

ARTICLE 1. ADMINISTRATION AND PROCEDURE

1100. Purpose

The purpose of this Bylaw is to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic, and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water supply, drainage, schools, parks, open space, and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the Town, including consideration of the recommendations of the master plan, if any, adopted by the Bellingham Planning Board and the comprehensive plan, if any, of the Metropolitan Area Planning Council; and to preserve and increase amenities, pursuant to Chapters 40A, 40B, and 41 of the Massachusetts General Laws as amended, and Article 89 of the Amendments to the Constitution.

1200. Administration

1210. Responsibility. This Bylaw shall be enforced by the Inspector of Buildings, who shall take such action as may be necessary to enforce full compliance with the provisions of this Bylaw and of permits and variances issued hereunder, including notification of noncompliance and request for legal action through the Board of Selectmen to the Town Counsel.

1220. Compliance Certification. No "development" shall be undertaken without certification by the Inspector of Buildings that such action is in compliance with then applicable zoning or without review by him regarding whether all necessary permits have been received from those governmental agencies from which approval is required by federal, state, or local law. Issuance of a Building Permit or Certificate of Use and Occupancy, where required under the Commonwealth of Massachusetts State Building Code, may serve as such certification. "Development" for these purposes shall mean erecting, moving, substantially altering or changing the use of a building, sign, or other structure, or changing the principal use of land.

1230. Submittals. In addition to any information which may be required under the Massachusetts State Building Code, the Inspector of Buildings shall require of applicants such information as he deems necessary to determine compliance with this Zoning Bylaw. This may include such things as a Site Plan indicating land and building uses and provisions for vehicular parking and egress, location of flood plain control elevations, and evidence of performance compliance under Section 3200 Environmental Controls.

1240. Expiration. Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this Bylaw unless the use or construction is commenced within a period of six 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.

1250. Penalty. Any person violating any of the provisions of this Bylaw, any of the conditions under which a permit is issued, or any decision rendered by the Board of Appeals shall be fined not more than \$100 for each offense. Each day that such violation continues shall constitute a separate offense.

1300. Board of Appeals

1310. Establishment. The Board of Appeals shall consist of five members and three associate members, who shall be appointed by the Selectmen and shall act in all matters under this Bylaw in the manner prescribed by Chapters 40A, 40B, and 41 of the General Laws.

1320. Powers. The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this Bylaw. The Board's powers are as follows:

1321. To hear and decide applications for Special Permits upon which the Board is empowered to act under this Bylaw, in accordance with Section 1500 Special Permits.

1322. To hear and decide appeals or petitions for variances from the terms of this Bylaw, including variances for use, with respect to particular land or structures. Such variance shall be granted only in cases where the Board of Appeals finds all of the following:

- (a) A literal enforcement of the provisions of this Bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.
- (b) The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.
- (c) Desirable relief may be granted without either:
 - (1) substantial detriment to the public good; or
 - (2) nullifying or substantially derogating from the intent or purpose of this Bylaw.

1323. To hear and decide other appeals. Other appeals will also be heard and decided by the Board of Appeals when taken by:

- (a) Any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of Ch.40A, G.L.; or by
- (b) The Metropolitan Area Planning Council; or by
- (c) Any person including any officer or Board of the Town of Bellingham or of any abutting town, if aggrieved by any order or decision of the Inspector of Buildings or other administrative official, in violation of any provision of Ch.40A, G.L.; or this Bylaw.

1324. To issue Comprehensive Permits. Comprehensive Permits for construction may be issued by the Board of Appeals for construction of low- or moderate-income housing by a public agency or limited dividend or non-profit corporation, upon the Board's determination that such construction would be consistent with local needs, whether or not consistent with local zoning, building, health or subdivision requirements, as authorized by Sec. 20-23, Ch.40B, G.L.

1325. To issue Withheld Building Permits. Building Permits withheld by the Inspector of Buildings acting under Sec.81Y, Ch.41, G.L., as a means of enforcing the Subdivision Control Law may be issued by the Board of Appeals where the Board finds practical difficulty or unnecessary hardship, and if the circumstances of the case do not require that the building be related to a way shown on the subdivision plan in question.

1330. Public Hearings. The Board of Appeals shall hold public hearings in accordance with the provisions of the General Laws on all appeals and petitions brought before it.

