (38.5) feet, where the underlying minimum open space requirement is twenty-five (25%) percent, a dimensional special permit may only be issued to decrease the minimum open space to twelve and one-half (12.5%) percent, etc.). The percentage limitations contained in this Section 2.3.6.5. shall not apply to (i) any project described in an application for a dimensional special permit pursuant to Section 2.3.6.0. that was filed with the Town Clerk prior to April 13, 2009, or (ii) any request for a dimensional special permit pursuant to Section 2.3.6.0. for relief from a minimum yard setback requirement, which request does not seek to extend the footprint of the structure any closer to the relevant lot line than currently exists, but which instead seeks to permit an addition to the structure that is proposed to be located the same or greater distance from the relevant lot line as the existing footprint of the structure.

2.3.7.0. *Height of Buildings.* The provisions governing the height of buildings shall not apply to chimneys, cooling towers, elevator bulkheads, non-mechanical ventilators, and other necessary appurtenant features usually carried above roofs. Such features and structures may be erected to their required height and in excess of the height limits otherwise provided for the district in which the structure is built. This provision shall not be construed to exempt wireless communications facilities from the requirements of Section 4.3.0.0.

2.3.8.0. *Additional Regulations.*

2.3.8.1. Except as otherwise expressly permitted under this By-Law, every part of a required yard shall be open to the sky and unobstructed except for accessory buildings in the yard area, and except for ordinary projections of the belt courses, cornices, sills, skylights, and ornamental features projecting from the building. Open or lattice enclosed fire escapes and the ordinary projections of chimneys and flues are permitted.

2.3.8.2. Projecting eaves, chimneys, bay windows, balconies, open and enclosed fire escapes and like projections which do not project more than five (5) feet from the line of the foundation wall, and unenclosed steps, unroofed porches and the like, which do not project more than ten (10) feet beyond the line of the foundation wall, need not comply with the yard regulations otherwise provided for the district in which the structure is built provided that a five (5) foot setback from all side and rear property lines is maintained.

- 2.3.8.3.** On corner lots, the set-back provisions governing the location of buildings on each of the abutting streets shall apply.
- 2.3.8.4.** A lot shall have a minimum width equal to the required frontage of the zoning district in which it lies for the entire depth of the required front yard; said width being measured parallel to the frontage for a lot having a straight frontage, and measured along a line having the same curvature as the frontage for a lot with a curved frontage. Further, no portion of a lot shall have any width dimension less than fifty (50%) percent of the required frontage; with this lesser width being measured perpendicular to a side line. See Appendix B, Figure 7.
- 2.3.8.5.** The minimum distance between multi-family buildings shall be forty (40) feet.
- 2.3.8.6.** Where a lot in a B-3, B-4, or I District abuts a residential district, the side yard setback for uses other than a single or two-family dwelling for the lot located in the B-3, B-4, or I District shall be 40 feet along the common boundary of such lot and the residential district. Where a lot in a B-2 District abuts a residential district, the side yard setback for uses other than a single or two-family dwelling for the lot located in the B-2 District shall be 30 feet along the common boundary of such lot and the residential district. Where a lot in a B-1 District abuts a residential district, the side yard setback for uses other than a single or two-family dwelling for the lot located in the B-1 District shall be 20 feet along the common boundary of such lot and the residential district.
- 2.3.8.7.** Where a lot in a B-3, B-4, or I District abuts a residential district, the rear yard setback for uses other than a single or two-family dwelling for the lot located in the B-3, B-4, or I District shall be 40 feet along the common boundary of such lot and the residential district. Where a lot in a B-2 District abuts a residential district, the rear yard setback for uses other than a single or two-family dwelling for the lot located in the B-2 District shall be 30 feet along the common boundary of such lot and the residential district. Where a lot in a B-1 District abuts a residential district, the rear yard setback for uses other than a single or two-family dwelling for the lot located in the B-1 District shall be 20 feet along the common boundary of such lot and the residential district.
- 2.3.8.8.** No accessory building or structure shall be located within the required front yard except for free-standing signs as set forth in Section 3.2.0.0., or appropriate fencing.
- 2.3.8.9.** No yard, court, or other open space required for a building in the B-3, B-4, and I Districts may be counted as open space for or occupied by another building.

2.3.8.10. Planned Development Districts. For dimensional regulations in a Planned Development District, see Section 4.5.3.0. and the Table of PDD Dimensional Regulations.

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ARTICLE III. GENERAL REGULATIONS.

3.1.0.0. Off-Street Parking and Loading.

3.1.1.0. General Parking Requirements.

- 3.1.1.1.** Adequate off-street parking shall be provided to service all parking demand created by new structures, additions to existing structures, or changes of use. Existing buildings and uses need not comply unless expanded or otherwise changed to increase their parking needs.
- 3.1.1.2.** In applying for building or occupancy permits, the applicant shall demonstrate that the minimum parking requirements set forth below will be met for the new demand without counting existing parking necessary for existing uses to meet these requirements.
- 3.1.1.3.** Any parking or loading requirement set forth herein may be reduced upon the issuance of a special permit by the Board of Appeals if the Board finds that the reduction is not inconsistent with public health and safety, or that the reduction promotes a public benefit, and that the requirements set forth in Section 5.3.0.0. are fulfilled. Such cases might include:
 - a.** Use of a common parking lot for separate uses having peak demands occurring at different times;
 - b.** Age or other characteristics of occupants of the facility requiring parking which reduces auto usage; or
 - c.** Peculiarities of the use which make usual measures of demand invalid.

A reserve area, to be maintained indefinitely as landscaped open space may be required sufficient to accommodate the difference between the spaces required (i.e. the sum of the spaces required for the separate uses individually) and the spaces provided. The parking/site plan shall show (in dotted outline) how the reserve area would be laid out in full compliance with the required number of spaces.

- 3.1.1.4. *Applicability.*** The off-street parking and loading provisions of Section 3.1.0.0. shall not apply to structures or uses lawfully existing as of the effective date of Section 3.1.1.4. or any amendment thereto, provided, however, the provisions of this Section 3.1.0.0. shall apply to the following:

- a. New Structures and New Uses. For new structures erected and new uses of land established or authorized after the effective date of this Section 3.1.1.4. or any amendment thereto
- b. Additions to Existing Structures. External additions of Gross Floor Area to existing structures for any use, accessory off-street parking and loading facilities shall be provided as required by the regulations for the districts in which such structures or uses are located, in which case additional off-street parking or loading facilities as required herein shall be provided for the total increase in intensity subsequent to the effective date of this Section 3.1.1.4. or any amendment thereto.
- c. Expansion of Use. A expansion to an existing use within any existing structure (or lot as the case may be) where the existing use is increased through addition of dwelling units, floor area, seating capacity or other units of measurement specified in Section 3.1.2.0. (but not including any uses in a new external addition to that structure, which shall be subject to the provisions of subsection (b) above), off-street parking and loading facilities shall be provided as required for such expansion of use.
- d. Change to New More Intensive Use. A change from one use to a new use which pursuant to the parking requirements set forth in Section 3.1.2.0. below requires a greater number of off-street parking spaces than the existing use would require based on the parking requirements set forth in Section 3.1.2.0. below.

3.1.2.0. Number of Spaces. For the purpose of computing the parking requirements of different uses, the number of spaces required shall be the largest whole number obtained after increasing all fractions upwards to one. Employees shall include the largest number of owners, managers, full and part-time workers and volunteers that may be normally expected on the premises during any single shift or portion thereof. The number of seats in benches, pews, or other continuous seating arrangements shall be calculated at twenty (20) inches for each seat. The following minimum parking requirements shall apply to Use Groups as listed below:

<u>OFF-STREET PARKING USE GROUP</u>	<u>OFF-STREET PARKING REQUIREMENT</u>
A	One per dwelling unit
A-MF	One and one-half parking spaces per residential unit
A-HO	One per each person that is employed at but does not reside at the premises
B	One per each rented room
C	One per employee on largest shift, plus one per guest room, plus one per one hundred square feet of space in function rooms not designed for eating
D	One per each fifty square feet of gross floor area, or one per each three seats of rated capacity, whichever may require the larger number of spaces
E	One per each four seats of rated capacity
F	One per each three persons of rated capacity
G	One per each two hundred (200) square feet of gross floor area
H	One per staff member, plus one per employee, plus one per each two hundred (200) square feet of gross floor area
I	One per staff member, one per employee, plus one per each two hundred (200) square feet of gross floor area
J	One per each employee on the largest shift, and one for each company-owned or operated vehicle, plus space for customers' vehicles and-loading space as appropriate
K	One space for each ATM

3.1.2.1. In computing parking space requirements no space shall be counted which is needed for circulation or loading of vehicles.

- 3.1.2.2. In computing gross floor area for the purposes of this Article III, eighty (80%) percent of the entire Gross Floor Area of each structure shall be included regardless of its intended use.
- 3.1.2.3. Required spaces may be provided on the same lot with the principal use or on a contiguous or nearby lot in the same district, provided that no space is counted as meeting the requirement of more than one (1) use 2-way except as allowed below) and provided further that the distance between such parking lot and the use it serves shall not exceed two hundred (200) feet.
- 3.1.2.4. For any uses(s) not assigned to an Off-Street Parking Group in Section 2.2.3.0. above (except where Section 2.2.3.0. indicates “None” or “N/A”), the Inspector of Buildings shall determine the required amount of off-street parking reasonably necessary to accommodate the proposed uses(s), provided, however, where the underlying use(s) requires a Special Permit pursuant to Section 2.2.3.0. above, the Board of Appeals, and not the Inspector of Buildings, shall determine the required amount of off-street parking reasonably necessary to accommodate the proposed uses(s) for all use(s) not assigned to an Off-Street Parking Group in Section 2.2.3.0. above (except where Section 2.2.3.0. indicates “None” or “N/A”).

3.1.3.0. *Size of Parking Spaces.* A parking space shall mean an equivalent ninety (90°) degree width of nine (9) feet by an equivalent ninety (90°) degree depth of eighteen (18) feet in size, provided, however, up to twenty-five (25%) percent of parking spaces may be reduced to an equivalent ninety (90°) degree width of eight and one half (8.5) feet by an equivalent ninety (90°) degree depth of sixteen (16) feet.

3.1.4.0. *Lanes for Circulation and Access.*

- 3.1.4.1. Two (2) way lanes for circulation shall be twenty-four (24) feet in width, provided, however, lanes for circulation for one-way traffic shall be no less than twenty (20) feet in width.
- 3.1.4.2. A reasonable number of entrances from, and exits to, the highway shall be provided for the lots to be served by such highway, and shall be located with proper regard to the proposed use of the developed area and safety to the pedestrian and vehicular traffic. Where appropriate, paved areas leading to and from entrances and exits shall also be provided.

3.1.5.0. *Parking Lot Design.*

- 3.1.5.1. A strip of land not less than six (6) feet in width shall be provided on at least two (2) sides of a parking lot or area and designated on the parking/site plan for the storage of snow plowed from the parking lot;

such snow storage area may be located in landscaped areas or in areas of required setbacks from lot lines or building lines.

- 3.1.5.2.** Only light areas as required for safety and comfort. Do not exceed eighty (80%) percent of the lighting power densities for exterior areas and fifty (50%) percent of lighting power densities for building facades and landscape features as defined in ASHRAE/IESNA Standard 90.1 – 2004, Exterior Lighting Section, without amendments. Design exterior lighting within the B1, B2, B3, and I Districts so that all lighting produces a no more than a maximum initial luminance value greater than 0.20 horizontal and vertical footcandles at the site boundary and no greater than 0.01 horizontal footcandles 15 feet from the boundary of the property. Document that no more than five (5%) percent of the total initial designed fixture lumens are emitted at an angle of ninety (90) degrees or height from nadir (straight down). For site boundaries that abut public rights-of-way, light trespass requirements may be met related to the curb line instead of the site boundary. The use of low intensity, shielded fixtures as well as so-called curfew controllers to turn off non-essential site lighting is highly encouraged to further reduce the effects of light pollution.
- 3.1.5.3.** The use of metal guardrails around parking drives and parking lots is not permitted. Where guardrails are used the type provided shall be of the heavy wooden timber variety. Metal or steel bollard, however, are permitted.
- 3.1.5.4.** Landscaping requirements are set forth in Section 3.3.0.0.
- 3.1.5.5.** Open parking lots containing six (6) or more parking spaces shall be set back twenty (20) feet from the street line and twenty (20) feet back from all other lines; provided, however, that along a boundary between business and residential use, parking lot setback shall be twenty-five (25) feet.

3.1.6.0. *Off-Street Loading.* All buildings requiring the delivery of goods, supplies, or materials, or shipments of the same shall have bays and suitable maneuvering space for off-street loading of vehicles as the Inspector of Buildings determines is reasonably necessary to accommodate the demands of the building or use(s), provided, however, where the underlying building or use(s) requires a Special Permit, the Board of Appeals shall determine the required amount of off-street loading bays, and where the underlying building or use(s) requires a Site Plan Special Permit in accordance with Section 5.4.0.0. below, the Site Plan Special Permit Granting Authority shall determine the number of off-street loading bays reasonably necessary to accommodate the demands of the building or use(s). Off-Street Loading Bays shall be subject to the following additional requirements:

- a. All off-street loading bays shall accurately be shown on a plan, including the location of the required or proposed off-street loading spaces, access thereto, dimensions and clearance.
- b. Off-street loading facilities are required by these zoning regulations so that vehicles engaged in unloading will not encroach on or interfere with the public use of streets, sidewalks, and alleys by automotive vehicles or pedestrians and so that adequate space is available for the unloading and loading of goods, materials, items or stock for delivery and shipping.
- c. Off-street loading facilities provided to meet the needs of one use may not be considered as meeting the needs of another use unless it is determined that the shared use of off-street loading facilities is reasonable and appropriate given the proposed uses and the location of the off-street loading facilities.
- d. Off-street parking facilities may not be used or counted as meeting off-street loading requirements.
- e. Adequate on-site area exists for the loading and unloading of such trucks. Such loading and unloading activity shall not be permitted in any public right-of-way.
- f. To the extent possible, access to loading areas shall be only from arterial or collector roadways and not from local streets.
- g. Loading areas shall be signed to indicate “no idling” and no idling shall be permitted.
- h. Any loading area located adjacent to a residential use shall not receive deliveries between the hours of 10 PM and 6 AM.

3.2.0.0. Signs.

3.2.1.0. *Applicability.* No signs are permitted in any district other than those signs listed herein which comply with the provisions of this Section 3.2.0.0.

3.2.2.0. *General Standards – All Districts.*

3.2.2.1. Flashing, moving, animated, or intermittently operating signs or advertising devices are not permitted except for signs showing only temperature and/or time displays. Notwithstanding the foregoing, rotating barber poles not greater than thirty (30) inches in height are permitted.

3.2.2.2. Pennants, banners, flags, and streamers are not permitted in any district, except as set forth in Section 3.2.3.7. below.

- 3.2.2.3. Billboards or off-premises signs are prohibited except as expressly provided herein.
- 3.2.2.4. Moveable, portable, sandwich sign, or "trailer signs" are prohibited except as expressly provided herein.
- 3.2.2.5. All signs, except temporary political signs, and other temporary signs listed in Section 3.2.5.3., shall be related harmoniously to the buildings to which they are attached or, if free-standing, to adjacent buildings. Signs shall be compatible in character, material, appearance, and scale with the general character of the Town of Swampscott and shall endeavor to enhance the visual environment.
- 3.2.2.6. Awnings for buildings containing non-residential uses are permitted subject to the requirements of Section 3.2.5.5. All awnings (and portions of the awnings/valences) shall be fixed or folding (retractable). Multiple awnings on a single building shall be consistent in size, profile and location and shall be limited to the first story of the building. Multi-tenant building awnings may vary in color but shall be located at the same height and have similar profiles to preserve the architectural lines of the building. Awnings shall not span numerous storefronts.

3.2.2.6. (a). Permitted

- a. Fire-resistant, water-repellant marine canvas material. Other material may be considered through Site Plan Review process.
- b. Down-lighting under an awning that is intended to illuminate the sidewalk under the awning

3.2.2.6. (b). Not Permitted

- a. Round or bull-nose awnings except for a single window or door.
- b. Vinyl or vinyl-coated, metal or glass material.
- c. Internally-illuminated awnings.

Where lettering is desired on awnings, any lettering or graphics on an awning shall be counted towards the maximum area (s.f.) of exterior advertising signage otherwise permitted under this By-Law. The valance on an awning shall not exceed 10” in height. Awning lettering and signage shall be on a valance only and a maximum of 6” in height.

With regard to all existing awnings, a replacement of an awning or any change or alteration of lettering or graphics on an awning shall be considered a new awning and subject to the restrictions set forth in this section. When installing awnings, both signs and awnings shall be

updated to comply with current signage by-law requirements.

All awnings shall undergo an Administrative Site Plan Review by the Planning Board. (ATM 5/5/2014)

- 3.2.2.7.** No sign or other advertising device attached to a building or roof overhang shall project more than twelve (12) inches above the roof ridge or parapet line. All roof signs are prohibited except in the case of a building with a mansard roof in which case no part of the sign shall be higher than the top edge of the slope. Signs may not be attached to chimneys, penthouses, rooftop equipment, or the like; provided, however, that in the case of a sloped roof (but not a mansard), a roof sign shall be permitted provided that the overall length of the sign does not exceed one-fifth (1/5) of the building length and provided that the height of the sign does not exceed one-tenth (1/10) the height of the rise of the roof (measured vertically), and provided that the sign aligns with, or is within two (2) feet of the building cornice/fascia.
- 3.2.2.8.** No sign, other than municipal signs or signs approved by the Board of Selectmen under Section 3.2.5.3. below, shall be pasted or attached to utility poles or municipal sign poles, or private or municipal fences. No signs shall be attached to trees.
- 3.2.2.9.** All exterior lighting of signs, to the extent permitted under this By-Law, shall be shielded so as not to cast light directly on adjacent streets or properties. The lighting source shall be shielded from view from adjacent roadways and properties. The level of illumination of lighting shall be low so as to reduce the glow of ambient light perceptible on adjacent properties. Lighting shall not exceed fifty (50%) percent of lighting power densities for building facades and landscape features as defined in ASHRAE/IESNA Standard 90.1 – 2004, Exterior Lighting Section, without amendments.
- 3.2.2.10.** All signs and their related supports shall be kept in full repair, and when not galvanized, shall be painted when necessary to prevent corrosion, decay, or an unsightly or neglected appearance. The Inspector of Buildings shall inspect all signs and require any sign to be removed for failure to comply with the provisions of this Section 3.2.2.10.

3.2.3.0. Permitted Signs.

- 3.2.3.1.** In all districts, two (2) real estate signs per lot, each not over six (6) square feet in area, advertising the sale, rental or lease of the premises on which it is located, and referring to premises.
- 3.2.3.2.** In all districts, directional and traffic signs, each not exceeding nine (9) square feet in area, and carrying no advertising.
- 3.2.3.3.** In all districts, one (1) contractor's sign, not exceeding six (6) square feet in area, and not exceeding six (6) feet above grade as measured to the topmost portion of the sign, may be displayed in connection with the ongoing renovation or construction of a building. The sign shall be removed within the earlier to occur of (a) ninety (90) days following the issuance of the building permit permitting such work or project; or (b) ten (10) days following the completion of the work or project.
- 3.2.3.4.** In any residential district one (1) "professional offices" sign per lot on the premises of such offices provided, however, that the size of such sign shall not exceed six (6) square feet in area, except as authorized by Section 2.2.7.7. No other signs relating to any commercial use, except those related to permitted home occupations as provided in Section 2.2.6.2. above and those otherwise expressly permitted in this Section 3.2.0.0., shall be permitted within any residential district.
- 3.2.3.5.** In all districts, one (1) free-standing sign per lot (except where more may be allowed by other provisions of this by-law) identifying the premises of a municipal building, school, church, temple, or other religious organization building provided, however, that the size of such sign shall not exceed six (6) square feet in any residential district unless a special permit is obtained and sixty (60) square feet in any other district.
- 3.2.3.6.** In all districts, one (1) free-standing sign not exceeding four (4) feet high by eight (8) feet wide on property proposed for subdivision to be removed upon completion of the development of the subdivision.
- 3.2.3.7.** In all districts the following are permitted:
 - a.** Pennants, banners, flags, streamers, windsocks, etc. for non-commercial purposes are permitted provided such do not exceed eighteen (18) square feet in area and which are not illuminated.
 - b.** Country, state, county, or other level of government flags for non-commercial purposes.
 - c.** In the B-1, B-2, B-3, B-4, and I District flags for commercial purpose are permitted provided such flags comply with the

following requirements:

- 1) Only one flag, projecting out from the face of the building, may be used as a sign in addition to any other sign or signs otherwise permitted in this By-Law;
- 2) Such a flag shall be mounted in a temporary manner in order to be displayed only during business hours;
- 3) Such a flag shall may not exceed six (6) square feet and shall be rectangular or square in shape;
- 4) When displayed, the height of the bottom point of such flag or banner shall not be less than seven (7) feet from the path of travel;
- 5) If such flags project over Town property, permission from the Board of Selectmen is required;
- 6) The flag shall be made of woven material, manufactured using man-made or natural fibers.

3.2.3.8. In the B-1, B-2, B-3, B-4, and I Districts, one (1) free-standing sign not exceeding four (4) feet high by six (6) feet wide advertising that space on the property is for rent, provided that such sign shall not be permitted more than six (6) months prior to the date such space will be available for occupancy and such sign shall be removed once the property is rented.

3.2.4.0. *District or Use Regulations.*

3.2.4.1. *Signs in the B-1 and B-2 Districts.*

(a) In the B-1 and B-2 Districts, upon the issuance of a permit from the Inspector of Buildings as provided in Section 3.2.6.0. below and, as applicable, upon the issuance of a Special Permit by the Board of Appeals where the underlying use requires or required a Special Permit in accordance with Section 2.2.3.0. or a Site Plan Special Permit by the Site Plan Special Permit Granting Authority where the development requires or required a Site Plan Special Permit in accordance with Section 5.4.0.0., there shall be permitted for each permitted commercial use one (1) sign attached flat against the wall of the building where such use is located identifying the name, standard logo, and/or standard graphic of the user, provided, however, the following requirements are met:

(i) the area of the sign does not exceed forty-five (45) square feet, provided, however, permitted commercial uses having an area of more than ten thousand (10,000) g.s.f. shall be permitted to have an area of up to ninety (90) square feet in size, provided that such sign is designed as part of the architectural decor of the building and that it is set back at least seventy-five (75) feet from the street or way on which it fronts.

(ii) the sign is not internally illuminated or illuminated from behind, provided, however, the requirements of this subsection (ii) may be altered in the B-2 District by Special Permit granted by the Board of Appeals.

(iii) where there is more than one (1) permitted commercial user in a single building, all signs must be the same height, the same geometric shape, located in a single continuous line above the storefronts, made of the same materials and quality, and there must be at least a three (3) foot buffer in between each such sign. See Figure 5 in Appendix B.

(iv) the sign is not comprised of individually illuminated letters.

(v) the sign does not relate to any use which is not located on the first floor of the building, provided, however, a sign for a use not located on the first floor of the building may be permitted upon issuance of a Special Permit by the Board of Appeals in accordance with the findings required under Section 5.3.2.0. below and provided that the sign is integrated as part of the architectural design of the building.

(vi) in the B-1 District only, (w) each sign shall be no more than thirty (30) inches tall, (x) all graphics and lettering in the sign must be colored gold (which color shall be the same as the gold color used on all other signs on the building), (y) the signs must contain a gold colored line having a width of at least one (1) inch located no less than one (1) inch inside the perimeter of the display area of the sign (which gold colored line shall be the same as the gold color used on all other signs on the building).

(b) In addition, subject to receipt of a Special Permit from the Board of Appeals under Section 5.3.0.0. below and a permit from the Inspector of Buildings as provided in Section 3.2.6.0. below, one (1) free-standing sign may be permitted per commercial development in the B-1 and B-2 Districts, provided that the off-street parking for such commercial development is located adjacent to the street or way on which the commercial development fronts, such free-standing sign does not exceed thirty (30) square feet in area, and such free-standing sign does not exceed eighteen (18) feet in height.

(c) In addition to the signs permitted above, within the B-1 and B-2 Districts, upon the issuance of a permit from the Inspector of Buildings as provided in Section 3.2.6.0. below and, upon the issuance of a Special Permit by the Board of Appeals where the underlying use requires or required a Special Permit in accordance with Section 2.2.3.0. or a Site Plan Special Permit by the Site Plan Special Permit Granting Authority where the development requires or required a Site Plan Special Permit in accordance with Section 5.4.0.0., one (1) or more projection signs extending at a ninety (90) degree angle from the front of a building may be permitted, in addition to the signs otherwise permitted, provided the following requirements are met:

(i) the projection sign is not located any closer than thirty (30) feet from any other projection sign and only one (1) projection sign is permitted for each permitted commercial use;

(ii) where more than one (1) projection sign is located on a building the top of each such sign shall be constant across the entire building;

(iii) each projection sign shall have a height no greater than thirty (30) inches and a width no greater than twenty (24) inches, provided, however, the area of such projection sign shall be counted towards the maximum area permitted for all exterior signs on the building;

(iv) the bottom of each projection sign shall be located at least seven and one-half (7.5) feet above grade;

(v) each projection sign shall not extend more than three (3) feet from the front wall of the building to which it is affixed;

(vi) each projection sign shall (w) be of the same or better materials and quality as all other signs on the building, (x) not be internally illuminated or illuminated from behind, (y) have a single background color, and (z) contain only the name, standard logo, and/or standard graphic of the user;

(vii) the projection sign is located in front of the use to which it related; and

(viii) in the reasonable judgment of the Inspector of Buildings or, as applicable, the Board of Appeals, the projection sign does not constitute a public safety concern.

(d) In addition to the signs permitted above, within the B-1 and B-2 Districts, awnings (new or replacement) without lettering or graphics may be installed upon approval through Administrative Site Plan Review by the Planning Board. Replacement awnings without a change or alteration of lettering or graphics on the awning may be installed upon approval through Administrative Site Plan Review by the Planning Board. For the purposes of this By-law, a change or alteration shall include any change in the font size or font type, any change in the content of the text and/or the addition or removal of any graphics. New awnings with lettering or graphics or replacement awnings with a change or alteration of lettering or graphics may be installed upon approval through Administrative Site Plan Review by the Planning Board and granting of a Special Permit issued by the Board of Appeals in accordance with Section 5.3.0.0.

	Planning Board Site Plan Review	ZBA Special Permit
New awning with no lettering or graphics	Yes	No
Replacement awning with no lettering or graphics	Yes	No
New awning with lettering or graphics	Yes	Yes
Replacement with lettering or graphics but not changing	Yes	No
Replacement with lettering or graphics that is changing	Yes	Yes

3.2.4.2. *Signs in the B-3, B-4, and I Districts.*

(a) In the B-3, B-4, and I-Districts upon the issuance of a permit from the Inspector of Buildings as provided in Section 3.2.6.0. below and, as applicable, upon the issuance of a Special Permit by the Board of Appeals where the underlying use requires or required a Special Permit in accordance with Section 2.2.3.0. or a Site Plan Special Permit by the Site Plan Special Permit Granting Authority where the development

requires or required a Site Plan Special Permit in accordance with Section 5.4.0.0., there shall be permitted for each permitted commercial use one (1) sign attached flat against the wall of the building where such use is located identifying the name, standard logo, and/or standard graphics of the user, provided, however, uses located in the end unit of a building (i.e., where the front and side of the premises containing the permitted use are comprised of exterior walls of the building) may have one (1) sign on each of the front and side(s) of the building. No sign for any permitted use shall have a display area greater than sixty (60) square feet in size, provided, however, permitted commercial uses having an area of more than ten thousand (10,000) g.s.f. shall be permitted to have a display area of up to one hundred and twenty (120) square feet in size, provided that such sign is designed as part of the architectural decor of the building. No sign shall be more than four (4) feet in height except as expressly provided herein. For the purposes of this Section 3.2.4.2. individually illuminated channel letters identifying the name of a commercial business, together with an ancillary so-called “pill sign” directly underneath the individually illuminated letters, shall be considered a single sign provided that such individual letters and the pill sign shall in no event in the aggregate exceed four (4) feet in height, and the total area of the letters and the pill sign do not exceed the maximum display area otherwise permitted for the sign (i.e., sixty (60) s.f. or one hundred twenty (120) s.f., as applicable). Where there is more than one (1) permitted commercial user in a single building, there must be at least a three (3) foot buffer in between each sign. An example of individual channel letters and a pill sign is set forth in Figure 5 of Appendix B to this By-Law.

(b) In addition to the signs permitted above, within the B-3, B-4, and I Districts, subject to receipt of a special permit from the Board of Appeals and a permit from the Inspector of Buildings as provided in Section 3.2.6.0. below, one (1) free-standing sign may be permitted per commercial development, located at any entrance to the premises, not to exceed sixty (60) square feet in area and not to exceed twenty-five (25) feet in height.

(c) In addition to the signs permitted above, within the B-3, B-4, and I Districts, upon the issuance of a permit from the Inspector of Buildings as provided in Section 3.2.6.0. below and, as applicable, upon the issuance of a Special Permit by the Board of Appeals where the underlying use requires or required a Special Permit in accordance with Section 2.2.3.0. or a Site Plan Special Permit by the Site Plan Special Permit Granting Authority where the planned developed requires or required a Site Plan Special Permit in accordance with Section 5.4.0.0., one (1) or more projection signs extending at a ninety (90) degree angle from the front of a building may be permitted, in addition to the signs otherwise permitted, provided the following requirements are met:

(i) the projection sign is not located any closer than thirty (30) feet from any other projection sign and only one (1) projection sign is permitted for each permitted commercial use;

(ii) where more than one (1) projection sign is located on a building the top of each such sign shall be constant across the entire building;

(iii) each projection sign shall have a height no greater than thirty (30) inches and a width no greater than twenty (24) inches;

(iv) the bottom of each projection sign shall be located at least seven and one-half (7.5) feet above grade;

(v) each projection sign shall not extend more than three (3) feet from the front wall of the building to which it is affixed;

(vi) each projection sign shall (x) not be internally illuminated or illuminated from behind, (y) have a single background color, and (z) contain only the name, standard logo, or standard graphic of the user;

(vii) the projection sign is located in front of the use to which it related; and

(viii) in the reasonable judgment of the Inspector of Buildings or, as applicable, the Board of Appeals, the projection sign does not constitute a public safety concern.

(d) In addition to the signs permitted above, within the B-3, B-4, and I Districts, awnings (new or replacement) without lettering or graphics may be installed upon approval through Administrative Site Plan Review by the Planning Board. Replacement awnings without a change or alteration of lettering or graphics on the awning may be installed upon approval through Administrative Site Plan Review by the Planning Board. For the purposes of this By-law, a change or alteration shall include any change in the font size or font type, any change in the content of the text and/or the addition or removal of any graphics. New awnings with lettering or graphics or replacement awnings with a change or alteration of lettering or graphics may be installed upon approval through Administrative Site Plan Review by the Planning Board and granting of a Special Permit issued by the Board of Appeals in accordance with Section 5.3.0.0. See table provided in Section 3.2.4.1. (d) for reference.

3.2.4.3. At a gas station, in addition to the signs normally permitted in the district, the following signs are permitted:

- a. standard and typical per-gallon price signs atop fuel pumps;
- b. one location of per-gallon price signs not attached to fuel pumps;
and
- c. "no smoking" signs required by law.

3.2.5.0. Specific Sign Types.

3.2.5.1. Intentionally omitted.

3.2.5.2. Window Signs. Temporary and permanent window signs are permitted only in the first-floor windows of a building. The total area of all signs (temporary and permanent added together) in any window shall not exceed twenty-five (25%) percent of the glass area of the window. Window signs in the B-3, B-4, and I Districts may be illuminated. In the B-1 and B-2 Districts window signs may not be illuminated except for one (1) "open" sign having an area no greater than two (2) square feet. See Figure 6 in Appendix B.

3.2.5.3. Temporary Signs. Except as otherwise noted, there shall be no temporary or special promotional signs; provided, however, that the following temporary signs are allowed:

- a. Temporary "car wash", "fair", "bazaar", and similar signs to be used for a single day (provided that any other required permits or authorization have been received).
- b. Temporary one-day "garage sale" signs (provided that any other required permits or authorizations have been received).
- c. Temporary one-day "open house" signs used for real estate purposes (provided that any other required permits or authorizations have been received).
- d. Signs that advertise approved subdivisions as outlined in the Town of Swampscott Rules and Regulations.
- e. The seasonal display of signs and exterior lighting for the purpose of celebration of holidays.
- f. Special advertising displays, banners or signs, visible from a public way, for municipal purposes or by churches, civic or charitable organizations or for community drives or celebrations may be displayed only on permit from the Board of Selectmen, such permits to be good for a minimum of ten (10) days and maximum of three

(3) months, as may be determined at the discretion of the Board of Selectmen. A permit may be renewed within the same calendar year at the discretion of the Board of Selectmen.

