

## Exhibit 21

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**Planning Board Minutes**  
**Thursday, July 28, 2005**

Memorial Building  
150 Concord Street, Public Hearing Room

Those present: Thomas Mahoney, Chairman, Ann Welles, Vice Chairman, Sue Bernstein and Carol Spack, Clerk. Andrea Carr-Evans arrived at 7:50 Also present were Jay Grande, Planning Director and MaryRuth Reynolds Administrative Assistant.

Meeting was called to order at 7:35 pm

**I. LID Update with Donna Jacobs**

Donna Jacobs briefly updated the Board on the status of the LID by-law; stating that the final report had been submitted with the Executive Office of Environmental Affairs. She recommended that the Board appoint a sub committee to work directly with her to fine tune the by-law. The Board will discuss that and appoint the members at their next meeting.

**II. Public Hearing to see if the Town will vote to amend the Zoning By-Law of the Town of Framingham as follows. Amend Section III.A.1. by deleting the entirety of the existing subsection i. and replacing with the following new subsection i.**

Tom read the Public hearing notice into the record. Documents 715-05, 718-05, 712-05 and 711-05 were in the boards packets for review. Jay Grande gave a brief overview stating that after review by the subcommittee, town counsel P&Z committee and Gene Kennedy there has be some additional amendments to this by-law. He briefly reviewed those sections with the Board. Tom O'Neil chairman of the P&Z Committee gave the board their tentative vote on the draft version which was available at the time of their meeting. The vote was 8 in favor and 0 opposed, with 1 abstention to support this by-law at Town Meeting.

1  
2 *Carol Spack moved that the Framingham Planning Board vote to endorse site plan*  
3 *review and all related zoning by-law sections identify in document 715-05 dated*  
4 *July 28, 2005 as presented by Jay Grande and discussed tonight. Sue Bernstein*  
5 *seconded the motion. The vote was 5 in favor and 0 opposed.*  
6

7 **III. Continued Public hearing for Definitive Subdivision RiverPath Drive Extension,**  
8 **off RiverPath Drive, RiverPath Associates, L.P., MWRA, and National**  
9 **Development**

10 In attendance for the applicant were Peter Barbieri, Scott Weiss and Karen Fisk.  
11 Peter stated that they were back before the Board because they had presented the  
12 Definitive Subdivision Plan several weeks ago at which time they were asked to  
13 review several items, drainage system and road way design. Which they have. Peter  
14 stated that the drainage reports were not available from SEA that night and will need  
15 to be discussed at a later hearing. Scott Weiss reviewed the road way design,  
16 discussing road way width and utility access. Karen Fisk reviewed the drainage  
17 system. The Board had concerns regarding the road widths and drainage on the site,  
18 they will further review the revised plans and department comments as the revised  
19 plans were submitted too late for the board to review before the hearing. The Board  
20 will be looking for some sort of agreement with the MWRA for the use of Meadow  
21 Street extension as an emergency access and or utility access.

22 *This hearing was continued to September 15, 2005 at 7:45*  
23

24 **IV. Continued Public Hearing for Definitive Subdivision Fox Creek Lane, 158**  
25 **Meadow Street, 160 Meadow Street 125 Elm Street RR and 90 Stearns Street,**  
26 **Fox Creek Lane, L.P., MWRA, and National Development**

27 In attendance for the applicant were Peter Barbieri, Scott Weiss and Karen Fisk.  
28 The Board briefly reviewed the revised plan. The applicant will be submitting a full  
29 set of revised plans to the Board and possibly the review from the Boards consultant  
30 by the next hearing. *This hearing was continued to September 15, 2005 at 8:30.*  
31

1 V. Continued Public Hearing for Site Plan Review and Public Way Access Permit,  
2 49, 51 and 55 New York Avenue, Genzyme Corporation

3 Peter Barbieri, Henry Fitzgerald, Jeff Johnson, Sean Reardon and Mike Hall.

4 *(Sue Bernstein moved to suspend the Board rules and have a hearing after*  
5 *10:00pm. Ann Welles seconded the motion. The vote was 5 in favor and 0 opposed)*

6 Mike Hall reviewed the traffic study conducted by the applicant. The study included  
7 4 intersections; New York & Route 30, Firmin & Willow & Route 30, California Ave  
8 & Route 9 and New York & California Ave, of which they examined trip traffic and  
9 the distribution patterns. He discussed the impacts on the area and his  
10 recommendations for the impacted intersections. He noted that the same information  
11 was provided to GPI and that they would be providing a response letter to the Board.  
12 The applicant has also filed with the Southboro Board and noted that those hearings  
13 will be starting around the end of August.

14 *This hearing was continued to August 11, 2005 at 8:45.*

15  
16 VI. Miscellaneous Administrative

17 a. 88 Blandin Ave ~ The Board asked Jay to send a letter to the owners of that  
18 property in regards to the sidewalk issue.

19 b. The Board asked Jay to send a reminder letter to 517 Worcester Road that they  
20 are still waiting for a set of revised plans showing the resolution of the traffic back up  
21 at the drive through

22 c. The Board requested that Jay send a letter to ZBA requesting more time to  
23 review the concrete batch plant at 597 OCP.

24  
25 V. Meeting adjournment

26 *Carol Spack moved to adjourn. Andrea Carr-Evans seconded the motion. The vote*  
27 *was 5 in favor 0 opposed. Meeting adjourned at 11:45 p.m.*



1  
2 Respectfully submitted,  
3 MaryRuth Reynolds  
4 Recording Secretary  
5  
6  
7  
8

9 **\*\*THESE MINUTES WERE APPROVED WITH AMENDMENTS AT THE**  
10 **PLANNING BOARD MEETING OF NOVEMBER 3, 2005**

11  
12 \_\_\_\_\_  
13 Thomas Mahoney, Chairman

## Exhibit 22

# *Town of Framingham Special Town Meeting August 3, 2005*

## *ARTICLE 1*

To see if the Town will vote to amend the Zoning By-Law of the Town of Framingham as follows:

Amend Section III.A.1. by deleting the existing words in Paragraph i. and replacing with the following words

“Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structure shall be subject to regulations concerning the bulk and height of structures, yard size, lot area, open space, parking, building coverage, and site plan review requirements in accordance with the provisions of this By-Law ”

Amend Section IV.I. Site Plan Review, Subsection 2, General Provisions, by deleting the following words in the parenthesis as they appear in the second sentence:

“(excluding subdivisions for detached single-family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under MGL Chapter 40A, Section 3)”

Sponsor: Planning Board

August 3, 2005 Voted: That Town Meeting amend the Zoning Bylaw of the Town of Framingham as set forth under Article 1 of the August 3, 2005 Special Town Meeting as printed in the handout, as amended

117 voting in favor, 2 opposed, 4 abstentions

A TRUE COPY ATTEST:  
*Valerie Mulvey*  
TOWN CLERK, FRAMINGHAM

*Town of Framingham  
Special Town Meeting  
August 3, 2005*

*ARTICLE 1  
AMENDMENTS*

August 3, 2005 Voted: That the following proposed language, amending Section III.A.2, be deleted from the proposed amendments in Article 1:

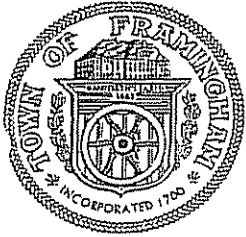
"However, the Planning Board shall be the Special Permit Granting Authority for uses under this section that require a public hearing before the Planning Board pursuant to other provisions of the Zoning Bylaw herein."

August 3, 2005 Voted: That Article 1 be amended by inserting the following words after the word structures, "frontage on an existing public way":

Section III.A.1.i would then read as follows:

"i. Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structures shall be subject to reasonable regulations concerning the bulk and height of structures, frontage on an existing public way, and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

A TRUE COPY ATTEST:  
*Valerie Mulvaney*  
TOWN CLERK, FRAMINGHAM



## FRAMINGHAM PLANNING BOARD

MEMORIAL BUILDING • ROOM B-37 • 150 CONCORD STREET • FRAMINGHAM, MA 01702-8373  
TELEPHONE [508] 620-4837 • FAX [508] 872-0523 • EMAIL: [planning\\_board@framinghamma.org](mailto:planning_board@framinghamma.org)

### PROPOSED ZONING AMENDMENTS

#### Section III.A. Single Residence

1. Amend Section III.A.1.e. by striking the words “public and religious schools and private and”, “churches or other places of worship; parish house”, “setback, side and rear yard” and “and/or the uses not otherwise covered” and replacing with new wording to read as follows.

Conform III.A.1.e. to proposed new text in III.A.1.i. as follows:

e. Public buildings and grounds not set forth in subsection i. herein; public hospitals and dormitories accessory thereto; passenger stations; water towers; reservoirs; amateur radio towers; private permanent type swimming pools accessory to residential use, subject to ~~set-back~~ all dimensional requirements of the District.

*The purpose of the amendment is to conform III.A.1.e. to the proposed new text in III.A.1.i.*

2. Amend Section III.A.1.i. by deleting in its entirety the existing subsection and replacing with the following new subsection i.

“i. Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structures shall be subject to reasonable regulations concerning the bulk and height of structures, and determining yard sizes, lot area, setbacks, open space, parking, and building coverage requirements ~~and site plan review requirements in accordance with the provisions of this By-law.~~”

*The purpose of this amendment is to make the new subsection consistent with the language in MGL c. 40A, Sect. 3.*

- 3.a. Amend the Section III.A.2. by adding the following sentence after the first sentence.