1340. Repetitive Petitions. Repetitive petitions for exceptions, appeals and petitions for variances, and applications to the Board of Appeals shall be limited as provided in Sec. 16, Ch.40A, G.L.

1400. Planning Board

1410. Special Permits. In instances where this Bylaw provides for Special Permits to be acted upon by the Planning Board, those actions shall be based upon the considerations of Section 1500 Special Permits, unless specifically designated otherwise.

1420. Development Plan Approval

The purpose of Development Plan Approval is to promote public health, safety, and welfare, by encouraging the laying out of parking, circulation, and buildings in a safe and convenient manner; to ensure that new developments are designed to protect and enhance the visual and environmental qualities of the Town, and to provide for an adequate review of development plans which may have significant impacts on traffic, drainage, town services, environmental quality and community character.

1421. Applicability. Unless proposed for single-family or two-family use, all development proposals are subject to Development Plan approval by the Planning Board if proposing any of the following:

- (a) a new building containing 1,000 or more square feet gross floor area;
- (b) an addition increasing ground coverage of any building by more than 2,500 square feet or, for buildings having ground coverage exceeding 10,000 square feet, an addition increasing that coverage by more than 10%;
- (c) substantial alteration to a parking facility having ten or more spaces; a change to an existing parking area that either results in fewer parking spaces than required by Section 3320; or
- (d) removal/disturbance of existing vegetative ground cover from more than 10,000 square feet of site area, unless done incidental to earth removal authorized by a special permit under Section 4630.

No building permit for such development shall be granted prior to Planning Board approval, except as provided at Section 1422d.

1422. Procedure.

- (a) Applicants are urged to confer with the Town Planner/Consultant regarding the materials necessary for submittal for Development Plan Review, if applicable.
- (b) Development Plan materials shall be submitted to the Planning Board Office, or other party designated by the Planning Board, who shall forthwith make a determination of whether those materials are complete, and if they are not, shall so notify the applicant and the Inspector of Buildings. Prior to filing an application for Development Plan Approval with the Planning Board, the Applicant shall distribute the application packages to town boards/departments pursuant to the Planning Board's Form K. A copy of the fully executed Form K shall be included in the application package submitted to the Planning Board.

Those agencies and officials provided with copies shall report their comments on compliance to the Planning Board not later than the time of the Planning Board's public hearing. Failure of these agencies and officials to provide a report to the Planning Board for consideration at the public hearing shall constitute their approval of the project.

Prior to voting on the Development Plan, the Planning Board shall hold a public hearing on the submission. The notice, posting, and publication of the public hearing on the

Development Plan shall be in accordance with the provisions of Section 11, Chapter 40A of the General Laws. Additionally, notice of the project, including a description of the project, date, time and location of the public hearing shall be posted prominently on the project site by the applicant. Prominently shall mean with a sign or signs of at least two feet by two feet in size and easily visible from each roadway on which the property has frontage. The sign shall be yellow with black lettering, with large text at the top indicating "Public Hearing Notice."

- c) The Planning Board shall determine whether or not the Development Plan complies with the requirements of Section 1425 Decision Standards within 60 days of the time that complete materials have been received by the Town Planner/Consultant, approving the Plan only if it does. Within 15 days of its vote on the Development Plan, a copy of the Development Plan decision shall be filed with the Town Clerk and Inspector of Buildings, with a copy being sent or hand delivered to the applicant. Any interested party aggrieved by the Development Plan decision may file an appeal with the Board of Appeals within 30 days of the date the decision was filed with the Town Clerk, as provided in M.G.L., Chapter 40A, Sections 8 and 15. The Inspector of Buildings shall not approve any building permit application subject to these provisions without receipt of Planning Board approval and expiration of a 30-day appeal period, as certified by the Town Clerk.
- (d) Failure of the Planning Board to vote within 60 days of filing shall constitute constructive approval. In this case, the Inspector of Buildings shall issue a Certificate of Constructive Approval and file such Certificate with the Town Clerk within 15 days of the Planning Board's failure to act. Appeals to the Certificate of Constructive Approval may be filed within 30 days of the date the decision was filed with the Town Clerk, as provided in M.G.L., Chapter 40A, Sections 8 and 15. Upon expiration of the statutory appeal period without appeal, the Inspector of Buildings may issue a building permit.
- (e) "As-Built" Information. As-built information shall be provided to the Inspector of Buildings for the following phases of construction:
- After installation of underground utilities, but prior to installation of a binder course of pavement;
 - After construction of a foundation, but before the start of building construction.
 - After completion of all construction activities, but before the issuance of an occupancy permit.