3.2.5.4. *Traffic Island Sponsor Signs.* For the purpose of identifying the sponsor of the landscaping on a traffic island, traffic island sponsor signs shall be permitted on islands from May 1 through October 31 of each year, according to the following requirements:

- a. The overall size of the sign, inclusive of the sign frame (if any), shall be twelve inches by eighteen inches (12" x 18"). The signboard shall be made of a single rigid sheet of plywood of M.D.O. board. One (1) or two (2) posts shall support this sign.
- b. The maximum allowable distance from the grade to the top of the sign, inclusive of the sign frame, shall be twenty-six (26) inches. One (1) sign per island is permitted.
- c. The sign, including letters, shall be non-illuminated, non-reflective, painted sign. The colors of the sign shall be as follows:

Signboard: dark green (color equivalent to Benjamin Moore paint Classic Color #602 – Gondola Ride). Lettering: white. Sign frame (if any): dark green, dark brown, or black. Sign post(s): dark green, dark brown, or black.

- d. The signboard shall be painted on both sides and may have lettering on one (1) or both sides. No images other than letters or numerals shall appear on the sign.
- e. The lettered message of the sign shall contain only the words: "sponsored by", followed by the name of the individual(s) or business sponsoring the landscaping on the island. The address or the individual(s) may be included on the sign. No other words or message shall appear on the sign.
- f. No phone numbers shall appear on the sign. No product trademarks or corporate logos shall appear on the sign.

3.2.5.5. *Projection Signs and Awnings.* Except as provided in Sections 3.2.4.1. and 3.2.4.2. above, no projection sign or awning shall be erected without a Special Permit issued by the Board of Appeals in accordance with Section 5.3.0.0.

3.2.6.0. *Permit Requirements.* No sign shall be erected, altered, or relocated without a permit issued by the Inspector of Buildings (except for real estate signs, political signs, window signs, contractor signs and traffic island sponsor signs that comply with the

provisions of this section, and temporary signs as defined in Section 3.2.5.3.). Such permit shall not be issued by the Inspector of Buildings until a proper certificate of public liability insurance is in force.

3.2.6.1. *Applications.* Applications shall be accompanied by a drawing showing the proposed location, including a photograph of the building facade where the sign is to be located and a portion of adjoining buildings, if applicable; and a dimensional sketch, showing the design, dimensions and position of the sign on the building facade, and such other pertinent information as the Inspector of Buildings may require to ensure compliance with this By-Law.

3.2.6.2. A Special Permit or Site Plan Special Permit relating to the proposed sign has been obtained as required by Section 3.2.4.1. or 3.2.4.2. above.

3.2.6.3. A permit shall be issued only if a sign conforms to the provisions of this By-Law and, as applicable, the conditions contained with the Special Permit or Site Plan Special Permit granted in accordance with Section 3.2.4.1. or 3.2.4.2. above.

3.2.7.0. *Enforcement.* The Inspector of Buildings is charged with the enforcement of this section. The Inspector of Buildings shall require the proper erection and maintenance of all signs, awnings, and related supports. The Inspector of Buildings may order the removal of any sign or awning that is not properly maintained, is deemed to constitute a public safety hazard or nuisance or that does not otherwise comply with the requirements of this By-Law. The cost of removal shall be borne by the owner of the sign or of the property on which it is erected.

3.3.0.0. General Landscaping and Screening Requirements.

3.3.1.0. *Landscaping.* The following requirements for landscaping apply to parking lots with six or more spaces in all districts. For the purpose of this section, landscaping shall consist of any of the following or combination thereof: grass, ground covers, shrubs, vines, flowers, water, hedges, or trees; and non-living durable material commonly used in landscaping, such as but not limited to, rocks, pebbles, or wood chips, but excluding asphalt or concrete. Asphalt, concrete, flagstone, etc., may be used in walkways, walls, and other landscaping features but no amount of “hard” materials such as these shall be counted (in area calculations) toward the required landscaped areas outlined below. All landscaped areas shall be regularly maintained, including for example, appropriate watering of plantings, weeding, pruning and replacement of dead plantings.

3.3.1.1. At least five (5%) percent of the interior area of the parking facility shall be landscaped. This does not include perimeter planting.

3.3.1.2. Each interior and exterior planting area shall be at least twenty-five (25) square feet in area and have no dimension less than five (5) feet.

- 3.3.1.3.** Each interior and exterior planting area shall contain at least one (1) tree and the facility as a whole shall contain at least two (2) trees for every ten (10) parking spaces.
- 3.3.1.4.** Trees used to satisfy parking lot landscaping requirements shall be a minimum of four (4) inch caliper at planting and shall be of species suitable for survival in the parking lot environment. Caliper of tree is measured at point on trunk four (4) feet above grade where tree is planted.
- 3.3.1.5.** Existing trees shall be preserved wherever possible. Removal of any tree exceeding six (6) inch caliper is strongly discouraged.
- 3.3.1.6.** Existing and new trees shall be protected by bollards, high curbs or other barriers sufficient to minimize damage.
- 3.3.1.7.** Extensive unbroken paved areas in large on-grade open parking facilities shall not be permitted. In parking lots containing twenty-five (25) or more spaces, a row shall contain no more than fifteen (15) contiguous parking spaces without a densely planted landscaped buffer of at least the dimensions of one (1) space. Such buffer shall also contain at least one (1) tree.
- 3.3.2.0. Screening.** The following uses of land shall be screened from adjacent residentially used or classified properties as set forth herein: (i) Property line(s) between nonresidential and residential uses or districts; (ii) off-street parking facilities containing six (6) or more spaces and not in a structure; and (iii) refuse disposal and dumpster areas, outdoor storage areas of goods and materials.

 - 3.3.2.1.** Screening shall consist of a strip of at least five (5) feet in width of densely planted shrubs or trees which are at least two (2) feet high at the time of planting and are of a type that may be expected to form within three (3) years after time of planting a continuous, unbroken year-round visual screen.
 - 3.3.2.2.** Intentionally Omitted.
 - 3.3.2.3.** Screening as required in this subsection shall be located so as not to obstruct vehicle sight distances, entrances and exits. Such screening shall not be higher than two (2) feet within thirty (30) feet of an intersection or ten (10) feet of a driveway. In no case shall the screening of parking facilities from abutting streets exceed four (4) feet in height.
 - 3.3.2.4.** Plantings shall be of trees of a species common to the area and appropriate for screening, spaced to minimize visual intrusion, and providing an opaque year-round visual buffer between uses. Such

plantings shall be provided and maintained by the owner of the property used for nonresidential purposes.

3.3.2.5. Screening shall be continuously maintained to as to effectively serve the purpose for which it is intended. No advertising devices of any kind shall be allowed on screening.

3.3.2.6. Screening shall be continuous except for required access.

3.3.3.0. *Exceptions.* These landscaping and screening regulations shall not apply to a change of use of an existing building or a change of ownership as long as the new use does not involve a substantial traffic increase over the previous use as determined by the Inspector of Buildings.

3.3.4.0. *Waiver or Modification.* The Board of Appeals shall have by special permit, or, where a Site Plan Special Permit is required, the Site Plan Special Permit Granting Authority shall have in connection with approval of the Site Plan Special Permit, the power to waive or modify any of these requirements under Section 3.3.0.0. when in its judgment the findings set forth in Section 5.3.2.0. are met and it determines that the strict application of such requirements would result in peculiar or exceptional difficulties, or exceptional and undue hardship, or in a specific instance where for topographic reasons fences, walls and screening as herein required could not possibly screen the activities conducted at ground level on the lot from view from the normal level of a first story window on any lot in a residence district either abutting such business area or abutting on a street across from such business.

3.4.0.0. Environmental Standards.

3.4.1.0. *Disturbances.* Repealed - number is reserved for future use.

3.4.2.0. *Lighting.* All exterior lighting, except municipal street lighting, shall be shielded so as not to cast light directly on adjacent streets or properties. The lighting source shall be shielded from view from adjacent roadways and properties. The level of illumination of lighting shall be low so as to reduce the glow of ambient light perceptible on adjacent properties. All exterior lighting shall also comply with other applicable requirements of this By-Law, including, for example, Sections 3.1.5.2. and 3.2.2.9. above.

3.5.0.0. Approved Street Plan.

3.5.1.0. *General.* No permit for the erection of any building shall be issued unless the lot to be built upon has frontage on a street, as defined in this Zoning By-Law, or, if it is an unconstructed way, such way has, in the opinion of the Swampscott Planning Board, sufficient width and suitable grades to permit street construction to provide for the needs of vehicular traffic in relation to the proposed uses of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon; and further, that a street plan based on the above criteria shall have been approved by the Swampscott Planning Board, and

construction of the street shall have been secured by one, or in part by one and in part by another of the methods described in the following subsections 3.5.1.1. and 3.5.1.2., which method or combination of methods may be selected and from time to time varied by the applicant:

- 3.5.1.1. By a proper bond, sufficient in the opinion of the Planning Board to secure performance of the construction of the street and the installation of municipal services required for the lot shown on the plan, and the Planning Board may require that the applicant specify the time within which such construction shall be completed.
- 3.5.1.2. By a deposit of money or negotiable securities, sufficient in the opinion of the Planning Board to secure performance of the construction of the street and the installation of municipal services required for the lot shown on the plan, and the Planning Board may require that the applicant specify the time within which such construction shall be completed.

3.6.0.0. Assisted and Independent Living Facilities.

3.6.1.0. *Purpose.* The purpose of this section is to provide a mechanism for the approval of:

- 3.6.1.1. Assisted living facilities (ALF) within a residential environment that offer supportive services to individuals who are unable to live independently in the community by offering supervision and/or assistance with basic activities of daily life, such as, but not limited to, dressing, bathing, toileting, and nutrition; and
- 3.6.1.2. Independent living facilities (ILF) that offer congregate living arrangements to persons over the age of fifty-five (55); and
- 3.6.1.3. The development of ALF and ILF in a manner that conserves environmental features, woodlands, wet areas, open space, areas of scenic beauty, views and vistas as well as encouraging the renovation and rehabilitation of older, existing buildings; and
- 3.6.1.4. The development of ALF and ILF in a manner harmonious with the surrounding land uses while protecting natural resources and open space.

3.6.2.0. *Definitions.* Within Section 3.6.0.0., the following terms shall have the following meanings:

Applicant: The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant shall own, or be the beneficial owner of, all the land included in the proposed site, or have

authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

Assisted Living Facility (ALF): Assisted Living Residence or Residence means any entity, however organized, whether conducted for profit or not for profit, which is licensed by the Commonwealth as an ALF and meets all of the following criteria:

- (a) provides room and board; and
- (b) provides, directly by employees of the entity or through arrangements with another organization which the entity may or may not control or own, Personal Care Services for three (3) or more adults who are not related by consanguinity or affinity to their care provider; and
- (c) collects payments or third party reimbursements from or on behalf of Residents to pay for the provision of assistance with the Activities of Daily Living or arranges for the same.

Bedroom: A separate room intended for, or which customarily could be used for, sleeping.

Dwelling Unit: A residence, including studio units. Each residence shall contain a living area, bathroom and, except in studio units, one (1) or more bedrooms, and may contain a kitchen area or combination kitchen/living area.

Independent Living Facility (ILF): A facility reserved by deed for occupancy by persons over the age of fifty-five (55) who are able to care for themselves, but with some common facilities as described herein.

Land: Land, including areas covered by water.

Regulations: The rules and regulations of the Board of Appeals.

Wetlands: Land subject to the provisions of M.G.L. c. 131, §§ 40 and 40A.

3.6.3.0. Special Permit. The development of an ALF and/or an ILF may be permitted upon the issuance of a special permit by the Board of Appeals, and upon site plan approval pursuant to Section 5.4.0.0.

3.6.4.0. Application. An application for a special permit shall be submitted to the Board of Appeals on forms furnished by the Board. Each such application shall be accompanied, if applicable, by a definitive plan of land pursuant to the Regulations of the Planning Board. In addition the applicants shall submit:

3.6.4.1. The following plans:

- a. a site plan pursuant to Section 5.4.0.0.;
- b. a plan at a scale of 1" = 40' showing the topography of the site at a minimum of two (2) foot intervals, as well as vegetation and special features, including wetlands, perennial streams and ponds, trees of more than eight (8) inch caliper, rock outcroppings, slopes in excess of fifteen (15%) percent, existing and proposed trails and paths, open vistas, structures of historical importance and biological or wildlife habitats, and proposed conservation and recreation easement areas; and
- c. a plan illustrating preliminary landscaping and architectural design, showing types, location and layout of buildings, and typical elevations, as well as the general height, bulk and appearance of structures. Perspective drawings may be subsequently required by the Board of Appeals.

3.6.4.2. The following narrative reports or data:

- a. a proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated date of completion;
- b. a development impact statement prepared by qualified professionals, detailing the impact of the development on the Town's capacity to furnish services including, but not limited to, roads, police, fire, emergency services and water;
- c. information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by Town Counsel;
- d. copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the Town, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by Town Counsel; and
- e. any and all other information that the Board of Appeals may reasonably require in a form acceptable to it to assist in determining whether the Applicant's proposed development plan meets the objectives of this section.

3.6.5.0. Standards. In order to be eligible for consideration for a special permit pursuant to this section, the proposed development shall meet all of the following standards:

- 3.6.5.1.** *Applicable District.* Minimum dimensional requirements for ALFs and ILFs shall be as set forth in the district in which the proposed facility is located.
- 3.6.5.2.** *Buffer.* A buffer area of fifty (50) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Board of Appeals may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least twenty (20) feet in depth which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the Town for conservation or recreation purposes; or (iii) the Board of Appeals determines that a smaller buffer will suffice to accomplish the objectives set forth herein.
- 3.6.5.3.** *Removal and Replacement of Vegetation.* With the site, no clear cutting shall be permitted, except incidental to construction of buildings, roads, trails and parking areas.
- 3.6.5.4.** *Roadways.* The principal roadway(s) and private way(s) serving the site shall be designed to conform with the Rules and Regulations of the Planning Board.
- 3.6.5.5.** *Parking.* The applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces. The minimum number of parking spaces provided on the site shall be three-tenths (0.3) parking space per dwelling unit in an ALF and one (1) parking space per dwelling unit in an ILF. For both ALFs and ILFs one (1) parking space shall be provided for every three (3) employees during the largest shift. The Board of Appeals may increase the required parking by up to ten (10%) percent to serve the needs of employees, visitors and service vehicles. All parking areas shall be screened from view from adjacent residentially zoned or occupied premises located outside the site, including public ways, by a landscaped border at least ten (10) feet in width. Parking lots in front setbacks in residential zones, and in buffer areas in all zones, with the exception of necessary access driveways, are prohibited. Parking areas in residential districts shall be located to the side or rear of all buildings. Parking lot layout shall be planned to permit landscaping, buffering, or screening to prevent direct views of parked vehicles from adjacent streets. The use of traditional picket fencing, hedges, walls, or landscape berms to define parking areas is encouraged. In parking areas of eleven or more parking stalls, at least one (1) tree of three inch or greater caliper shall be planted for every six (6) parking

places. Adequate tree wells and irrigation shall be provided for all parking lot landscaping. Pedestrian access is to be taken into consideration in parking lot design. The use of separate walkways is encouraged. Textured paving or grade separated (elevated) walkways are desired on all pedestrian access ways.

- 3.6.5.6. *Loading.* Loading areas shall be at least twenty feet by nine feet (20' x 9'), and have a minimum overhead clearance of ten (10) feet. Screening and landscaping shall be provided to block all views of loading areas (except those specifically designated for emergency vehicles) from the public right-of-way and adjacent properties.
- 3.6.5.7. *Surface Drainage.* The surface drainage system shall be designed in accordance with the Regulations of the Planning Board.
- 3.6.5.8. *Utilities.* All electric, gas, telephone, and water distribution lines shall be placed underground, except upon a demonstration of exceptional circumstances.
- 3.6.5.9. *Paths.* Paths for the use of residents shall be attractively designed with proper regard for convenience, separation of vehicular, bicycle and pedestrian traffic, adequate connectivity, completeness of access to the various amenities and facilities on the site and to pathways on adjacent sites.
- 3.6.5.10. *Paving and Curbing.* Where the roadway is or may be ultimately intended for dedication and acceptance by the Town of Swampscott, granite curbing, gray in color, is required, except in areas of very low traffic volume where no curbing will be required. Rolled asphalt (Cape Cod berm) curbing is unacceptable in all such ways. Curbing is to be sloped or cut to provide a barrier free transition at road crossings and building entrances. Paving should be textured or of different materials at pedestrian crossings and walkways. The use of stone, brick or cultured stone pavers for entrance walkway borders is encouraged. The use of textured materials for walkway borders is encouraged.
- 3.6.5.11. *Design and Architectural Character.*
 - a. *Massing and Style.* Building massing and style shall be distinctively residential in character, drawing on the historical design elements that are contextually consistent with regional New England architecture. Historical and traditional design elements are encouraged. Front yards which use boxwood hedges, evergreen hedges, traditional style picket fences, stone walls, or iron picket fences with granite curb and pilasters is encouraged. Fences or hedges should not exceed three (3) feet in height at the fronts of

buildings. Fences and landscaping to screen service areas may exceed this height, consistent with the intent and use of the space.

- b. *Roofs.*** Preference shall be given to roof pitches consistent with single-family, residential design. New England traditional or vernacular styles are preferred. Material shall be consistent with the architecture of the building. Composition shingle material is acceptable, providing that it is of high quality and provides architectural definition to the tab shingle to emulate traditional wood shingle styles. Tile, slate, or metal roofing is permitted, provided it is consistent with the architectural style of the building. Gutters and down spouts are encouraged to provide drainage away from foundations, but shall be consistent with the other architectural elements of the building. All buildings should have a chimney to convey the look and feel of residential use.
- c. *Facade Element.*** Design of the facade shall be highly detailed and articulated to be compatible with the scale and sensitivity to the residential uses of the project. Facades should have a well defined foundation, a modulated wall element, and pitched roof or articulated cornice which defines the character of the building, and provides relation to the human scale of typical family residences.
- d. *Entrances.*** Building entrances shall comply with all current accessibility regulations, however the use of ramps and lifts is discouraged. Buildings should be designed with entrances that are barrier free for the intended residential or commercial uses. The use of sloping entry walks, covered entryways, porticos, arcades, and covered porches is encouraged. Where grade separation of an entrance is required because of site topography, accommodation should be provided in the architectural detail of the entry to allow barrier free use by building residents and visitors.
- e. *Door and Window Openings.*** Doors and windows form the transition from public to private space, and should reflect residential detailing in design and placement. The use of cornices, architectural moldings, side lights, transom lights, and raised panels in doors is encouraged. Window openings should vary between buildings, but should not be unbroken and continuous in any circumstance. The use of opening sash windows with true divided lights, or detailing to convey the character of divided lights is encouraged. The use of shutters consistent with the architecture of a building is encouraged. A wide range of material for doors and windows is acceptable, except that the use of commercial, anodized or painted aluminum or steel storefront assemblies is discouraged.

f. *Materials and Design Elements.* Material chosen for exterior elements should be consistent with the intent and use of materials traditionally found in residential design in New England. Siding materials such as clapboard and shingle are preferred, and the use of new materials which reduce maintenance, but emulate the look and feel of traditional materials is encouraged. The use of a variety of trim material to provide detail at the eaves, comers, gables, pediments, lintels, sills, quoins, and balustrades is encouraged. The use of bays, towers, cupolas, cross gables, and dormers to provide unique character to a building and provide articulation of the facade is encouraged. The color palette chosen for any building should be consistent with colors traditionally found in residential design in New England.

3.6.5.12. The ALF or ILF shall have an integrated emergency call, telephone and other communications system to provide monitoring for its residents. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Swampscott Fire Department for the emergency evacuation of the residents with emphasis on ensuring the safety of residents with physical impairments.

3.6.5.13. An ALF or an ILF may consist of a single building or multiple buildings.

3.6.5.14. Structures and uses accessory to the ALF of ILF may also be provided (with the exception of covered parking areas) within the same building, including, but not limited to, the following: beauty and barber salons; recreational, physical fitness and therapy services; nondenominational chapel; library; bank automated teller machine; management offices; adult day care or adult day health facility; hospice residence; food service; laundry and covered parking areas; provided, however, that such accessory uses and structures shall be designed for the primary use of the residents and staff of the ALF or ILF. Such accessory uses may not be designed for or used as a general business by the general public. Such accessory uses shall be wholly be within a structure containing residential units, and shall have not exterior advertising display.

3.6.5.15. The facility shall be served by the municipal water system.

3.6.6.0. *Conversion of Existing Structures.* Applicants are encouraged to convert land and buildings that are no longer needed or suitable for their original use, and to permit reuses which are compatible with the character of the neighborhood and which take into consideration the interests of abutters, neighbors and the public, especially where the site abuts a residential area or the building(s) merit preservation.

3.6.7.0. *Action by the Board of Appeals.* The Board of Appeals may grant a special permit for an ALF/ILF where it makes the following findings:

- 3.6.7.1.** The proposed ALF complies with the requirements of this section;
- 3.6.7.2.** The proposed ALF does not cause substantial detriment to the neighborhood after considering the following potential consequences:

 - a.** noise, during the construction and operational phases;
 - b.** pedestrian and vehicular traffic;
 - c.** environmental harm; and
 - d.** visual impact caused by the character and scale of the proposed structure(s).
- 3.6.7.3.** For conversions of existing structures, the Board shall find that the proposal protects the Town of Swampscott's heritage by minimizing removal or disruption of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. If the building is a municipally owned building, the proposed uses and structures are consistent with any conditions imposed by the Town Meeting on the sale, lease, or transfer of the site. The buffer requirements, minimum open space requirements, and building height requirements shall be those physically existing as of May 2, 2000. The Board may permit expansion of the structure to the degree reasonably necessary to comply with federal and state law.

ARTICLE IV. SPECIAL REGULATIONS.

4.1.0.0. Flood Plain/Wetland Protection Overlay District.

(This section refers to those areas delineated on the Swampscott Flood Plain/Wetlands Protection District Map. See Section 4.2.0.0. for Special Regulations applicable to areas delineated on the Flood Insurance Rate Map (FIRM).)

4.1.1.0. Purpose. The purposes of the Flood Plain/Wetland Protection Overlay District (FPWPOD) are as follows:

- 4.1.1.1.** To provide that lands in the Town of Swampscott subject to seasonal or periodic flooding as described hereinafter shall not be used for residence or other purposes in such a manner as to endanger health or safety.
- 4.1.1.2.** To protect, preserve and maintain the water table and water recharge areas within the town so as to preserve present and potential water supplies for the public health and safety.
- 4.1.1.3.** To assure the continuation of the natural flow pattern of the water courses within the Town of Swampscott in order to provide adequate and safe flood water storage capacity to protect persons and property against the hazards of flood inundation.
- 4.1.1.4.** To protect the Town of Swampscott against the costs which may be incurred through the unsuitable use of wetland.
- 4.1.1.5.** To conserve natural conditions, wildlife, open space and generally the amenities of the Town of Swampscott and otherwise to preserve, protect and promote the health, safety and welfare of the public.

4.1.2.0. Location of District. The FPWPOD shall include all land shown on the Flood Plain/Wetland Protection District Map by contour and/or elevation markings, which were established following an evaluation of the vegetation, the high water mark, and the historical or the projected flood elevations. The Swampscott Flood Plain/Wetland Protection District Map, dated April 1, 1976 and signed by the Town Engineer, and as thereafter amended, is hereby made a part of this By-Law and is on file at the Town Clerk's office.

4.1.2.1. If any land indicated on the map as being in the FPWPOD is proved, by the applicant after public hearing, to be in fact not wetland nor subject to flooding nor unsuitable for the proposed use because of drainage and topographic conditions, and if the use of such land will not be detrimental to the public health, safety and welfare, the Board of Appeals may permit building or other uses of such land.

4.1.3.0. *Overlay District.* The FPWPOD is an overlay districts superimposed over the underlying districts set forth in this Zoning By-Law. Within a FPWPOD, the requirements of the underlying district continue to apply, subject to the following additional provisions.

4.1.4.0. *Permitted Uses.* The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill or storage materials or equipment:

4.1.4.1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.

4.1.4.2. Forestry and nursery uses.

4.1.4.3. Outdoor recreational uses including fishing, boating, play areas, foot, bicycle, and/or horse paths, etc.

4.1.4.4. Conservation of water, plants and wildlife.

4.1.4.5. Wildlife management areas.

4.1.4.6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on premises.

4.1.4.7. Buildings lawfully existing prior to adoption of these provisions.

4.1.5.0. *Emergency Work.* Permission to work in the FPWPOD may be granted without the procedures outlined herein if the Board of Health and/or the Conservation Commission certify that an emergency exists. Such permission shall be limited to the work required to alleviate the emergency and shall include a definite time limitation.

4.1.6.0. *Prohibited Uses.* No building or other structure shall be erected, constructed, enlarged or otherwise created for any residence or other purposes; no filling, dumping, excavation, removal or transfer of gravel, sand, loam, or other material which will restrict or impede water flow or reduce the normal or flood water storage capacity shall be permitted.

4.1.7.0. *Uses Available by Special Permit.* The following uses are available upon the issuance of special permit by the Board of Appeals.

- 4.1.7.1. Construction of dams and other water control devices, so as not to diminish the original dimensions.
- 4.1.7.2. Bridges and like structures permitting passage between lands of the same owner, provided that such bridges and structures shall be constructed, maintained and used at the expense and risk of such owner. The Board of Appeals shall consider the effect of such structures on water storage and impediments to water flow.
- 4.1.7.3. Driveways and walkways ancillary to permitted or permissive use within overlapped districts where alternative means of access are inappropriate and not reasonably feasible.
- 4.1.7.4. Structures ancillary to recreational or educational uses, provided that the ground area covered by such structures does not exceed one hundred (100) square feet.

4.1.8.0. *Special Permit Application.* Applications for a special permit shall be made in accordance with the regulations of the Board of Appeals. The Board shall require conformance with the following standards before issuing a special permit:

- 4.1.8.1. Any ancillary structures permitted shall be so designed and secured that during flooding the foundation will not be undermined, or the structure will not be floated off, battered off, or swept away.
- 4.1.8.2. There shall be no danger of pollution to public or on-site water resources.
- 4.1.8.3. Methods of drainage shall be adequate.

4.1.9.0. *Decision.* In granting a permit, the Board of Appeals may impose reasonable restrictions based upon or in addition to the considerations listed in Section 4.1.7.0. and may set time limitations on the work to be done. The Board may require that the applicant post a cash deposit or surety bond, in form acceptable to the Town Treasurer, in amount determined by the Board to be sufficient to ensure satisfactory completion of the work in compliance with the permit and any specific restrictions and limitations thereof, or the restoration of any area or unfinished work to its original condition.

4.2.0.0. Coastal Flood Area Overlay District.

(This section refers to those areas delineated on the Flood Insurance Rate Map (FIRM). See Section 4.1.0.0. for Special Regulations applicable to areas delineated on the Swampscott Flood Plain/Wetlands Protection District Map.)

4.2.1.1. Purpose. The purposes of the Coastal Flood Area Overlay District (CFAOD) are to provide for a review of building permit application to ensure that all proposals are consistent with the need to minimize flood damage, taking into account the effects of long-term sea level rise and storm surge. and to promote design standards toward this goal to achieve the following:

- 4.2.1.2.** Ensure public safety through reducing the threats to life and personal injury;
- 4.2.1.3.** Eliminate new hazards to emergency response officials;
- 4.2.1.4.** Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- 4.2.1.5.** Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions beyond the site of the flooding;
- 4.2.1.6.** Eliminate costs associated with the response and cleanup of flooding conditions; and
- 4.2.1.7.** Reduce damage to public and private property resulting from flooding waters.

4.2.2.0. Definitions. *Except for terms defined in Section 4.2.2.1, all terms used in Section 4.2.0.0. shall be defined as listed in National Flood Insurance Program Part 1909.1, which is on file with the Town Clerk, Planning Board and Inspector of Buildings and can also be found in 44 CFR 59.1 (Code of Federal Regulations).*

4.2.2.1. Long-Term Sea Level Rise: The estimated relative increase in mean sea level over the design life of a proposed building or structure. The effects of long-term sea level rise, as referenced in the CFAOD , shall be determined using the “Highest” curve from the U.S. National Climate Assessment (Global Sea-Level Rise Scenarios for the United States National Climate Assessment, NOAA Technical Report OAR CPO-1, December 12, 2012) and local rates of land subsidence for a 50 year time horizon, unless the approving authority determines that other, more appropriate methods for determining sea level rise or other time horizons, are more appropriate for the specific project. Table 1.1 in the Town of Swampscott Coastal Climate Change Study Final Report (dated June 2016) provides relative seal level rise estimates for years 2020 through 2100 in 10-year increments, considering a start year of 2013.

TABLE 1.1
SEA LEVEL RISE ESTIMATES FOR SWAMPSCOTT

Scenarios	2020	2030	2040	2050	2060	2070	2080	2090	2100
Global SLR (from 2013-year of interest) "Highest" (feet)	0.21	0.61	1.10	1.70	2.40	3.21	4.11	5.12	6.23
Land subsidence (feet) @ 0.04 in./yr.	0.02	0.06	0.09	0.12	0.15	0.19	0.22	0.25	0.29
Total Relative SLR - "Highest" (feet)	0.24	0.66	1.19	1.82	2.56	3.39	4.33	5.37	6.52

4.2.3.0. Location of District. The CFAOD is herein established as an overlay district. The CFAOD includes all special flood hazard areas within the Town of Swampscott designated as Zone AE, AO, or VE on the Essex County Flood Insurance Rate Map (FIRM), issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). The map panels of the Essex County FIRM that are wholly or partially within the Town of Swampscott are panel number 25009C0531G, 25009C0532G, 25009C0533G, and 25009C0534G dated July 16, 2014. The exact boundaries of the CFAOD may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board and Inspector of Buildings.

4.2.3.1. In order for a property included in the CFAOD to be no longer considered in the floodplain as shown of FIRM and therefore not subject to the requirements of 44 CFR 60.3 and Section 3107.0 of the Massachusetts State Building Code, a property owner must obtain a Letter of Map Amendment (LOMA) or a Letter of Map Revision (LOMR) from FEMA.

4.2.4.0. Floodway and Base Flood Elevation Data.

4.2.4.1. Floodway Data. In Zone AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

4.2.4.2. *Base Flood Elevation Data.* Base flood elevation data is required for subdivision proposals or other developments within unnumbered A Zones.

4.2.5.0. *Overlay District.* The CFAOD is an overlay district superimposed over the underlying districts set forth in this Zoning By-Law. Within the CFAOD, the requirements of the underlying district continue to apply, subject to the additional provisions set forth in this section.

4.2.5.1. *Reference to Existing Regulations.* All development in the CFAOD, including structural and non-structural activities, whether permitted by right or by special permit, must be in compliance with the following state statute(s) and regulations. Any variance from the provisions and requirements of the below-referenced state regulations may only be granted in accordance with the required variance procedures of said regulations:

- a. G.L. Chapter 131, § 40;
- b. that section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (at the effective date hereof 780 CMR);
- c. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (at the effective date hereof 310 CMR 10.00);
- d. Inland Wetlands Restriction, DEP (at the effective date hereof 310 CMR 13.00);
- e. Coastal Wetlands Restriction, DEP (at the effective date hereof 310 CMR 12.00); and
- f. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (at the effective date hereof 310 CMR 15, Title 5).

4.2.5.2. *Other Use Regulations:*

- a. Within Zone AO on the FIRM, adequate drainage paths around structures on slopes is required to guide floodwaters around and away from proposed structures.
- b. In Zone AE, along watercourses that have a regulatory floodway designated on the Swampscott FIRM, encroachments are prohibited in the regulatory floodway which would result in increased flood levels within the community during the occurrence of the base flood discharge.

- c. Man-made alteration of sand dunes within Zone VE which would increase potential flood damage is prohibited.
- d. All new construction within Zone VE must be located landward of the reach of mean high tide.
- e. All subdivision proposals shall take into consideration the long-term effects of sea level rise and storm surge, and shall be reviewed to assure that (1) such proposals minimize flood damage; (2) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and (3) adequate drainage is provided to reduce exposure to flood hazards.
- f. Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
- g. There shall be established a “routing procedure” which will circulate or transmit one (1) copy of the development plan to the Conservation Commission, Planning Board, Board of Health and Inspector of Buildings for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

4.2.6.1. *Permitted Uses - AE and VE Zones.* Building permits for new construction or alteration of structures shall be approved subject to the following:

- 4.2.6.2.** *Flood Proofing Regulations A and V Zones:* Any new construction or substantial improvement to be undertaken within Zones AE and VE shall be in accordance with the Massachusetts State Building Code (780 CMR), and shall take into consideration the long-term effects of sea level rise and storm surge in determining additional freeboard height above the minimum freeboard required by the Massachusetts State Building Code (780 CMR).
- 4.2.6.3.** Storm drainage systems shall be designed in accordance with the Massachusetts State Building Code (780 CMR), and shall take into consideration the long-term effects of sea level rise and storm surge.
- 4.2.6.4.** No mobile homes shall be placed within the areas designated on the Town’s Flood Insurance Rate Maps (FIRM) as AE or VE Zones.
- 4.2.6.5.** All public utility systems, including power, communications and gas, shall be designed in accordance with the Massachusetts State Building Code (780 CMR) and shall take into consideration the long-term effects of sea level rise and storm surge. Critical elements of all public utility systems that are sensitive to water exposure shall not be permitted below the base flood elevation, and shall take into consideration the long-term

effects of sea level rise and storm surge in determining additional freeboard height above the base flood elevation.