“However, the Planning Board shall be the Special Permit Granting Authority for uses under this section that require a public hearing before the Planning Board pursuant to other provisions of the Zoning By-Law herein ”

- 3.b. And further amend Section III.A.2.a. by deleting this paragraph as follows and reformatting accordingly.

a ~~Charitable and welfare institutions except as to uses permitted by reason of compliance with paragraph III.A.1.i. of the Bylaw.~~

*The purpose is to eliminate any conflict with the new section III.A.1.i. and revisions to IV.I. and to allow for concurrent hearings before the Planning Board streamlining the review process.*

A TRUE COPY ATTEST:

*Valerie Mulvey*

TOWN CLERK, FRAMINGHAM

#### Section IV.G.9.

Special Town Mtg August 3, 2005

8/16/2005

4. Amend Section IV.G.9. by deleting in its entirety.

*The purpose of this amendment is to again remove any conflicts with the revisions to Sections III.A. and IV.I.*

Section IV.I. Site Plan Review

5. Amend Section IV.I.2. by deleting the following words in the first sentence as follows:

"(excluding subdivisions for detached single family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under M.G.L. Chapter 40A, Section 3)"

*The purpose is not to preclude exempt uses from site plan review.*

6. Amend Section IV.I.2.c. by striking the numbers and words "5,000" and "the addition of 20" and inserting in place thereof the numbers and words as follows.

"c. any new structure, group of structures, substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which either results in the development, redevelopment, reuse, change in use, or an increase of 3,000 square feet of gross floor area or requires 5 or more parking spaces or an off-street loading facility, when any portion of any lot or parcel of land on which said structure or use is located in or lies within 200 feet of a residential district, shall be subject to this Section IV.I. in its entirety."

*The purpose of this amendment is to provide the requirement for site plan review for uses listed under the new Section III.A.1.i.*

7. Amend Section IV.I.3. by reformatting existing paragraph b. to c. and adding a new paragraph b. as follows.

"b. The Planning Board, at its discretion and based on a preliminary assessment of the scale and type of development proposed, may waive or modify the requirements for submission of any of the elements in Subsection 5 and the development impact standards in Subsection 6. Such waiver shall be issued in writing with supporting reasons"

*The purpose of this amendment is to provide the Board with the ability to grant reasonable waivers from the submission requirements and standards under Subsections 5 and 6 for exempt uses.*

## BY-LAW SUBMITTAL FORMS (Revised 6/2002)

### Form 1 — Cover Letter (MANDATORY)

On Form 1, the town clerk makes a formal request for approval of by-law/charter amendments, and provides basic information related to the packet. We have added a place for a contact person on the planning board.

### Form 2 — Town Meeting Action (MANDATORY)

Attach to Form 2:

1. a certified copy of the existing by-law;
2. three (3) certified copies of town meeting action;
3. a certified copy of the final version of the by-law as amended; and,
4. an annotated comparison indicating all changes to the existing by-law.

### Form 3 — Zoning and/or Historic District Maps (AS REQUIRED)

Please attach two (2) certified copies of all maps where the vote of Town Meeting entails a change in the zoning map.

### Form 4 — Town Meeting Certification (MANDATORY)

This form allows us to determine if the town meeting was properly convened. We have added a request for a copy of the text referred to, but not set forth in the warrant articles. In the past, we have had to call the clerk to obtain this text.

### Form 5 — Additional Information Required for Charter Amendments Proposed Pursuant to G.L.c. 43B, § 10 (AS REQUIRED)

This form is intended for use in connection with the procedures for *charter amendments* as set forth in G.L. c. 43B, § 10.

### Form 6 — Relevant Laws (MANDATORY)

This form enables us to determine if the Town's authority to enact the submitted by-law derives from a local option statute or a special act. The Town risks disapproval if its authority derives from a local option statute or special act which is not disclosed to the Attorney General.

### Form 7 — Zoning Procedures/Attachments (AS REQUIRED)

This form enables us to verify that the town has complied with the procedural requirements of G.L. c. 40A, § 5, for the enactment of zoning by-laws. Please remember to attach a copy of each item requested. Also, we have added language requesting in dates 3 & 5 that you mark the article numbers in the planning board notice that is published and posted. We have asked that this be done in the past, but some do and some don't.

### Form 8 — Additional Information Required for the approval of Historic District By-laws Adopted Pursuant to G.L.c. 40C, § 3 (AS REQUIRED)

This form enables us to verify that the town has met the procedural requirements of G.L. c. 40C, § 3.

NOTE: Please omit the forms not being used in the submission of your packet.

Form 1 (revised 1/2002)

Town: FRAMINGHAM

Date: August 3, 2005

Attorney General Tom Reilly  
Municipal Law Unit  
1350 Main Street, 4<sup>th</sup> Floor  
Springfield, Massachusetts 01103-1629  
TEL: (413) 784-1240, FAX: (413) 784-1244  
Website: [www.ago.state.ma.us/mlu.asp](http://www.ago.state.ma.us/mlu.asp)

Dear Attorney General Reilly:

Pursuant to G.L. c. 40, § 32, I hereby request approval of the enclosed amendments to town by-laws. GL. c. 40, §32 specifies that this request must be made within thirty (30) days after final adjournment of Town Meeting

- 1.) Town Meeting (select a, b or c): NOTE: If (c) is selected, please specify (i), (ii), or (iii).  
(a) Annual ☐ (b) Special ☒ (c) Other: [ ☐ i ☐ authorized by Charter  
ii ☐ authorized by Special Act  
iii ☐ authorized by By-Law ]

2.) Date Town Meeting First Convened: August 3, 2005

3.) Date (s) of Adjourned Sessions: N/A

4.) Identify Warrant Article(s) Submitted:

(a) Zoning: Article 1

(b) Historical District: None

(c) General: None

(d) Charter Amendment: None  
(Proposed amendments to an existing charter pursuant to M.G.L. c. 43B, § 10)

5.) List Zoning Maps Relating to Warrant Article(s):

6.) Town Counsel

Attorney: Christopher Petrini

Firm: Petrini & Associates, PC

Address: 150 Concord St.

Framingham, MA 01702

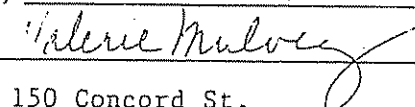
Phone: ( 508 ) 620-4802

E-Mail: [cpetrini@framinghamma.gov](mailto:cpetrini@framinghamma.gov)

Fax Number: ( 508 ) 620-5910

8.) Town Clerk

Name (Print): Valerie Mulvey

Signature: 

Address: 150 Concord St.

Framingham, MA 01702

Phone: (508) 620-4863

E-Mail: [Valerie.Mulvey@framinghamma.gov](mailto:Valerie.Mulvey@framinghamma.gov)

Fax Number: (508) 628-1358

Work Schedule: Mon.-Fri., 8:30am-5:00pm

7.) Planning Board - Contact Person

Name (Print): Jay Grande

Phone: ( 508 ) 620-4837 Work Schedule: Mon.-Fri., 8:30am-5:00pm

E-Mail: [jwg@framinghamma.gov](mailto:jwg@framinghamma.gov) Fax Number: ( 508 ) 620-5910



Date TM Convened August 3, 2005**TOWN MEETING ACTION**

Please provide the following:

- Submission **EXISTING BY-LAW** -- One (1) certified copy of the entire main section of the  
# 1. [X] existing by-law within which each proposed amendment occurs. This requirement is very important since without the full text of the entire main section of the existing by-law being amended we will be unable to ascertain the full meaning of the proposed changes in context. By-law amendments include even minor technical changes in current by-laws, amendments to tables showing uses permitted in different zoning districts, and amendments which re-codify, reorganize or renumber existing by-laws previously approved by the Attorney General.
- Submission **TOWN MEETING ACTION** -- Three (3) certified copies of the main motion, or  
# 2. [X] amended main motion voted by town meeting, with the date and votes thereon. Also include a copy of each floor amendment favorably acted upon by town meeting.
- Submission **FINAL VERSION OF BY-LAW AS AMENDED** -- One (1) certified copy of the  
# 3. [X] by-law (Submission #1) as amended by town meeting (Submission #2).
- Submission **ANNOTATED COMPARISON** -- Please indicate all changes (including deletions  
# 4. [X] and additions) to the existing by-law. This may be done in any manner by which the changes are clearly indicated. For example, you may annotate a copy of the existing by-law (#1 above) or a copy of the final version of the by-law as amended (#3 above) by underlining, italicizing, or otherwise highlighting or indicating all changes. Be sure to include a legend explaining the method chosen. Preferably, you may substitute for the above a computer-generated "compare" document in which the deleted text is shown in "strike-out" format, and the new text is shown in "redline" format.

For any vote requiring a simple majority it will be sufficient to certify that the moderator declared that the motion carried. Where the vote was unanimous, it will be sufficient to certify that the moderator declared that the motion carried unanimously.

For any vote requiring more than a simple majority and where the vote was not unanimous an actual vote count must be taken. Zoning by-laws and historic district by-laws require a two-thirds vote.