As-built information shall consist of either a Certification from a registered architect, landscape architect, engineer, or other design professional that all construction has been completed in accordance with the approved Development Plan, or a stamped Plan showing the location of all buildings and structures, all utilities, including septic system, leaching area, underground piping, vent pipes, drainage facilities, water wells, well piping, electric, gas, and phone lines showing that all construction has been completed in accordance with the approved Development Plan (if a Certification is submitted, all measurements and calculations shall be available for inspection if requested). The Inspector of Buildings shall determine the form of the as-built information required at each phase. (whether plan or certification).

- (f) To assurance that ongoing construction complies with the approved Development Plan, the Town shall inspect all waterworks, wastewater, stormwater pipes, pavement grading, and appurtenant construction. At least one week prior to commencement of construction, the DPW Director shall be notified by certified mail of the intended commencement. The

DPW Director shall upon receipt of notification, appoint an agent and instruct said agent to make continuing inspections of the work to insure compliance with the approved Development Plans. The wages of said agent are to be determined by the DPW Director and paid to the Town by the Applicant. If the agent is an employee of the Town, the cost will be the employees standard pay scale plus 50% for indirect payroll costs. If the agent is a consultant, the wages will in accordance with the agreement for services.

1423. Submittals. Prior to filing an application for Development Plan Approval with the Planning Board, the Applicant shall distribute the application packages to town boards/departments pursuant to the Planning Board's Form K. A copy of the fully executed Form K shall be included in the application package submitted to the Planning Board.

The following materials shall be submitted for Development Plan approval, except any not germane to the specific case, as determined by the Planning Board and communicated to the applicant in writing prior to submittal. Refer to the Planning Board's Procedural Rules for additional information on submission requirements.

- (a) A site plan prepared by a land surveyor, registered architect, landscape architect, professional engineer, showing the following:
- A locus plan at the scale of 1" = 200'.
 - The project name, north arrow, date, scale, name and address of record owner or owners, applicant, engineer, architect and their proper seals of registration. Names of all abutters within 300 feet of the site boundaries as determined from the latest tax records. If the property owner is not the applicant, a statement of consent from the property owner should be included with the application.
 - Use and ownership of adjacent premises, approximate location of buildings within 50 feet of the site, and if the proposal entails on-site sewage disposal, the approximate location of any wells on or off the premises within 300 feet of the leaching field or other discharge location.
 - Location and boundaries of the site and of any lots proposed, frontage, and abutting land, and an indication of abutting land under same ownership. The location of zoning districts, and overlay zoning districts within the locus of the plan.
 - The location and footprint of existing and proposed buildings/structures, total area of buildings in square feet, streets, ways, drives, driveway openings within 300 feet of the site boundaries, walkways, service areas, parking spaces, loading areas, fences and screening, utilities, waste storage and disposal facilities, wells, and drainage facilities.
 - Existing and proposed topography, at a minimum contour interval of two feet, and vegetation, indicating areas of retained vegetation and identifying the location of significant trees, historic features, and unique natural land features.
 - Indication of wetlands and other areas subject to control under the Wetlands Protection Act, and the 100 foot zone surrounding such areas, identified through field survey acceptable to the Conservation Commission; Flood Plain and Floodway boundaries; and erosion control measures.
 - The location and description of all proposed septic systems, water supply, storm drainage systems, utilities, and refuse and other disposal methods.