4.2.7.0. *Special Rules - Zone VE.*

- 4.2.7.1.** No land within the areas designated as VE (Velocity) Zones on the Town's Flood Insurance Rate Maps (FIRM) shall be developed unless such development is demonstrated by the applicant to be located landward of the reach of the mean high tide, and meets the additional requirements of this Zoning By-Law.
- 4.2.7.2.** Existing uses/structures located on the land below the base flood elevation in coastal high hazard areas (Zone VE) shall not be expanded; repairs and alterations not exceeding substantial improvement shall be in accordance with the Massachusetts State Building Code (780 CMR).
- 4.2.7.3.** Any man-made alteration of sand dunes within Zone VE which might increase the potential for flood damage to existing structures is prohibited.
- 4.2.7.4.** New construction or substantial improvement of structures within Zone VE shall have the space below the lowest floor free of obstructions or be constructed with "breakaway walls" intended to collapse under stress without jeopardizing the structural support of the structure so that impact on the structure by abnormally high tides or wind-driven water is minimized. Such temporary enclosed space shall not be used for human habitation.
- 4.2.7.5.** All new construction and substantial improvements within Zone VE shall be elevated on adequately anchored pilings or columns, and securely anchored to such pilings or columns so that the lowest portion of all structural members supporting the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level, and shall take into consideration the long-term effects of sea level rise and storm surge in determining additional freeboard height above the base minimum freeboard required by the Massachusetts State Building Code (780 CMR). A registered engineer or architect shall certify that the structure is adequately anchored to withstand velocity waters and hurricane wave wash.
- 4.2.7.6.** The use of fill for structural support for existing structures, new construction, or substantial improvement of structures within Zone VE is prohibited.

4.2.8.0. *Variation by Special Permit.* The Board of Appeals may grant a special permit varying these requirements upon a determination that the variation is the minimum necessary, considering the flood hazard, to afford relief in the case of:

4.2.8.1. New structures to be erected on a lot of one half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the flood elevation, or

4.2.8.2. the restoration or reconstruction of a structure, listed on the National Register or an Official State Inventory of Historic Places.

4.2.8.3. The applicant shall be notified that the issuance of a special permit to locate a structure at an elevation below the based flood elevation will result in increased actuarial rates. Upon the granting of such special permit, the Board of Appeals shall require that:

a. A notice be recorded with the title records of the property at Essex South District Registry of Deeds, stating that the proposed construction will be located in a special flood hazard area. Said notice will also contain a statement of the number of feet below the base flood elevation that the lowest non-flood-protected floor of the proposed structure shall be located.

b. The Town Clerk maintains a record of all such special permits, including justification for their issuance and the number of special permits issued. The Clerk shall also send an Annual Report to the Flood Insurance Administrator, of the number of special permits granted.

4.2.9.0. *Prohibitions.* Special permits shall not be issued:

4.2.9.1. For any new construction, substantial improvement, or other development in a designated flood zone, which would result in a significant increase in flood heights within the community during the occurrence of a base flood.

4.2.9.2. Except where the Board of Appeals specifically makes a determination that the special permit issuance will not result in significantly increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflicts with existing local laws or ordinances.

4.2.10.0. *Duties of the Inspector of Buildings and Maintenance of Records.* The Inspector of Buildings shall maintain for public inspection and furnish upon request for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FIRM any certificates of flood proofing and information on the elevation (in relation to mean sea level) of the level of the lowest

habitable floor (including basement if habitable) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been flood proofed, the elevation (in relation to mean sea level) to which the structure was flood proofed;

4.2.10.1. For the purpose of the determination of applicable flood insurance risk premium rates within the Zone VE on a community's FIRM:

- a. obtain the elevation (in relation to mean sea level) of the lowest portion of all structural members supporting the lowest floor of all new or substantially improved structures, and whether or not such structures contain a basement.
- b. Obtain, if the structure has been flood proofed, the elevation (in relation to mean sea level) to which the structure was flood proofed.
- c. Maintain a record of all such information.

4.2.11.0. *Notification of Watercourse Alteration.* A property owner shall notify the following, in a riverine situation, of any alteration or relocation of a watercourse: Adjacent communities; NFIP State Coordinator; NFIP Program Specialist.

4.3.0.0. Wireless Communications Services Overlay District.

4.3.1.0. *Purpose.* The purpose of this section is to establish a district in which wireless communications services may be provided with minimal harm to the public health, safety and general welfare. Specifically, the Wireless Communications Services Overlay District (WCSOD) has been created to:

- 4.3.1.1.** Protect the general public from hazards associated with wireless communications facilities (WCF); and
- 4.3.1.2.** Minimize visual impacts from WCF on residential districts within the Town of Swampscott. This section does not apply to satellite dishes and antennas for residential use, particularly as set forth in Section 2.2.4.8.

4.3.2.0. *Location of District.* The WCSOD shall include the following parcels:

4.3.2.1.¹

¹ The Attorney General disapproved this subsection. Article 3, Section 11, subsection C.1 of the former By-Laws, which defines the district, is reprinted in its entirety in Appendix C.

4.3.3.0. *Overlay District.* The WCSOD shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning district shall remain in full force and effect, except as may be specifically superseded herein.

4.3.4.0. *Permitted and Prohibited Uses.* Uses permitted as of right in the underlying district are allowed in the WCSOD. Uses prohibited in the underlying districts are prohibited in the WCSOD.

4.3.4.0. *Uses Available by Special Permit.*

4.3.4.1. A new wireless communications facility (WCF), with or without antennas, satellite dishes and other accessory devices, and accessory structures may be erected in a WCSOD upon the issuance of a special permit by the Zoning Board of Appeals pursuant to Section 5.3.0.0. and subject to site plan approval as set forth in Section 5.4.0.0., and subject to all of the conditions set forth in Section 4.3.5.0.

4.3.4.2. Antennas, satellite dishes and other accessory devices, whether located on an existing WCF or on an existing structure (accessory equipment), may be erected in a WCSOD upon the issuance of a special permit by the Zoning Board of Appeals pursuant to Section 5.3.0.0. and subject to site plan approval as set forth in Section 5.4.0.0., subject to all of the conditions set forth in Section 4.3.5.0.

4.3.5.0. *Conditions.* A WCF or accessory equipment shall meet the following standards to be eligible for a special permit:

4.3.5.1. The only WCFs allowed are free-standing monopoles, with associated accessory equipment and accessory structures. Lattice style towers and similar facilities requiring three or more legs and/or guy wires for support are not allowed. Accessory equipment may be allowed, whether located on a WCF or other structure, by special permit.

4.3.5.2. To the extent feasible, all service providers shall co-locate on a single WCF. WCFs shall be designed to accommodate the maximum number of users technologically practical. The intent of this requirement is to reduce the number of WCFs which will be required to be located within the community. There shall exist no more than twelve (12) antennas, satellite dishes, or other accessory devices on any Town approved WCF, regardless of the number of users on that site.

4.3.5.3. Any proposed extension in the height, addition of accessory equipment, construction of a new WCF, or replacement of a WCF, shall be subject to a new application for an amendment to the Special Permit.

4.3.5.4. New WCFs shall be considered by the Zoning Board of Appeals only upon a finding by the Zoning Board of Appeals that existing or approved

WCFs cannot accommodate the accessory equipment planned for the proposed WCF.

- 4.3.5.5. The site in question shall contain at least forty thousand (40,000) square feet.
- 4.3.5.6. No WCF or attached accessory equipment shall exceed sixty (60) feet in height as measured from ground level at the base of the WCF. In the event that accessory equipment is affixed to an existing structure, such accessory equipment shall not exceed ten (10) feet in height above the level of the point of its attachment to the structure.
- 4.3.5.7. All WCFs shall be designed to be constructed at the minimum height necessary to accommodate the anticipated and future use.
- 4.3.5.8. A WCF shall not be erected nearer to any property line than a distance equal to the vertical height of the WCF (inclusive of any appurtenant accessory equipment).
- 4.3.5.9. Siting shall be such that the view of the WCF from adjacent abutters, residential neighbors and other areas of Town shall be as limited as possible. All WCFs shall be painted or otherwise colored so they will blend in with the landscape or the structure on which they are located. A different coloring scheme shall be used to blend the WCF with the landscape below and above the tree or building line.
- 4.3.5.10. WCFs shall be suitably screened from abutters and residential neighborhoods.
- 4.3.5.11. Fencing may be required to control access to WCFs and accessory equipment and shall be compatible with the scenic character of the Town of Swampscott.
- 4.3.5.12. Existing on-site vegetation shall be preserved to the maximum extent practicable.
- 4.3.5.13. There shall be no signs, except for announcement signs, no trespassing signs and a required sign giving a phone number where the owner can be reached on a twenty-four (24) hour basis. All signs shall conform with Section 3.2.0.0., herein.
- 4.3.5.14. Night lighting of the WCF shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required FAA.

- 4.3.5.15. There shall be a minimum of one (1) parking space for each WCF, to be used in connection with the maintenance of the WCF and the site, and not to be used for the permanent storage of vehicles.
- 4.3.5.16. To the extent technologically feasible, all network interconnections from the WCF shall be via land lines.
- 4.3.5.17. Applicants proposing to erect WCFs on municipally owned land or structures shall provide evidence of contractual authorization from the Town of Swampscott to conduct wireless communications services on municipally owned property.
- 4.3.5.18. Traffic associated with the WCF and accessory equipment and structures shall not adversely affect abutting ways.
- 4.3.5.19. Accessory equipment may be located on structures or may be freestanding.
- 4.3.5.20. Accessory equipment shall be situated on a structure in such a manner it is screened, preferably not being visible from abutting streets. Free standing dishes or antenna shall be located on the landscape in such a manner so as to minimize visibility from abutting streets and residences and to limit the need to remove existing vegetation. All equipment shall be colored, molded and/or installed to blend into the structure and/or the landscape.

4.3.6.0. *Special Permit Application.* Applications for a special permit shall be made in accordance with the regulations of the Board of Appeals. In addition to the requirements for site plan review under Section 5.4.0.0., five (5) copies of the following information shall be submitted for an application to be considered complete.

- 4.3.6.1. A locus plan at a scale of 1" = 200' which shall shows all property lines, the exact location of the proposed WCF or accessory equipment, street, landscape features, residential dwellings and neighborhoods and all buildings within five hundred (500) feet of the WCF or accessory equipment.
- 4.3.6.2. A color photograph or rendition of the WCF with proposed accessory equipment. For accessory equipment, a color photograph or rendition illustrating the dish or antenna at the proposed location is required. A rendition shall also be prepared illustrating a view of the monopole, dish or antenna from the nearest street or streets.
- 4.3.6.3. The following information shall be prepared by a professional engineer:
 - a. a description of the WCF and the technical, economic and other reasons for the proposed location, height and design;

- b. confirmation that the WCF complies with all applicable Federal and State standards;
- c. a description of the capacity of the WCF including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations;
- d. if applicable, a written statement that the proposed WCF complies with, or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health; and
- e. the applicable review and advertising fees as noted in the application guidelines.

4.3.7.0. Exemptions. The following types of WCF are exempt from Section 4.3.0.0:

- 4.3.7.1.** Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission provided that the tower is not used or licensed for any commercial purpose.
- 4.3.7.2.** Facilities used for the purposes set forth in G.L. c. 40A, § 3.

4.3.8.0. Certification and Removal.

- 4.3.8.1.** Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission, Federal Aviation Administration and the American National Standards Institute and required maintenance shall be filed with the Inspector of Buildings by the Special Permit Holder.
- 4.3.8.2.** All unused WCF or part thereof or accessory equipment or structures which have not been used for one (1) year shall be dismantled and removed at the owner's expense.

4.4.0.0. Regulations Pertaining to Specific Uses.

4.4.1.0. Garages, Service Stations, and Liquor Establishments. No permit shall be issued for the erection or enlargement of a garage or other structure for the storage of more than five (5) motor vehicles (each referred to for the purposes of this Section 4.4.1.0. as a “garage”), nor for a motor vehicle service station, or gasoline filling station, nor for a commercial establishment selling or serving liquor, nor for the conversion of any premises not so used to be used for such purposes, if the principal entrance to the premises used for such purpose, or any use accessory thereto, is situated within a radius

of two hundred (200) feet from a lot used or reserved to be used for a park, school, church, or library. No existing garage or service or filling station shall be deemed to be a nonconforming use through the subsequent erection of any such park, school, church or library.

4.4.2.0. *Access to Commercial or Industrial Buildings.* No driveway or other means of access for vehicles other than accepted streets shall be maintained or used in the Residence A1, A2, A3, or A4 Districts for the servicing of a commercial or industrial building in the Business B1, B2, B-3, B-4, or I Districts.

4.4.3.0. *Obstructions to Traffic.* On any lot in any district, no wall, fence, or other structure shall be erected or altered, and no hedge, tree, shrub or other growth shall be maintained, which may cause danger to traffic on a street by obscuring the view.

4.4.4.0. *Stripping, Excavating or Mining.* No person, firm, or corporation shall strip, move, excavate or mine soil, sand or gravel in the Town, for use other than on the premises from which the same shall be taken except in connection with the construction or alteration of a building on such premises and excavation or grading incidental thereto.

4.4.5.0. *Multi-Family and Mixed-Use Developments in the B-4 District.* All multi-family and mixed-use developments must meet the following design criteria and the Permit Granting Authority shall, in addition to the findings set forth in Sections 5.3.2.0 and 5.4.0.0, make findings confirming that each of the following design criteria has been met:

4.4.5.1. There shall be a continuous open green space across the entirety of the required front yard setback. Only access points for sidewalks and driveways shall be allowed to extend into this open green space.

4.4.5.2. All off-street parking areas shall be located behind or to the side of the principal structure on the lot. No parking area shall be located closer to the front lot line than the front building façade.

4.4.5.3. In order to ensure the production of a significant number of more reasonably-priced dwelling units (whether rental or for sale), unless waived or modified by the Special Permit Granting Authority, no more than 30% of the total dwelling units in a multi-family or mixed-use development in the B-4 District shall contain two (2) or more bedrooms.

4.5.0.0. Regulations Pertaining to Planned Development Districts (PDD).

4.5.1.0. *Purposes.* The purposes of this Section 4.5.0.0. are to: (1) provide the opportunity for a variety of housing types at certain locations in the Town at greater densities and with reduced dimensional requirements than would otherwise be allowed; (2) expand the possible uses on the land in the districts; (3) promote the efficient use of land in the districts; (4) provide the opportunity to redevelop the land in the districts to benefit the

Town and the public including facilitating, as appropriate, the removal or significant rehabilitation of abandoned and dilapidated buildings that pose a hazard to public safety and welfare; (5) provide diversity and variety in housing types; (6) promote design and land planning to achieve aesthetic qualities of the Town; and (7) encourage development of new housing that is affordable to low and moderate-income households.

4.5.1.1. Definition. A planned development is a residential plan for the use and development of a parcel of land, improved or unimproved, which plan conforms to the purposes and provisions of Section 4.5.0.0. and is not subject to Section 2.2.3.0. – Table of Principal Uses and Section 2.3.2.0. – Table of Dimensional Regulations in Appendix A and Illustrations in Appendix B.

4.5.1.2. Location of Districts. The Planned Development Districts are mapped as follows:

Phillips Fire Station PDD, Assessor’s Map 29, Lot 45, 2 Phillips Avenue;

Burrill Senior Center PDD, Assessor’s Map 1, Lot 23, 89 Burrill Street;

Greenwood PDD, Assessor’s Map 19, Lot 87, 71 Greenwood Avenue;

Temple PDD, Assessor’s Map 29, Lots 4 and 3A, 837 Humphrey Street.

4.5.2.0. *Permitted Principal and Accessory Uses.* Uses permitted in the Planned Development Districts.

4.5.2.1. In the Phillips Fire Station PDD, a single family dwelling and an accessory garage or storage space for private automobiles are allowed as of right.

4.5.2.2. In the Burrill Senior Center PDD, a single, two-family, or three-family dwelling is allowed as of right.

4.5.2.3. In the Greenwood PDD, multi-family dwellings, up to three accessory garages, one accessory structure and a maximum of two wireless telecommunications facilities (WTF) integrated into the building design are allowed as of right, provided that such WTF shall comply with the conditions set forth in Section 4.3.5.0. of the Bylaw, except for the requirement set forth in Section 4.3.5.15 requiring a parking space for each WTF.

4.5.2.4. In the Temple PDD, single-family or multi-family dwellings and an accessory garage or storage area, located beside or under the dwellings, for private automobiles are allowed as of right.

4.5.3.0. Dimensional Regulations. The dimensional regulations in the following table apply in the Planned Development Districts.

	<u>Table of PDD Dimensional Regulations</u>				
	<u>Phillips Fire Station PDD</u>	<u>Burrill Senior Center PDD</u>	<u>Greenwood PDD</u>	<u>Temple PDD</u>	
				<u>Multi-Family</u>	<u>Single-Family</u>
<u>Minimum Lot Area (sf: square feet)</u>	<u>10,442 sf</u>	<u>9,165 sf</u>	<u>96,600 sf</u>	<u>97,567 sf</u>	<u>4,500 sf</u>
<u>Minimum Lot Frontage</u>	<u>120 feet</u>	<u>79 feet</u>	<u>250 feet</u>	<u>392 feet</u>	<u>50 feet</u>
<u>Front Yard Setback</u>	<u>30 feet</u>	<u>17 feet</u>	<u>60 feet</u>	<u>40 feet</u>	<u>15 feet</u>
<u>Rear Yard Setback</u>	<u>35 feet</u>	<u>25 feet</u>	<u>60 feet</u>	<u>40 feet (north side)</u>	<u>10 feet</u>
<u>Side Yard Setback</u>	<u>11 feet (west side)</u> <u>9 feet (east side)</u>	<u>10 feet</u>	<u>35 feet</u>	<u>20 feet (south side)</u> <u>20 feet (east side)</u>	<u>10 feet</u>
<u>Maximum Gross Floor Area</u>	<u>Not Applicable</u>	<u>Not Applicable</u>	<u>65,000 sf</u>	<u>70,000 sf</u>	
<u>Open Space Requirement</u>	<u>Not Applicable</u>	<u>Not Applicable</u>	<u>35%</u>	<u>45%</u>	<u>Not Applicable</u>
<u>Total Lot Coverage</u>	<u>25 percent</u>	<u>25 percent</u>	<u>None Required</u>	<u>None Required</u>	
<u>Maximum Building Coverage</u>					<u>35 percent</u>
<u>Maximum Height *</u>	<u>2 1/2 stories up to 35 feet</u>	<u>2 1/2 stories up to 35 feet</u>	<u>65 feet</u>	<u>45 feet</u>	<u>35 feet</u>
<u>Minimum Parking Spaces per Dwelling Unit</u>	<u>2 spaces</u>	<u>2 spaces</u>	<u>2 spaces</u>	<u>2 spaces</u>	
<u>Minimum Parking Space Size</u>	<u>None Required</u>	<u>9 ft by 18 ft</u>	<u>9 ft by 18 ft</u>	<u>9 ft by 18 ft</u>	<u>8 ft by 16 ft</u>
<u>Minimum Width of Parking Lot Circulation Lanes</u>	<u>None Required</u>	<u>None Required</u>	<u>20 feet</u>	<u>By-Law</u>	

	<u>Phillips Fire Station PDD</u>	<u>Burrill Senior Center PDD</u>	<u>Greenwood PDD</u>	<u>Temple PDD</u>	
				<u>Multi-Family</u>	<u>Single-Family</u>
<u>Maximum Number of Dwelling Units</u>	<u>1</u>	<u>3</u>	<u>28</u>	<u>42</u>	<u>14</u>
<u>Setback For Garage or storage space for private automobiles</u>	<u>20 feet from rear lot line, 0 feet from western lot line</u>	<u>By-Law</u>	<u>Rear Yard: 25 feet</u> <u>Side Yard: 10 feet</u> <u>Front Yard: 60 feet</u>	<u>None Required</u>	
<u>Maximum Number of Principal Structures per Lot</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>2</u>	<u>1</u>
<u>Maximum Number of Accessory Structures (other than Detached Garages)</u>			<u>1</u>		
<u>Maximum Number of Detached Garages</u>			<u>one – 4 car detached garage; and two – 5 car detached garages</u>		
<u>Minimum Landscape Buffer Between Parking Spaces and Adjacent Property Line</u>			<u>15 feet</u>		
<u>Off-Street Loading</u>			<u>None</u>		

* Maximum height is measured to the peak of the finished roof.

** Excluding the existing cupola.

*** By-Law means that the provisions of the Swampscott Zoning By-Law other than those applicable to a Planned Development District apply. See Section 4.5.5.0.

4.5.3.1. No Relief / Waivers to Requirements within the Greenwood PDD: Notwithstanding anything to the contrary contained in this Zoning Bylaw, within the Greenwood PDD no relief or waiver of any kind may

be issued or granted from the use, dimensional, landscaping, parking lot, loading and parking requirements set forth within Section 4.5.3.0 (Table of PDD Dimensional Regulations) or otherwise in the Zoning Bylaw.

4.5.4.0. *Parcel Subdivision.* No parcel of land in in the Phillips Fire Station Planned Development District, the Burrill Senior Center Planned Development District, or the Greenwood Planned Development District may be subdivided.

4.5.5.0. *Zoning Conformance.* Unless specifically provided in Section 4.5.0.0., all other provisions of the Swampscott Zoning By-Law apply to uses and structures in a Planned Development District, including, but not limited to, Site Plan Review.

4.5.6.0. *Affordable Housing Requirement.* With respect to the development of the Greenwood Planned Development District, any Developer of this locus shall contribute to the local stock of affordable housing units in accordance with one of the following two affordability options:

4.5.6.1. On-Site Affordable Housing Units. At least 15% of the units in the Greenwood Planned Development District shall be established as affordable housing units constructed on the locus.

- a. As a condition of development of the locus, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the Board of Selectmen. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development and shall ensure that affordable units can be counted toward the Town's Subsidized Housing Inventory. The regulatory agreement shall also impose limitations to preserve the long-term affordability of the units and to ensure their continued availability for affordable income households. Resale controls shall be established through a restriction on the property and shall be in force in perpetuity. Any Developer of the Greenwood Planned Development District shall not be granted a building permit until the restriction and regulatory agreement are recorded at the Registry of Deeds and copies are provided to the Inspector of Buildings, the Town Planner/Director of Community Development and the Town Clerk.
- b. Any Developer of the Greenwood Planned Development District shall submit a marketing plan to the Board of Selectmen for its approval, which shall describe how the affordable units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.

- c. All affordable units constructed under this By-law shall be situated within the development so as not to be in less desirable locations than market-rate units in the development. Affordable housing units shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units. Interior features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.

4.5.6.2. Fee-in-Lieu of Units. As an alternative to the requirements of Section 4.5.6.1, any Developer of the Greenwood Planned Development District may make a monetary contribution to the Town's Affordable Housing Trust, which funds shall be designated for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the Greenwood Planned Development District.

- a. Calculation of fee-in-lieu of units. Any Developer of the Greenwood Planned Development District may pay fees-in-lieu of the construction of affordable units to the Town's Affordable Housing Trust. For purposes of this By-law, the fee-in-lieu of the construction of affordable units shall be the greater of (i) 20% of the total number of proposed units multiplied by \$25,000, and (ii) such other higher amount determined by the Swampscott Board of Selectmen.
- b. Fees-in-lieu of units made to the Town's Affordable Housing Trust in accordance with this By-law shall be used only for purposes of providing affordable housing for low- or moderate-income households. Using these contributions, affordable housing may be provided through a variety of means, including but not limited to the provision of favorable financing terms, subsidized prices for purchase of sites, or construction of affordable units within larger developments.

4.6.0.0. Regulations Pertaining to Smart Growth (MGL 40R) Zoning Overlay District (ATM 5/5/2014)

4.6.1.0. Purposes. The purposes of Smart Growth (SG) Overlay Districts are:

- 4.6.1.1.** To promote low-impact, green, and sustainable development that is pedestrian friendly.
- 4.6.1.2.** To ensure high-quality site planning, architecture and landscape design that is consistent with SG's visual character and identity of the Town of Swampscott.

- 4.6.1.3. To establish development standards that ensure context-sensitive design and creative site planning in the reuse of existing buildings and construction of new buildings.
- 4.6.1.4. To provide for diversified housing stock at a variety of costs in close proximity to the local bus lines, including AFFORDABLE HOUSING, that meets the needs of the Town's population and promotes diversity.
- 4.6.1.5. To generate positive tax revenue, and to benefit from the financial incentives provided by MGL c. 40R, while providing the opportunity for housing choice among households of varying incomes, ages and sizes.

4.6.2.0. *Scope and authority.* An SG is established pursuant to the authority of MGL c. 40R and 760 CMR 59.00, and shall be deemed to overlay the parcels as shown on the Zoning Map of the Town of Swampscott, as amended. The regulations for use, dimensions, and all other provisions of the Zoning By-law governing the Underlying Zoning district shall remain in full force, except for those projects undergoing development pursuant to this By-law. At the option of the owner, development of land within an SG may be undertaken either by means of a Plan Approval pursuant to the zoning controls set forth in this By-law or by complying with all applicable zoning controls set forth in the Town's Zoning By-law (Underlying Zoning). When a building permit is issued for any development project for which Plan Approval has been granted under this By-law, all of the land shown on the approved Plan shall be developed pursuant to this By-law and shall not be developed pursuant to the Underlying Zoning. Development projects proposed pursuant to this By-law shall be subject to all other applicable local, state and federal regulations. Applications for Plan Approval by the Approving Authority shall not be subject to any other provisions of the Zoning By-law, including limitations upon the issuance of building permits for residential uses related to a rate of development or phased growth limitation or to a local moratorium on the issuance of such permits, or to other building permit or dwelling unit limitations.

4.6.3.0. *Establishment and delineation of Smart Growth Overlay Districts.* The Vinnin Square SG is an overlay district having a land area of approximately 2.3 acres in that is superimposed over the Underlying Zoning district and is shown on the Town's Zoning Map (located at the end of the By-law) and shall comprise the property identified as assessor map 17 parcel 29, currently in the B1 Zoning District.

4.6.4.0. *Definitions.* All definitions are as they appear in the Zoning By-law. As used in this By-law, the following terms shall have the meanings set forth below. To the extent that there is any conflict between this By-law and MGL c. 40R and/or 760 CMR 59.00 et seq., the latter shall control:

AFFORDABLE HOMEOWNERSHIP UNIT — An Affordable Housing Unit required to be sold to an Eligible Household in accordance with the requirements of this By-law.

AFFORDABLE HOUSING — Housing that is affordable to and occupied by Eligible Households.

AFFORDABLE HOUSING RESTRICTION — A deed restriction of **AFFORDABLE HOUSING** meeting the requirements in MGL c. 184, § 31, and the requirements of this By-law.

AFFORDABLE RENTAL UNIT — An Affordable Housing Unit required to be rented to an Eligible Household in accordance with the requirements of this By-law.

APPLICANT — A landowner or other petitioner that files a Plan for a Development Project subject to the provisions of the SG By-law.

APPROVING AUTHORITY — The Planning Board of the Town of Swampscott acting as the authority designated to review Development Projects and issue approvals under this By-law.

AS-OF-RIGHT DEVELOPMENT — A development project allowable under this By-law without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A development project that is subject to the Plan Review requirement of this By-law shall be considered an As-of-Right Development.

DESIGN STANDARDS — The document entitled Swampscott Smart Growth Overlay District Design Standards, adopted pursuant to MGL c. 40R, § 10. The Design Standards are applicable to all Development Projects within an SG that are subject to Plan Review by the Approving Authority. Design Standards are subject to approval by the Department of Housing and Community Development.

DEVELOPMENT LOT — One or more lots meeting the dimensional requirements of this By-law which are designated as a Development Lot on a Plan for a Development Project proposed within an SG and for which Plan Approval is required under the provisions of this By-law. The lots comprising a Development Lot need not be in the same ownership but within the application review period the **APPLICANT** must demonstrate site control of all land shown on the Plan.

DEVELOPMENT PROJECT — A residential or mixed-use development undertaken under this this By-law. The limits of a Development Project shall be identified on the Plan which is submitted to the Approving Authority for Plan Review.

DHCD — The Massachusetts Department of Housing and Community Development (DHCD) or any successor agency.

ELIGIBLE HOUSEHOLD — An individual or household whose annual income is below 80% of the area-wide Median Household Income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

HOUSEHOLD INCOME, MEDIAN — The median income, adjusted for household size, as reported by the most recent information from, or calculated from regulations promulgated by, the United States Department of Housing and Urban Development (HUD).

MIXED-USE DEVELOPMENT PROJECT — A development that includes a building or buildings with a minimum of 25% of the floor area on the street level devoted to one or more Nonresidential Use. A minimum of 50% of the total gross floor area in a Mixed-Use Development Project shall be devoted to residential uses.

MONITORING AGENT — A qualified housing organization designated by the Board of Selectmen with the power to monitor and to enforce compliance with the provisions of this By-law related to Affordable Housing Units, including but not limited to computation of rental and sales prices; income eligibility of households applying for Affordable Housing Units; administration of an approved housing marketing and resident selection plan; and recording and enforcement of an Affordable Housing Restriction for each Affordable Housing Unit in an SG.

MULTIFAMILY DEVELOPMENT PROJECT — A residential development that contains only a building or buildings(s) with more than three dwelling units.

NONRESIDENTIAL USE — A use that is listed as an allowed retail and consumer service use or an allowed institutional and recreational use in the B-1 Zoning District, without need for a special permit, in the Table of Principal Uses, Section 2.2.3.0.

OFFICE — A place of business of a professional organization or the administration facility of a commercial or industrial organization.

PLAN — Plans depicting a proposed Development Project for all or a portion of the SG and which is submitted to the Approving Authority for its review and approval in accordance with the provisions of this By-law and the Design Standards.

PLAN APPROVAL — The Approving Authority's authorization for a

proposed Development Project based upon a finding of compliance with this By-law and Design Standards after the conduct of a Plan Review.

PLAN REVIEW — The review procedure established by this By-law and administered by the Planning Board of the Town of Swampscott as the Approving Authority.

RENOVATION — Physical improvement that adds to the value of the real property. Painting, ordinary repairs, and other normal maintenance do not constitute a Renovation.

SETBACK — Dimensional Setback requirements as set forth in Appendix A - Table of Dimensional Requirements: Section 2.3.2.0 of the By-law. Until such time that the Town has qualified for a density bonus payment under 760 CMR 59.06 (2) for one or more 40R bonus units permitted within the SG, any amendments to Appendix A – Table of Dimensional Requirements: Section 2.3.2.0, as in effect upon adoption of the SG, shall not apply to the SG until DHCD has received written notice of such amendments.

SG or DISTRICT — The Smart Growth Overlay District, an overlay zoning district adopted pursuant to MGL c. 40R, in accordance with the procedures for zoning adoption and amendment as set forth in MGL c. 40A and approved by DHCD pursuant to MGL c. 40R and 760 CMR 59.00.

UNDERLYING ZONING — The zoning requirements adopted pursuant to MGL c. 40A that are otherwise applicable to the geographic area in which the SG is located, as said requirements may be amended from time to time.

UNDULY RESTRICT — A provision of the SG or a Design Standard that adds unreasonable costs or unreasonably impairs the economic feasibility of a proposed development project in an SG.

UNRESTRICTED UNIT — A dwelling unit that is not restricted as to rent, price or eligibility of occupants.

ZONING BY-LAW — The Zoning By-law of the Town of Swampscott, Massachusetts, adopted in accordance with and pursuant to the provisions of MGL c. 40A.

ZONING MAP — The Zoning Map of the Town of Swampscott, Massachusetts, adopted in accordance with and pursuant to the provisions of MGL c. 40A.

4.6.5.0. Permitted uses. The following uses shall be permitted in the following districts as-of-right upon Plan Approval, but shall not exceed residential densities specified in the Table of Dimensional and Density Requirements below:

Allowable Uses Table

Residence Uses	SG Vinnin Square District
Multifamily Development Project	Yes
Mixed-Use Development Project	Yes

4.6.6.0. Prohibited uses or activities in the SG.

4.6.6.1. Any use prohibited by the Underlying Zoning.

4.6.6.2. Nonresidential uses permitted as-of-right pursuant to the Underlying Zoning are permitted pursuant to this By-law as part of a Mixed-Use Development Project.