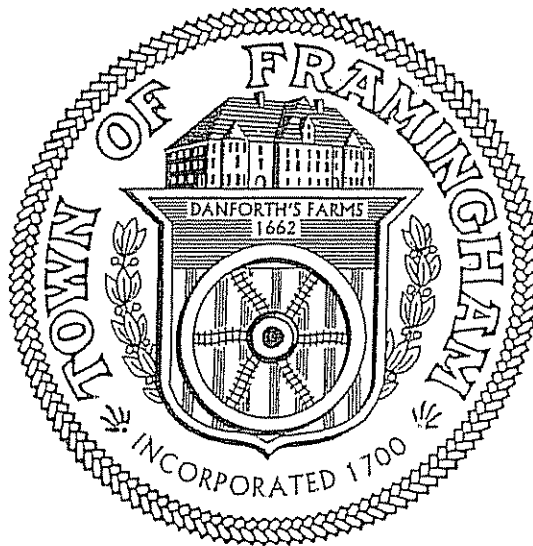
However, if the town has either (a) by vote of this town meeting, or (b) in a previously adopted general by-law voted that a counted vote need not be taken and that the Moderator may declare that the required vote has been achieved, then such declaration of the Moderator will be sufficient. If by (a), then please attach a copy of the minutes from this town meeting showing the vote to dispense with a counted vote; if by (b), then please identify the by-law including the date on which it was adopted by town meeting [\_\_\_\_], and the date it was approved by the Attorney General's Office [\_\_\_\_].

FORM 2

EXISTING BY-LAW

# ZONING BY-LAW

TOWN OF FRAMINGHAM, MASSACHUSETTS

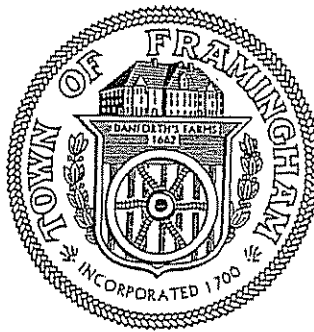


APRIL, 2004

FRAMINGHAM PLANNING BOARD

*Thomas F. Mahoney, Chairman*  
*Ann Welles, Vice Chairperson*  
*Carol J. Spack, Clerk*  
*Susan P. Bernstein*  
*Andrea Carr-Evans*

A TRUE COPY ATTEST:  
*W. Lee Mahoney*  
TOWN CLERK, FRAMINGHAM



## TOWN OF FRAMINGHAM

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### III. USE AND DIMENSIONAL REGULATIONS

#### A. SINGLE RESIDENCE

1. No building or structure shall be used or arranged or designed to be used in any part and no change shall be made in the use of land or premises, except for one or more of the following purposes:
  - a. A detached dwelling for one family
  - b. The taking of boarders or the letting or renting of rooms by a resident family in a dwelling; but no dwelling so used shall be enlarged, but may be remodeled for the same or like purpose
  - c. Home occupations and home offices, as accessory uses within single family dwellings, or buildings accessory thereto, subject to the following conditions:
    - (1) The home occupation or home office shall be clearly incidental and secondary to the use of the dwelling as a residence, shall be located within the dwelling unit or a single accessory building, and shall not change the residential character thereof.
    - (2) The area utilized for the purpose of the home occupation or home office shall not exceed the smaller of (a) twenty-five (25) per cent of the total floor area of the dwelling unit or (b) four hundred (400) square feet
    - (3) In a home occupation, not more than one (1) non-resident full-time employee, or equivalent thereof, may be employed in a secretarial or like position. In a home office, not more than two (2) non-resident full-time employees, or equivalent thereof, may be employed. Non-resident employees in a home office need not be secretarial or the like, but shall be employed in a capacity supportive of the practice of the resident professional
    - (4) Not more than three (3) customers, clients, pupils, or patients for business or instruction shall be present at any one time. Customers, clients, etc. shall be present only between the hours of 8:00 a.m. and 9:00 p.m., Monday through Saturday
    - (5) There shall be no exterior display or storage of goods or materials, and no exterior indication of the home office or occupation other than one non-illuminated identification sign not to exceed two (2) square feet in area.
    - (6) There shall be no noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in a residential area.
  - d. Family day care home, as an accessory use to a dwelling, allowing not more than six children in care, provided that said dwelling and provider have received a license from the Office for Children to provide family day care, as defined by Chapter 282 of the General Laws
  - e. Public buildings and grounds; public and religious schools and private and public hospitals and dormitories accessory thereto; churches or other places of worship; parish houses; passenger stations; water towers; reservoirs; amateur radio towers; private permanent type swimming pools accessory to residential use, subject to set-back, side and rear yard requirements of the District, and/or like uses not otherwise covered
  - f. Farms, greenhouses, nurseries and truck gardens; stock farms, cemeteries and the raising of live stock and fowls subject to such conditions as may be prescribed by the Board of Health
  - g. A garage on the same lot or in the same building to which it is accessory and in which no business or industry is conducted, except such necessary repair work as is not of a hazardous nature. Garage space shall not be provided on such lot for more than two motor vehicles, except that space for one additional motor vehicle may be provided for each 2,000 square feet of area by which the lot area exceeds 4,000 square feet, but space shall not be provided for more than five motor vehicles in any case. Not more than one commercial vehicle shall be stored on such lot.

- h. Private stables subject to such conditions as may be prescribed by the Board of Health
- i. Facilities, including structures and site improvements, owned and operated by a non-profit organization recognized by the Commonwealth of Massachusetts as such, Chapter 180, as amended, Massachusetts General Laws, operated for religious, charitable, educational, scientific, or literary purposes, or to prevent cruelty to animals or children and not of a correctional nature, which are used for the non-profit work of the organization, including the administration of such organization's affairs, provided that:
- (1) The contiguous area of the site, including the area of any ponds or lakes located thereon, shall be not less than 40 acres, and
  - (2) No facilities, other than an access roadway and its necessary appurtenances, shall be located nearer to any lot line than one hundred feet, and
  - (3) The total area of lot coverage by buildings, including accessory buildings, shall not exceed 6 percent, and
  - (4) The total area of lot coverage by all facilities, including structures and site improvements which can include but not be restricted to buildings, accessory buildings, parking areas, roadways, driveways, sidewalks, pedestrian trails, and bicycle paths, shall not exceed 20 percent of total lot area, and
  - (5) The maximum height of buildings shall be three stories not to exceed forty feet, as defined in the BOCA Basic Building Code. Structures such as steeples, monuments, towers, and silos, not intended for occupancy by persons, may be erected to a height of sixty feet, and
  - (6) There shall be provided facilities for off street parking in accordance with Section IV of the Town of Framingham Zoning By-Law. Passenger car parking spaces shall be not less than eight feet six inches in width. Bus and single unit truck parking spaces shall be not less than eleven feet in width and thirty- five feet long. At least one parking space shall be provided for each employee, plus one parking space for every three persons visiting the facilities in private vehicles, based on the maximum number of persons to be accommodated on the property at one time, plus one parking space for every bus or single unit truck; and,
  - (7) Entrances to the lot from public or private ways shall be a minimum of thirty feet wide with edge radii of fifty-five feet. The entrance width shall be measured at the interior points of curvature of the edge radii. Entrances restricted to passenger cars only may have edge radii of thirty feet, and
  - (8) Any sign may not exceed six square feet in area and ten feet in height, including supporting structures and light sources, and must be of a design in keeping with reasonable aesthetic standards and the character of the neighborhood. Signs must be fixed in position so as not to rotate or oscillate. No sign shall project over a street or way used by the public, or shall constitute a hazard to vehicular or pedestrian traffic by its location or the direction and amount of its illumination. Lighting of signs shall be a continuous illumination, not flashing, blinking, or varying in color. Lighting by exposed neon or fluorescent tubes is prohibited, and
  - (9) Exterior lighting shall be continuous illumination, not flashing, blinking, or varying in color. Exterior lighting fixtures shall be designed and placed so that the light source shall be completely shielded or diffused so as not to produce glare or excessive lighting on abutting premises, and
  - (10) The premises shall be used for the prescribed purpose only in conformity with a site plan bearing the recommendations of the Planning Board. Said site plan shall show, among other things, the following data:
    - (a) Area of site
    - (b) Area, size, and location of all existing and proposed building, structures, parking spaces, driveway openings, service areas, and other open uses, sufficient existing and proposed topographical data to show impact of development on the site and surrounding properties, including but not limited to drainage, and cut and fill, all facilities for sewage, refuse, and other waste disposal and for surface water drainage, all landscape features (such as fences, walls, and planting areas) on the lot, signs, and exterior lighting, except for the seasonal display of lights for the purpose of celebrating holidays.

- (c) Maximum area of site to be used for each purpose and a description of such purpose.
- (d) Maximum number of employees to be accommodated at one time.
- (e) If the public is to be admitted to the premises in the usual course of the use of the facilities, the nature of the activities for which the public is to be admitted and the maximum number of persons expected to be accommodated at one time
- (f) The number of parking spaces and loading berths to be provided and the proposed layout, including access, roads, circulation and maneuvering space, grading, drainage, safety precautions or devices, and surfacing material to be used
- (g) Hours of operation of the facilities as established by the Board of Selectmen
- (h) Hours of operation of the facilities open to the public, as established by the Board of Selectmen.
- (i) Existing and estimated future traffic patterns in roadways affected by the facility, including traffic counts and roadway capacity
- (j) Facility water supply requirement and quantity and type of waste waters to be discharged.
- (k) There shall also be shown on said plan additional information, if any, necessary for the Planning Board to determine compliance with this By-Law.