- Landscape Plan showing planting areas, signs, fences, walls, walks and lighting, both existing and proposed. Location type, and screening details for all abutting properties and waste disposal containers.
 - The location, height, size, materials, and design of all proposed signage.
 - The location height, intensity, and bulb type of all external lighting fixtures, the direction of illumination, and methods to reduce glare onto adjoining properties.
 - Location and description of proposed open space and recreation areas.
 - A table of information showing how the plan conforms to the Zoning Bylaw.
- (b) Building floor plans and architectural elevations. A registered architect or engineer shall prepare the floor plans and architectural elevations, unless there is no building involved exceeding 35,000 cubic feet. Building elevation plans shall indicate the type and color of materials to be used on all facades.
- (c) A narrative describing the project, including:
- proposed use(s);
 - building or addition size proposed, broken down by use, if applicable;
 - projected number of employees, hours of operation and description of shifts;
 - projected parking spaces required (show calculation based on building usage/employees);
 - proposed methods of screening the premises and parking from abutting property and the street;
 - a calculation of existing and proposed lot coverage;
 - projected Town water and sewer demand, if any;
 - a discussion of the status of all other required local, state and federal permits (copies of all permits issued for the project shall be included in the application package);
 - a discussion of how the project conforms with the Bellingham Master Plan
- (d) Drainage calculations/analysis.
- (e) A traffic study/analysis, if required (refer to Planning Board's Subdivision Rules and Regulations for detailed requirements).
- (f) Evaluation of Impact on Water Resources. The applicant shall submit such materials on the measures proposed to prevent pollution of surface and ground water, erosion of soil, excessive runoff of precipitation, excessive raising or lowering of the water table, or flooding of other properties. The evaluation shall include the predicted impacts of the development on the aquifer, and if applicable, and compare the environmental impacts to the carrying capacity of the aquifer.

- (g) Evaluation of Impact on Landscape. The applicant shall submit an explanation, with sketches as needed, of design features intended to integrate the proposed new buildings, structures and plantings into the existing landscape to preserve and enhance existing aesthetic assets of the site, to screen objectionable features from neighbors and public areas.
- (h) Any additional studies or other materials required under this Section, under Section 3200 Environmental Controls, and elsewhere in this Bylaw.
- (i) A Development Plan filing fee, as required in the Planning Board Rules and Procedures.

1424. Proposals in Two Municipalities. Where a proposal is located in part in the Town of Bellingham and in part in an adjacent municipality, the provisions of Development Plan Review shall apply as follows.

- (a) Applicability of Development Plan Review shall be determined by testing the entire proposal in both communities against the thresholds of Section 1421.
- (b) Submittals for the portion lying in the Town of Bellingham shall be as specified at Section 1423. For portions lying outside the Town, only those items necessary for the determinations of paragraph (c) need be submitted.
- (c) The proposal shall be approved provided that the portion lying within the Town of Bellingham complies with the requirements of the Zoning Bylaw and provided that outcomes from the entire development for impacts limited by the terms of this Bylaw, such as light overspill (Section 3232), comply as measured in Bellingham.

1425. Decision Standards. The Planning Board shall approve a Development Plan only upon its determination that:

- (a) The performance requirements of this By-Law (e.g. Section 3200 Environmental Controls and Section 3300 Parking and Loading Requirements) have been met.
- (b) For the given location and type and extent of land use, the design of building form, building location, egress points, grading, and other elements of the development could not reasonably be altered to:
 - (1) improve pedestrian or vehicular safety within the site and egressing from it;
 - (2) reduce the visual intrusion of parking areas viewed from public ways or abutting premises;
 - (3) reduce the volume of cut or fill;
 - (4) reduce the number of removed trees 8" trunk diameter and larger;
 - (5) reduce soil erosion;
 - (6) reduce hazard or inconvenience to pedestrians from storm water flow and ponding.
- (c) Adequate access is provided to each structure for fire and service equipment.
- (d) Adequate utility service and drainage is provided, consistent where apt with the performance intent of the Design Standards of the Subdivision Regulations of the Bellingham Planning Board, as in effect at the time of the submission of the Development Plan.

- (e) Adequate capacity is available on impacted streets to accommodate the proposed project, based on a traffic study prepared in accordance with the traffic guidelines/regulations contained in the appendix of the Planning Board's Rules and Regulations for the Subdivision of Land. If a development is projected to cause a decrease in level of service (LOS) over the no-build condition on impacted streets, the Planning Board, at its sole discretion, may require implementation of mitigative measures and/or Transportation Demand Management (TDM) measures to restore the LOS to the no-build condition.
- (f) No other zoning violations are observed.

1426. Duration of Approval. Development Plan Approval shall become void two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in MGL c. 40A, Section 15, unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion. In such case a request for extension of the date of completion must be submitted to the Planning Board in writing no less than 30 days prior to the date of expiration.

1427. Performance Guarantee. As a condition of Development Plan Approval, the Planning Board may require that a performance guarantee, secured by deposit of money or negotiable securities, in the form selected by the Planning Board be posted with the town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The amount of security shall be determined by an estimate from the applicant's engineer which may be confirmed or increased by the Board. The town may use the secured funds for their stated purpose in the event that the applicant not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any.