4.6.7.0. Dimensional and other requirements.

4.6.7.1. New buildings within the SG shall be subject to the bulk, dimensional and density requirements in the Table of Dimensional and Density Requirements:

Table of Dimensional and Density Requirements

District	Min. Lot Area (sq. ft.)	Max. Residential Density (units/ acre)	Min. Frontage (linear ft.)	Min. Front Setback (linear ft.)	Min. Side Setback (linear ft.)	Min. Rear Setback (linear ft.)	Min. Open Area (%)	Max. Height (ft.)
SG Vinnin Square District	10,000	30	35	N	(1)	(1)	(2)	42

NOTES:

N – None

(1) – Except as to any boundary abutting any other business district, six feet; as to any boundary abutting any residential district, nine feet. May be reduced at the discretion of the Approving Authority.

(2) – One square foot of open land area (in addition to the areas of required parking spaces for such lot) for each two square feet of gross floor area.

4.6.7.2. Building Renovation. Renovation of existing buildings may maintain existing building footprints, and may only expand such footprints insofar as such expansion is in compliance with the required dimensional requirements for new buildings.

4.6.7.3. Portions of the lot in the SG Vinnin Square District are located in the Town of Marblehead, and in the City of Salem. If a Development Project proposed in the SG Vinnin Square District includes development in another municipality, allowable density in the Town of Swampscott will be calculated based on the area of land within the

Town of Swampscott.

- 4.6.7.4. Fractional units. When the application of the allowable densities specified in the Table of Dimensional and Density Requirements, results in a number that includes a fraction, the fraction shall be rounded up to the next whole number.
- 4.6.7.5. Signage. Commercial signage proposed within a Mixed-Use Development Project shall be subject to the procedures and requirements of the Sign By-law, Section 3.2.0.0., unless otherwise granted written approval by DHCD.
- 4.6.7.6. Noise. An Application proposing the installation of exterior venting air conditioners, ventilators, blowers and similar equipment shall be required to demonstrate to the Approving Authority that the noise produced by such equipment will not be in excess of 60 decibels at 20 feet in any direction, or the distance to the nearest building having a residential use, whichever is the lesser. Upon construction and occupancy, noise from the Development Project, including resulting from air conditioners, ventilators, blowers and similar equipment, shall at all times comply with this requirement.
- 4.6.7.7. Stormwater. Proposed Development Projects shall be subject to Swampscott By-law requirements regarding Stormwater Management and Erosion Control, as applicable. Until such time that the Town has qualified for a density bonus payment under 760 CMR 59.06(2) for one or more 40R bonus units permitted within the SG, any amendments to the Swampscott By-law requirements regarding Stormwater Management and Erosion Control, as in effect upon adoption of the SG, shall not apply to the SG until DHCD has received written notice of such amendments.

4.6.8.0. *Off-Street parking.*

- 4.6.8.1. Off-street parking in the District shall be provided in order to meet or exceed the following minimum requirements:

Off-Street Parking Minimum Required Parking

Use	Vinnin
Dwelling unit (1 bedroom)	2.0 spaces
Dwelling unit (2 bedrooms)	2.0 spaces

Off-Street Parking Minimum Required Parking

Use	Vinnin
Dwelling unit (3 bedrooms)	2.0 spaces
Dwelling unit (4 bedrooms)	2.0 spaces
Nonresidential Use	1.0 space/300 square feet

- 4.6.8.2.** Fractional spaces. When the application of the minimum required parking standards in this this By-law results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is 0.5 or more. If the result includes a fraction below 0.5, the fraction shall be rounded down to the next whole number.
- 4.6.8.3.** Location of parking. Any surface parking lot shall be located at the side or rear of a building, relative to any public right-of-way or public open space. In no case shall surface parking for new construction be permitted within the required front Setbacks. Subsurface parking that requires blasting may be disallowed if the Approving Authority finds, based on the results of a geotechnical analysis, that it is not possible to mitigate any extraordinary adverse impact of blasting on nearby properties.
- 4.6.8.4.** The Approving Authority may grant a Plan Approval making such modifications in the parking standards or prescribe safeguards and conditions as it shall warrant appropriate, provided that it finds that it is impractical to meet the standards and that such modifications are appropriate by reason of the proposed use and will not result in or worsen parking or traffic problems in or in proximity to the SG. The Approving Authority may impose conditions of use or occupancy appropriate to such modifications.
- 4.6.8.5.** Shared use of required parking. At the discretion of the Approving Authority, shared use may be made of required parking spaces by intermittent use establishments such as churches, assembly halls, or theaters whose peak parking demand is only at night or on Sundays and by other uses whose peak demand is only during the day. In order for such shared parking to be eligible to satisfy required off-street parking standards in whole or in part, prior to Plan Approval, a formal agreement shall be made in writing by the owners of the uses involved concerning the number of spaces involved, substantiation of the fact that such shared use is not overlapping or in conflict, and the duration of the agreement. Required spaces shall be within 300 feet of the main

entrance to the principal buildings served by the shared parking.

4.6.8.6. The Approving Authority may require additional visitor parking beyond the maximum required spaces per unit if deemed appropriate given the design, layout, use and/or density of the proposed development project.

4.6.8.7. Construction standards. Each parking space shall be at least nine feet wide and 20 feet long and shall be designed with appropriate means of vehicular access to a street as well as maneuvering areas. Access and maneuvering areas shall not be obstructed or used for the parking of motor vehicles. Parking shall be designed and constructed to comply with all applicable disability access requirements including but not limited to the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board (AAB).

4.6.9.0. *Design Standards.* To ensure that new development shall be of high quality, and shall meet the standards envisioned by the Town in adopting this By-law, the Approving Authority shall adopt the Smart Growth Overlay District Design Standards, to the extent such standards have been approved by DHCD, governing the issuance of Plan Approvals for Development Projects within the SG and shall file a copy with the Town Clerk. In addition to the standards set forth in this By-law, the physical character of Development Projects within the SG shall comply with such Design Standards. In the event of any conflict between this By-law and the Design Standards, this By-law shall govern and prevail.

4.6.9.1. The Approving Authority may adopt, by simple majority vote, amendments to the Design Standards.

4.6.9.2. Before adopting any amendment to the Design Standards, the Approving Authority shall submit the proposed amendment to DHCD for approval. Any amendment to the Design Standards shall not take effect until approved by DHCD and filed with the Town Clerk.

4.6.9.3. Design Standards shall be objective and may address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of building and garage entrances, off-street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties..

4.6.9.4. An application for Plan Approval that has been submitted to the Town Clerk pursuant to this By-law shall not be subject to any Design Standard that has not been approved by DHCD and filed with the Town Clerk.

4.6.10.0. AFFORDABLE HOUSING.

- 4.6.10.1.** Number of Affordable Housing Units. Twenty percent of all dwelling units constructed in a Development Project shall be Affordable Housing Units provided, however, that 25% of all rental dwelling units in a Development Project shall be Affordable Housing Units. For Development Projects in which all of the dwelling units are limited to occupancy by elderly persons and/or by persons with disabilities, 25% of the dwelling units shall be Affordable Housing Units, whether the dwelling units are rental or ownership units. Any Development Project which includes age-restricted residential units shall comply with applicable federal, state and local fair housing laws and regulations.
- 4.6.10.2.** Fractional units. When the application of the percentages specified in Subsection 4.6.10.1 results in a number that includes a fraction, the fraction shall be rounded up to the next whole number.
- 4.6.10.3.** Affordable Housing Units shall comply with the following requirements:

 - a) The monthly rent payment for an AFFORDABLE RENTAL UNIT, including utilities and parking, shall not exceed 30% of the maximum monthly income permissible for an Eligible Household, with price determined assuming a household size equal to the number of bedrooms in the unit plus one unless other affordable program rent limits approved by DHCD shall apply;
 - b) For an Affordable Homeownership Unit, the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowners' association fees, insurance, and parking, shall not exceed 30% of the maximum monthly income permissible for an Eligible Household, assuming a household size equal to the number of bedrooms in the dwelling unit plus one; and
 - c) Affordable Housing Units required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.

4.6.10.4. Design and construction.

- a) Design. Affordable Housing Units must be comparable in initial construction quality and exterior design to the Unrestricted Units. Units of Affordable Housing shall be equitably dispersed throughout the Development Project of which they are part, proportionately across all unit types, and in accordance with a housing marketing and selection plan approved by the Monitoring Agent and DHCD. However, nothing in this section is intended to limit a homebuyer's rights to renovate a dwelling unit under applicable law. The Affordable Housing Units must have access to all on-site amenities. The total number of bedrooms in the Affordable Housing Units shall be at least proportionate to the total number of bedrooms in all units in the Development Project.
- b) Timing. All Affordable Housing Units must be constructed and occupied not later than concurrently with construction and occupancy of unrestricted units. For any Development Project that is approved in phases, the proportion of Affordable Housing Units shall be consistent across all phases.

4.6.10.5. Affordable Housing Restriction. Each Affordable Housing Unit shall be subject to an Affordable Housing Restriction which is recorded with the Essex County Registry of Deeds or Land Court Registry District of Essex County. The Affordable Housing Restriction shall provide for the implementation of the requirements of this By-law. All Affordable Housing Restrictions must include, at minimum, the following:

- a) Description of the Development Project, including whether the Affordable Housing Unit will be rented or owner-occupied.
- b) A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity and number of bedrooms and number of bedroom types of AFFORDABLE RENTAL UNITS in a project or portion of a project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental project or the rental portion of a project without specific unit identification.
- c) The term of the Affordable Housing Restriction shall be the longest period customarily allowed by law but shall be no less than 30 years.
- d) The name and address of the Monitoring Agent with a designation

of its power to monitor and enforce the Affordable Housing Restriction. In a case where the Monitoring Agent cannot adequately carry out its administrative duties, upon certification of this fact by the Board of Selectmen or by DHCD such duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Board of Selectmen.

- e) Reference to a housing marketing and resident selection Plan, to which the Affordable Housing Unit is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. If approved by DHCD, the housing marketing and selection Plan may provide for preferences in resident selection. The Plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that preference for such unit shall be given to a household of the appropriate size.
- f) A requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection Plan.
- g) Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership unit will be set.
- h) A requirement that only an Eligible Household may reside in an Affordable Housing Unit and that notice of any lease or sublease of any Affordable Housing Unit to another Eligible Household shall be given to the Monitoring Agent.
- i) Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Monitoring Agent.
- j) Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and the Town of Swampscott, in a form approved by Town Counsel, and shall limit initial sale and resale to and occupancy by an Eligible Household.
- k) Provision that the restriction on Affordable Rental Units in a rental development project or rental portion of a Development Project shall run with the rental Development Project or rental portion of a Development Project and shall run in favor of the Monitoring Agent and the Town, in a form approved by Town Counsel, and shall limit

rental and occupancy to an Eligible Household.

- l) Provision that the owner(s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the Monitoring Agent, in a form specified by that agent certifying compliance with the provisions of this By-law and containing such other information as may be reasonably requested in order to ensure affordability.
- m) A requirement that residents in Affordable Housing Units provide such information as the Monitoring Agent may reasonably request in order to ensure affordability eligibility and compliance.
- n) Designation of the priority of the Affordable Housing Restriction over mortgages and other restrictions.

4.6.10.6. Administration. The Monitoring Agent shall ensure the following:

- a) Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed.
- b) Income eligibility of households applying for Affordable Housing Units is properly and reliably determined.
- c) The housing marketing and resident selection Plan conforms to all requirements and is properly administered.
- d) Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection Plan with appropriate unit size for each household being properly determined and proper preference being given.
- e) Affordable Housing Restrictions meeting the requirements of this section are recorded with the Essex County Registry of Deeds or Land Court Registry District of Essex County.

4.6.10.7. The housing marketing and selection Plan may make provision for payment by the Applicant of reasonable costs to the Monitoring Agent to develop, advertise, and maintain the list of Eligible Households, to conduct the housing lottery, and to monitor and enforce compliance with affordability requirements over time.

4.6.11.0. *Administration.* The Approving Authority shall adopt and file with the Town Clerk administrative rules relative to the application requirements and contents for Plan Review. Such administrative rules may be included as a separate section within the

approved Design Standards. Such administrative rules and any amendment thereto must be approved by DHCD. The Plan Review process encompasses the following, as may be supplemented by the administrative rules:

4.6.11.1. Preapplication review. The APPLICANT is encouraged to participate in a preapplication review with the Approving Authority at a regular meeting(s) of the Approving Authority. The purpose of the preapplication review is to obtain the advice and direction of the Approving Authority prior to filing the application, including determining whether additional technical analyses listed in Section 4.6.11.2.c.2 of this By-law may be required. At the preapplication review the APPLICANT shall outline the proposal and seek preliminary feedback from the Approving Authority, other municipal review entities, and members of the public. The APPLICANT is also encouraged to request a site visit by the Approving Authority and/or its designee in order to facilitate preapplication review.

4.6.11.2. Application Procedures.

- a) An application for Plan Approval shall be filed by the APPLICANT with the Town Clerk and a copy of the application, including the date of filing certified by the Town Clerk, shall be filed forthwith with the Approving Authority. The APPLICANT shall also file 17 copies of the application with the Building Inspector and with the Approving Authority. Said filing shall include any required forms provided by the Approving Authority. An application must include a site plan prepared by a certified architect, landscape architect, and/or a civil engineer resided in the Commonwealth of Massachusetts and that all Plans shall be signed and stamped, and drawings be prepared at a scale approved in advance by the Approving Authority.
- b) As part of any application for Plan Approval, the APPLICANT must submit the following documents to the Approving Authority and the Monitoring Agent:
 1. Evidence that the Development Project complies with the cost and eligibility requirements in Section 4.6.10.3 of the By-law;
 2. Development Project Plans that demonstrate compliance with the requirements of Section 4.6.10.4 of the By-law; and
 3. A form of AFFORDABLE HOUSING RESTRICTION that

satisfies the requirements of Section 4.6.10.5 of the By-law.

- c) As part of any application for Plan Approval, the Applicant may be required to submit one or more of the following technical analyses to the Approving Authority:
1. Surface and water pollution. A report on the impact of stormwater runoff on adjacent and downstream surface water bodies, subsurface groundwater and the water table.
 2. Soils. A geotechnical report that details the potential dangers of erosion and sedimentation caused by the operation and maintenance of the proposed development. The report is to be prepared by a qualified professional geotechnical engineer.
 3. Geotechnical analysis. If subsurface blasting is proposed, an analysis by a certified geotechnical engineer shall be required in accordance with MGL c. 148 showing whether such blasting will have any extraordinary adverse impacts on nearby property.
 4. Traffic impact. A report from a registered professional engineer on existing street capacities, estimated average daily traffic generation, composition, peak hour levels and directional flows resulting from the proposed development, proposed methods to mitigate the estimated traffic impact and methodology and sources used to derive existing data and estimations.
 5. Sample board. Identification of all major exterior materials, colors and finishes.
 6. Noise. Documentation as necessary to demonstrate that the noise produced by exterior venting air conditioners, ventilators, blowers and similar equipment will not be in excess of 60 decibels at 20 feet in any direction, or the distance to the nearest building having a residential use, whichever is the lesser.

- d) Review fees. Pursuant to MGL c.40R, §11(a), the APPLICANT shall be required to pay for reasonable consulting fees to provide peer review of the application for the benefit of the Approving Authority. Such fees shall be held by the Town in an interest-bearing escrow account, and shall be used only for expenses associated with the use of outside consultants employed by the Approving Authority in reviewing the Plan application. Any surplus funds remaining after the completion of such review, including any interest accrued, shall be returned to the APPLICANT forthwith.
- e) Upon receipt by the Approving Authority, applications for Plan Approval shall be distributed to the Board of Selectmen, Board of Health, Housing Committee, Building Inspector, Conservation Commission, Zoning Board of Appeals, Department of Public Works, the Fire and Police Departments and the Water and Sewer Commission. Any reports from these parties shall be submitted to the Approving Authority within 60 days of filing of the application.
- f) Within 30 days of filing of an application with the Approving Authority, the Approving Authority or its designee shall evaluate the proposal with regard to its completeness and shall submit an advisory report, in writing, to the APPLICANT certifying the completeness of the application. Where an application is found to be incomplete, the Approving Authority or its designee shall provide a statement describing required items that were missing from the application. The Approving Authority or its designee shall forward to the APPLICANT, with its report, copies of all recommendations received to date from other boards, commissions or departments.

4.6.11.3. Public hearing. The Approving Authority shall hold a public hearing and review all applications according to the procedure specified in MGL c. 40R, § 11.

4.6.11.4. Prior to the granting of any Plan Approval for a Development Project, the APPLICANT must demonstrate to the satisfaction of the Monitoring Agent, or, in the event that a Monitoring Agent has not yet been named, to the satisfaction of the Approving Authority, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to the Town.

4.6.11.5. Plan Approval decision.

- a) The Approving Authority shall make a decision on the application for Plan Approval by a simple majority vote and shall file said decision with the Town Clerk within 120 days of the receipt of the application by the Town Clerk. The time limit for public hearings and taking of action by the Approving Authority may be extended by written agreement between the APPLICANT and the Approving Authority. A copy of such agreement shall be filed with the Town Clerk.
- b) Failure of the Approving Authority to take action within 120 days or extended time, if applicable, shall be deemed to be an approval of the application.
- c) An APPLICANT who seeks approval because of the Approving Authority's failure to act on an application within the 120 days or extended time, if applicable, must notify the Town Clerk, in writing, within 14 days from the expiration of said time limit for a decision, of such approval and that a copy of that notice has been sent by the APPLICANT to parties in interest by mail and that each such notice specifies that appeals, if any, shall be made pursuant to MGL c. 40R and shall be filed within 20 days after the date the Town Clerk received such written notice from the APPLICANT that the Approving Authority failed to act within the time prescribed.
- d) The Approving Authority's findings, including the basis of such findings, shall be stated in a written decision of approval, conditional approval or denial of the application. The written decision shall contain the name and address of the APPLICANT, identification of the land affected and its ownership, and reference by date and title to the Plans that were the subject of the decision.
- e) The decision of the Approving Authority, together with the detailed reasons therefor, shall be filed with the Town Clerk, the Board of Appeals and the Building Inspector. A copy of the decision shall be mailed to the APPLICANT and to the owner if other than the APPLICANT by the Approving Authority certifying that a copy of the decision has been filed with the Town Clerk and that all Plans referred to in the decision are on file with the Approving Authority. A notice of the decision shall be sent to parties in interest and to persons who requested a notice at the public hearing.
- f) Effective date. If 20 days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the

Town Clerk shall so certify on a copy of the decision. If the application is approved by reason of the failure of the Approving Authority to timely act, the Town Clerk shall make such certification on a copy of the application. A copy of the decision or application shall be recorded with the title of the land in question in the Essex County Registry of Deeds or the Essex Land Registry District, and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The responsibility and the cost of said recording and transmittal shall be borne by the APPLICANT.

- 4.6.11.6.** Criteria for approval. The Approving Authority shall approve the Development Project upon finding that it complies with the requirements of the SG and applicable Design Standards.
- 4.6.11.7.** Criteria for conditional approval. The Approving Authority may impose conditions on a Development Project as necessary to ensure compliance with this this By-law and applicable Design Standards, or to mitigate any extraordinary adverse impacts of the Development Project on nearby properties, insofar as such conditions are compliant with the provisions of MGL c. 40R and applicable regulations and do not unduly restrict opportunities for development. The Approving Authority may require construction of an approved Development Project to be phased for the purpose of coordinating the Development Project with any mitigation required to address extraordinary adverse Development Project impacts on nearby properties.
- 4.6.11.8.** Criteria for denial. The Approving Authority may deny an application for Plan Approval pursuant to this By-law if it finds one or more of the following:
- a) The Development Project does not meet the conditions and requirements set forth in the SG and applicable Design Standards.
 - b) The APPLICANT failed to submit information and fees required by the SG and necessary for an adequate and timely review of the design of the Development Project or potential Development Project impacts.
 - c) It is not possible to adequately mitigate significant adverse Development Project impacts on nearby properties by means of suitable conditions.
- 4.6.11.9.** Time limit. A Plan Approval shall remain valid and shall run with the

land indefinitely, provided that construction has commenced within two years after the decision issues, which time shall be extended by the time required to adjudicate any appeal from such approval. Said time shall also be extended if the APPLICANT is actively pursuing other required permits for the project or if there is good cause for the failure to commence construction, or as may be provided in an approval for a multiphase development project.

4.6.11.10. Appeals. Pursuant to MGL c. 40R, § 11, any person aggrieved by a decision of the Approving Authority may appeal to the Superior Court, the Land Court Department, or the Housing Court Department within 20 days after the Plan decision has been filed in the office of the Town Clerk.

4.6.12.0. *Waivers.* The Approving Authority may at its discretion authorize waivers in the Plan Approval with respect to the dimensional and other standards set forth in this this By-law and in the Design Standards upon a finding that such waiver will allow the Development Project to achieve the density, affordability and/or physical character allowable under this By-law. However, the Approving Authority may not waive any portion of the Affordable Housing requirements in Section 4.6.10.0 of this By-law, except insofar as such waiver results in the creation of a number of Affordable Housing Units in excess of the minimum number of required Affordable Housing Units and receives prior written approval by DHCD under the 40R program.

4.6.13.0. *Fair housing requirement.* All Development Projects within the SG shall comply with applicable federal, state and local fair housing laws.

4.6.14.0. Annual update. On or before July 31 of each year, the Board of Selectmen shall cause to be filed an annual update with DHCD in a form to be prescribed by DHCD. The annual update shall contain all information required in 760 CMR 59.07, as may be amended from time to time, and additional information as may be required pursuant to MGL c. 40R and accompanying regulations. The Town Clerk shall maintain a copy of all updates transmitted to DHCD pursuant to this By-law, with said copies to be made available upon request for public review.

4.6.15.0. Notification of issuance of building permits. Upon issuance of a residential building permit within the SG, the Building Inspector shall cause to be filed an application to the DHCD in a form to be prescribed by DHCD, for authorization of payment of a one-time density bonus payment for each residential building permit pursuant to MGL c. 40R. The application shall contain all information required in 760 CMR 59.06(2), as may be amended from time to time, and additional information as may be required pursuant to MGL c. 40S and accompanying regulations. The Town Clerk shall maintain a copy of all such applications transmitted to DHCD pursuant to this By-law, with said copies to be made available upon request for public review.

4.6.16.0. Date of effect. The effective date of this By-law shall be the date on which such adoption is voted upon by Town Meeting pursuant to the requirements of MGL c. 40A § 5 and MGL c. 40R; provided, however, that an APPLICANT may not proceed with construction pursuant to this By-law prior to the receipt of final approval of this By-law and accompanying Zoning Map by both DHCD and the Office of the Massachusetts Attorney General.

4.6.17.0. Severability. The provisions of this section are severable. If any provision of this section is held invalid, the other provisions shall not be affected but shall remain in full force.

4.7.0.0. Humphrey Street Overlay District

4.7.1.0. Purpose

The Humphrey Street Overlay District (HSOD) is meant to promote development and define a sense of place in the historic downtown of Swampscott that enhances and encourages a mix of uses, protects historic and cultural resources, and fosters a harmonious connection between the district and the natural environment of the waterside. This bylaw is meant to promote future economic, cultural and environmental opportunities and development within the downtown area.

The purposes of the HSOD are as follows:

- To establish preferred patterns and a design framework for the HSOD and to protect and enhance the overall quality of the built environment in the district while balancing aesthetic concerns;

- To respect the scale and character of the residential and commercial mix in the HSOD and surrounding districts by applying a high level of attention to site and building design which promotes attractive and functional development;
- To promote compact development that is pedestrian oriented and preserves the historic value and character of the area;
- To encourage building designs and practices that are adaptable to multiple uses and add flexibility for responding to conditions and constraints inherent to specific sites;
- To that connect residents and visitors to the built and natural environment through a thoughtful mix of business, residential, cultural, educational, and civic uses; and
- To apply to all types of development in the HSOD including public and private.

4.7.2.0. *Overlay District & Boundaries*

The HSOD is an overlay district superimposed over the underlying zoning districts set forth in the Zoning By-law and as designated on the Zoning Map. Within the HSOD, the requirements of the underlying district continue to apply, subject to the following additional provisions established by the HSOD bylaw. To the extent there is a conflict between the requirements of the Zoning By-law and the HSOD bylaw, the latter shall control.

The boundaries of the HSOD shall be as shown on the Town of Swampscott Zoning Map on file in the office of the Town Clerk and shall encompass those lots and rights-of-way shown on the map designated as lying within the HSOD.

4.7.3.0. *Permitted Uses and Review Processes*

The permitted uses in the underlying zoning districts (Section 2.2.3.0. Table of Principal Uses) are modified by the HSOD bylaw to encourage compliance with the HSOD standards and to achieve the purposes of this bylaw.

The following uses are permitted in the HSOD in accordance with the “Table of Additional Uses within the HSOD” below (4.7.3.1). Uses permitted by right in the underlying zoning districts which are not specifically listed in Section 4.7.3.1 are still permitted by right, but must adhere to the requirements of a “Y” as defined below and obtain building permit approval. Uses permitted by a special permit in the underlying zoning districts which are not specifically listed in Section 4.7.3.1 must adhere to the requirements of a “HSSP” as defined below and obtain building permit approval.

The Zoning Board of Appeals shall not grant a variance for any use not allowed under this bylaw.

Symbols employed shall mean the following:

Y = A use permitted as a matter of right, subject to Humphrey Street Design Review approval by the Planning Board (Section 4.7.3.2)

HS SI-P = A use permitted by Humphrey Street Design Review approval by the Planning Board and a Humphrey Street Site Plan Special Permit by the Planning Board in accordance with Section 5.4.0.0 of this By-law and in accordance with the Humphrey Street Site Plan Special Permit approval criteria (Section 4.7.8.0)

HSSP = A use authorized by Humphrey Street Design Review approval by the Planning Board (Section 4.7.4.2) followed by a special permit from the Zoning Board of Appeals in accordance with Section 5.3.0.0 of this By-law and in accordance with the Humphrey Street Special Permit approval criteria (Section 4.7.9.0)

N = An excluded or prohibited use

4.7.3.1. Table of Additional Uses Within the HSOD

PRINCIPAL USE	A-4 DISTRICT	B-1 DISTRICT
Residential		
Multi-family of less than six units	HSSP	HS SI-P
Multi-family of six units or more	HSSP	HSSP
Mixed-Use Residential – up to ten units and 20,000 square feet (SF) of gross floor area (GFA) of non-residential	HS SI-P	HS SI-P
Institutional		
Theatre; museum; performing, cultural, or arts facility; hall for public gathering	HSSP	HS SI-P
Commercial		
Retail containing less than 2,000 SF of GFA	HS SI-P	Y
Retail containing 2,000 to 5,000 SF of GFA	HSSP	HS SI-P
Bakery containing less than 2,000 SF of GFA	HS SI-P	Y
Bakery containing 2,000 to 5,000 SF of GFA	HSSP	HS SI-P
Restaurant of coffee shop containing less than 2,000 SF of GFA	HSSP	Y
Restaurant or coffee shop containing 2,000 to 7,500 SF of GFA	N	Y
Restaurant or coffee shop containing more than 7,500 SF of GFA	N	HS SI-P
Restaurant abutting one or more residentially-zoned properties that are being used for residential purposes	HSSP	HSSP
Restaurant providing delivery service (using more than one delivery vehicle/shift)	N	HS SI-P

Catering establishment	N	HS SI-P
Personal service establishment containing 2,000 to 5,000 SF of GFA	N	Y
Personal service establishment containing more than 5,000 SF of GFA	N	HS SI-P
Bank or financial service containing 2,000 to 5,000 sf (with no drive-through)	N	Y
Automatic Teller machine (freestanding)	HSSP	HS SI-P
Any allowed use containing outdoor seating, display or storage <u>on the front sidewalk without alcohol</u>)	HSSP	Y
Hotel, Inn (See §5.13.0.0.)	HSSP	HS SI-P
Motel (See §5.13.0.0.)	N	HSSP
Bed & Breakfast (See §5.13.0.0.)	HS SI-P	HS SI-P

4.7.3.2. Humphrey Street Design Review

All applications for new construction, additions, and projects involving exterior renovations in the HSOD must receive design review approval by the Planning Board. To receive design review approval, an application:

1. Must meet requirements of the basic design standards as outlined in Section 4.7.4.0 (all applications) and
2. Should meet guidance and goals as outlined in Section 4.7.5.0 (HS SI-P and HSSP applications).

4.7.4.0. Humphrey Street Overlay District Design Standards

4.7.4.1. Purpose and Applicability

The purpose of the HSOD Design Standards is to establish basic design standards that promote the purposes of the HSOD as outlined in Section 4.7.1.0.

The Design Standards shall apply to all new construction, additions or projects involving exterior renovation. If a use is permitted as a matter of right, the Planning Board may waive its review for applicants at its discretion; such applicants may proceed to apply for a building permit with a signed design review waiver from the Planning Board.

4.7.4.2. Basic Design Standards

All applications to the Planning Board under this bylaw shall provide detailed design on all street-facing walls (45 degrees or less from lot line). The Planning Board will issue an advisory recommendation to the

Building Inspector and Special Permit Granting Authority, where applicable.

Applications shall include at least four (4) of the architectural features illustrated in Appendix B Figure 9, except for residential-only structures in the underlying A-4 district. It is not within the Planning Board's authority to prescribe specific elements except when the Planning Board may require specific design elements or changes to promote compatibility with adjacent uses and to achieve the desired community character or pedestrian orientation.

All qualifying structures must meet the following standards:

- A. Regularly-spaced and similarly-shaped windows shall be provided on all building stories;
- B. Ground floor windows or window displays shall be provided along at least 30 percent of the building's (ground floor) street-facing elevation(s) except for residential-only structures in the underlying A-4 district; windows and display boxes shall be integral to the building design and not mounted to an exterior wall;
- C. Display windows shall be trimmed, recessed, or otherwise defined by wainscoting, sills, water tables, or similar architectural features;
- D. On multi-story buildings except for residential-only structures in the underlying A-4 district, ground floors shall be defined and separated from upper stories by appropriate architectural features that visually identify the transition from ground floor to upper story; such features should be compatible with the surrounding architecture; such features may be provided by:
 - a. A cornice above the ground level;
 - b. An arcade;
 - c. Changes in material or texture; or
 - d. A row of clerestory windows on the building's street-facing elevation;
- E. The tops of flat roofs shall be treated with appropriate detailing

(e.g., cornice, pediment, flashing, trim, or other detailing) that is compatible with the surrounding architecture, and pitched roofs shall have eaves, brackets, gables with decorative vents, or other detailing that is consistent with the surrounding architecture;

- F. Primary building entrances except for residential-only structures in the underlying A-4 district, shall open directly to the outside and, if not abutting a street, shall have walkways connecting them to the street sidewalk; every building shall have at least one primary entrance that does not require passage through a parking lot or garage to gain access; and shall include weather protection features, such as awnings, canopies, or overhangs.

4.7.5.0. *Humphrey Street Design Guidelines*

In addition to ensuring compliance with the Design Standards above, the Planning Board shall encourage adherence to the following guidelines before issuing a Humphrey Street Site Plan Special Permit or providing recommendations to the Zoning Board of Appeals for HSSP applications.

HSOD proposals should follow local development patterns (e.g., open space and view corridors, common setbacks, streetscapes). The continuation of such patterns should contribute to a unified visual appearance within an area. Not all established development patterns present opportunities for a desirable interface. Applicants should be prepared to address such situations with respect to the current design proposal and how the departure from the existing pattern benefits the community.

4.7.5.1. Hard Surface Sidewalk Extension

- A. The area between a building and the front lot line should be hard surfaced for use by pedestrians as an extension of the sidewalk as shown in Appendix B Figure 10, except that this area may contain tree wells, planting strips and gardens.
- B. For each one hundred (100) square feet of hard-surface area between a building and the front lot line, at least one of the following amenities should be provided (as shown in Appendix B Figure 10):
 - a. A bench or other seating;
 - b. A tree;
 - c. A landscape planter; or
 - d. A bicycle parking facility.

- C. Wherever possible, mixed-use and commercial buildings should be located directly adjacent and parallel to the sidewalk.
- D. Clearly visible and direct pedestrian paths should be established between neighboring mixed-use and commercial buildings, between buildings and outlying parking areas and between buildings and transit facilities.
- E. Where pedestrian paths cross vehicular routes, a change in paving materials, textures or colors should be provided to emphasize the conflict point, improve visibility, enhance safety and provide added aesthetic appeal.
- F. The placement of patios, plazas and similar spaces (including outdoor dining areas) should take into consideration the impact of solar orientation.