(11) Use of the facility shall be subject to such conditions as may be prescribed by the Board of Health.

(12) Any person desiring a building permit under this section shall submit eight copies of the site plan to the Planning Board, and one copy to the Board of Health, by registered or certified mail, return receipt requested. The Board of Health shall notify the applicant and the Planning Board by certified or registered mail within thirty days of receipt of said plan of its approval, with or without conditions, or its disapproval, stating in detail its reasons therefor. No building permit shall be issued until the Planning Board has made recommendations to the Building Commissioner or has allowed 60 days to elapse after receipt of the site plan without acting thereon

(13) In making recommendations to the Building Commissioner under this paragraph, the Planning Board shall assure to a degree consistent with a reasonable use of the site for the purposes permitted:

- (a) Protection of adjoining premises and the general neighborhood against detrimental or offensive uses on the lot, considering characteristics of the neighborhood, noise, odor, dust or other nuisances.
- (b) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties, or improvements
- (c) Adequacy of water supply, the methods of disposal for snow, sewage, refuse, and other wastes, the methods of drainage for surface water, and snow removal
- (d) Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the lot
- (e) Adequacy of all other municipal facilities relative to fire and police protection and municipal services to meet the needs of the uses proposed on the site

(14) Before the Planning Board makes its recommendations to the Building Commissioner a public hearing shall be held by the Planning Board

2. The following uses shall require a special permit from the Zoning Board of Appeals:

- a. Charitable and welfare institutions except as to uses permitted by reason of compliance with paragraph III A 1 i of this By-Law
- b. Licensed establishment for the care of sick, aged, crippled or convalescent persons
- c. Private and public golf clubs provided the same are located on a parcel or parcels of land of not less than 50 acres
- d. Outdoor recreational facilities such as swimming pools, tennis courts (but not including driving ranges or miniature golf) owned or operated by a non-government agency, subject to the following provisions:

- (1) The use shall not be conducted as a private gainful business

(2) No accessory structure shall be located nearer any lot line than seventy (70) feet.

e. Conversion of single-family detached dwellings, in existence on March 15, 1939, to use as two-family dwellings, subject to the following provisions:

- (1) The lot and structure shall conform to the existing area, frontage, width, setback, and lot coverage requirements applicable to the zoning district in which they are located. The Zoning Board of Appeals shall not grant a special permit for a nonconforming lot or structure.
- (2) The ground coverage of the structure shall not be increased by more than ten percent, nor the height by raising the roof or otherwise. This restriction shall not apply to the construction of porches, bay windows, or similar accessory structures not exceeding four hundred square feet in area, nor to the addition of dormer windows or gables not over twelve feet in width upon the existing roof.
- (3) Off-street parking shall be provided for both dwelling units in accordance with the requirements set forth in Section IV B, including without limitation the requirements for number of parking spaces and setbacks from lot lines. A minimum of 200 square feet of parking area shall be provided for each required parking space.

3. The following uses shall require a special permit from the Planning Board:

a. Conversion of a single-family detached dwelling to multifamily use, subject to the following provisions:

- (1) The structure must have been in existence as a residential structure on March 15, 1939.
- (2) The total number of dwelling units after conversion shall not exceed the maximum number of single-family lots which could be attained on the parcel in conformance with the use and dimensional regulations of the underlying zoning district, as determined by the Planning Board.
- (3) In connection with an application for a special permit under this section, an applicant shall submit a plan conforming to the requirements for a preliminary subdivision plan under the Planning Board's rules and regulations for the subdivision of land, or an "approval not required plan" if applicable, indicating the number and layout of single-family dwelling lots attainable under the Zoning By-Law without any variance or other special permit, and without any waiver of said rules and regulations.
- (4) An application under this section shall be subject to the Site Plan Review provisions of Section IV I. of this By-Law, regardless of the gross floor area of the structure to be converted.
- (5) Any special permit issued under this section shall include the following conditions:
  - (a) the parcel for which the special permit has been granted shall not be further subdivided;
  - (b) the structure for which the special permit has been granted shall not be enlarged by any change to the exterior walls or roof;
  - (c) no variance of any sort shall be issued in conjunction with the use for which the special permit has been granted.

b. Assisted Living and Congregate Living Housing for the elderly, including non-profits, not-for-profits and for-profits, subject to the following conditions (1) - (10) for all new construction and for all rehabilitation/reconstruction of such use in an existing building where the existing footprint or floor area ratio (FAR) have increased; and subject to the following conditions (7) - (10) only for the rehabilitation/ reconstruction of such use in an existing building where the existing footprint and floor area ratio (FAR) have not increased:

- (1) the development shall be on a parcel or parcels of land of not less than 5 acres, or not less than 1 acre per 10 units or fraction thereof, whichever acreage calculation is greater in Single Residence and General Residence Districts;
- (2) the development shall be permitted only on a parcel or parcels of land located on a primary or collector roadway or with direct access to a primary or collector roadway;
- (3) the Floor Area Ratio (FAR) shall not exceed .25 in Residential zones. In a Business District or Office and Professional District, the specified Floor Area Ratio for the District shall apply;

- (4) the minimum front setback shall be 150 feet, of which at least 75 feet from the streetline shall be landscaped open space;
- (5) the minimum side setback shall be 50 feet, except where the development abuts a lot in single-family, two-family or three-family use, in which case the minimum side setback shall be 200 feet;
- (6) the maximum height of a structure (excluding chimneys, antennas and other appurtenances necessary for the operation of the building) in a Single Residence or General Residence District shall not exceed 2 1/2 stories and shall not exceed 35 feet when set back more than 300 feet of a single family, two-family or three-family residential lot line and shall not exceed 2 stories and shall not exceed 26 feet within 300 feet of a single family, two-family, or three-family residential lot line; in a Business District or Office and Professional District, the underlying height requirement shall apply;
- (7) developments adjoining or facing residential uses, shall provide year-round opaque screening at the time of occupancy, comprised of walls, fences, berms, or evergreen plantings;
- (8) all parking areas shall be provided with year-round opaque screening at the time of occupancy, comprised of walls, fences, berms, or evergreen plantings;
- (9) developments located in a Single Residence District or General Residence District shall be designed for compatibility with the residential character of the area;
- (10) developments shall be subject to Site Plan Review.

## G. DIMENSIONAL REGULATIONS

### 1. General Requirement

No division of land shall be made which results in the creation of any lot having dimensions smaller than the minimum required by this Section for the building or use located thereon within the district in which such lot is located

### 2. Table of Dimensional Regulations

Minimum lot area, frontage, lot width, setbacks and open space, and maximum height, lot coverage and floor area shall be as specified in the following table of Dimensional Regulations, subject to the further provisions of this Section:

District	Principal Building or Use	Lot Minimum		Minimum Setback		Minimum Landscaped Open Space Surface Ratio	Building Maximums		
		Area (s.f.)	Frontage (ft)	Front <sup>+</sup> (ft.)	Side (ft.)		Height	Lot Coverage	Floor Area Ratio
Single Residence R-4	One-family or two-family detached dwellings	43,560	100	30 or more	30	50%	3/35	15%	-
	Any other principal use	43,560	150	30 or more	30	50%	3/35	15%	-
R-3	One-family or two-family detached dwellings	20,000	100	30 or more	15	40%	3/35	25%	-
	Any other principal use	43,560	150	30 or more	30	50%	3/35	15%	-
R-2	One-family or two-family detached dwelling	12,000	65	30 or more	12	35%	3/35	30%	-
	Any other principal use	43,560	150	30 or more	30	50%	3/35	15%	-
R-1	One-family or two-family detached dwelling	8,000	65	30 or more	10	30%	3/35	35%	-
	Any other principal use	43,560	150	30 or more	30	50%	3/35	15%	-
General Residence G	One-family or two-family detached dwelling	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal use	43,560	150	30 or more	30	50%	3/40	15%	-
Neighborhood Bus B-1	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal use	4,000	-	**	-	5%***	3/40	33%	-
Community Bus B-2	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal use	8,000	65	25	15	20%	3/40	-	0.32
General Bus B-3	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal use	8,000	65	25	15	20%	3/40	-	0.32
General Bus B-4	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal use	10,000	65	25	15	20%	6/80	-	0.32
Business B	Any non-residential use	6,000	50	25	15	20%	6/80	-	0.32
	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
Central Business CB	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal or mixed use	-	-	10**	-	5%***	6/80	60%	2.0
Office/Professional P	Residential structure	8,000	65	30 or more	15	30%	3/40	35%	-
	Any other principal use	6,000	50	30 or more	15	20%	3/40	20%	0.32
Planned Re-use PR	One-family or two-family detached dwellings	20,000	100	30 or more	15	40%	3/40	25%	-
	Other uses permissible in Single Res. Districts	43,560	150	30 or more	30	50%	3/40	25%	-
Light Manufacturing M-1	Any non-residential use	6,000	50	50	15	20%	6/80	-	0.32
	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
General Manufacturing M	Any non-residential use	6,000	50	50	15	20%	6/80	-	0.32
	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
Open Space/ Recreation OR	Golf course or country club	50 ac	200	100	100	90%	3/40	5%	-
	Any other principal use	5 ac	200	100	100	80%	3/40	10%	-
Geriatric/Elderly G/E <sup>#</sup>	Any Principal Use	3.5 ac	200	20	15	-	3/40	-	0.32
Technology Park TP <sup>S</sup>	Any Principal Use	43,560	100	30	15	-	6/80	-	-

<sup>+</sup> Where shown as "30 or more" the minimum front setback shall be 30 feet from the sideline of a street over 40 feet in width, and 50 feet from the center line of a street 40 feet or less in width

<sup>++</sup> Minimum front setback as regulated, except where building lines have already been established in which case building lines must be maintained; to be used for landscaping, pedestrian and vehicular access. Additional uses within the front setback in the CBD are listed under Section IV G 11 a, herein. No parking in the front setback.