1430. Site Plan Review.

The purpose of the Site Plan Review is to promote public health, safety and welfare by encouraging the laying out of parking, egress and change in uses in a safe and convenient manner for existing structures and/or construction of new development that do not require a Development Plan Review.

1431. Applicability. The following development proposals, unless required to receive Development Plan Approval under Section 1420, require Site Plan Review by the Planning Board prior to approval for a building or occupancy permit by the Inspector of Buildings.

- (a) Any non-residential development in a Business 1, Business 2 or Industrial Zone exceeding 10,000 square feet.
- (b) Any change from a dwelling or residence in a Business 1, Business 2 or Industrial Zone to a business or industrial use excluding, however, Home Occupations under Section 4110.

1432. Procedure. Materials required for Site Plan Review shall be submitted to the Inspector of Buildings with or prior to application for a building or occupancy permit requiring Site Plan Review. The Inspector of Buildings shall forthwith transmit such materials to the Planning Board, along with notification of the date by which action on the permit application is required. The Planning Board shall consider the materials at a meeting, and shall report its findings in writing to the Inspector of Buildings prior to the date on which he must act on the permit application. Failure to do so shall be construed as lack of objection.

The inspector of Buildings shall approve applications subject to Site Plan Review only consistent with Planning Board findings timefully received.

1433. Submittals. The applicant shall provide as much of the materials specified at Section 1423 for Development Plan Approval as is reasonably necessary for the Planning Board to determine compliance with Section 1425 Decision Standards, and a filing fee as required under a schedule of fees to be established and from time to time amended by the Planning Board, based upon the actual cost of review. Applicants are urged to confer with the Town Planner regarding the materials necessary for submittal for Site Plan Review.

1440. Planning Board Associate Member. As authorized in Section 9 of Chapter 40A, there shall be one Associate Member of the Planning Board. Such associate shall act on special permit applications when designated to do so by the Planning Board Chairman, in case of absence, inability to act, or conflict of interest on the part of any member of the board, or in the event of a vacancy on the board. The associate member shall be appointed for a three year term by majority vote of the Selectmen and members of the Planning Board, in the same manner as for filling a vacancy.

1450. Repetitive Petitions. Repetitive petitions for appeals, special permits and applications to the Planning Board shall be limited as provided in Sec. 16, Ch. 40A, M.G.L.

1500. Special Permits

1510. Special Permit Granting Authority. Unless specifically designated otherwise, the Board of Appeals shall act as the Special Permit Granting Authority.

1520. Public Hearings. Special Permits shall only be issued following public hearings held within 65 days after filing with the Special Permit Granting Authority an application, a copy of which shall forthwith be given to the Town Clerk by the applicant.

1530. Criteria. Special Permits shall be granted by the Special Permit Granting Authority only upon its written determination that the proposed use will not have adverse effects which over-balance its beneficial effects on either the neighborhood or the Town, in view of the particular characteristics of the site and of the proposal in relation to that site. The determination shall indicate consideration of each of the following:

- (a) social, economic or community needs which are served by the proposal;
- (b) traffic flow and safety;
- (c) adequacy of utilities and other public services;
- (d) neighborhood character and social structures;
- (e) qualities of the natural environment;
- (f) potential fiscal impact

1540. Permit Recording. Special permits shall not take effect until the Board which acted on the permit has received documentation from the applicant that a copy of the decision, certified by the Town Clerk, has been recorded in the Norfolk County Registry of Deeds, as required at Section 11 of Chapter 40A MGL.

1550. Expiration. Special Permits shall lapse within 12 months of Special Permit approval (plus time required to pursue or await the determination of an appeal referred to in Sec. 17, Ch.40A, G.L., from the grant thereof) if a substantial use thereof or construction has not begun, except for good cause.

1600. Amendments

This Bylaw may from time to time be changed by amendment, addition or repeal by the Town Meeting in the manner provided in Sec. 5, Ch.40A, G.L., and any amendments therein.

1700. Applicability

Where the application of this Bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants or agreements, the provisions of this Bylaw shall control.

1800. Effective Date

The effective date of any amendment of this Zoning Bylaw shall be the date on which such amendment was voted upon by a Town Meeting, as provided by Sec.5, Ch.40a, G.L.

1900. Separability

The invalidity of any Section or provision of this Bylaw shall not invalidate any other Section or provision hereof.