4.7.5.2. Reinforcement of the Corner

On sites located at public street right-of-way intersections (corners):

- A. primary structures located within thirty (30) feet from the corner should be within ten (10) feet of both front lot lines;
- B. At least one of the street-facing walls should be at least forty (40) feet long;
- C. The highest point of the building's street-facing elevation should be within twenty-five (25) feet of the corner;
- D. A main entrance into the building should be on a street-facing wall and either at the corner or within twenty-five (25) feet of the corner; and
- E. Off-street parking is discouraged within forty (40) feet of the corner.

4.7.5.3. Main Entrance

- A. At least one entrance of the principal building should face the front lot line. Where there is more than one (1) front lot line, the entrance may face either a front lot line or diagonally towards the corner.
- B. For residential buildings that have more than one (1) main entrance, only one entrance should face the front lot line.

4.7.5.4. Ground Floor Treatment

- A. Where the underlying district is B-1, the ground floor facing the street for new structures should be designed for non-residential use by following the requirements for windows and entrance doors in Section 4.7.4.2. This does not prohibit residential use of such ground floor spaces.
- B. Windows on street frontages should comply with the following:
 - a. Where the underlying district is B-1, new facades that face a street should maintain a minimum ratio of two-thirds (2/3) glass to one-third (1/3) solid material on the ground floor.
 - b. No reflective sheeting or other window blocking techniques should be permitted other than cloth drapery and window shades.

4.7.5.5. Awnings and Canopies

New and replacement awnings must meet the requirements of Section 3.2.2.6 with the following additional allowances:

- A. Awnings should project at least three (3) feet from the building wall façade;
- B. Awning covers should be made of durable material that look like natural fabric and have no gloss sheen;
- C. Awnings may be flat or angled;
- D. Hand-cranked or “traditional” awnings are preferred;
- E. Awnings proposed under an HSOD application are exempt from the Administrative Site Plan Review by the Planning Board, but instead are subject to HSOD design review.

4.7.5.6. Roof-Mounted Equipment

All roof-mounted equipment, including satellite dishes and other communication equipment, excluding solar panels, should be screened in one of the following ways:

- A. A parapet as tall as the tallest part of the equipment;

- B. A screen around the equipment that is as tall as the tallest part of the equipment; or
- C. A setback of the equipment from the street-facing perimeters of the building of at least three (3) feet for each foot of height of the equipment.

4.7.5.7. Roof

Dormer windows are encouraged for pitched roofs. Buildings should have either:

- A. A sloped roof with a pitch no flatter than 6/12; or
- B. A roof with a pitch of less than 6/12 and a cornice that meets the following requirements as shown in Appendix B Figure 11.
 - a. The top part of the cornice should project at least six (6) inches from the face of the building and be at least two (2) inches further from the face of the building than the bottom part of the cornice; and
 - b. The height of the cornice is based on the height of the building as follows:
 - i. Buildings ten (10) feet or less in height should have a cornice at least twelve (12) inches high.
 - ii. Buildings greater than ten (10) feet and less than thirty (30) feet in height should have a cornice at least eighteen (18) inches high.
 - iii. Buildings thirty (30) feet or greater in height should have a cornice at least twenty-four (24) inches high.

4.7.6.0. *Humphrey Street Site Plan and Special Permit Standards*

All proposed uses or activities in the HSOD that are being reviewed for a Humphrey Street Site Plan Special Permit (HS SI-P) or a Humphrey Street Special Permit (HS SP) are subject to the Lot Area, Building Height, Parking and Sign Regulations of the underlying zone, except as noted below.

Applications for residential-only uses shall be made in accordance with the content requirements of Section 5.4.6.0 (Contents of Plan – Residential). Applications for mixed or commercial-only uses shall be made in accordance with the content

requirements of Section 5.4.5.0 (Contents of Plan – Commercial). Plans shall be prepared as outlined in Section 5.4.4.0 (Preparation of Plans).

Applications as a matter of right shall include nine (9) copies of application packet (six (6) copies for Planning Board, two (2) copies for Town Clerk, one (1) copy for Inspector of Buildings); applications for an HS SI-P shall include thirteen (13) copies of application packet (six (6) copies for Planning Board, two (2) copies for Town Clerk, one (1) copy for each: Board of Health, Inspector of Buildings, Town Engineer, Fire Department, Conservation Commission); Applications for an HSSP shall include seventeen (17) copies of application packet (nine (9) copies for Zoning Board of Appeals, two (2) copies for Town Clerk, one (1) copy for each: Board of Health, Inspector of Buildings, Town Engineer, Fire Department, Conservation Commission, Planning Board).

Any applicant applying for a Section 6 Special Permit within the HSOD must still go before the Planning Board for design review. After the Planning Board has made their recommendations available to the ZBA, a determination will be made by the ZBA if such an extension, alteration, reconstruction or change is not substantially more detrimental than the existing nonconforming structure or use to the neighborhood.

4.7.6.1. Dimensional Requirements and Exceptions

Uses and structures within the HSOD shall conform to the following dimensional requirements. Exceptions to the following dimensional requirements may be granted by the approval of an HS SI-P from the Site Plan Special Permit Granting Authority (Planning Board) for uses permitted as a matter of right or HS SI-P. Exceptions to the following dimensional requirements may be granted by the approval of an HSSP from the Special Permit Granting Authority (Zoning Board of Appeals) for uses permitted by HSSP.

- A. Minimum Lot Area = 7,500 square feet
- Minimum Lot Frontage = 70 feet
- Minimum Front Yard Setback = 0 feet (commercial / mixed-use) / 15 feet (residential-only)
- Minimum Side Yard Setback = 0 feet (commercial / mixed-use) / 7.5 feet (residential-only)
- Minimum Rear Yard Setback = 15 feet
- Maximum Building Height = 35 feet (3 stories, except for those properties that abut Nahant Bay which carry a 2.5-story limit)
- Minimum Open Space = 15% (commercial / mixed-use) / 20% (residential-only)
- Maximum Building Coverage = 80% (commercial / mixed-use) / 40% (residential-only)

- B. Exception – At least sixty (60) percent of the frontage of a lot, measured in percentage of linear feet of the lot frontage, shall be occupied by buildings that are set back no more than ten (10) feet from the front lot line and that are at least twenty (20) feet in depth. This requirement may be waived for additions to existing buildings where the addition does not increase the setback of the existing building or where the addition is not visible from any street. A deeper setback may be allowed for a forecourt when a garden and/or hard-surfaced terrace are provided. This requirement is waived for residential-only buildings located in the A-4 district.
- C. Exception – The minimum separation between two or more buildings on the same lot shall be twenty (20) feet.
- D. Exception – The permit granting authority may modify all dimensional requirements (except building height) outlined in Section 4.7.6.1 (A) if, in its opinion, such modifications will result in improved design that is in keeping with Section 4.7.1.0.
- E. Exception – The permit granting authority may, as part of the special permit, reduce the lot frontage requirement for a development that provides consolidated or shared access for two or more adjoining parcels, subject to a legally-enforceable agreement or restriction in a form acceptable to the permit granting authority and approved by Town Counsel (Section 4.7.7.1).
- F. Exception – Building height is measured from mean street level to the absolute top of the structure, not including weather vanes, spires less than six (6) inches in diameter, or other minimally-sized adornments as deemed by the Planning Board. A waiver may be sought by the applicant with regards to height, but may not exceed forty (40) feet. For residential-only buildings in the underlying A-4 district, the permit granting authority may waive the height requirement if there is at least twenty-five (25) feet between the building of the applicant and each building on abutting properties, or when there is a total distance of fifty (50) feet between the building of the applicant and each building on abutting properties added together. For buildings in the underlying B-1 district, the permit granting authority may waive the height requirement if a public open space is created on the property.
 - a. Public open space must be outside, and shall be in the form of a park, courtyard, walking trail, or plaza.

- b. Public open space shall be accessible and generally be at or near grade level to facilitate use.
- c. Locked gates or restricted passages negate the purpose of “open” space. All outdoor ground level features which are accessible from the public sidewalk should always be open to the public during daylight hours.
- d. Public open space shall be no less than ten (10) percent of the area of the lot in question.

4.7.6.2. Parking

- A. All off-street parking areas shall be located behind or to the side of the principal structure on the lot. No parking area shall be located closer to the front lot line than the front building façade. This provision may be waived at the discretion of the permit granting authority for residential-only multi-family uses in the underlying A-4 district.
- B. The required setback from side and rear lot lines specified for off-street parking shall consist entirely of landscaped area, except for required access drives.
- C. In establishing parking requirements for uses in the Humphrey Street Overlay District, consideration shall be given to the Town’s goal of making this overlay a “park-once” district where on-street and municipal off-street spaces are used to enable customers to use one space for multiple destinations. Reference Section 4.7.7.0. Alternative Parking Solutions for guidance.

4.7.6.3. Off-Street Loading, Parking of Trucks, Buses and Commercial Vehicles

- A. Within the Humphrey Street Overlay District, off-street loading shall only be required if it is a practical option due to the availability of adequate space in a rear parking lot or alley.
- B. Parking stalls for trucks, buses, or other commercial vehicles exceeding either seven and a half (7.5) feet in width or eighteen (18) feet in length shall be located at least fifty (50) feet from the nearest dwelling unit in the underlying A-4 residential district.
- C. Stalls for delivery vehicles or other commercial vehicles shall be

specifically identified in the site plan, and shall be of such dimensions as to accommodate the specified type of vehicle. Such vehicles shall be permitted to park only in the stalls so identified and approved.

4.7.6.4. Screening – Generally

A. Refuse Areas

All refuse containers for uses other than single-family and two-family homes shall meet the following conditions, which may only be waived by the permit granting authority at its discretion.

- a. Refuse containers shall not be visible from the street.
- b. Refuse containers shall be set back from the front property line at least as far as the primary structure on the property. No refuse container shall be located in the front yard.
- c. Refuse containers shall be enclosed or screened by a structure constructed out of the same or similar materials to the primary structure on the property or an approved alternative. The enclosure shall screen the containers from view from the public way and protect the containers from raccoons, rodents, and other pests.
- d. Outdoor refuse containers shall not be stored within ten (10) feet of exterior windows or doors that open directly into habitable space within housing units on the basement, ground, or first floors of buildings contained residential units.

B. Buffers between Districts

Where two (2) land use districts abut each other, the more intense district use must provide a buffer planting strip when adjacent to residential districts or to less intense residential districts. All development must follow the buffer and screening requirements in the table below and illustrated in Appendix B Figure 12.

Subject Lot in District where Side or Rear Lot Line abuts Residential District (or a less intense residential district)	Buffer Width
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Residence A-1, A-2, A-3	None
Residence A-4	5 feet
Business B-1	10 feet

4.7.7.0. *Alternative Parking Solutions*

4.7.7.1. Shared Parking

- A. Where an application for an HS SI-P or HSSP proposes shared parking with one (1) or more other separately-owned properties and such shared parking has been approved by the permit granting authority, the owners of the properties shall enter into a legal agreement guaranteeing access to, use of, and management of designated shared parking spaces.
- B. The agreement shall be in a form approved by Town Counsel and shall be included as a condition to any approved HS SI-P or HSSP.

4.7.7.2. Fee in Lieu of Providing On-Site Parking Spaces

- A. Where the required off-street parking spaces cannot be provided on-site and are not currently available on the street and/or in municipal parking lots, the applicant may, at the option of the permit granting authority, pay a fee in lieu of one (1) or more required spaces, in an amount established by the Board of Selectmen and sufficient to cover the estimated cost of providing additional public parking spaces in the general location of the proposed use.
- B. Such fees shall be kept in a dedicated fund for municipal parking purposes and shall be used for such purposes within four (4) years or returned to the applicant (or the applicant’s successor).

4.7.8.0. *Humphrey Street Site Plan Special Permit Approval Criteria*

In addition to the standards in Section 4.7.4.0 and the design guidelines and standards in sections 4.7.5.0 and 4.7.6.0, the Site Plan Special Permit Granting Authority shall make a finding as to whether the proposed development meets the following criteria:

4.7.8.1. All new construction or additions that would (1) alter the building gross floor area by more than eight hundred (800) square feet or (2) increase gross floor area by fifteen (15) percent or more, shall be designed consistent with the architectural context in which they are located. This requires meeting the following criteria:

- A. There is continuity in building sizes between new and existing buildings;

- B. The ground floor and upper floor elevations and architectural detailing are compatible with adjacent buildings;
- C. The roof is compatible in elevation, roof pitch, shape, and height step-down with adjacent buildings;
- D. There is continuity of building sizes on the site, if more than one building is proposed;
- E. There is continuity in the rhythm of windows and doors on the proposed building(s);
- F. The relationship of buildings to public spaces, such as streets, plazas, and public parking, including on-street parking, is strengthened by the proposed building(s).

- 4.7.8.2. The proposed development meets the purpose of the HSOD (4.7.1.0.);
- 4.7.8.3. The proposed development meets the standards in Section 4.7.6.0. and design standards in Section 4.7.4.0. and in as much as possible the design guidelines in Section 4.7.5.0.
- 4.7.8.4. Final action by the Site Plan Special Permit Granting Authority shall not take place until the earlier of (a) twenty (20) days after filing the HS SI-P application, and (b) receipt of written reports by Board of Health, Inspector of Buildings, Town Engineer, Fire Department, and Conservation Commission.

4.7.9.0. *Humphrey Street Special Permit Approval Criteria*

Applications for a special permit shall be made in accordance with the regulations of the Special Permit Granting Authority, who shall require conformance with the following standards before issuing a Humphrey Street Special Permit:

- 4.7.9.1. The proposed development meets the purpose of the HSOD (4.7.1.0.);
- 4.7.9.2. The proposed development meets the standards in Section 4.7.6.0. and design standards in Section 4.7.4.0. and in as much as possible the design guidelines in Section 4.7.5.0.; and
- 4.7.9.3. The Planning Board has performed a design review, submitted recommendations, and recommendations have been considered by the

Special Permit Granting Authority.

- 4.7.9.4.** Final action by the Special Permit Granting Authority shall not take place until the earlier of (a) thirty-five (35) days after filing the HSSP application, and (b) receipt of written reports by Board of Health, Inspector of Buildings, Town Engineer, Fire Department, Conservation Commission, and Planning Board.

4.7.10.0. *Decision*

In granting a Humphrey Street Site Plan Special Permit or a Humphrey Street Special Permit, the permit granting authority may impose reasonable conditions and restrictions based upon or in addition to the considerations listed in the HSOD bylaw and may set limitations on the work to be done.

4.8.0.0. Inclusionary Housing Regulations

4.8.1.0. Purpose

The purpose of this bylaw is to encourage development of new housing that is affordable to low and moderate-income households. At minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in MGL c. 40B sect. 20-24 and other affordable housing programs developed by state, county and local governments. It is intended that the affordable housing units that result from this bylaw be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Massachusetts Department of Housing and Community Development (DHCD). Definitions for affordable housing units (homeownership and rental) and eligible household can be found in “4.6.4.0. Definitions.”

4.8.2.0. Applicability

- 4.8.2.1.** In all zoning districts, the inclusionary zoning provisions of this section shall apply to the following uses:

Any project that results in a net increase of ten (10) or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space;

Any subdivision of land for development of six (6) or more dwelling units; and

Any assisted or independent living facility development that includes five (5) or more assisted or independent living units and accompanying services.

- 4.8.2.2.** The inclusionary zoning provisions of this section do not apply to the following districts and overlays:

Greenwood Planned Development District; and

Smart Growth (MGL 40R) Zoning Overlay District.

- 4.8.2.3.** Failure to comply with or evasion this section of the Swampscott Zoning By-laws is prohibited. Non-compliance or evasion includes, but is not limited to, segmenting land or properties in such a manner so as to avoid inclusionary housing requirements by either subdividing one parcel of land into six parcels of land in such a manner that each parcel will have less than six dwelling units or purposefully dividing a large development into phases that would develop less than six dwelling units

during each phase.

4.8.3.0. *Special Permit*

The development of any project set forth in “4.8.2.0. Applicability” shall require the grant of a Special Permit from the Board of Appeals, or the Planning Board in the cases of a subdivision. A Special Permit shall be granted if the proposal meets the requirements of this bylaw. The application procedure for the Special Permit shall be as defined in “Article V. Administration and Procedures” of the Zoning By-laws.

4.8.4.0. *Mandatory Provision of Affordable Units*

4.8.4.1. As a condition of approval for a Special Permit, the applicant shall contribute to the local stock of affordable units in accordance with the following requirements:

- A. At least ten (10) percent of the units in a division of land or multiple unit development subject to this bylaw shall be established as affordable housing units in any one or combination of methods provided for below:
1. constructed or rehabilitated on the locus subject to the Special Permit (see “4.8.5.0. Provisions Applicable to Affordable Housing Units On- and Off-Site”);
 2. constructed or rehabilitated on a locus different than the one subject to the Special Permit (see “4.8.6.0. Provision of Affordable Housing Units Off-Site”);
 3. an equivalent fees-in-lieu of payment may be made (see “4.8.7.0. Fees-in-Lieu-of Affordable Housing Unit Provision”); or
 4. An applicant may offer, and the SPGA may recommend, subject to the approval of the appropriate Town board or body, the acceptance of donations of land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction of the number of affordable units that would otherwise be required to be constructed under this by-law. The SPGA may require, prior to recommending that the appropriate Town board or body accept land as satisfaction of the requirements of this by-law, that the applicant must submit appraisals of the land in

question, as well as other data relevant to the determination of equivalent value.

- B. The applicant may offer, and the SPGA may accept, any combination of the Section 4.8.4.1.(A)(1)-(4) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number of affordable units or value of affordable units required to be constructed or set-aside under this by-law.
- C. As a condition for the granting of a Special Permit, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the Planning Board. The regulatory agreement shall be consistent with any applicable guidelines issued by the DHCD and shall ensure that affordable units can be counted toward Swampscott's Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in "4.8.9.0. Preservation of Affordability; Restrictions on Resale" of this bylaw. The Special Permit shall not take effect until the restriction, the regulatory agreement and the Special Permit are recorded at the Registry of Deeds and a copy provided to the Planning Board and the Inspector of Buildings.

4.8.4.2. To facilitate the objectives of "4.8.4.0. Mandatory Provision of Affordable Units," modifications to the dimensional requirements in any zoning district may be permitted for any project under these regulations, as the applicant may offer and the SPGA may grant, subject to the conditions below:

- A. *Density Bonus.* The SPGA may allow the addition of two market-rate units for each affordable unit provided as part of compliance with the Special Permit. The minimum lot area, maximum height, and/or maximum building coverage normally required in the applicable zoning district may be reduced by that amount necessary to permit up to two (2) additional market-rate units on the lot for each one (1) affordable unit required in Section 4.8.4.1.
- B. *Voluntary Inclusionary Housing Bonus.* New affordable housing development that is not subject to Section 4.8.2.0. and exceeds the requirements specified in Section 4.8.4.1.(A) may receive the same benefits specified in Section 4.8.4.2.(A) when the development is approved by the SPGA by a grant of a

Special Permit pursuant to this provision. The net increase in housing units shall not exceed fifty percent (50%) of the original property yield, meaning the number of units that would be allowed to be constructed in compliance with these Zoning By-laws but for this Voluntary Inclusionary Housing Bonus, before any density bonuses were applied.

4.8.5.0. Provisions Applicable to Affordable Housing Units On- and Off-Site

4.8.5.1. *Siting of Affordable Units.* All affordable units constructed or rehabilitated under this by-law shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

4.8.5.2. *Minimum Design and Construction Standards for Affordable Units.* Affordable housing units shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.

4.8.5.3. *Timing of Construction or Provision of Affordable Units or Lots.* Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below.

Market-Rate Unit (% Complete)	Affordable Housing Unit (% Required)
< 30%	-
30% plus 1 unit	10%
Up to 50%	30%
Up to 75%	50%
75% plus 1 unit	70%
Up to 90%	100%

Fractions of units shall not be counted.

4.8.5.4. *Marketing Plan for Affordable Units.* Applicants under this by-law shall submit a marketing plan or other method approved by the Town through its Planning Board, to the SPGA for its approval, which describes how the affordable units will be marketed to potential homebuyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.

4.8.6.0. *Provision of Affordable Housing Units Off-Site*

As an alternative to the requirements of Section 4.8.5.0., an applicant subject to the by-law may develop, construct or otherwise provide affordable units equivalent to those required by Section 4.8.4.0. off-site. All requirements of this by-law that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the SPGA as an integral element of the Special Permit review and approval process.

4.8.7.0. *Fees-in-Lieu-of Affordable Housing Unit Provision*

4.8.7.1. As an alternative to the requirements of Section 4.8.5.0. or 4.8.6.0., an applicant may contribute to the Town's Affordable Housing Trust to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.

- A. *Calculation of Fee-in-Lieu-of-Units.* The applicant for development subject to this by-law may pay fees-in-lieu of the construction of affordable units. For the purposes of this bylaw, the fee-in-lieu of the construction or provision of affordable units will be determined as a per-unit cost as calculated from regional construction and sales reports. The Swampscott Affordable Housing Trust will make the final determination of acceptable value.
- B. *Schedule of Fees-in-Lieu-of-Units Payments.* Fees-in-lieu-of-units payments shall be made according to the schedule set forth in 4.8.5.3.
- C. *Creation of Affordable Units.* Cash contributions and donations of land and/or buildings made to the Town or its Housing Trust in accordance with Section 4.8.7.1. shall be used only for purposes of providing affordable housing for low- or moderate-income households. Using these contributions and donations, affordable housing may be provided through a variety of means, including but not limited to the provision of favorable financing terms, subsidized prices for purchase of sites, or affordable units within larger developments.

4.8.8.0. *Maximum Incomes and Selling Prices: Initial Sale*

4.8.8.1. To ensure that only eligible households purchase affordable housing

units, the purchaser of an affordable unit shall be required to submit copies of the last three (3) years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the Town's Affordable Housing Trust, that his/her or their family's annual income level does not exceed the maximum level as established by DHCD, and as may be revised from time to time.

- 4.8.8.2.** The maximum housing cost for affordable units created under this by-law is as established by DHCD, Local Initiative Program or as revised by the Town.

4.8.9.0. *Preservation of Affordability; Restrictions on Resale*

- 4.8.9.1.** Each affordable unit created in accordance with this by-law shall have limitations governing its resale through the use of a regulatory agreement (Section 4.8.4.1(C)). The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property and shall be in force in perpetuity.

A. *Resale Price.* Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section 4.8.9.1, above.

B. *Right of First Refusal to Purchase.* The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town, consistent with model riders prepared by DHCD, granting, among other things, the municipality's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

C. The SPGA shall require, as a condition for Special Permit under this by-law, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section 4.8.9.1.(B), above. The Building Inspector shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

4.8.10.0. Conflict with Other Bylaws

The provisions of this by-law shall be considered supplemental to existing zoning by-laws. To the extent that a conflict exists between this by-law and others, the more restrictive by-law, or provisions therein, shall apply.

4.8.11.0. Severability

If any provision of this by-law is held invalid by a court of competent jurisdiction, the remainder of the by-law shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this by-law shall not affect the validity of the remainder of Swampscott's zoning by-laws.

4.9.0.0. Tourist Lodging Overlay District**4.9.1.0. Purpose**

The Tourist Lodging Overlay District (TLOD) is meant to promote tourism within the Town and to specifically define the locations where lodging establishments may be allowed. This bylaw is meant to promote future economic, cultural and environmental opportunities and encourage establishments that would attract tourists to Swampscott.

4.9.2.0. Overlay District & Boundaries

The TLOD is an overlay district superimposed over the underlying zoning districts set forth in the Zoning By-law and as designated on the Zoning Map. Within the TLOD, the requirements of the underlying district continue to apply, subject to the following additional provisions established by the TLOD bylaw. To the extent there is a conflict between the requirements of the Zoning By-law and the TLOD bylaw, the latter shall control. The boundaries of the TLOD shall be as shown on the Town of Swampscott Zoning Map on file in the office of the Town Clerk and shall encompass those lots and rights-of-way shown on the map designated as lying within the TLOD.

4.9.3.0. Permitted Uses

The permitted uses in the underlying zoning districts (Section 2.2.3.0. Table of Principal Uses) are modified by the TLOD bylaw to encourage compliance with the TLOD standards and to achieve the purposes of this bylaw. The following uses are permitted in the TLOD in accordance with the "Table of Additional Uses within the TLOD" below (4.9.3.1). Uses permitted by special permit in Section 4.9.3.1. must adhere to the requirements of the TLOD as defined below. The Zoning Board of Appeals shall not grant a variance for any use not allowed under this bylaw. Symbols employed in the "4.9.3.1. Table of Additional Uses within the TLOD" shall mean the following:

SP = A use authorized by a special permit from the Zoning Board of Appeals in accordance with the criteria defined Section 5.13.0.0. of this By-law.

N = An excluded or prohibited use

4.9.3.1. Table of Additional Uses within the Tourist Lodging Overlay District (TLOD)

PRINCIPAL USE	A-1	A-2	A-3	A-4	B-1	B-2	B-3	B-4	I	OFF-STREET PARKING GROUP
Hotel	SP	SP	SP	SP	SP	SP	SP	SP	N	C, E*
Motel	N	N	N	N	N	SP	SP	SP	N	C
Inn	SP	SP	SP	SP	SP	SP	SP	SP	N	C
Bed & Breakfast Establishment	SP	SP	SP	SP	SP	SP	SP	SP	N	C

* = Applicable to restaurant and café portion only

ARTICLE V. ADMINISTRATION AND PROCEDURES.**5.1.0.0. General.**

5.1.1.0. *Permits.* This By-Law shall be administered by the Building Commissioner, also known as the Inspector of Buildings. Pursuant to the State Building Code, the Inspector of Buildings may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the Commonwealth and may request advisory reviews by other municipal boards and officials. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed with regard to size or shape or principal use without written certification by the Building Commissioner that such action is in compliance with then applicable zoning, and that all necessary permits have been received under federal, state, or local law. No excavation for a building foundation nor work on a building foundation shall commence, until the Building Commissioner issues a building permit. Issuance of a Building Permit or Certificate of Use and Occupancy, where required under the Commonwealth's State Building Code, may serve as such certification.

5.1.1.1 In order to aid the Building Commissioner in determining compliance with applicable zoning and approvals and relief granted under this By-law, if any, an applicant for a building permit shall file with the Building Commissioner, a ~~plot~~ site plan based upon an actual current instrument survey, showing the location of any proposed changes to the existing footprint of a structure, including additions, decks, staircases, landings, porch roofs, accessory structures, and any alteration. Each applicant shall also file an "as built" certified ~~plot~~ site plan, within 30 days after the completion of the work, prepared by a registered land surveyor who shall certify on the plan that the location of the foundation complies with this Bylaw and any relief granted hereunder.

5.1.2.0. *Enforcement.* The Building Commissioner shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this By-Law and of permits, special permits, variances, and site plan approval issued thereunder, including notification of noncompliance and request for legal action through the Selectmen to Town Counsel.

5.1.3.0. *Penalties.* The penalty for violation of any provision of this By-Law, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals, any special permit granting authority, or the site plan approval board shall be three hundred dollars (\$300.00) for each offense. Each day that each violation continues shall constitute a separate offense. The provisions of this By-Law may be enforced by non-criminal disposition in accordance with the provisions of Massachusetts General Laws Chapter 40, Section 21D.

5.2.0.0. Board of Appeals.

5.2.1.0. *Establishment.* The Board of Appeals shall consist of five (5) members and three (3) associate members.

5.2.2.0. *Powers.* The Board of Appeals and the Planning Board shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws to the extent conferred upon it by this By-Law. The Board of Appeal's powers are as follows:

5.2.2.1. The Board of Appeals shall have the power to hear and decide applications for special permits, including, without limitation, dimensional special permits, site plan special permits and any other special permits permitted under this By-Law. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority, to act in all matters in accordance with the provisions of this By-Law. The Planning Board shall have the power to hear and decide applications for site plan special permits where it serves as the Site Plan Special Permit Granting Authority pursuant to Section 5.4.3.0. below.

5.2.2.2. The Board of Appeals shall have the power to hear and decide appeals or petitions for variances from the terms of this By-Law, with respect to particular land or structures, as set forth in G.L. c. 40A, § 10, and more specifically set forth in Section 5.5.0.0. below. The Board of Appeals shall not grant use variances.

5.2.2.3. The Board of Appeals shall have the power to hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, §§ 7, 8 and 15.

5.2.2.4. The Board of Appeals shall have the power to hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, §§ 20-23.

5.2.3.0. *Regulations.* The Board of Appeals and the Planning Board may adopt rules and regulations for the administration of the powers granted to it under this By-Law. To promote consistency in the administration of Site Plan Special Permits, the Board of Appeals and the Planning Board shall within sixty (60) days of the effective date of this By-Law jointly adopt rules for the administration of Site Plan Special Permits.

5.2.4.0. *Fees.* The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for special permits, variances, administrative appeals, and applications for comprehensive permits, provided, however, with regard

to the administrative and other fees relating to Site Plan Special Permits such fees shall be jointly established by the Board of Appeals and the Planning Board.

5.3.0.0. Special Permits.

5.3.1.0. *Special Permit Granting Authority.* Unless specifically designated otherwise, the Board of Appeals shall act as the special permit granting authority under this By-Law.

5.3.2.0. *Criteria.* Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the benefit to the town and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:

- 5.3.2.1.** Social, economic, or community needs which are served by the proposal;
- 5.3.2.2.** Traffic flow and safety, including parking and loading;
- 5.3.2.3.** Adequacy of utilities and other public services;
- 5.3.2.4.** Neighborhood character and social structures;
- 5.3.2.5.** Impacts on the natural environment; and
- 5.3.2.6.** Potential fiscal impact, including impact on town services, tax base, and employment.

The provisions of this Section 5.3.2.0. shall not apply to requests for dimensional special permits pursuant to Section 2.3.6.0. of this By-Law and requests for special permits pursuant to Section 2.2.7.0. of this By-Law.

5.3.3.0. The burden of proof is on the party requesting a special permit to prove that its application meets the criteria to be eligible for a special permit.

5.4.0.0. Site Plan Special Permit.

5.4.1.0. *Purpose.* The purpose of this section is to provide for the protection and promotion of health, safety, convenience and general welfare of the inhabitants of the Town of Swampscott, and for promoting acceptable site planning practices and standards, and for promoting attractive, quality design and layout of commercial, industrial and residential development compatible with the Town of Swampscott neighborhoods, environment and character.

5.4.2.0. *Applicability.* For the purpose of computing the total gross floor area of a site plan, all extensions or additions to projects/developments approved within the five (5)

previous calendar years shall be aggregated. The following types of activities require a site plan special permit by the special permit granting authority:

- 5.4.2.1. *Commercial.* Construction, exterior alteration or exterior expansion of a non-residential structure that either: (i) changes or alters the building footprint of a development that previously required site plan approval or a site plan special permit, or (ii) involves more than eight hundred (800) square feet of gross floor area. For the purposes of this Section 5.4.2.1., a multi-family structure shall be considered a non-residential structure.
- 5.4.2.2. *Residential - Addition.* Construction, exterior alteration or exterior expansion of a single or two-family residence that either: (i) changes or alters the footprint of a residence that previously required site plan approval or a site plan special permit, or (ii) involves an addition of more than eight hundred (800) square feet of gross floor area.
- 5.4.2.3. *Residential - New.* Any new construction of a single or two-family residence involving more than three thousand (3,000) square feet of gross floor area.
- 5.4.2.4. *Parking Area or Lot.* Construction or expansion of a parking lot for an exempt, municipal, institutional, commercial, industrial, or multi-family structure or purpose, or for single- or two-family residential purposes where a parking area or lot capable of accommodating more than three (3) vehicles is proposed. For the purposes of this Section 5.4.2.4., a parking area or lot serving a development containing more than three (3) dwelling units shall be subject to site plan approval. Any change in size, location or number of parking spaces, circulation lanes, curb cuts, or landscaped areas of parking areas or lots that previously required site plan or a site plan special permit shall require a site plan special permit.
- 5.4.2.5. *Subdivision.* Any subdivision of land and subsequent construction of structures thereon.
- 5.4.2.6. *Adult Uses.* Any proposed Adult Use, whether in a new or existing structure, it being the intent that the entire lot, not just the individual Adult Use, shall be subject to review under this Section 5.4.0.0.
- 5.4.2.7. *Site Preparation.* In all districts, no site preparation shall be undertaken on a vacant lot until approval for a construction project requiring a site plan special permit is obtained from the Site Plan Special Permit Granting Authority and the Inspector of Buildings. Site preparation is herein defined as a change in topography or cover, i.e.: excavation; dredging; filling; changing the grade; blasting; removal of trees or other vegetation. Borings and test pits to determine subsoil conditions are not included in this definition. If the rights under such a building permit

have not been exercised within the limits provided by existing statutes, and site preparation has already commenced, the land shall be restored by means of placing a top soil and/or plantings by the applicant. Ordinary maintenance of vacant lots shall be exempt from this subsection.