<sup>\*\*\*</sup> A portion of this requirement may be provided in the public right of way (street trees, etc.)

<sup>#</sup> See § IV G 10 for additional Dimensional Regulations for Geriatric Care/Elderly Housing District Uses, including regulations on setback requirements, floor area ratio calculations, and minimum landscape open space requirements within this district.

<sup>§</sup> See §§ III L 5 and III L 7 for additional Dimensional Regulations for Technology Park District uses, including floor area ratio regulations and minimum landscaped open space requirements within this District.

### 3. Lot Area Regulations

#### a. Lot Area Requirement

Where a minimum lot area is specified in Section IV G.2, no principal building or use shall be located on any lot of lesser area (such minimum lot area to be determined as set forth in these Lot Area Regulations, Section IV G.3), except as may be permitted hereinafter; and no such area shall include any portion of a street.

#### b. Residential Area Districts

The Single Residence and General Residence Districts are divided into four Area Districts, as follows:

- Area District No. 1, 2A and 2B (R-4);
- Area District No. 2C, 2D and 2E (R-3);
- Area District No. 3 (R-2); and
- Area District No. 4 (R-1 and G).

#### c. Irregularly-Shaped Lots

When the distance between any two points on lot lines is less than 50 feet, measured in a straight line, the smaller portion of the lot which is bounded by such straight line and such lot lines shall be excluded from the computation of the minimum lot area unless the distance along such lot lines between such two points is less than 150 feet in such cases where the Minimum Lot Area is less than 20,000 square feet, as set forth in the Table of Dimensional Regulations, Section IV G 2. Otherwise, when the distance between any two points is less than 80 feet, measured in a straight line, the smaller portion of the lot which is bounded by such straight line and such lot lines shall be excluded from the computation of the minimum lot area, unless the distance along such lot lines between such two points is less than 240 feet. In all cases, the principal use shall not be located on such excluded area of the lot.

#### d. Uplands Area Requirement

For the purpose of this Section, any lot laid out to be a buildable lot must contain upland area totaling at least 100 percent of the minimum lot area requirement for the zoning district in which the land is situated. In addition, a minimum of 70 percent of the required minimum lot area must be contiguous upland area, and shall be the location for the principal structure on the lot. Portions of a lot excluded from the computation of a minimum lot area, as provided under subsections IV G 3 c, above, shall not be used to meet the upland area requirements, herein.

A lot for single or two family residential use, shall be exempt from this subsection d Uplands Area Requirement, provided such lot conformed to all zoning requirements at the time of recording or endorsement.

The term "upland" is defined herein as land which is not "Land under Water Bodies and Waterways", "Freshwater Wetlands", or "Vernal Pool Habitat" as set forth in the Framingham Wetlands Protection By-Law [Town of Framingham By-Laws Article V, Section 18.2], as well as land which is not an area of special flood hazard, as described under subsection III H 1., herein.

#### 4. Lot Frontage and Width Regulations

##### a. Lot Frontage Requirement

Where a minimum lot frontage is specified in Section IV G.2, no principal building or use shall be located on a lot which fronts a lesser distance on a street, except as may be permitted hereinafter.

##### b. Lot Width Requirement

Each lot shall have a width such that the center of a circle having a minimum diameter of 80% of the required frontage of the lot can be passed along a continuous line from the sideline of the street along which the frontage of the lot is measured to any point of the building or proposed building on the lot without the circumference intersecting any side lot line.

In addition, each lot shall have a width such that the entire portion of the parcel from the lot frontage to the required front setback line shall have a minimum width equal to the required lot frontage as specified in Section IV G.2, and such that the portion of the lot where any line passes through a principal building on the lot shall also have a minimum width equal to the required lot frontage as specified in Section IV G.2.

#### 5. Setback Regulations

##### a. Front and Side Setback Requirements

Where a minimum depth of setback is specified in Section IV G.2, no building or structure shall be erected within the specified distance from the applicable lot line, except as permitted hereinafter.

##### b. Projections into Setbacks

1. Uncovered steps and ramps, and walls and fences no greater than six feet in height above the natural grade, may be permitted in a setback.

##### c. Corner Clearance

In any district where a front setback is required, no building, fence or other structure may be erected and no vegetation may be maintained between a plane two and one-half feet above curb level and a plane seven feet above curb level within that part of the lot bounded by the sidelines of intersecting streets and a straight line joining points on such sidelines 25 feet distant from the point of intersection of such sidelines or extensions thereof.

##### d. Side Setback Abutting Residential District

Where a side lot line of a lot in a non-residential district, abuts a Single Residence or General Residence Zoning District, there shall be a minimum side setback requirement for buildings on such lot of 30 feet; except in the Central Business (CB) or Neighborhood Business (B-1) Districts, where such minimum side setback requirement for buildings on such lot shall be 10 feet. This setback regulation for such lot in a non-residential district shall not be applicable if such lot is for a single family or two family residential use."

##### e. Determination of Lot Lines

Where the designation of a front or side lot line for the purpose of determining required yards is unclear because of the particular shape or type of lot, the Building Commissioner shall designate the appropriate front or side lot line.

##### f. Exception for Existing Alignment

In Single Residence, General Residence and Office and Professional Districts, if the alignment of existing principal buildings on adjacent lots on each side of a lot fronting the same street in the same district is nearer to the street line than the required front setback, the average of the existing alignments of all such buildings within 200 feet of said lot shall be the required front setback.

##### g. Special Permit for Limited Accessory Structures

1. Limited Accessory Structures – A structure that does not require a building permit, including but not limited to, a shed, dog house, pool house, oil or natural gas tank covers, wood storage bins, or any other similar accessory structure.



2. The Zoning Board of Appeals may authorize by Special Permit the placement of Limited Accessory Structures within the minimum side setback, provide that the board can find that the structure is in keeping with, and not substantially detrimental to, the surrounding neighborhood
3. Dimensional Regulations for Limited Accessory Structures – A Limited Accessory Structure:
  - a. Shall be no larger than 120 square feet of gross floor area,
  - b. Shall not be more than twelve (12) feet in height as measured from the average natural grade at a distance of up to three (3) feet from the structure,
  - c. Shall not be located within the required front setback or any closer to that setback than the primary structure.
  - d. For a residential use, the accessory structure may be located at a distance from the lot line not less than one-third (1/3) of the required minimum side setback
  - e. For a non-residential use, the accessory structure may be located at a distance from the lot line not less than one-half (1/2) of the required minimum side setback
4. No more than three (3) Limited Accessory Structure shall be permitted within the required side setbacks on any one lot

## 6. Open Space Regulations

### a. Open Space Requirement

Where a minimum percentage of open space is specified in Section IV G 2 , no principal building or use shall be located or substantially altered on any lot in which such space is not provided

### b. Open Space in Front Setback

In any district where a front setback is required, landscaped open space ten feet in depth shall be provided along the entire width of the lot at the front lot line. Said strip may be interrupted by necessary vehicular and walkway entrances and exits.

### c. Usable Open Space for One-family and Two-family Dwellings

All one-family and two-family detached dwellings shall have a minimum of 800 square feet of usable open space per bedroom

### d. Open Space in Setback Abutting Residential District or Uses

In any district where a non-residential use abuts or faces a residential zoning district or a single family or two family use, a landscaped open space buffer at a minimum depth of 15 feet, shall be provided and maintained in order to separate, both physically and visually, the residential use from the non-residential use; except in the Central Business (CB) or Neighborhood Business (B-1) Districts where such minimum open space depth shall be 5 feet. The landscaped open space buffer strip shall be continuous except for required vehicular access and pedestrian circulation

The buffer strip shall include a combination of deciduous and/or evergreen trees and lower-level elements such as shrubs, hedges, grass, ground cover, fences, planted berms, and brick or stone walls. Such open space buffer strips shall provide a strong visual barrier between uses at pedestrian level and shall create a strong impression of spatial separation.

### e. Landscaping Requirement

In every district and for all uses and structures, which are subject to site plan review, landscaping shall be provided in accordance with the purpose, intent, objectives and standards of Section IV K 8 of this By-Law, as feasible. All off-street parking plans and site plans, required under Sections IV B or IV I, shall include a landscape plan and planting schedule prepared by a registered landscape architect. Landscaped buffer strips along street right of ways shall be in accordance with this Section IV G 6 Open Space Regulations, except in Districts where a larger buffer is required. Site constraints shall be considered in applying the standards of Section IV K 8, which may be waived in accordance with Section IV K 10 c

## 7. Building Height and Bulk Regulations

### a. Maximum Height Requirement

Where a maximum height of buildings is specified in Section IV G 2 , no building or part of a building shall exceed the specified number of stories and furthermore, no building or part of a building shall exceed the specified feet above average finished grade, except as permitted hereinafter.

**b. Exceptions to Maximum Height Requirement**

1. The maximum height requirement specified in Section IV G 2. shall not apply to accessory structures or appurtenances normally built above the roof level and necessary for the operation of the building or use. Such structures shall not be intended for human occupancy, and shall be erected only to serve the purpose for which they are intended. Except for chimneys and penthouses for stairways and mechanical installations, no such accessory structure or appurtenance shall exceed a height of 80 feet from the average grade.
2. Steeples, monuments and towers not used for communication purposes and not intended for occupancy may be erected to a greater height than specified by Section IV G 2 if a special permit is granted by the Zoning Board of Appeals after a public hearing

**c. Bulk (Lot Coverage and Floor Area) Requirements**

For any building or group of buildings on a lot, including accessory buildings, the percentage of the lot covered by such buildings (Lot Coverage) or the ratio of the gross floor area of the building to the area of the lot (Floor Area Ratio) shall not exceed the maximum specified in Section IV G 2.

**d. Height Requirements Near Residential Districts**

In addition to the height limitations as set forth under subsection a. and subsection b. herein, the following additional requirements shall apply for all buildings (except for those in single-family or two family use), in non-residential zoning districts, when such building is in close proximity to a single residence or general residence zoning district.

1. Buildings located less than 50 feet from a single residence or general residence district shall be a maximum of 30 feet in height above finished grade.
2. In the Central Business District (CB) and Neighborhood Business District (B-1), buildings located less than 50 feet from a single residence or general residence district may be exempted by the above height restriction, up to a maximum of 40 feet in height above finished grade, by special permit, in accordance with the requirements of Section V E. of this By-Law, if the Special Permit Granting Authority determines that the proposed building would be consistent with the historic development pattern of the existing commercial center of the area, and that such building would not be more intrusive on the residential district than a building 30 feet in height. The Planning Board shall be the Special Permit Granting Authority under this subsection
3. In all non-residential zoning districts where the maximum building height for a use is designated as 6 stories and 80 feet above finished grade, as specified in Section IV G 2 Table of Dimensional Regulations, the following height requirement shall apply when such use is in close proximity to a single residence or general residence zoning district:

DISTANCE FROM RESIDENTIAL DISTRICT	BUILDING HEIGHT
equal to or greater than 50 but less than 200 feet	40 feet.
equal to or greater than 200 but less than 300 feet	50 feet.
equal to or greater than 300 but less than 400 feet	60 feet.
equal to or greater than 400 feet	80 feet

For the purposes of this subsection, when a zone line runs along a street, the width of the right of way of the street shall be included in the calculation for distance from a residential zoning district

**8. Exemptions from Dimensional Regulations**

**a. Single Lot Exemption for Single and Two-Family Use**

A lot for single or two-family residential use shall be exempt from any increase in area, frontage, width, setback (i.e., yard), lot coverage or depth requirements resulting from the adoption or amendment of this By-Law, provided that:

1. The lot was not held in common ownership with any adjoining land at the time of recording or endorsement, whichever occurs sooner;
2. The lot conformed to existing zoning requirements at such time;
3. The lot has at least 5,000 square feet of area and at least 50 feet of frontage; and
4. The lot conforms to the open space and lot coverage requirements and to any other provisions of this By-Law except for lot area, frontage and setback requirements

**b. Common Lot Exemption for Single and Two-Family Use**

A lot for single or two-family residential use shall be exempt from any increase in area, frontage, width, setback (i.e., yard), lot coverage or depth requirements resulting from the adoption or amendment of this By-Law for five years from the effective date of such adoption or amendment, provided that:

1. The plan for such lot was recorded or endorsed as of January 1, 1976;
2. The lot was held in common ownership with any adjoining land as of January 1, 1976;
3. The lot conformed to the existing zoning requirements as of January 1, 1976;
4. The lot has at least 7,500 square feet of area and at least 75 feet of frontage.

This exemption shall not apply to more than three such adjoining lots held in common ownership.

**c. Single and Two Family Residential Structure**

Alteration, reconstruction, extension or structural change (collectively "alteration") to a non-conforming single or two family residential structure, which is considered a non-conforming structure due to its location on a lot with insufficient area, width and/or frontage, shall not be considered an increase in the non-conforming nature of the structure and shall be permitted by right if, at the time of application, the structure and alteration will comply with all then current open space, lot coverage and building height requirements, and the alteration will comply with all then current setback requirements, as set forth in Section IV G. of these By-Laws, and further provided that such alteration does not result in the conversion of a structure from a single family use to a two-family use.

**9. Dimensional Regulations for Educational and Institutional Uses**

**a. General Requirement**

Educational and institutional uses listed in Section III A 1 e and located in a residential district shall be subject to the dimensional regulations specified by Section IV G 2 for buildings other than a one-family or two-family detached dwelling

**b. Exception for Family Day Care Homes**

Family day care homes, as listed in Section III A 1 d, must comply with the dimensional regulations of Section IV G 2 for a one-family detached dwelling in the district within which the facility is located

**c. Special Requirements for Large Facilities**

Facilities listed under Section III A 1 i shall be subject to the dimensional regulations of said section in lieu of the requirements of Section IV G 2

**10. Dimensional Regulations for Geriatric Care/Elderly Housing District Uses**

**a. Special Setback Requirements**

Buildings on adjoining lots within the Geriatric Care/Elderly Housing District must meet the setback requirements specified by Section IV G 2 for the district, but may be integrated with walkways and breezeways which interconnect buildings and provide pedestrian connections. Further, a minimum setback from the Geriatric Care/Elderly Housing District Boundary Line shall be as follows: 70 foot setback for a one-story or two-story building within the District, and

## I. SITE PLAN REVIEW

### 1. Purpose

The purpose of this section is to protect the health, safety, convenience and general welfare of the inhabitants of the Town by providing for a review of plans for uses and structures which may have significant impacts on traffic, municipal and public services and utilities, environmental quality, community economics, and community values in the Town.

### 2. General Provisions

The Planning Board shall conduct site plan review and approval. Notwithstanding any provision of this By-Law to the contrary, any structure, use, alteration or improvement which meets any of the following criteria (excluding subdivisions for detached single-family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under MGL Chapter 40A, Section 3) shall require site plan review and approval as set forth in this section:

- a. any new structure, or group of structures under the same ownership on the same lot or contiguous lots, or any substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which results in the development of any off-street parking or loading facilities (except for residences requiring fewer than five stalls) and less than 8,000 square feet of gross floor area, and except for residences requiring fewer than five stalls, any new construction or expansion, alteration or enlargement of a parking facility and/or off-street loading facility and/or any facility for the storage or sale of any type of new or used vehicle, including construction vehicles, truck trailers and/or any vehicle which would normally require licensing by the Commonwealth of Massachusetts shall be subject to the provisions of the first paragraph of Section IV I.5, herein with regard to Contents and Scope of Applications;
- b. any new structure, or group of structures under the same ownership on the same lot or contiguous lots, or any substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which results in the development of, redevelopment of, reuse of, change in use of, or an increase of at least 8,000 square feet of gross floor area, or which requires the provision of 30 or more new or additional parking spaces under this By-Law, or which results in a floor area ratio (FAR) greater than 0.32, shall be subject to this Section IV I. in its entirety;
- c. any new structure, group of structures, substantial improvement, substantial alteration, or change in use, which either results in an increase of 5,000 square feet of gross floor area or requires the addition of 20 or more parking spaces, when any portion of the lot or parcel of land on which said structure or use is located lies within 200 feet of a residential district, shall be subject to this Section IV I. in its entirety.

For purposes of this Section IV I, the calculation of increase in floor area shall be based on the aggregate of all new structures, improvements, alterations or enlargements, calculated from the date of enactment of this section.

### 3. Basic Requirements

- a. Notwithstanding anything contained in this By-Law to the contrary, no building permit shall be issued for, and no person shall undertake, any use, alteration or improvement subject to this section unless an application for site plan review and approval has been prepared for the proposed development in accordance with the requirements of this section, and unless such application has been approved by the Planning Board.
- b. No occupancy permit shall be granted by the Building Commissioner until the Planning Board has given its approval that the development and any associated off-site improvements conform to the approved application for site plan review and approval, including any conditions imposed by the Planning Board.

### 4. Application and Review Procedure

- a. Prior to the filing of an application pursuant to this section, the applicant, as defined in Section I E 1 herein, shall submit a preliminary draft of such application to the Building Commissioner, who shall advise the applicant as to the pertinent sections of this Zoning By-law.

- b. The applicant shall submit to the Planning Board ten (10) copies of the application for site plan approval, conforming to the requirements of this Section IV I. Upon receiving the completed application, the Planning Board shall forthwith transmit one copy each to the Building Commissioner, the Engineering Department, the Planning Department, the Police Department, the Fire Department, the Board of Public Works and such other departments and boards as the Planning Board may determine appropriate.
- c. Such agencies shall, within 35 days of receiving said copy, report to the Planning Board on (1) the adequacy of the data and the methodology used by the applicant to determine impacts of the proposed development and (2) the effects of the projected impacts of the proposed development. Said agencies may recommend conditions or remedial measures to accommodate or mitigate the expected impacts of the proposed development. Failure by any such agency to report within the allotted time shall constitute approval by that agency of the adequacy of the submittal and also that, in the opinion of that agency, the proposed project will cause no adverse impact.
- d. The Planning Board shall not render a decision on said application until it has received and considered all reports requested from Town departments and boards, or until the 35-day period has expired, whichever is earlier. Where circumstances are such that the 35-day period is insufficient to conduct an adequate review, the Planning Board may, at the written request of the applicant, extend such period to 60 days.
- e. The Planning Board shall hold a public hearing on any properly completed application within 65 days after filing, shall properly serve notice of such hearing, and shall render its decision within 90 days of said hearing. The hearing and notice requirements set forth herein shall comply with the requirements of G.L. c 40A section 11, and with the requirements of Section V L. of this By-Law. All costs of the notice requirements shall be at the expense of the applicant.
- f. In reviewing the impacts of a proposed development, the Planning Board shall consider the information presented in the application for site plan approval, including all items specified in Section IV I 5; all reports of Town departments submitted to the Planning Board pursuant to Section IV I 4 (c); and any additional information available to the Planning Board, submitted to the Planning Board by any person, official or agency, or acquired by the Planning Board on its own initiative or research.