5.4.3.0. Procedures. In order to streamline the permitting process, the special permit granting authority for the purposes of site plan special permits under this Section 5.4.0.0. (the “Site Plan Special Permit Granting Authority”) shall be (i) the Board of Appeals if the project or development requiring the site plan special permit also requires one (1) or more additional special permits or variances from the Board of Appeals, or (ii) the Planning Board in all other cases. In the case where a project or development requires a site plan special permit and one (1) or more additional special permits or variances, the applicant shall submit a single application for all such special permits or variances to the Board of Appeals. Notwithstanding the foregoing, any application for a Site Plan Special Permit filed with the Board of Appeals shall be automatically transferred to the Planning Board, and the Planning Board shall become the Site Plan Special Permit Granting Authority and the Board of Appeals shall take no further action with regard to an application for a Site Plan Special Permit, in either of the following circumstances: (a) the application pending before the Board of Appeals is amended so as to no longer require any other special permits or variances (except for a Site Plan Special Permit), or (b) all of the applicant’s requests for other special permits or variances (except for the Site Plan Special Permit) are denied by the Board of Appeals.

Applicants for site plan special permits shall submit six (6) copies of the site plan to the Planning Board if it is the Site Plan Special Permit Granting Authority for review, nine (9) copies of the site plan to the Board of Appeals if it is the Site Plan Special Permit Granting Authority, two (2) copies of the site plan review materials with the application to the Town Clerk, and within three (3) days thereafter shall also submit a copy of the site plan materials to the Board of Health, Inspector of Buildings, Town Engineer, Fire Department, Conservation Commission and, if the Planning Board is not the Site Plan Special Permit Granting Authority, the Planning Board, for each of their advisory review and written recommendations and/or comments. Where the Board of Appeals is the Site Plan Special Permit Granting Authority, the Site Plan Special Permit Granting Authority shall not take final action on any Site Plan Special Permit until the earlier of (i) thirty-five (35) days after filing of the Site Plan Special Permit application with the Site Plan Special Permit Granting Authority, and (ii) receipt by the Site Plan Special Permit Granting Authority of written reports from the Board of Health, Inspector of Buildings, Town Engineer, Fire Department, Conservation Commission and, if the Planning Board is not the Site Plan Special Permit Granting Authority, the Planning Board. Where the Planning Board is the Site Plan Special Permit Granting Authority, the Site Plan Special Permit Granting Authority shall not take final action on any Site Plan Special Permit until the earlier of (i) twenty (20) days after filing of the Site Plan Special Permit application with the Site Plan Special Permit Granting Authority, and (ii) receipt by the Site Plan Special Permit Granting Authority of written reports from the Board of Health, Inspector of Buildings, Town Engineer,

Fire Department, and Conservation Commission. The Site Plan Special Permit Granting Authority shall review the site plan and approve it in accordance with the requirements and procedures otherwise applicable to special permits under G.L. c.40A and this By-Law, except as otherwise expressly provided in this Section 5.4.0.0. No deviation from an approved site plan shall be permitted without modification thereof which has received approval from the Site Plan Special Permit Granting Authority.

5.4.4.0. *Preparation of Plans.* Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. Except where expressly provided otherwise, all plans shall have a minimum scale of one (1) inch equals forty (40) feet.

5.4.5.1. Contents of Plan - Commercial. The contents of the site plan are as follows:

5.4.5.2. For construction activities identified in Sections 5.4.2.1., 5.4.2.4., 5.4.2.5. and 5.4.2.6., the following six (6) separate plans prepared at a scale of one (1) inch equals forty (40) feet, or other such scale as may be approved by the Site Plan Special Permit Granting Authority, shall be submitted. The plans are as follows:

- a.** *Site layout* which shall contain the boundaries of the lot(s) in the proposed development, locations and dimensions of proposed structures, driveways, internal roadways and access ways to adjacent public roadways, all parking areas, loading areas, walkways, and areas for snow storage after plowing. The first sheet of this plan shall be a locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or other distance as may be required by the Site Plan Special Permit Granting Authority.
- b.** *Topography and drainage* plan showing location of all existing natural features, including ponds, brooks, streams and wetlands, and which shall contain the existing and proposed final topography at two (2) foot intervals, and plans for handling stormwater drainage.
- c.** *Utility and landscaping* plan, which shall include the locations and dimensions of all utilities, gas, telephone, electrical, communications, water, drainage, sewer and other waste disposal facilities, the location of all hydrants, fire alarms and firefighting facilities on and adjacent to the site, the location and type of external lighting, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.
- d.** *Architectural* plans, at a scale of one inch equals forty (40) feet, which shall include the ground floor plan and elevations for all sides of the building(s), and a color rendering. Elevations shall show architectural styles intended and shall indicate exterior materials and colors proposed.
- e.** *Landscaping* plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.
- f.** *Photometric* plan if the project is located within the B1, B2, B3 or I District and proposes the addition of five (5) or more outdoor parking spaces with outdoor lighting, prepared by a lighting professional that is certified by the National Council on

Qualifications for the Lighting Professions (NCQLP), or a State licensed professional engineer, architect, landscape architect or land surveyor and containing the following information:

- a. Location and limits of the canopy or outdoor display area at a scale of not less than one (1) inch equals forty (40) feet (1" = 40');
- b. Location and height of all canopy lighting for service stations and service station/mini-marts and all pole, building or ground mounted lighting fixtures for an outdoor display area at a vehicle sale, rental and ancillary service establishments; and
- c. A photometric diagram showing predicted maintained lighting levels produced by the proposed lighting fixture facilities.

- 5.4.5.3.** *Time and Cost Statement.* The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof.
- 5.4.5.4.** *Summary.* A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this By-Law.
- 5.4.5.5.** *Drainage Calculations.* The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design shall conform to Town of Swampscott subdivision regulations.
- 5.4.5.6.** *Development Impact Statement.* The Site Plan Special Permit Granting Authority may require a Development Impact Statement (DIS) as set forth in Section 5.6.2.0. below.
- 5.4.5.7.** *Traffic Impact Report.* The Site Plan Special Permit Granting Authority may require a report on existing traffic volume, composition, peak hour levels, and existing street capacities, estimated daily traffic generation, composition, peak hour levels, and directional flow resulting from the proposed development, proposed methods to mitigate the estimated traffic impact, and the methodology and sources used to derive existing data and estimations.

5.4.5.8. Discussion on the Effects of Long-Term Sea Level Rise – For developments located in the CFAOD, provide a discussion on how the effects of long-term sea level rise and storm surge on the proposed project will be mitigated. Include calculations showing the projected sea level rise over a 50-year period, what temporary and permanent measures are proposed to minimize flood damage, and any adverse or beneficial effects these measures may have on adjacent properties.

5.4.6.1. *Contents of Plan - Residential.* The contents of the site plan for single and two-family residences are as follows (plans with regard to multi-family residences shall meet the plan requirements for commercial developments set forth in Section 5.4.5.0 above):

5.4.6.2. For construction activities identified in Sections 5.4.2.2. and 5.4.2.3., the following plans prepared at a scale of one (1) inch equals forty (40) feet (or at such other scale as otherwise required herein or as may be approved by the Site Plan Special Permit Granting Authority), shall be submitted. The plans are as follows:

- a.** *Locus plan* showing the applicant's lot and adjacent streets, and footprints of the applicant's house and proposed addition, and showing the footprints of houses and other buildings on abutting lots. Distances of adjacent homes to the applicant's property lines shall be dimensional on the plan.
- b.** *Dimensional site plan* of the entire lot showing all existing and proposed buildings, structures, driveways, curb cuts, and exterior lighting, at a scale of one (1) inch equals forty (40) feet. Said plan shall be dimensional to show distances to all setback lines.
- c.** *Landscape plan* showing the limits of the work, existing trees and vegetation, vegetation to be removed, proposed new landscaping with size, type and quantity of vegetation at a scale of one (1) inch equals forty (40) feet. The site plan and the landscape plan may be combined into one (1) plan if all required information can be clearly shown on one (1) plan.
- d.** *Dimensional floor plans and building elevations* (all sides) of existing structures and proposed additions at a scale of one-quarter (1/4) inch equals one (1) foot. Elevations shall indicate exterior materials proposed.
- e.** Discussion on the Effects of Long-Term Sea Level Rise – For developments located in the CFAOD, provide a discussion on how the effects of long-term sea level rise and storm surge on the

proposed project will be mitigated. Include calculations showing the projected sea level rise over a 50-year period, what temporary and permanent measures are proposed to minimize flood damage, and any adverse or beneficial effects these measures may have on adjacent properties.

5.4.7.0. *Waiver of Compliance.* The Site Plan Special Permit Granting Authority may, upon written request of the applicant, waive any of the plan requirements set forth in Section 5.4.4.0., 5.4.5.0., or 5.4.6.0. above if it determines that the project involves relatively simple development plans or the plan requirement is not necessary to adequately review and decide the petition before it.

5.4.8.0. *Approval.* The Site Plan Special Permit Granting Authority shall make the following findings, in additions to the findings set forth in Section 5.3.2.0. above, in connection with approving any Site Plan Special Permit: (i) any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations; and (ii) new building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

- 5.4.8.1.** Minimize the volume of cut and fill, the number of removed trees six (6) inch caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;
- 5.4.8.2.** Maximize pedestrian and vehicular safety both on the site and egressing from it;
- 5.4.8.3.** Minimize obstruction of scenic views from publicly accessible locations;
- 5.4.8.4.** Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
- 5.4.8.5.** Minimize glare from headlights and lighting intrusion;
- 5.4.8.6.** Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;

- 5.4.8.7. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;
- 5.4.8.8. Ensure compliance with the provisions of this Zoning By-Law, including parking and landscaping;
- 5.4.8.9. Minimize adverse traffic impact of the proposed project.
- 5.4.9.0. Minimize the hazard of coastal flooding, taking into account the effects of long-term sea level rise and storm surge.

The Site Plan Special Permit Granting Authority may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives.

5.4.9.1. *Applicability.* Notwithstanding anything to the contrary contained in this By-Law, at the election of the project applicant, a project that requires a Site Plan Special Permit under this By-Law shall not be required to obtain a Site Plan Special Permit for such project, but shall continue to be subject to the Pre-Existing Site Plan Approval (as defined herein), where (i) site plan approval for the project was voted on and approved by the Planning Board (regardless of when the decision was filed) on or after July 1, 2008 but prior to April 17, 2009 (referred to for the purposes of this Section 5.4.9.0. as a “Pre-Existing Site Plan Approval”), (ii) a building permit for the project was duly issued by the Inspector of Buildings on or before January 1, 2010, and (iii) the project is substantially completed on or before January 1, 2011. Notwithstanding that the Pre-Existing Site Plan Approval was originally issued by the Planning Board, a Pre-Existing Site Plan Approval may be amended by (a) the Board of Appeals if the project subject of the Pre-Existing Site Plan Approval requires but has not yet received one (1) or more approvals from the Board of Appeals and such amendment is required due to changes to the project required by the Board of Appeals in connection with the approvals sought from the Board of Appeals, or (b) in all other cases, the Planning Board. Any amendment of a Pre-Existing Site Plan Approval referenced in the immediately preceding sentence shall not be considered nor shall it require a Site Plan Special Permit under this By-Law. Notwithstanding anything to the contrary contained within this Section 5.4.0.0., for the purposes of construction of Renewable and Alternative Energy Research and Development Facilities within the I District under Section 2.1.1.8 and Section 2.2.3.0. of this By-Law (RE/AE R&D Facilities) and projects located within the Planned Development Districts (PDDs) under Section 2.1.1.7. and Section 4.5.0.0. of this By-Law, site plan review for such facilities and projects shall not be a special permit process and shall not be subject to the special permit requirements of G.L.c. 40A or this By-Law. All RE/AE R&D Facilities and projects within the PDDs shall be subject to administrative site plan review by the Planning Board, and the Planning Board shall only have the right to (i) approve the site plan, (ii) approve the site plan with reasonable conditions, or (iii) deny the site plan

only if the site plan fails to furnish adequate information required by this By-Law. Site plan review for RE/AE R&D Facilities and projects within the PDDs shall be subject to the requirements of Sections 5.4.1.0., 5.4.4.0., 5.4.5.0. or 5.4.6.0., as applicable, and 5.4.7.0. of this By-Law. In connection with approving or approving with conditions a site plan for RE/AE R&D Facilities and projects within the PDDs, the Planning Board shall make the findings contained within Section 5.4.8.1. through 5.4.8.9. of this By-Law.

5.5.0.0. Variances.

The Board of Appeals shall take the following items into consideration in determining whether or not a variance requested under Section 5.2.2.2. above should be granted:

5.5.1.0. It is only in rare instances and under exceptional circumstances that variances shall be granted.

5.5.2.0. Variances shall only be granted upon a finding that owing to circumstances related to the (i) soil conditions, (ii) shape, or (iii) topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this By-Law would involve substantial hardship 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 such By-Law.

5.5.2.1. Circumstances. A lot lacking sufficient area is not eligible for a variance based solely on the fact that it has insufficient area. A lot lacking sufficient frontage is not eligible for a variance based solely on the fact that it has insufficient frontage.

5.5.2.2. Hardships. Any hardship demonstrated by an applicant must arise from and directly relate to the circumstance (i.e., soil conditions, shape or topography) alleged by the applicant. By way of example, but not limitation, the following shall not be considered hardships for the purposes of obtaining a variance:

5.5.2.2(a). Self created hardships.

5.5.2.2(b). Hardships which would not be shared generally by anyone attempting to make a reasonable and permitted use of the same property (i.e., hardships that are personal or specific to this applicant).

5.5.2.2(c). Personal hardships.

5.5.3.0. The burden of proof is on the party requesting the variance to prove that its application meets all of the criteria to be eligible for a variance.

5.6.0.0. Procedures for Special Permits and Variances.

5.6.1.0. *Procedures.* Applications shall be filed in accordance with the rules and regulations of the special permit granting authority. An application shall not be deemed complete until all copies of required information and documentation have been filed with the special permit granting authority.

5.6.2.0. *Development Impact Statement (DIS).* In connection with any request for any special permit or any variance, the special permit granting authority, in its sole and absolute discretion, may require an applicant to submit to it at the sole cost and expense of the applicant, a development impact statement (DIS). The special permit granting authority may deny any request for a special permit or variance where the DIS discloses that the proposed use does not comply with the provisions of this By-Law. At the request of the special permit granting authority, the DIS shall be prepared by an interdisciplinary team including a Registered Landscape Architect or Architect, a Registered Professional or Civil Engineer, and/or a Registered Surveyor, and may include all or some of the following information in addition to any other such information requested by the special permit granting authority:

5.6.2.1. *Physical Environment.*

- a. Describe the general physical conditions of the site, including amounts and varieties of vegetation, general topography, unusual geologic, archeological, scenic and historical features or structures, location of significant viewpoints, stone walls, trees over sixteen (16) inches in diameter, trails and open space links, and indigenous wildlife.
- b. Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.

5.6.2.2. *Surface Water and Subsurface Conditions.*

- a. Describe location, extent, and type of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the site.
- b. Describe any proposed alterations of shorelines or wetlands.
- c. Describe any limitations imposed on the project by the site's soil and water conditions.
- d. Describe the impact upon ground and surface water quality and recharge, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the site.
- e. Describe the effects of long-term sea level rise and storm surge for developments located in the CFAOD, and provide a discussion on how the effects of long-term sea level rise and storm surge on the proposed project will be mitigated, calculations showing the projected sea level rise over a 50-year period, what temporary and permanent measures are proposed to minimize flood damage and any adverse or beneficial effects these measures may have on adjacent properties.

5.6.2.3. *Circulation Systems.*

- a. Project the number of motor vehicles to enter or depart the site per average day and peak hour. Also state the number of motor vehicles to use streets adjacent to the site per average day and peak hour. Such data shall be sufficient to enable the special permit granting authority to evaluate (i) existing traffic on streets adjacent to or approaching the site, (ii) traffic generated or resulting from the site, and (iii) the impact of such additional traffic on all ways within and

providing access to the site. Actual study results, a description of the study methodology, and the name, address, and telephone number of the person responsible for implementing the study, shall be attached to the DIS.

5.6.2.4. Support Systems.

- a. *Water Distribution:* Discuss the water system proposed for the site, means of providing water for firefighting, and any problems unique to the site.
- b. *Sewage Disposal:* Discuss the sewer system to be used, and evaluate impact of sewage disposal on the wastewater treatment facility.
- c. *Refuse Disposal:* Discuss the location and type of facilities, the impact on existing Town refuse disposal capacity, hazardous materials requiring special precautions.
- d. *Fire Protection:* Discuss the type, location, and capacity of fuel storage facilities or other flammables, distance to fire station, and adequacy of existing firefighting equipment to confront potential fires on the proposed site.
- e. *Recreation:* Discuss the distance to and type of public facilities to be used by residents of the proposed site, and the type of private recreation facilities to be provided on the site.
- f. *Schools:* Project the increase to the student population for nursery, elementary, junior high school, and high school levels, also indicating present enrollment in the nearest public schools serving these categories of students.

5.6.2.5. Phasing. Where development of the site will be phased over more than one (1) year, indicate the following:

- a. Describe the methods to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles. Describe the approximate size and location of portion of the parcel to be cleared at any given time and length of time of exposure.
- b. Describe the phased construction, if any, of any required public improvements, and how such improvements are to be integrated into site development.

5.6.3.0. Conditions. Special permits and variances may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the special permit granting authority may deem necessary to serve the purposes of this By-Law.

5.6.4.0. Plans. An applicant for a special permit or variance shall submit a plan in substantial conformance with the requirements of Section 5.4.0.0., herein.

5.6.5.0. Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within twelve (12) months following the issuance of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, § 17, from the grant thereof) with the Town Clerk. Variances shall lapse in accordance with the provision of G.L. c.40A, § 10.

5.6.6.0. Regulations. The special permit granting authority may adopt rules and regulations for the administration of this section.

5.6.7.0. Fees. The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits and variances.

5.7.0.0. Applicability/General Provisions.

5.7.1.0. Other Laws. Where the application of this By-Law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-Law shall control.

5.7.2.0. Conformance. Construction or operations under a Building Permit shall conform to any subsequent amendment of this By-Law unless the use or construction 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.

5.7.3.0. Section Headings. Headings contained within this By-Law are for convenience and are not intended to have substantive meaning.

5.8.0.0. Partial Invalidity.

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

5.9.0.0. Amendments.

This By-Law may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in G.L. c. 40A, § 5, and any amendments thereto.

5.10.0.0. Adult Uses.

5.10.1.0. Purpose and Intent. The purpose of this article is to establish reasonable and uniform regulations of adult entertainment uses within the Town of Swampscott. The intent of the By-Law is to address and mitigate the negative secondary effects of adult entertainment uses. Numerous studies have documented that the quality of life in a

community is degraded by adult entertainment establishments as a result of increased levels of crime including crimes against children, prostitution and drugs; depreciation of property values; adverse impacts on public health including noise, litter, unsanitary conditions, and traffic. The provisions of this By-Law have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials including sexually oriented materials; and it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult entertainment to their intended market. It is neither the intent nor the effect of this article to condone or legitimize the distribution of obscene or other illegal matter or materials.

5.10.2.0. Definitions.

(a) **Adult Uses:** A business, including Adult Bookstores, Adult Motion Picture Theaters, Adult Paraphernalia Stores, Adult Video Stores and any other business which display live nudity located in a building or portion thereof, or a use of land having a substantial or significant portion of its business activity, stock in trade or other matter or materials for sale, rental, distribution or exhibition, which are distinguished or characterized by their emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL Chapter 272, Section 31. For purposes of this By-Law, each of the businesses defined, as an adult use herein shall constitute a separate adult use business even if operated in conjunction with another adult use business at the same establishment.

(b) **Adult Bookstore:** A business having as a substantial or significant portion of its stock in trade, books, magazines, periodicals, pictures and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Chapter 272, Section 31.

(c) **Adult Motion Picture Theater:** An enclosed building or outdoor venue used for public uses, for presenting material (motion pictures, films, video cassettes, cable television, slides, DVDs or any other such visual or electronic media) distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Chapter 272, Section 31.

(d) **Adult Paraphernalia Store:** A business having as a substantial or significant portion of its stock in devices, objects, tools, toys or electronic media which are distinguished or characterized by their association with sexual activity, including sexual intercourse, sexual conduct or sexual excitement as defined in MGL Chapter 272, Section 31.

(e) **Adult Video Store:** A business having a substantial or significant portion of its stock in trade (for sale or rent) motion pictures, films, video cassettes, DVDs and other film material or similar audio/visual media and electronic media which are distinguished or characterized by their emphasis depicting, describing, or

relating to sexual conduct or sexual excitement as defined in MGL Chapter 272, Section 31.

(f) **Businesses Which Display Live Nudity:** A business offering activities or goods or providing services where employees or entertainers are engaging in full or partial nudity, sexual conduct or sexual excitement as defined In MGL Chapter 272, Section 31.

(g) **Nudity** as defined in M.G.L. c. 272, §31.

(h) **Sexual Conduct** as defined in M.G.L. c. 272, §31.

(i) **Sexual Excitement** as defined in M.G.L. c. 272, §31.

(j) **Substantial or significant portion of stock:** Used within this By-Law shall mean any of the following:

- (i) twenty (20%) percent or more of the business square footage, inventory or stock of merchandise for sale, rental, distribution, or exhibition during any period of time;
- (ii) twenty (20%) percent or more of the annual number of gross sales, rentals, or other business transactions; or
- (iii) twenty (20%) percent or more of the annual gross business inventory; or
- (iv) twenty (20%) percent or more of the hours during which the establishment is open.

(k) **Business:** The term "business", used within this By-Law, refers to certain types of goods and services.

5.10.3.0. *Applicability / Eligibility Requirements.*

(a) Adult Uses shall be prohibited in all zoning districts, except for the I District.

(b) No more than one (1) Adult Use shall be allowed to operate within the same building, structure or portion thereof.

(c) All Adult Uses are subject to a special permit by the Zoning Board of Appeals

(d) All Adult Uses located within a building, structure or portion thereof require a Site Plan Special Permit from the Board of Appeals.

(e) A special permit for an adult use shall lapse upon any of the following:

- (i) A change in the location of the adult uses;
- (ii) A sale, transfer or assignment of the business or the license;
- (iii) A change in the ownership or management of the applicant.

(f) Any adult use granted a special permit shall comply with all other Town By-Laws and all Federal and State statues regarding public nuisances, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

(g) Adult Book Stores, Adult Paraphernalia Stores and Adult Video Stores shall not be permitted to open for business earlier than 10:00 a.m. and close no later than 9:00 p.m.

(h) Businesses which display live nudity and adult motion picture theaters shall not be permitted to open for business earlier than 10:00 a.m. and close no later than 9:00 p.m.

(i) No adult use special permit shall be issued to any person, corporation, officer, director, general partner convicted of violating the provisions of M.G.L. c.119, S. 63 or M.G.L. c. 272, S. 2, 3, 4, 4A, 6, 7, 8, 12, 13, 28 and M.G.L c. 265 S. 13B, 13F, 13H, 22, 22A, 23, 24, and 24B. If any person so identified is found to be convicted of violating these MGL's, such Special permit shall immediately null and void.

(j) No adult use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.

(k) Any adult use special permit granted shall expire after a period of two (2) calendar years from its date of issuance and shall be automatically renewable for successive two (2) year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to the expiration of the then-existing two (2) year period, subject to the request being noticed as specified in MGL Chapter 40A, Section 9. Said notice shall state that the renewal request will be granted unless, prior to the expiration of the then existing permit, a written objection from any individual or entity is received by the Zoning Board of Appeals. In the event of such an objection, a public hearing on the renewal shall be held in accordance with MGL Chapter 40A, Section 9. The existing Special Permit shall remain in effect until the conclusion of the public hearing and decision of the Zoning Board of Appeals either granting or denying the Special Permit renewal, in accordance with the provisions of Section 5.10.7.0. In granting any such renewal, the Board of Appeals may impose additional conditions, including, without limiting the foregoing, time limits to correct violations, hours of operations and additional screening, upon which a specified lapse of time without correction or compliance shall result in a revocation of the Special Permit.

5.10.4.0. Location Requirements. Adult uses shall be setback from the following uses as follows:

(a) five hundred (500) feet, measured from the structure to the property line of any lot used for residential purposes, including, but not limited to, such uses as elderly housing, assisted living and nursing homes. Hotels and motels are not considered residential uses for purposes of this section of the By-Law.

(b) five hundred (500) feet, measured from the structure to the property line of any lot used for a public or private school, state approved childcare facility, or nursery school.

(c) five hundred (500) feet, measured from the structure to the property line of any lot used for a church or other place used for religious purposes.

(d) five hundred (500) feet, measured from structure to structure for any of the following uses where children congregate, including, without limitation, as listed below:

- i. Bowling Alleys
- ii. Video (electronic) arcades
- iii. Ice Skating Rinks
- iv. Laser Tag arcades
- v. Billiard (pool) halls
- vi. Roller Skating Rink
- vii. Mini Golf
- viii. Golf / Driving Range
- ix. Baseball Batting Cages
- x. Basketball Courts
- xi. Sports Fields

(e) five hundred (500) feet, measured from structure to the property line of any park or playground.

(f) five hundred (500) feet, measured from one adult use to another adult use.

The distances specified above shall be measured by a straight line from the nearest exterior wall of the structure in which the proposed adult use is to be located to the nearest property line. For purposes of measuring the required five hundred (500) feet separation between two adult uses and the required five hundred (500) feet separation between an adult use and a use where children congregate, as listed above, located within a free standing building or structure, the distance shall be measured by a straight line between the nearest exterior walls of the building or structure. Where an adult use or any of the other uses, as specified above, are located within a portion thereof of a building or structure, the distance shall be measured by a straight line between the nearest patron entrance to the nearest patron entrance.

5.10.5.0. Site Development Standards.

- (a) All adult use businesses shall comply with the dimensional requirements of the underlying zoning district.
- (b) The establishment or maintenance of more than one (1) adult business in the same building, structure or portion thereof is prohibited.
- (c) For all new construction, a continuous landscaped buffer strip shall be installed along the entire perimeter of the lot, except that portion directly needed for access / egress. In the case of an existing structure, whether free-standing, free-standing as part of a larger development or attached as a group of individual stores, the site shall be modified to the maximum extent reasonable to provide a continuous landscaped buffer strip along the entire perimeter of the lot. For purposes of this provision, a continuous landscaped buffer strip shall be defined as a mix of deciduous and evergreen vegetation for a minimum width of ten (10) feet.
- (d) No signs, advertisement, display or other implements or items shall be displayed in the windows of the business.
- (e) All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- (f) No adult use shall have any flashing lights visible from outside the establishment.

5.10.6.0. Application Requirements. The application for a Special Permit for an Adult Use shall include the following information:

- (a) A completed Adult Use Special Permit application and application fee as required.
- (b) A sworn statement stating that neither the applicant, nor the manager, in the Adult use business has been convicted of violating the provisions of MGL Chapter 119, Section 63 or MGL Chapter 272, Section 28;
- (c) Proposed provisions for securing the safety of the public inside and outside the Adult Use business;
- (d) The present and proposed physical layout of the interior of the Adult Use business.
- (e) A locus map highlighting the subject property, displaying the property lines of adjacent lots and building footprints, where applicable, within 1000 feet and the distance measurements to the uses as listed in Section 5.10.4.0 above. This map shall be a minimum size of 24" x 36" and a minimum scale of 1"=500'. For

purposes of verifying distance measurements, the Zoning Board of Appeals may require a smaller scale than 1"=500'.

(f) A Site Plan in accordance with Section 5.4.0.0. of this zoning By-Law. Notwithstanding the requirements of Section 5.4.0.0. of this zoning By-Law, for an application without any exterior construction or modification, the Site Plan shall consist of an existing conditions and proposed landscape Plan.

(g) A letter from the property owner acknowledging submittal of the proposed application.

(h) Identification of the type of adult use business that is being requested

(i) If the applicant is a person, then he /she shall sign the application under the pains and penalties of perjury

(j) If the applicant is a corporation or other entity other than an individual, each officer, director, general partner, trustee, or other person who will participate directly in decisions relating to management shall sign the application under the pains and penalties of perjury and each person signing the application shall be considered a permittee,

(k) Each person signing the application must be qualified in accordance with Section 5.10.6.0.(b)

5.10.7.0. *Criteria for Approval.* For purposes of a special permit to allow an Adult Use, the criteria for approval shall be limited and narrowed based upon definite and objective standards, regardless of all other approval criteria within this By-Law. The Board of Appeals shall grant a special permit for an Adult Use in accordance with this section unless it finds that the proposed adult business taken alone or in combination with other special permitted activities on the premises, would adversely affect the public health, safety or order in that the permitted activities cannot be conducted in a manner as to:

(a) Protect employees, patrons and members of the public inside or outside the business from disruptive conduct, from criminal activity, or from health, safety or fire hazards;

(b) Prevent an unreasonable increase in the level of noise in the area caused by the adult business or caused by patrons entering or leaving the business;

(c) Prevent an unreasonable increase in the level of pedestrian or vehicular traffic in the area of the business or an unreasonable increase in the number of vehicles to be parking in the area of the business;

(d) Compliance with the dimensional, parking and other requirements of this By-Law, where applicable; and

(e) Compliance with any and all requirements for Adult Uses as set forth in this By-Law, and any and all other state, federal or local regulations or statutes.

5.10.8.0. Severability. The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

5.11.0.0. Accessory Apartments

The provisions of this Section 5.11.0.0. outline the considerations and requirements for approval of Accessory Apartments (“AA”). The intent and purpose of this Section 5.11.0.0. is as follows:

- 5.11.0.1.** Provide for flexibility within the existing zoning By-Law to afford an opportunity to accommodate additional living arrangements;
- 5.11.0.2.** A plan for changing demographics and economic climate;
- 5.11.0.3.** Increase supply of affordable housing;
- 5.11.0.4.** Provide housing options for extended family; and
- 5.11.0.5.** Ensure compliance of new and existing AA’s with building, safety, fire code standards and zoning provisions.

5.11.1.0. Definitions

- 5.11.1.1.** *Accessory Apartment or AA:* an area contained within an owner occupied single-family dwelling unit that maintains internal access and circulation to the dwelling unit, restricted to not more than two (2) bedrooms and no more than three (3) occupants, consisting of provisions for bathing, cooking and sleeping. The inclusion of an AA within a single family dwelling unit does not create a two-family dwelling. Furthermore, internal walls and doors, for purposes of privacy, and additional means of access / egress are not precluded. The AA shall be ancillary / subordinate in size, location and function to the dwelling unit. An AA shall only be permitted within a single-family dwelling and not within a detached accessory building.

5.11.2.0. Applicability / Eligibility The Board of Appeals may issue a special permit to allow an AA in a single family home or for an expansion of an existing lawfully existing AA.

5.11.3.0. Design Standards for Accessory Apartments

- 5.11.3.1.** Only one (1) AA may be created per lot.
- 5.11.3.2.** All new entrances shall be located on the side or rear of the structure,

if proposed.

5.11.3.3. The AA shall not have more than three (3) occupants.

5.11.3.4. The AA shall not have separate or independent utilities, such as water, sewer and electricity, from the dwelling unit.

5.11.3.5. An AA shall not exceed eight hundred (800) sq. ft.

5.11.3.6. The owner(s) of the residence in which the AA is created must continue to occupy either the primary dwelling unit or the AA as their primary residence, except for bona fide temporary absences.

5.11.3.7. The Board of Appeals shall have the discretion to review and require additional on-site parking. All parking requirements for the AA shall be provided on the property within existing designated parking areas.

5.11.4.0. Use Restriction To ensure continued compliance with owner-occupancy and other By-Law requirements by current as well as by any subsequent owners, AA's permitted under this By-Law shall be subject to a Use Restriction, to be recorded in the Essex Registry of Deeds. The Use Restriction, to be provided by the Inspector of Buildings, shall be the only form acceptable and shall include the following:

- a. Notice that the existence of the AA is predicated upon occupancy by the owner, to whom the permit has been issued;
- b. Notification to a buyer of the AA By-Law
- c. Upon sale of the property, the new owner shall be required to file an application for a new special permit to maintain the AA;
- d. Within thirty (30) days of receipt of a letter from the Inspector of Buildings determining a violation, a special permit shall be sought for the continuation of the AA. Failure to apply for the Special permit within thirty (30) days shall result in the AA being discontinued and the special permit shall automatically lapse and be null and void;
- e. Require that current and future property owners notify the Inspector of Buildings in the event the AA has been or will voluntarily be discontinued; and
- f. The dwelling unit remains a single family dwelling unit and the AA cannot be used except in accordance with the requirements of this By-Law and any conditions set forth in the applicable special permit.

5.11.5.0. *Procedural Requirements* The Board of Appeals shall hold a public hearing, in accordance with M.G.L Chapter 40A, Section 9, for AA's allowed by special permit. Prior to the issuance of a building permit, the property owner shall file a copy of the executed use restriction required pursuant to Section 5.11.4.0. above, and submit to the Inspector of Buildings evidence that it has been recorded in the Essex Registry of Deeds.

5.11.6.0. *Application Requirements* Prior to a building permit being issued for an AA, the applicant shall provide the following to the Inspector of Buildings:

- a. A completed application and filing fee as required.
- b. Adequate information to determine compliance with the provisions set forth herein. This shall include, but not be limited to, a site plan, interior floor plans and building elevations.
- c. A copy of the recorded Use Restriction in accordance with Section 5.11.4.0. above

5.11.7.0. *Criteria for Approval* The Board of Appeals may grant a special permit for an AA based upon making the findings set forth in Section 5.3.2.0. and upon determining that the proposed AA otherwise complies with the requirements of this By-Law. In order to provide adequate dwelling units for disabled and handicapped individuals, the Board of Appeals will allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons in addition to any requirements in accordance with the Mass. State Building Code and as exempt pursuant M.G.L. Chapter 40A, Section 3.

5.11.8.0. *Monitoring, Inspections & Enforcement* The following methods are available to ensure continued compliance with these regulations as set forth:

1. In accordance with Section 5.11.4.0.(c), upon the sale of the property, the new owner shall be required to file a new application with the Inspector of Buildings. Upon filing, the Inspector of Buildings shall conduct an inspection of the AA for purposes of verifying compliance.
2. The Inspector of Buildings shall keep a cumulative list of all lawfully existing AAs in the Town of Swampscott and shall conduct annual inspections of each such AA to confirm its compliance with the requirements of this By-Law, the applicable special permit and all applicable legal requirements. The Inspector of Buildings shall impose a inspection fee to be paid annually by each owner of an AA, provided, however, (i) such fee shall in no event be less than \$100.00, (ii) such fee shall be due and payable on or before February 1st of each year, and (iii) failure of an owner of an AA to pay such fee within thirty (30) days of the date required shall be deemed a violation of this By-Law and a violation of the applicable special permit. If a complaint is filed with the Inspector of Buildings with regard to an unauthorized AA, the Inspector of Buildings shall inspect the AA for purposes of determining whether there is a violation. If a violation exists, the owner shall apply to the Board of Appeals, within thirty

(30) days from the receipt of letter from the Inspector of Buildings for a special permit for the continuation of the AA. Failure to apply for the special permit within thirty (30) days shall result in the AA being discontinued.

5.11.9.0 *Pre-Existing AA's.* AA's that were in existence prior to January 1, 2007 may be continued regardless of whether it complies with the Design Standards set forth in Section 5.11.3.0. and without the requirement of a Special Permit as set forth in Section 5.11.2.0 above provided that the following conditions are fulfilled:

1. Said AA was in existence prior to January 1, 2007 and has been occupied for at least six (6) months since January 1, 2007 (The owners shall have the burden of proof to demonstrate such by furnishing evidence the existence of said AA); and
2. Provided that an application to the Inspector of Buildings is submitted within 90 days from the date of approval of these regulations by the Attorney General, together with a non-refundable application fee in the amount of \$350.00; and
3. Provided that the applicant otherwise complies with the requirements set forth in Section 5.11.4.0. and 5.11.8.0.

The owner of any AA that was in existence prior to January 1, 2007 that does not comply with the requirements of this Section 5.11.9.0. shall not be entitled to the protections of this Section 5.11.9.0. and must within 90 days from the date of approval of these regulations by the Attorney General either (i) immediately vacate and discontinue the use of such AA, or (ii) apply to the Board of Appeals for a Special Permit pursuant to Sections 2.2.3.0. and 5.11.2.0. of this By-Law and the AA will be subject to all of the requirements of Section 5.11.0.0. of this By-Law.

5.12.0.0. Drive-Throughs. The provisions of this Section 5.12.0.0. outline the considerations and requirements for approval of Drive-Throughs.

5.12.1.0. Design Criteria All Drive-Throughs must meet the following design criteria and the Board of Appeals shall, in addition to the findings set forth in Section 5.3.2.0. above, make findings confirming that each of the following design criteria have been met:

- 5.12.1.1.** The design and location of the Drive-Through will not contribute to increased congestion on public or private streets or alleys adjacent to the subject property.
- 5.12.1.2.** The design and location of the Drive-Through will not impede access to or exit from the parking lot serving the business, impair normal circulation within the parking lot or impede pedestrian movement.
- 5.12.1.3.** The design and location of the Drive-Through will not create a nuisance for adjacent properties.

- 5.12.1.4. The vehicle stacking standards of this subsection shall apply unless otherwise expressly approved by the Board. The Board may require additional stacking spaces where trip generation rates suggest that additional spaces will be needed.

A minimum number of off-street vehicle stacking spaces for queuing purposes shall be based upon the approved use type. For the purposes of this Section 5.12.1.4., the dimension of each vehicle for the purposes of planning the stacking shall be twenty (20) feet in length by ten (10) feet in width.

Allowed Use Type	Minimum Stacking Spaces
Bank or Financial Institution	5
Pharmacy	5
Restaurant / Fast Food (ordering point and pick-up point are same window)	10
Restaurant / Fast Food (ordering point and pick-up point are separate)	6 (prior to ordering point) 4 (between ordering point and pick-up window)
Other Allowed Uses	At the discretion of the Board

(ATM 5/5/2014)

- 5.12.1.5. Entrances to drive-up lanes shall be at least twenty-five (25) feet from driveways entering a public or private street or alley.
- 5.12.1.6. Drive-through service facilities shall not be considered as justification for reducing the number of required parking spaces.
- 5.12.1.7. The minimum width of each drive-through lane shall be ten (10) feet. The entrance to the lane and the direction of traffic flow shall be clearly designated by signs and pavement marking or raised curbs.

- 5.12.1.8.** The drive-through lane shall be designed to permit vehicles to leave or escape the drive-through lane without reversing the vehicle and without any obstruction that would prevent such vehicle to leave or escape. The Board may waive such requirement based on the site layout, traffic patterns, parking, and stacking space requirements. (ATM 5/5/2014)

5.13.0.0. Travel and Tourist Lodging Establishments

5.13.1.0. Purpose

The provisions of this section provide guidelines for the creation and regulation of Travel and Tourist Lodging Establishments within the Town of Swampscott and outline the considerations and requirements for their approval. Informed through public input from the “Swampscott 2025: The Master Plan,” the Town recognizes the value of the tourist trade industry and the benefits that it provides to the community. One of the mainstays of the tourist trade industry is the availability of accommodations and lodging options to attract visitors for short-term and temporary visits. The intent of this bylaw is to encourage Tourist and Travel Lodging Establishments within the Town of Swampscott. For purposes of this bylaw, Travel and Tourist Lodging Establishments (herein referred to as ‘Lodging Establishments’) have been further categorized as hotels, motels, inns, and bed and breakfast establishments. General regulations that are common to all types of lodging establishments as well as specific regulations for each type of lodging establishments are given in the sections below.

5.13.2.0. General Regulations for All Types of Travel and Tourist Lodging Establishments

This section describes the provisions related to all types of lodging establishments regardless of their sub-classification.

- 5.13.2.1.** Lodging establishments are intended for transient, overnight or short-term occupancy guests on intermittent visits, and shall not be used as long-term rental units or apartments.
- 5.13.2.2.** Allowable length of stay in a lodging establishment is no less than one (1) night and no greater than thirty (30) nights.
- 5.13.2.3.** No guest of any lodging establishment may claim residency at such location.
- 5.13.2.4.** Lodging establishments shall have on-site management at all times.
- 5.13.2.5.** Lodging establishments are subject to the provisions of the signage regulations in section 3.2.0.0. Additionally, lodging establishments in the A-1, A-2, A-3, and A-4 districts shall comply with the requirements of section 3.2.4.1.

- 5.13.2.6. Parking requirements for each type of lodging establishment are given in sections “2.2.3.0. Table of Principal Uses” and “4.9.3.1. Table of Additional Uses within the Tourist Lodging Overlay District (TLOD),” and further defined in section “3.1.2.0. Number of Spaces.”
- 5.13.2.7. Lodging establishments shall not have independent in-room cooking facilities.

5.13.3.0. *Hotel*

A building or buildings intended and designed primarily for providing overnight transient lodging to the general public for compensation. Hotels may also provide ancillary facilities and services for added comfort and enjoyment of its guests and incidentally to the non-guest general public. The following regulations pertain specifically to hotels.

- 5.13.3.1. Hotels shall have at least six (6) bedrooms available for guest accommodation.
- 5.13.3.2. Hotels shall have a common entrance through which guests enter the establishment into a common area such as a lobby or atrium from the parking area. Primary access to individual guest bedrooms is through common areas connected by an interior network of hallways, stairwells, and elevators within the building.
- 5.13.3.3. Hotels may provide full food service to its guests.
- 5.13.3.4. Ancillary facilities and services are allowed in a hotel that are available to guests as well as being open and available to the general public including restaurants, cafes, spas, boutiques, salons, gift shops, and entertainment, as deemed acceptable by the Special Permit Granting Authority. These facilities shall be accessed from within the common interior area of the building and shall be accessible to the public.
- 5.13.3.5. Allowable amenities that are only available to registered guests include swimming pool, sauna, fitness room, recreation center, business center, and laundry as deemed acceptable by the Special Permit Granting Authority. These facilities may be located in areas that require special guest access. Non guest pay per use and visitor access to these facilities shall not be allowed.
- 5.13.3.6. Hotels may offer a function hall, reception hall, or banquet hall which is intended for the purpose of hosting a party, banquet, wedding or other reception, or other social event. These halls are spaces that are rented out for specific events which may be catered and may include musical entertainment during such event.

- 5.13.3.7.** Hotels may offer a conference hall, convention center, or meeting room which is intended for the purpose of hosting singular events such as business conferences, seminars, or other business related meetings. These halls are spaces that are rented out for specific events, which may include catering.

5.13.4.0. Motel

A building or buildings intended and designed primarily for providing overnight transient lodging to the general public for compensation. Motels provide a basic functional lodging option for accommodation only and do not provide ancillary facilities or services to its guests or to the non-guest general public. The following regulations pertain specifically to motels.

- 5.13.4.1.** Motels shall have at least six (6) bedrooms available for guest accommodation.
- 5.13.4.2.** Primary access to individual guest bedrooms in a motel shall be directly accessible from the exterior of the building, either directly from the parking area or by external, open staircases.
- 5.13.4.3.** Motels shall not provide food service.
- 5.13.4.4.** Motels shall not provide ancillary facilities or services such as swimming pools, fitness rooms, etc.

5.13.5.0. Inn

A building intended and designed primarily for providing overnight transient lodging to the general public for compensation. Inns may also provide limited ancillary facilities and services for added comfort and enjoyment of its guests, but not to the non-guest general public. The following regulations pertain specifically to inns.

- 5.13.5.1.** Inns shall have at least four (4) but no more than sixteen (16) bedrooms available for guest accommodation.
- 5.13.5.2.** Inns shall have a common entrance through which guests enter the establishment into a common area such as a lobby or atrium from the parking area. Primary access to individual guest bedrooms is through common areas connected by an interior network of hallways, stairwells, and elevators within the building.
- 5.13.5.3.** Meals and other light fare may be provided only to registered guests in designated dining or common areas within the establishment. This service does not constitute a restaurant and the non-guest general public may not visit the establishment for meals.
- 5.13.5.4.** Common areas where guests can congregate may be provided. These areas may also include common facilities such as a refrigerator,

microwave, toaster, coffee maker, sink, ice machine, or similar amenities.

- 5.13.5.5.** Inns may include additional accommodations to serve as a residence for the proprietor.

5.13.6.0. *Bed and Breakfast (B&B)*

Overnight transient lodging accommodations within a residential building that is offered to the general public for compensation. Bed and Breakfast establishments may also provide limited ancillary facilities and services to its guests, but not to the non-guest general public. The following regulations pertain specifically to B&Bs.

- 5.13.6.1.** A B&B is a private, owner-occupied residence with up to four (4) bedrooms available for guest accommodation within the residence.
- 5.13.6.2.** The B&B shall be subordinate and incidental to the main residential use of the building. The guest rooms may not comprise more than fifty (50%) percent of the gross floor area of the principal residence. Common B&B areas are not included in this calculation.
- 5.13.6.3.** Guest room units shall be located within the primary residential structure.
- 5.13.6.4.** No exterior alterations shall be made to the residential building other than those required by law to ensure the safety and adequacy of ingress and egress to the structure or for aesthetic improvements and maintenance.
- 5.13.6.5.** Food service within a B&B shall be limited to breakfast and shall only be available to registered guests. This food service shall not constitute a restaurant and the non-guest general public may not visit the establishment for breakfast.
- 5.13.6.6.** Common areas where guests can congregate may be provided. These areas may also include common facilities such as a refrigerator, microwave, toaster, coffee maker, sink, ice machine, or other similar amenities.

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ARTICLE VI. DEFINITIONS.

In this By-Law, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the By-Law. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The words "shall" or "will" are mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein, but defined in the Commonwealth of Massachusetts State Building Code, shall have the meaning given therein unless a contrary intention is clearly evident in this By-Law.

Accessory apartment: See Section 5.11.0.0.

Accessory building: A subordinate building located on the same lot as the main or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land, such as a garage, playhouse or private greenhouse.

Accessory use: A use customarily incidental to the main or principal building or use of the land. An accessory use must be subordinate to the main or principal use and it must be customarily related to the main or principal use.

Adult day care facility: A building or structure where care, protection, and supervision are provided, on a regular schedule, to adults over the age of eighteen (18).

Adult uses: See Section 5.10.0.0.

Agricultural use, nonexempt: Agricultural use of property not exempted by G.L. c. 40A, § 3.

Alterations: As applied to a building or structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement whether by extending on a side or by increasing in height, or the moving from one (1) location or position to another.

Assisted Living Facility (ALF): See definition in Section 3.6.2.0.

Automatic Automobile / Vehicle Washing Facility: An establishment providing washing, waxing and/or detailing of vehicles provided in whole or in part by automated facilities.

Automatic teller machine (ATM): A facility for the distribution of cash, whether attached to a principal structure or free-standing and remote therefrom, drive-through or walk-up.

Bank or financial institution: Any institution licensed by the federal government or licensed or chartered by the Commonwealth of Massachusetts as a bank, savings bank, trust company, credit union or any other bank charter form established under the Massachusetts General Laws.

Bed and breakfast establishment: Overnight transient lodging accommodations within a residential building that is offered to the general public for compensation, subject to the provisions set forth in By-law Section 5.13.0.0. Bed and Breakfast establishments may also provide limited ancillary facilities and services to its guests, but not to the non-guest general public.

Billboard: A means of conveying information, or a device designed to attract attention, that is displayed for public view, and which indicates a use, activity, product, message, or advertisement not related to, or available on, the property where the sign is located. Municipal signs are exempt.

Building: A structure enclosed within exterior walls or firewalls, built, erected, and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals, or property. For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.

Building coverage: That percentage of the lot or plot area covered by the total footprint of a building or buildings. The total footprint is defined as the total area of ground covered by all structures on a lot, including roofed structures and covered porches.

Building height: In the case of flat roofs, the vertical distance from the highest point of the roof (or top of parapet if parapet is higher than plane of roof; but this would not apply to parapets two (2) feet in height or less) to the lowest finished grade of the ground adjoining any side of the building. In the case of sloped roofs, the vertical distance from the midpoint of the slope between the highest ridge and the main plate to the average finished grade of the ground adjoining the building. In neither case shall the height of a building be measured from the top of a basement, cellar, garage, storage area, etc., which is counted as a story. If the existing grades on the site prior to construction are raised one (1) foot or more (on average) for the new construction, then the height of the building shall be calculated from the grades that existed prior to new construction.

Building line: A line even with the front of the principal building which runs across the entire width of the lot and parallel with the street.

Building, principal: A building in which is conducted the main or principal use of the lot on which said building is situated.

Business, medical or professional office - large: A building or part thereof having more than ten (10) workers on-site concurrently (regardless of whether they be principals, partners, employees or of other classification), which exists for the transaction of business or the provision of medical or professional services exclusive of the receipt, sale, storage, or processing of merchandise.

Business, medical or professional office - medium: A building or part thereof having at least five (5), but not more than ten (10), workers on-site concurrently (regardless of whether they be principals, partners, employees or of other classification), which exists for the transaction of business or the provision of medical or professional services exclusive of the receipt, sale, storage, or processing of merchandise.

Business, medical or professional office - small: A building or part thereof having four (4) or fewer workers on-site concurrently (regardless of whether they be principals, partners, employees or of other classification), which exists for the transaction of business or the provision of medical or professional services exclusive of the receipt, sale, storage, or processing of merchandise.

Child care facility: A day care center or a school age child care program as defined in G.L. c. 28A, § 9.

Club, lodge or fraternal organization: Buildings, structures and premises used by a for profit or not for profit social or civic organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes provided there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

Commercial recreation: A structure for recreational, social or amusement purposes, which may include as an accessory use, the consumption of food and drink, including all connected rooms or space with a common means of egress and entrance. Such facilities shall include movie theaters, dance halls, skating rinks, bowling alleys, health clubs, dance studios, or other commercial recreational centers conducted for or not for profit. A drive-in theater, golf course/driving range, bathing beach, sports club, horseback riding stable, boathouse, game preserve, marina or other commercial recreation carried on in whole or in part outdoors, except those activities more specifically designated in this By-Law, conducted for or not for profit.

Commercial development: One (1) or more buildings (whether detached or attached or in common or separate ownership) used for commercial or mixed-use purposes that functions as a single development (for example, without limitation, has a shared parking facility and/or shared access from a street or way) as determined by the Board of Appeals.

Commercial vehicle: Any vehicle used for purposes other than the transportation of fewer than nine (9) persons, or any vehicle or piece of equipment which is not considered a private passenger car by either insurers, the Massachusetts Registry of Motor Vehicles or the United States Department of Transportation. Included is equipment, whether registered or unregistered, which would require registration for travel on a public way.

Contractor's yard: Premises used by a contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment.

Distribution facility: See “Warehouse.”

Drive-Through: A facility that encourages or permits customers to obtain goods, receive services, transact business, or be entertained, while remaining in their motor vehicles.

Dwelling: A building designed and occupied as the living quarters of one (1) or more families. Single- and two-family dwellings shall be designed for or occupied by not more than one (1) or two (2) families, respectively. A multi-family dwelling shall be one designed for and occupied by three (3) or more families.

Dwelling unit: A residence. Each residence shall contain a living area, bathroom and, except in studio units, one (1) or more bedrooms, and may contain a kitchen area or combination kitchen/living area.

Educational use (nonexempt): Educational facilities not exempted from regulation by G.L. c. 40A, § 3, including dance studios, martial arts facilities, and the like.

Erect: To build, construct, reconstruct, move upon, or conduct any physical development of the premises required for a building; to excavate, fill, drain, and the like preparation for building shall also be considered to erect.

Family: Two (2) or more individuals related by blood, marriage or adoption living and cooking together on the premises as a single housekeeping unit, but not including more than four (4) persons living together unrelated by blood, marriage or adoption.

Family day care: Any private residence which on a regular basis receives for temporary custody and care during part or all of the day, children under seven (7) years of age or children under sixteen (16) years of age if such children have special needs. Provided, however, in either case, that the total number of children shall not exceed more than six (6), excluding participating children living in the residence. Family day care shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefore.

Financial institution: See “Bank.”

Flood plains: Low areas adjoining a body of water or a watercourse which have been in the past or can reasonably be expected in the future to be covered by flooding.

Funeral home: Facility for the conducting of funerals and related activities such as embalming.

Group residence: A premise licensed by or operated by an agency of the Commonwealth of Massachusetts as set forth in the State Building Code housing not more than twenty-five (25) unrelated persons, sixteen (16) years of age or over.

Gross floor area (g.f.a.): The total square feet of floor space within the outside dimensions of a building including each floor level, without deduction for hallways, stairs, closets, thickness of

walls, columns, or other features, including floor area of attic containing 7'3" or greater in height as measured perpendicular from the floor to the underside of the rafters, but excluding basement/cellar if more than fifty (50%) percent of height of basement/cellar is below the finished grade of the ground adjoining the basement/cellar.

Home occupation: An occupation, business, trade, service or profession which is subordinate to and conducted in a dwelling unit or in a building or other structure accessory thereto, by the owner thereof.

Hotel: A building or buildings intended and designed primarily for providing overnight transient lodging to the general public for compensation, subject to the provisions set forth in By-law Section 5.13.0.0. Hotels may provide ancillary facilities and services for added comfort and enjoyment of its guests and incidentally to the non-guest general public.

Independent Living Facilities (ILF): See definition in Section 3.6.2.0.

Inn: A building intended and designed for providing overnight transient lodging to the general public for compensation, subject to the provisions set forth in By-law Section 5.13.0.0. Inns may provide limited ancillary facilities and services for added comfort and enjoyment of its guests, but not to the non-guest general public.

Junk: Any article or material or collection thereof, which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which, unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new shall be considered junk.

Junkyard or automobile graveyard: The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials, or the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or parts thereof.

Kennel: One (1) pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any shop where dogs are on sale, and also including every pack or collection of more than three (3) dogs three (3) months old or over, owned or kept by a person on a single premises irrespective of the purpose for which they are maintained.

Light manufacturing: Fabrication, assembly, processing, or packaging operations, employing only electric or other substantially noiseless and inoffensive motor power. Light manufacturing may include production of clothing, but not of cloth; production of packages, but not of paperboard, production of small machinery, but not steel. All power and processes shall be free of disturbing agents such as odors, gas, fumes, smoke, cinders, heat, vibration, excessively bright lights and electromagnetic radiation.

Long-Term Sea Level Rise: The estimated relative increase in mean sea level over the

design life of a proposed building or structure. The effects of long-term sea level rise, as referenced in the CFAOD, shall be determined using the “Highest” curve from the U.S. National Climate Assessment (Global Sea Level Rise Scenarios for the United States National Climate Assessment, NOAA Technical Report OAR CPO-1, December 12, 2012) and local rates of land subsidence for a 50 year time horizon, unless the approving authority determines that other, more appropriate methods for determining sea level rise or other time horizons, are more appropriate for the specific project. Table 1.1 in the Town of Swampscott Coastal Climate Change Study Final Report (dated June 2016) provides relative sea level rise estimates for years 2020 through 2100 in 10-year increments, considering a start year of 2013.

Lot A: A continuous parcel of land with legally defined boundaries. See Figure 2 in Appendix B.

Lot area: The horizontal area within the exterior lines of the lot, exclusive of any area in a street, and exclusive of any horizontal area subject to oceanic tidal action but below mean high water or under any water body, bog, swamp, wet meadow, marsh, or other wetland as defined in G.L. c. 131, § 40, as may be amended. See Figure 8 in Appendix B. (ATM 5/5/2014)

Lot - corner: A lot abutting two intersecting streets. A corner lot shall be considered as having two (2) front property lines and two (2) side property lines. The rear property line shall consist of the intersection point of the two side property lines. See Figure 2 in Appendix B.

Lot - depth of: The mean distance from the street line of the lot to its opposite rear line measured in the general direction of the side lines of the lot. See Figure 2 in Appendix B.

Lot - frontage of: A lot line coinciding with the sideline of a street which provides both legal rights of vehicular access and physical vehicular access to the lot, said line to be measured continuously along a single street or along two (2) intersecting streets if their angle of intersection is greater than one hundred and twenty (120) degrees. See Figure 2 in Appendix B.

Lot line, front: The lines separating a lot from the right-of-way of a street.

Lot line, rear: Any lot line which is not a front lot line or a side lot line.

Lot line, side: Any line which separates a lot from another lot and which intersects a front lot line.

Lot - width of: The horizontal distance between side lot lines, measured parallel to the lot frontage at the front yard setback line. See Figure 2 in Appendix B.

Major recreational equipment: Campers, trailers or other recreational vehicles. All other recreational equipment, including boats, shall be considered lawfully nonconforming.

Motel: A building or buildings intended and designed for providing overnight transient lodging to the general public for compensation, subject to the provisions set forth in By-law Section

5.13.0.0. Motels shall provide a basic, functional lodging option for accommodation only and shall not provide ancillary facilities or services to its guests or to the non-guest general public.

Motor Vehicle Filling / Fueling Station / Gasoline Station: An establishment providing for the retail sale of gasoline or other petroleum products or fuels, including the accessory sales of motor vehicle accessories in conjunction with the services provided and the accessory sale of convenience items, such as lottery, pre-packaged food and beverage, and similar items shall be permitted in connection with the motor vehicle filling/fueling station provided that the area in which such items are sold in no event exceeds five hundred (500) g.s.f. Repair services, with the limited exception of a tire air machine, are excluded from this use classification.

Motor vehicle general and body repair: An establishment, garage or work area enclosed within a building for the servicing and repair of autos, including fenders, bumpers and similar components of motor vehicle bodies, but not including the storage vehicles for the cannibalization of parts or fuel sales.

Motor vehicle light service: Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

Motor vehicle sales and rental: The indoor or outdoor sales or rental of motor vehicles.

Municipal service facilities: Facilities owned or operated by the Town of Swampscott.

Multi-family dwelling: See “Dwelling.”

Nursery / Greenhouse: A commercial activity primarily concerned with the sale (at retail or at wholesale) of plants (whether or not grown on the premises) used in gardening or farming, including related goods used in gardening or farming. Related goods are defined as only those used on the plant or in its soil to preserve or promote the life and health of the plants sold, including for example, fungicides, peat moss and mulches).

Nursing or convalescent home: A licensed facility where persons are housed or lodged and furnished with meals and nursing care for hire.

Office: A place in which functions such as directing, consulting, record keeping, clerical work and sales (without the presence of merchandise) of a firm are carried on; also, a place in which a professional person conducts his or her professional business.

Open Space: The area of a lot expressed as a percentage of lot not occupied by the footprint of buildings, structures, and/or material that is not pervious. No vehicles may be parked within the minimum required Open Space.

Outdoor storage: Enclosed or open-lot storage of material, contractor's equipment, machinery and metals, other than scrap or junk, and similar materials.

Outpatient medical center or clinic: A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

Personal service establishment: A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, travel agency and the like.

Pervious material: Surface material intended to allow water to permeate through into the ground. The surface material may include, but not limited to, vegetation, rocks, pebbles, woodchips and/or similar landscaping materials; or unit paver with an open joint pattern. Concrete, asphalt, and/or other hard surface material that does not have open, porous joints is not considered pervious. Undisturbed natural occurring bedrock outcroppings are considered pervious material.

Renewable and Alternative Research and Development Facilities: This use shall only include activities associated with research and development of services or products related to renewable and alternative energy.

Restaurant: A building, or portion thereof, containing tables, chairs and/or booths, which is designed, intended and used for the sale and consumption of food prepared on and/or off the premises. A restaurant may contain a bar area or lounge provided that such area(s) does not include in the aggregate more than sixty (60%) percent of the total seats available in the restaurant and that food is offered for sale at such bar area / lounge area during all times the restaurant is open.

Retail: A facility selling goods but not specifically listed in the Table of Use Regulations.

Retail selling of animals or pets: A facility selling live animals (not including live animals of the type typically sold in grocery stores for cooking and eating by people).

Single-family dwelling: See "Dwelling."

Self-Service Automobile / Vehicle Washing Facility: An establishment providing self-service washing, waxing and/or detailing of vehicles.

Self-storage mini-warehouse: See "Warehouse, Distribution, Self-storage mini-warehouse."

Sign: Any device designed to inform or attract the attention of persons not on the premises on which the device is located. Any building surfaces other than windows which are internally illuminated or decorated with gaseous tube or other lights are considered "signs." The following, however, shall not be considered signs within the context of this By-Law:

- (a) Flags and insignia of any government except when displayed in connection with commercial promotion.

- (b) Legal notices, or informational devices erected or required by public agencies.
- (c) Temporary devices erected for a charitable or religious cause, provided they are removed within seven (7) days of erection.
- (d) Temporary displays inside windows, covering not more than twenty-five (25%) percent of window area, illuminated by building illumination only.
- (e) Standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline.
- (f) Integral decorative or architectural features of a building, except letters, trademarks, moving parts, or parts internally illuminated or decorated with gaseous tube or other lights.
- (g) Devices identifying a building as distinct from one (1) or more of its occupants, such device being carved into or attached in such a way as to be an integral part of the building, not illuminated separate from building illumination, without color contrasting with sign background, and not exceeding four (4) square feet in area.
- (h) Address identification through numerals or letters not exceeding three (3) inches in height.

See Figure 4 in Appendix B for types of signs.

Sign area: The area of the smallest horizontally or vertically oriented rectangle which could enclose all the display area of the sign, together with any backing different in color or material from the finish material of the building face, without deduction for open space or other irregularities. Structural members not bearing advertising matter shall not be included unless internally or decoratively lighted. Only one side of flat, back-to-back signs need be included in calculating sign area. See Figure 4 in Appendix B for samples of different types of signs.

Storage container: A fully enclosed, detached, self supporting structure, of any type of construction or material, not having a foundation, electricity, plumbing, or other mechanical systems and utilized for temporary storage of any kind. Storage containers shall include, but not limited to the following: any truck, the trailer portion of a tractor trailer vehicle, storage container box, portable warehouse, box trailer, whether registered or not in accordance with M.G.L Chapter 90 or in accordance with the laws of any other state.

Story: That portion of a building (including basements, cellars, garages, storage areas, etc.) contained between any floor and the floor or roof next above it. The lowest level of a building, including basements, cellars, garages, storage areas, etc., shall not be counted as a story if more than one-half (1/2) of the height of this level is below the average finished grade of the ground adjoining this level. A half-story is a story which is comprised of fifty (50%) percent or less of the square footage of the floor below. (05/03)

Street: (1) A public way or a way which the Swampscott Town Clerk certifies is maintained and used as a public way; or (2) a way shown on an endorsed definitive subdivision plan, either built

to specification or for which adequate security exists to complete construction; or (3) a way having in the opinion of the Planning Board sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed uses of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

Structure: A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like.

Tattoo and Body Piercing Shop: An establishment whose principle business activity, either in terms of operation or as held out to the public, is the practice of one or more of the following: (1) placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin, by means of the use of needles or other instruments designed to contact or puncture the skin; (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

Two-family dwelling: See “Dwelling.”

Veterinary establishment: A facility used by one or more licensed veterinarians to provide health care for animals. Overnight care is not provided except as part of necessary medical treatment of an animal.

Warehouse / Distribution Facility / Self-Storage Mini-Warehouse: A building (a) used primarily for the storage of goods and materials, for distribution, but not for retail sale on the premises, and/or (b) consisting of individual, self-contained units that are leased or owned for the storage or business and/or personal property. No materials may be stored outside of the Warehouse/Self-Storage Mini-Warehouse.

Wetlands: Areas such as marshes, swamps, and lowland where groundwater is at or near the surface for at least six (6) months of the year. Vegetation characteristic of wetland is listed in G.L. c. 131, § 40 and on a simplified list, both on file at the Town Clerk's office. These areas are subject to periodic inundation.

Window: The framework, glass, and/or other transparent or translucent panels that enclose an opening constructed in a wall or roof that functions to admit light or air into the building structure. The window may be subdivided by multiple frames and panes; however, opaque frames or panels that exceed eight (8") in width are not part of the calculated dimensions in determining window area. Opaque frames or panels that exceed eight (8") in width which divide the window in any manner will then be considered wall of the building structure. See Figure 6 in Appendix B.

Wireless communications facility: A wireless communication monopole which facilitates the provision of wireless communications services.

Wireless communications services: The provision of the following types of services: cellular telephone service, personal communications and enhanced specialized mobile radio service.

Yard - front: A space across the full width of the lot and extending from the most forward point of the building located on such a lot to the front line of such a lot. See Figure 3 in Appendix B.

Yard - rear: A space across the full width of the lot and extending from the most rearward point of the building located on such a lot to the rear line of such a lot. See Figure 3 in Appendix B.

Yard - side: A space extending from the front yard to the rear yard between the side lot line and extending from that point on a building located in such a lot which is closest to that side lot line. See Figure 3 in Appendix B.

APPENDIX A - TABLE OF DIMENSIONAL REQUIREMENTS: SECTION 2.3.2.0

DISTRICT	Minimum lot area (sq. ft.)	Minimum lot frontage (ft.)	Maximum height	Minimum Open Space
A1	30,000	125	2.5 stories but not in excess of 35 feet	25%
A2	20,000	100	2.5 stories but not in excess of 35 feet	25%
A3	10,000	80	2.5 stories but not in excess of 35 feet	25%
A4	10,000	80	2.5 stories but not in excess of 35 feet	25%
B1	10,000 for dwellings	80 for dwellings	2.5 stories but not in excess of 35 feet ²	15%
B2	10,000 for dwellings	80 for dwellings	40 feet ²	15%
B3 and I	15,000 for dwellings; 40,000 all others	100 for dwellings; 200 all others	35 feet for dwellings; 40 feet all others ²	15%
B4	40,000	200	5 stories (not to exceed 65 feet); if building has front setback of a minimum of 175 feet, 7 stories (not to exceed 85 feet)	10%

² Parapets may extend no more than 2 feet above the maximum building height.