## 5. Contents and Scope of Applications

An application for site plan review and approval under Section IV I 2 a shall be prepared by qualified professionals, including a Registered Professional Engineer, a Registered Architect, and/or a Registered Landscape Architect, and shall be limited to a parking plan, pursuant to subsection 5 f, herein, containing items 1-15 as set forth in subsection 5 a, below, an environmental impact assessment, as set forth in subsection 5 g (2), below, and a parking impact assessment, as set forth in subsection 5 g (5), below. The Planning Board may require additional information be provided by the applicant, including but not limited to a Traffic Impact Assessment, should traffic and circulation matters or other development related issues be deemed important considerations to a site plan evaluation and decision.

An application for site plan review and approval under Section IV I 2 b or 2 c shall be prepared by qualified professionals, including a Registered Professional Engineer, a Registered Architect, and/or a Registered Landscape Architect, and shall include:

- a. A site plan at a scale of one inch equals twenty feet (1"=20'), or such other scale as may be approved by the Planning Board, containing the following items and information:
  - 1. Topography of the property, including contours at a 2 foot interval based on the Mean Sea Level Datum of 1927
  - 2. Location of all buildings and lot lines on the lot, including ownership of lots, and street lines, including intersections within 300 ft
  - 3. Dimensions of proposed buildings and structures, including gross floor area, floor area ratio, total lot coverage of building, and breakdown of indoor and outdoor floor area as to proposed use. Area dimensions to include Lot Coverage of Building, Paved Surface Coverage, and Landscaped Open Space and Other Open Space, with percentages of these items to be provided and to total 100 percent of the lot area

4. Maximum seating capacity, number of employees, or sleeping units if applicable.
5. Locations and dimensions, including total ground coverage, of all driveways, maneuvering spaces and aisles, parking stalls and loading facilities, and proposed circulation of traffic.
6. Location of pedestrian areas, walkways, flow patterns and access points, and provisions for handicapped parking.
7. Location, size, and type of materials for surface paving, curbing, and wheel stops.
8. Location, dimension, type and quantity of materials for open space, planting, and buffers where applicable.
9. Provisions for storm water drainage affecting the site and adjacent parcels, and snow disposal areas. Drainage computations and limits of floodways shall be shown where applicable.
10. Polar diagram showing direction and intensity of outdoor lighting, indicating fixture height, location, type of lighting, and wattage.
11. Identification of parcel by sheet, block, and lot number of Assessor's Maps.
12. Planning Board Signature Block at approximately the same location on each page of the submitted plans.
13. Zoning Table to be located on both the front page of the submitted plans and on the Parking Plan/Site Plan page.
14. Water service, sewer, waste disposal, and other public utilities on and adjacent to the site.
15. Any additional information required by the Planning Board to ensure compliance with this section. The Planning Board may waive any of the above requirements.

For convenience and clarity, this information may be shown on one or more separate drawings.

- b. A landscape plan at the same scale as the site plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including planting areas with size and type of stock for each shrub or tree.
- c. An isometric line drawing (projection) at the same scale as the site plan, showing the entire project and its relation to existing areas, buildings and roads for a distance of 100 feet from the project boundaries.
- d. A locus plan at a scale of one inch equals 100 feet (1"=100'), or such other distance as may be approved by the Planning Board, showing the entire project and its relation to existing areas, buildings and roads for a distance of 1,000 feet from the project boundaries, or such other distance as may be approved or required by the Planning Board.
- e. Building elevation plans at a scale of one-quarter inch equals one foot (1/4"=1'-0") or one-half inch equals one foot (1/2"=1'-0") or such other scale as may be approved by the Planning Board, showing all elevations of all proposed buildings and structures and indicating the type and color of materials to be used on all facades.
- f. A parking plan, at the same scale as the site plan.
- g. A Development Impact Statement which shall describe potential impacts of the proposed development, compare them to the impacts of uses which are or can be made of the site without a requirement for site plan review, identify all significant positive or adverse impacts, and propose an acceptable program to prevent or mitigate adverse impacts. The Development Impact Statement shall consist of the following five elements:

(1) Traffic Impact Assessment

- (a) **Purpose:** To document existing traffic conditions in the vicinity of the proposed project, to describe the volume and effect of projected traffic generated by the proposed project, and to identify measures proposed to mitigate any adverse impacts on traffic
- (b) **Format and Scope:**
  - (i) Existing traffic conditions: average daily and peak hour volumes, average and peak speeds, sight distances, accident data, and levels of service (LOS) of intersections and streets likely to be affected by the proposed development. Generally, such data shall be presented for all streets and intersections adjacent to or within 1000 feet of the project boundaries, and shall be no more than 12 months old at the date of application, unless other data are specifically approved by the Planning Board. Where a proposed development will have an impact on a critical intersection or intersections beyond 1,000 feet of the project boundary, particularly intersections of arterial and collector roadways which are integral to the circulation of the proposed development, the Planning Board may require that such intersections beyond 1,000 feet of the project boundary be included in the analysis of traffic conditions.
  - (ii) Projected traffic conditions for design year of occupancy: statement of design year of occupancy, background traffic growth on an annual average basis, impacts of proposed developments which have already been approved in part or in whole by the Town
  - (iii) Projected impact of proposed development: projected peak hour and daily traffic generated by the development on roads and ways in the vicinity of the development; sight lines at the intersections of the proposed driveways and streets; existing and proposed traffic controls in the vicinity of the proposed development; and projected post-development traffic volumes and levels of service of intersections and streets likely to be affected by the proposed development (as defined in (i) above)

(2) Environmental Impact Assessment

- (a) **Purpose:** To describe the impacts of the proposed development with respect to on-site and off-site environmental quality
- (b) **Format and Scope:**
  - (i) Identification of potential impacts: description and evaluation of potential impacts on the quality of air, surface water, and ground water adjacent to or directly affected by the proposed development; on-site or off-site flooding, erosion, and/or sedimentation resulting from alterations to the project site, including grading changes and increases in impervious area; on-site or off-site hazards from radiological emissions or other hazardous materials; adverse impacts on temperature and wind conditions on the site and adjacent properties; impacts on solar access of adjacent properties; and off-site noise or light impacts
  - (ii) Systems capacity: evaluation of the adequacy of existing or proposed systems and services for water supply and disposal of liquid and solid wastes
  - (iii) Proposed mitigation measures: description of proposed measures for mitigation of any potential adverse impacts identified above.

(3) Fiscal Impact Assessment

- (a) Purpose: To evaluate the fiscal and economic impacts of the proposed development on the Town.
- (b) Format and Scope:
  - (i) Projections of costs arising from increased demands for public services and infrastructure
  - (ii) Projections of benefits from increased tax revenues, employment (construction and permanent), and value of public infrastructure to be provided.
  - (iii) Projections of the impacts of the proposed development on the values of adjoining properties.
  - (iv) Five-year projection of increased Town revenues and costs resulting from the proposed development.

(4) Community Impact Assessment

- (a) Purpose: To evaluate the impacts of the proposed development with respect to the Town's visual and historic character and development goals
- (b) Format and Scope:
  - (i) Site design and neighborhood impact: evaluation of the relationship of proposed new structures or alterations to nearby pre-existing structures in terms of character and intensity of use (e.g., scale, materials, color, door and window size and locations, setbacks, roof and cornice lines, and other major design elements); and of the location and configuration of proposed structures, parking areas, and open space with respect to neighboring properties
  - (ii) Historic impact: identification of impacts on significant historic properties, districts or areas, or archaeological resources (if any) in the vicinity of the proposed development.
  - (iii) Development goals: evaluation of the proposed project's consistency or compatibility with existing local and regional plans.

(5) Parking Impact Assessment

- (a) Purpose: To document existing neighborhood parking conditions, to evaluate the off-site impacts of the proposed parking, and to mitigate any adverse parking impacts on the neighborhood.
- (b) Format and Scope:
  - (i) existing off-site neighborhood parking conditions, including identification of streets likely to be affected by the proposed development;
  - (ii) projected impact of proposed development;
  - (iii) proposed mitigation measures for adverse impacts identified above.

The Planning Board, at its discretion and based on a preliminary assessment of the scale and type of development proposed, may waive or modify the requirements for submission of any of the elements of the development impact assessment listed in this paragraph. Such waiver shall be issued in writing with supporting reasons.