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DISTRICT		Minimum front yard (ft.)	Minimum side yard (ft.)	Minimum rear yard (ft.)	Maximum building coverage (% of lot)
A1	If lot has an area of 30,000 s.f. or more	30	15	35 ³	25
	If lot has an area of at least 20,000 s.f. but less than 30,000 s.f.	25	10	25	25
	If lot has an area of under 20,000 s.f.	20	7.5	20	30
A2	If lot has an area of at least 20,000 s.f.	25	10	25	25
	If lot has an area of under 20,000 s.f.	20	7.5	20	30
A3	All lots	20	7.5	20	30
A4	All lots	20	7.5	20	30
B1	All lots	none required	none required	20	30 for dwellings 70 all others
B2	All lots	none required	none required	10	30 for dwellings 80 all others
B3 and I	All lots	25 for dwellings; 100 all others	10 for dwellings; 40 all others	25 for dwellings; 40 all others	25 for dwellings; 20 all others

³ Provided, however, that the rear yard need not be more than 25% of lot depth.

DISTRICT		Minimum front yard (ft.)	Minimum side yard (ft.)	Minimum rear yard (ft.)	Maximum building coverage (% of lot)
B4	All lots	20	20	20	90

APPENDIX B - ILLUSTRATIONS

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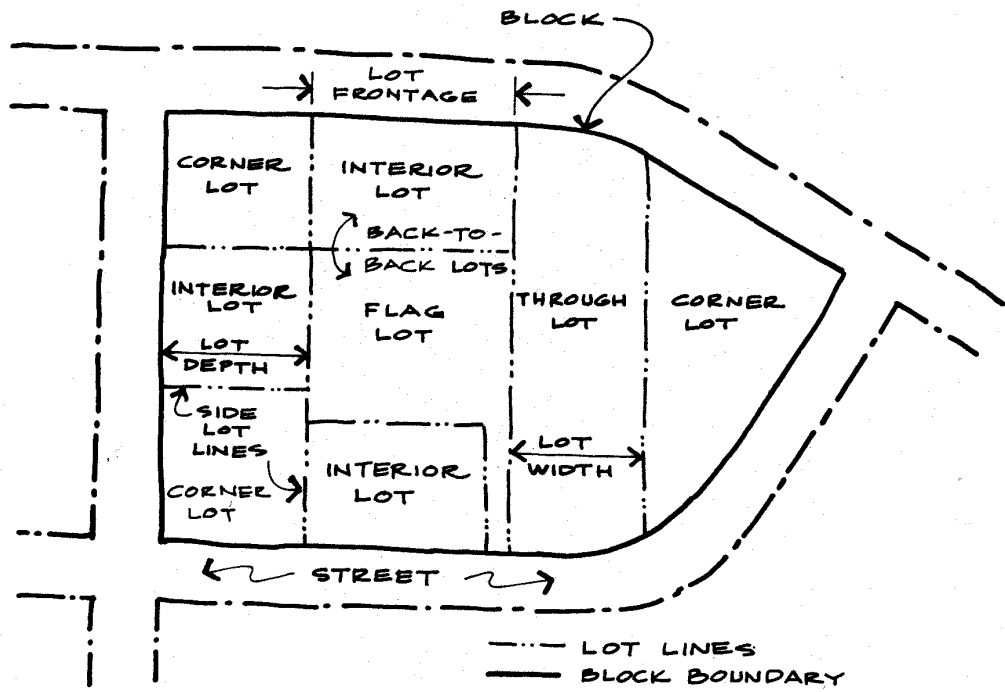


Figure 2

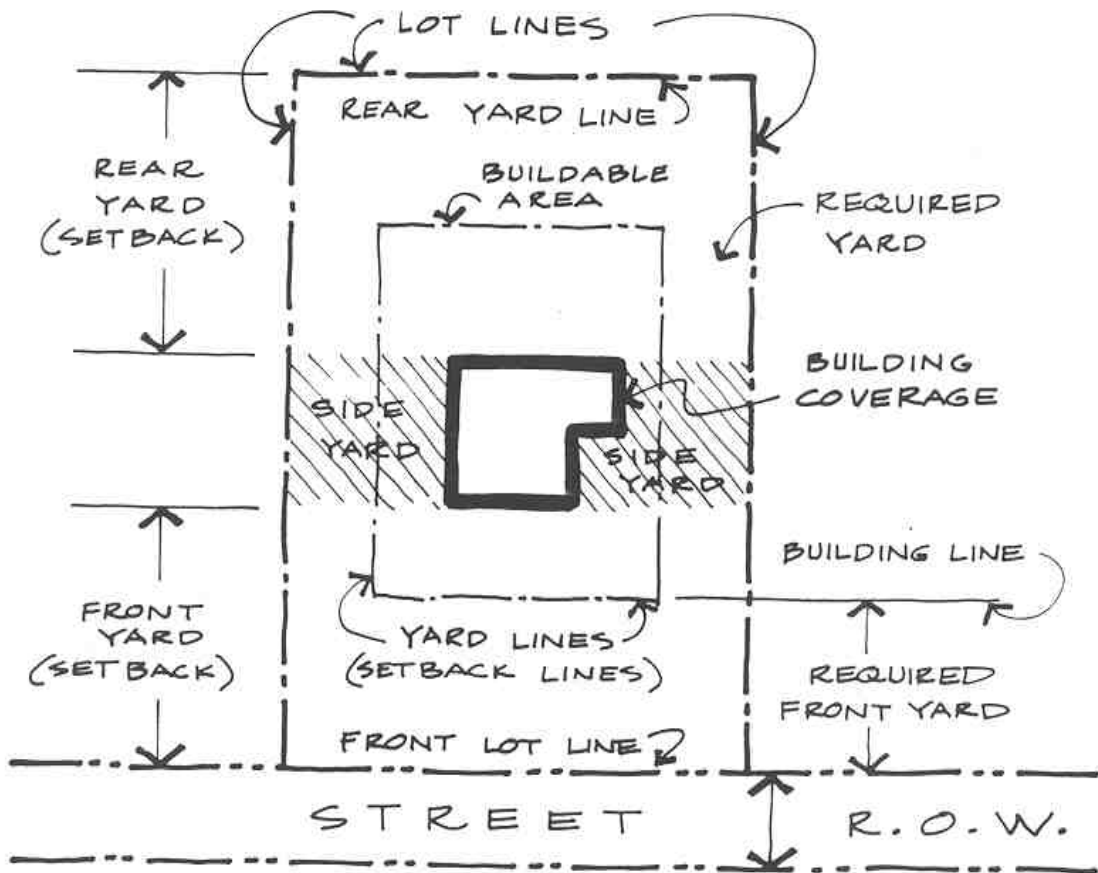
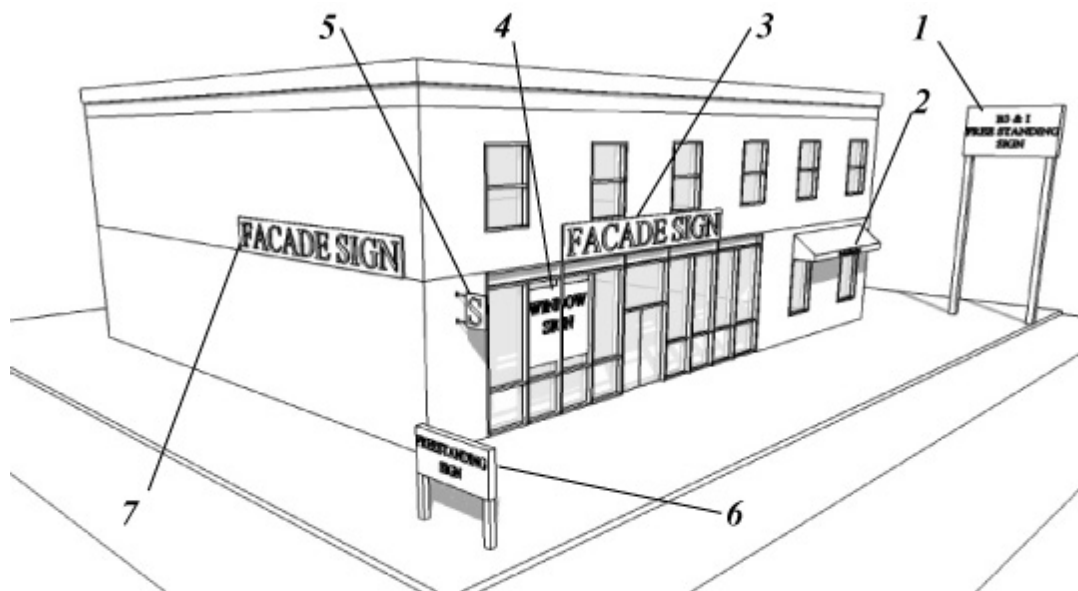


Figure 3

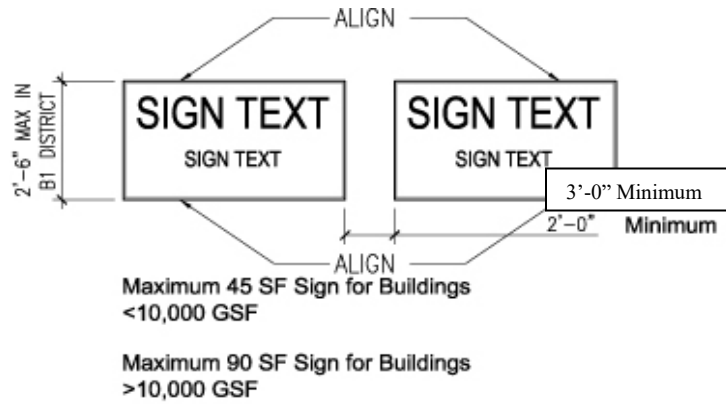


SIGN TYPE EXAMPLES

- 1 Free-Standing sign (not exceeding 60 square feet)*
- 2 Awning Sign*
- 3 Building Facade Sign - Front*
- 4 Window Sign*
- 5 Projection Sign*
- 6 Free-Standing sign (not exceeding 30 square feet)*
- 7 Building Facade Sign - Side*

Figure 4

In B-1 and B-2 Districts:



In B-3, B-4, and I Districts:



Signs that are letters and/or logos shall be dimensioned in a straight line horizontal and vertical from the outer most point of such letter or logo in order to create a boundary. This virtual boundary is the area of the sign.

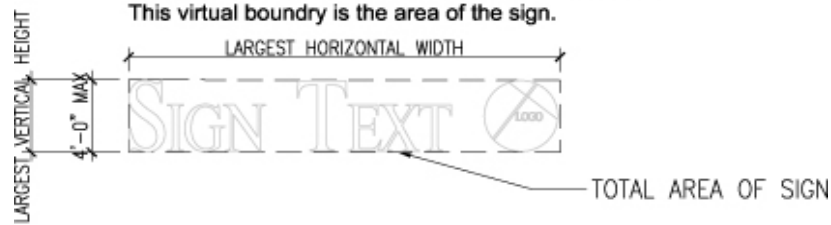


Figure 5

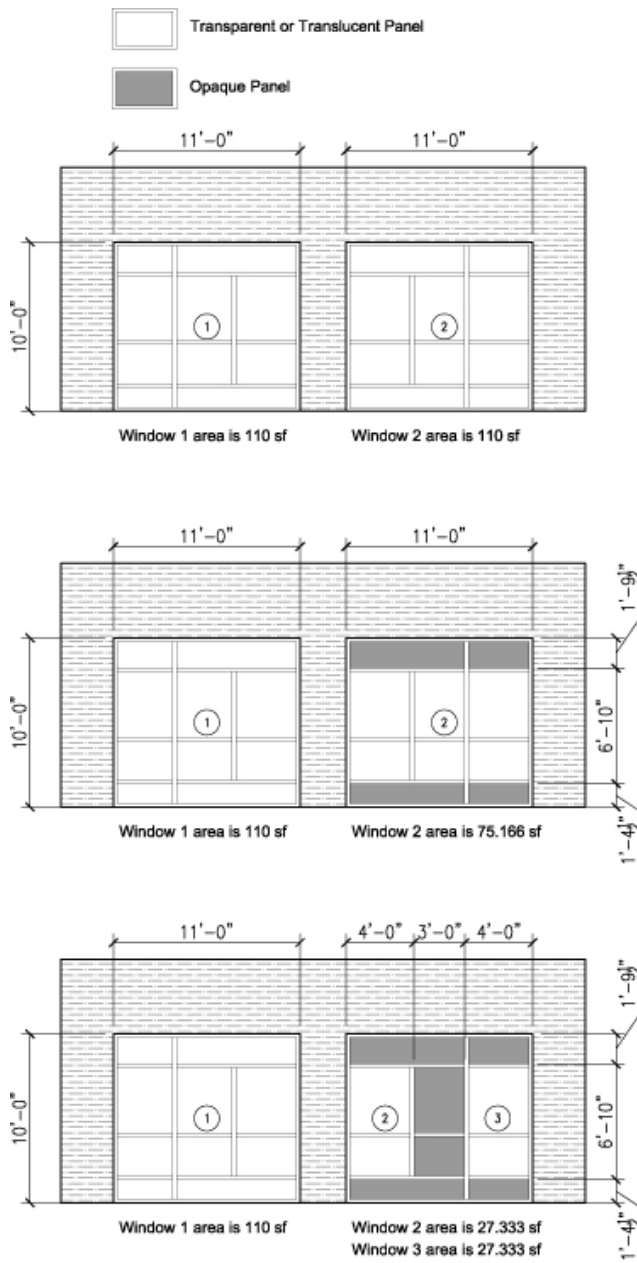


Figure 6

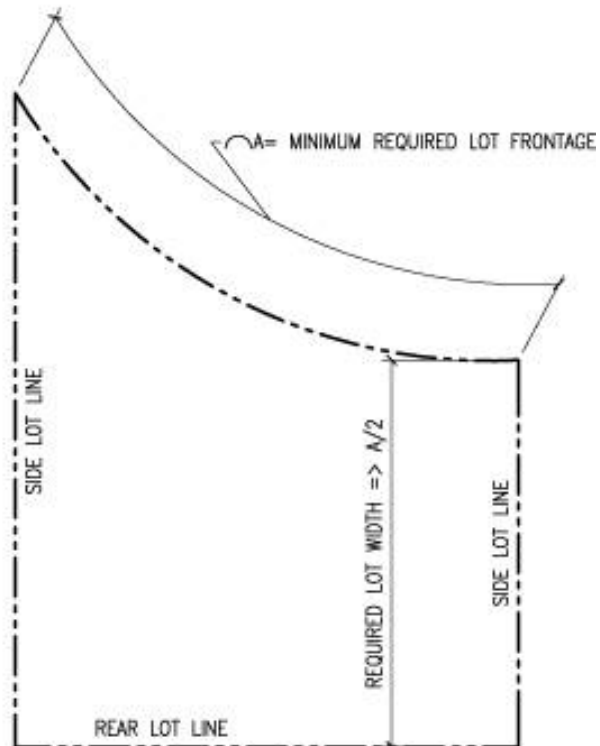
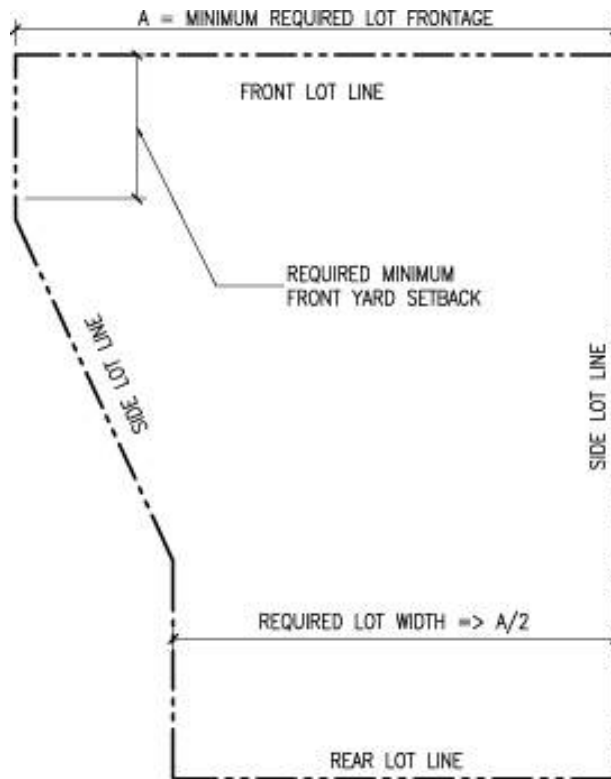


Figure 7

Lot Area Calculation for coverage ratios will use the High Tide Water Mark as the coastal boundary.

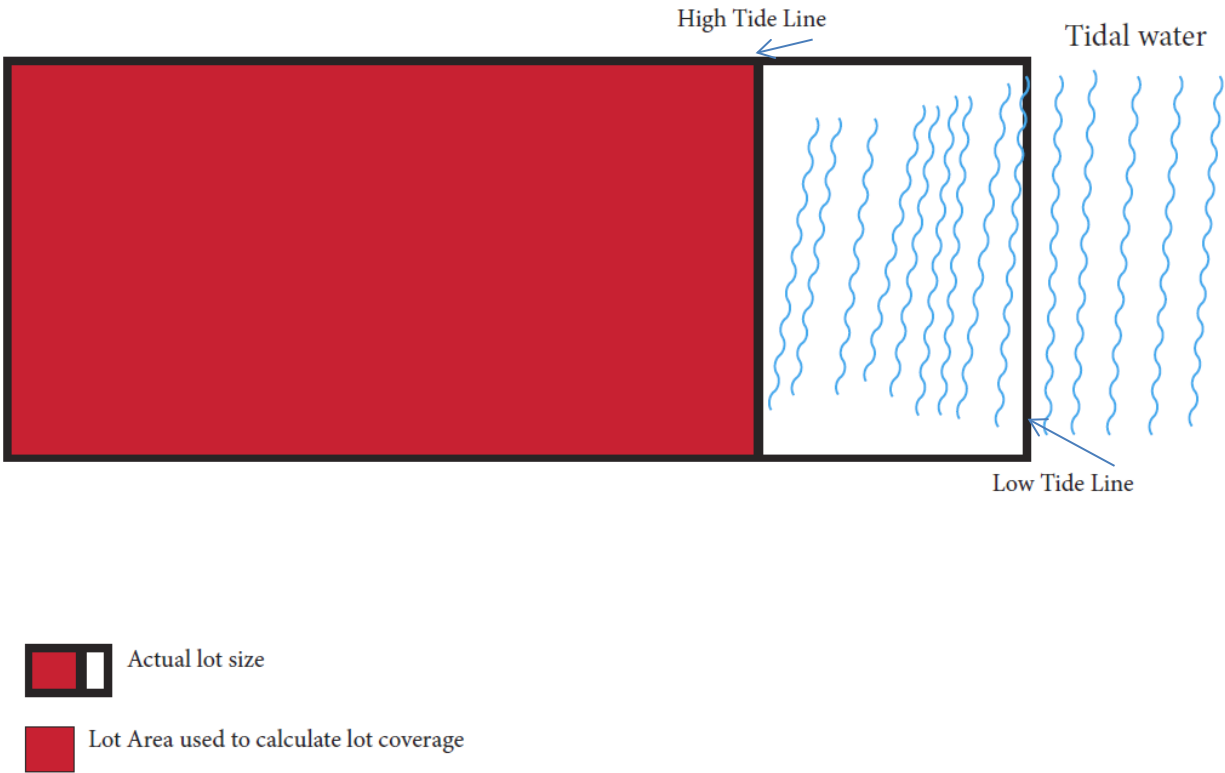


Figure 8

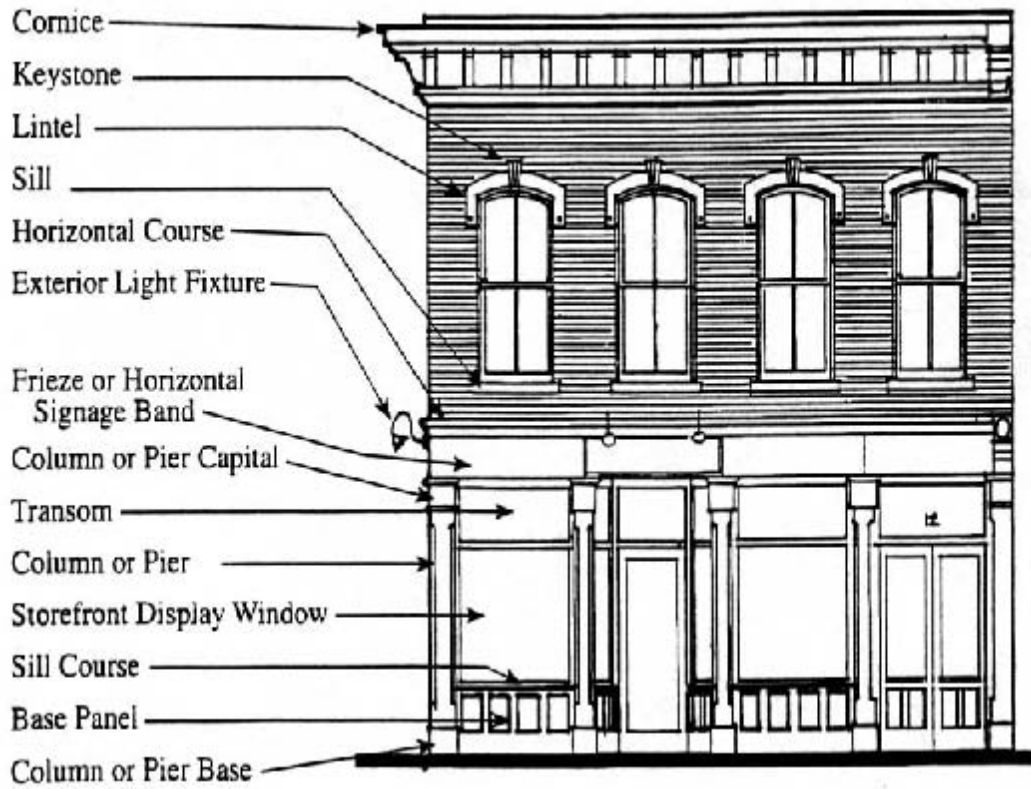


Figure 9 Detailed Design Features

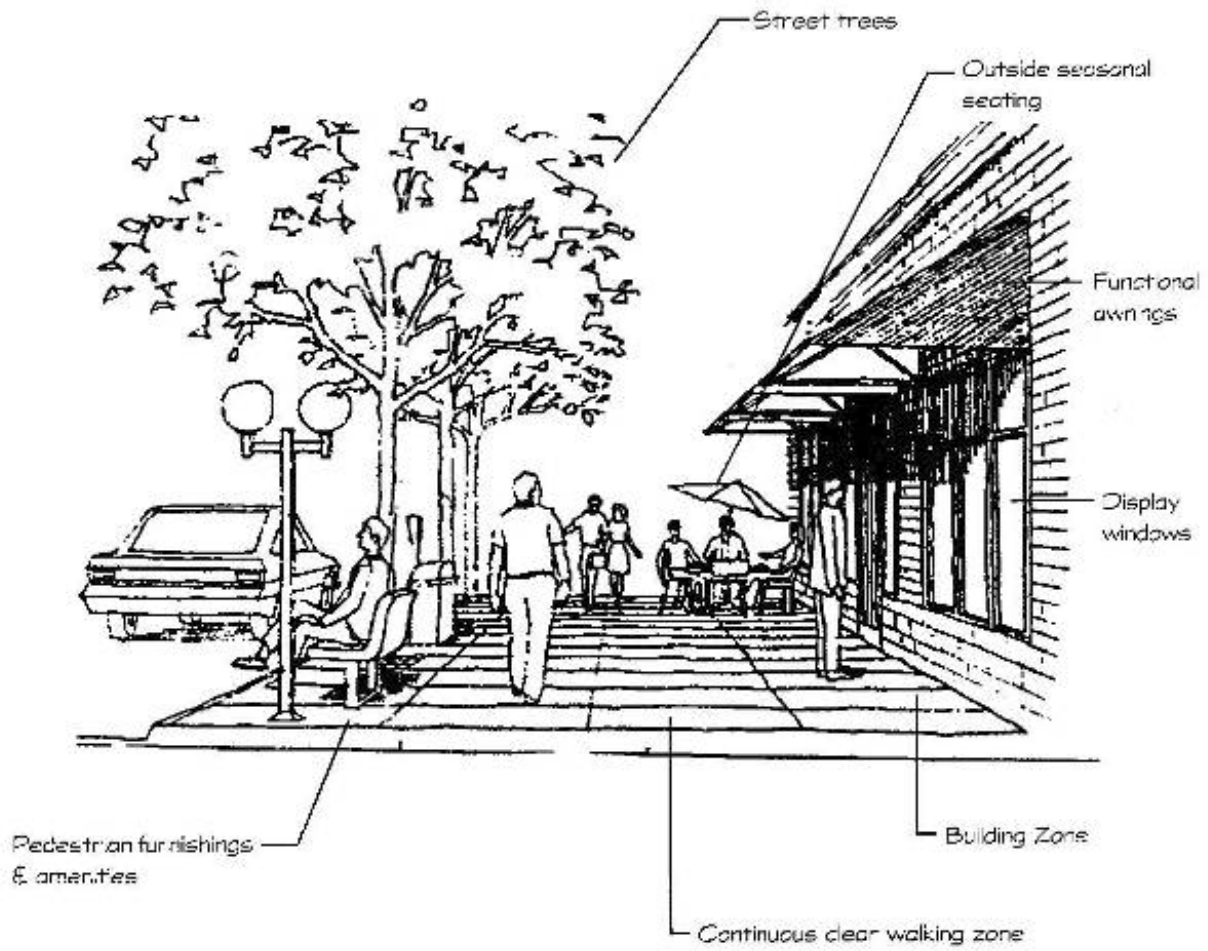


Figure 10 Pedestrian Amenities

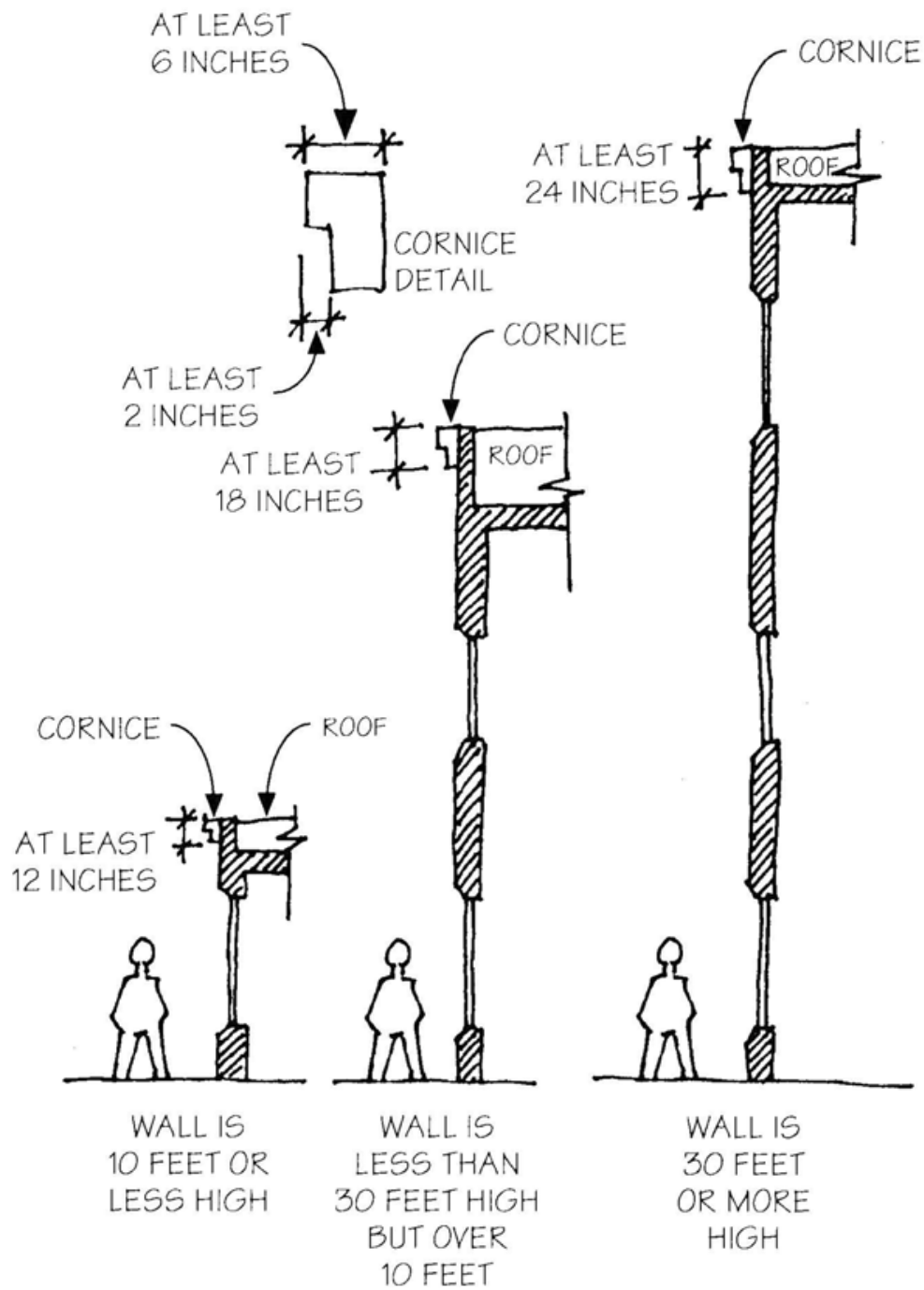


Figure 11 Cornice Design

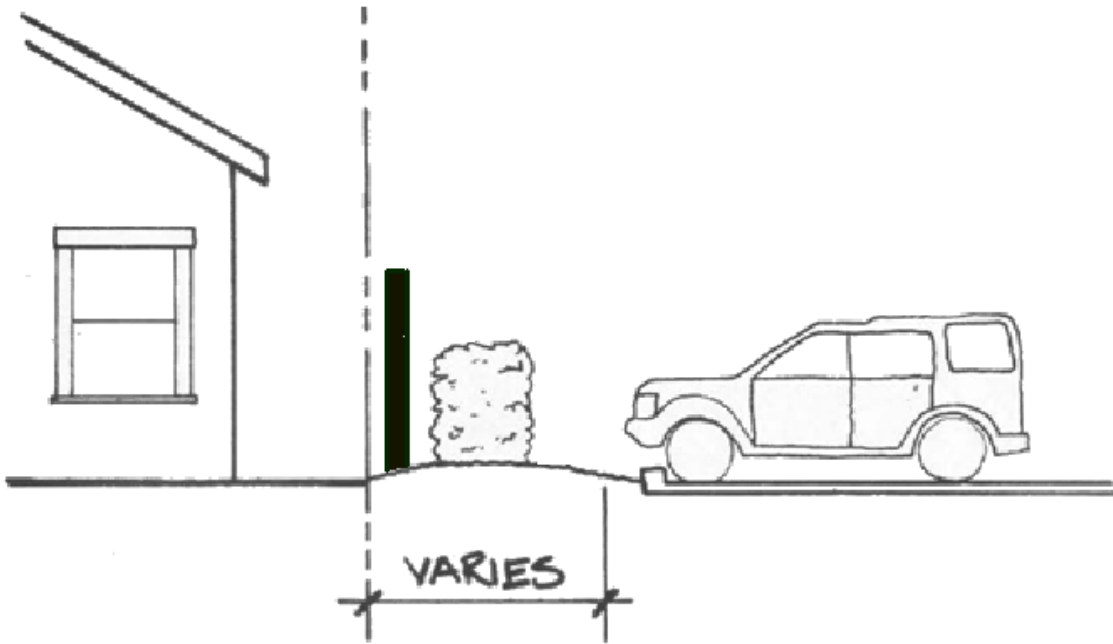


Figure 12 Buffer Planting Strip

TABLE 1.1
SEA LEVEL RISE ESTIMATES FOR SWAMPSCOTT

Scenarios	2020	2030	2040	2050	2060	2070	2080	2090	2100
Global SLR (from 2013-year of interest) "Highest" (feet)	0.21	0.61	1.10	1.70	2.40	3.21	4.11	5.12	6.23
Land subsidence (feet) @ 0.04 in./yr.	0.02	0.06	0.09	0.12	0.15	0.19	0.22	0.25	0.29
Total Relative SLR - "Highest" (feet)	0.24	0.66	1.19	1.82	2.56	3.39	4.33	5.37	6.52