6. Development Impact Standards

The following standards shall be used in evaluating projected impacts of proposed developments; provided, however, that an application for site plan review and approval under Section IV I.2 a shall be evaluated using only the standards contained in Section IV I.6 b and Section IV I.6 e, below. New building construction or other site alteration shall be designed, to the extent feasible, and 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 comply with the following standards:



a. Traffic Impact Standards

- (1) The "level of service" (LOS) of all impacted intersections and streets shall be adequate following project development, or the total value of off-site traffic improvements required or approved by the Planning Board as a condition of approval in any location within the Town affected by the proposed project shall be equal to a minimum of three per cent (3%) of the total development cost of the proposed project. For purposes of this standard:
  - (i) "level of service" (LOS) shall be determined according to criteria set forth by the Transportation Research Board of the National Research Council;
  - (ii) "impacted" means intersections projected to receive at least five per cent (5%) of the expected traffic generated by the proposed development, either based upon the total anticipated peak hour traffic generated by the proposed project, or based upon the total anticipated average daily traffic counts generated by the proposed project;
  - (iii) "adequate" shall mean a level of service of "B" or better for rural, scenic and residential streets and for all new streets and intersections to be created in connection with the project; and "D" or better for all other streets and intersections; and
  - (iv) "total development cost" shall mean the total of the cost or value of land and all development-related improvements, and shall be determined on the basis of standard building or construction costs, such as published in the Engineering News Record or other source acceptable to the Planning Board, for the relevant type of structure and use
- (2) The proposed site plan shall minimize points of traffic conflict, both pedestrian and vehicular. The following guidelines shall be used to achieve this standard:
  - (i) Entrance and exit driveways shall be so located and designed as to achieve maximum practicable distance from existing and proposed access connections from adjacent properties
  - (ii) Where possible, driveways shall be located opposite similar driveways
  - (iii) Sharing of access driveways by adjoining properties and uses is encouraged
  - (iv) Left-hand turns and other turning movements shall be minimized
  - (v) Driveways shall be so located and designed as to discourage the routing of vehicular traffic to and through residential streets
  - (vi) Pedestrian and bicycle circulation shall be separated from motor vehicle circulation as far as practicable.

b. Environmental Impact Standards

- (1) The proposed development shall not create any significant emission of noise, dust, fumes, noxious gases, radiation, or water pollutants, or any other similar significant adverse environmental impact
- (2) The proposed development shall not increase the potential for erosion, flooding or sedimentation, either on-site or on neighboring properties; and shall not increase rates of runoff from the site to the satisfaction of the Town Engineer and Board of Public Works. Provision for attenuation of runoff pollutants and for ground water recharge shall be included in the proposal. The proposed development shall comply with the latest accepted state and federal Best Management Practices for water quality mitigation and management
- (3) The design of the proposed development shall minimize the destruction of unique natural features
- (4) The location and configuration of proposed structures, parking areas and open space shall be designed so as to minimize any adverse impact on temperature levels or wind velocities on the site or adjoining properties

- (5) Outdoor lighting, including lighting on the exterior of a building or lighting in parking areas, shall be arranged to minimize glare and light spillover to neighboring properties
- (6) Proposed structures, and existing structures adjoining the project site shall be free from shadows created by the proposed development from 9:00 a.m. to 3:00 p.m. on December 21. Proposed development within the Central Business District shall be exempt from this standard
- (7) All outdoor lighting shall be designed and located so that a line drawn from the height of the luminaire along the angle of cutoff intersects the ground at a point within the development site; except that this requirement shall not apply to (a) low-level intensity pedestrian lighting with a height of less than ten feet, or (b) security lighting directed off the wall of a principal structure

c. Fiscal Impact Standards

- (1) Projected positive net fiscal flow for first five years after design year of occupancy

d. Community Impact Standards

- (1) Design elements shall be compatible with the character and scale of neighboring properties and structures.
- (2) The design of the development shall minimize the visibility of visually degrading elements such as trash collectors, loading docks, etc
- (3) The design of the development shall be consistent or compatible with existing local plans, including plan elements adopted by the Planning Board, Conservation Commission, Parks Commission, and other Town bodies having such jurisdiction.
- (4) The design of the development shall minimize earth removal and volume of cut and fill. Any grade changes shall be in keeping with the general appearance of neighboring developed areas
- (5) The design of the development shall minimize the area over which existing vegetation is to be removed. Tree removal shall be minimized and, if established trees are to be removed, special attention shall be given to the planting of replacement trees.

e. Parking Standards

- (1) The facility will not create a hazard to abutters, vehicles or pedestrians
- (2) Appropriate access for emergency vehicles will be provided to the principal structure.
- (3) Adverse impacts on the abutters, residents, or businesses in the area or on the character of the neighborhood will be mitigated satisfactorily.

7. Decision

a. Specific Findings Required

Prior to granting approval or disapproval, the Planning Board shall make written findings with supporting documentation as specified below. Such findings shall pertain to the entire proposed development including any site plan or design modifications imposed by the Planning Board as a condition of its approval, and any off-site improvements proposed by the applicant or required by the Planning Board as a condition of its approval

b. Approval

The Planning Board shall approve an application, based on its review of the projected development impacts and the proposed methods of mitigating such impacts, if said Board finds that the proposed development is in conformance with this By-Law, after considering whether the proposed development will comply, to the extent feasible, with the standards set forth in Sections IV I 6 (a) - (e); provided, however, that an application for site plan review and

approval under Section IV I 2 a shall be evaluated using only the standards contained in Section IV I 6 b. and Section IV I 6 e.

c. Disapproval

- (1) The Planning Board may reject a site plan that fails to furnish adequate information required by the by-law;
- (2) The Planning Board may reject a site plan where, although proper in form, the plan depicts a use or structure so intrusive on the needs of the public in one regulated aspect or another that rejection by the board would be tenable.

8. Conditions, Limitations and Safeguards

In granting approval of an application the Planning Board may impose conditions, limitations and safeguards which shall be in writing and shall be a part of such approval. Such conditions may include, among other matters and subjects:

- a. Controls on the location and type of access to the site;
- b. Controls on the number of vehicles that arrive or depart during the morning and/or evening peak hours (including controls on the maximum number of vehicles which may use the off-street parking areas during said periods);
- c. Requirements for off-site improvements up to a maximum value of six per cent (6%) of the total development cost of the proposed project to improve the capacity and safety of roads, intersections, pedestrian ways, water, sewer, drainage, and other public facilities which are likely to be affected by the proposed development;
- d. Requirements for donation and/or dedication of land for right-of-way to provide for future roadway and/or intersection widenings or improvements;
- e. Requirements for securing the performance of all proposed work, including proposed off-site improvements, by either or both of the following methods: (1) a performance bond, a deposit of money, negotiable securities, letter of credit, or bank passbook in an amount determined by the Planning Board to be sufficient to cover the cost of all or any part of the improvements required as conditions of approval; (2) a covenant running with the land, executed and duly recorded by the owner of record, whereby the required improvements shall be completed before the property may be conveyed by other than a mortgage deed.
- f. Conditions to minimize off-site impacts on traffic and environmental quality during construction
- g. Requirements for reductions in the scale of the proposed development, including reductions in height, floor area, or lot coverage, provided, however, that any such reduction be limited to that which is reasonably necessary to reduce the level of impact of the proposed development to a level that will permit the Board to make the written findings required under Section IV I 7 (a) herein
- h. requirements for screening parking facilities from adjoining premises or from the street by walls, fences, plantings, or other devices to mitigate adverse impacts;
- i. conditions to mitigate adverse impacts to the neighborhood and abutters, including but not limited to adverse impacts caused by noise, dust, fumes, odors, lighting, headlight glare, hours of operation, or snow storage

The applicant, when other than the owner(s), and the owner(s) of land will be responsible for mitigation measures or conditions which are required as part of a favorable decision for issuance of site plan approval.

## 9. Administration

- a. The Planning Board shall establish and may periodically amend rules and regulations relating to the administration of this section, including additional regulations relating to the scope and format of reports required hereunder.
- b. The Planning Board shall establish and may periodically amend a schedule of fees for all applications under this section. No application shall be considered complete unless accompanied by the required fees.
- c. The Planning Board shall be responsible for deciding the meaning or intent of any provision of this section which may be unclear or in dispute.
- d. Any person aggrieved by a decision of the Planning Board with regard to Site Plan Review may appeal such decision to a court having jurisdiction, in accordance with Massachusetts General Laws, Chapter 40A, Section 17.

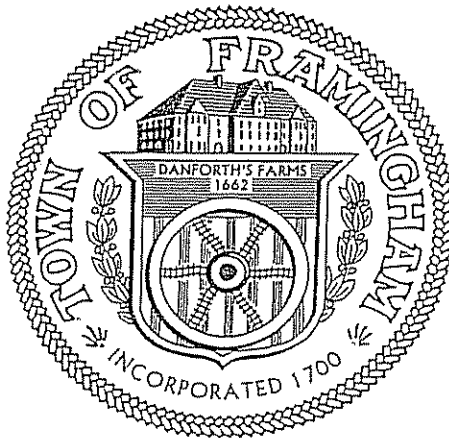
## 10. Separability

The invalidity of one or more provisions or clauses of this section IV I. shall not invalidate or impair the section as a whole or any other part hereof.

# TOWN MEETING ACTION

Three certified copies of the main motion, or amended main motion voted by town meeting, with the date and votes thereon.

TOWN OF FRAMINGHAM, MASSACHUSETTS



AUGUST 3, 2005 SPECIAL TOWN MEETING

VALERIE MULVEY, TOWN CLERK

# *Town of Framingham Special Town Meeting August 3, 2005*

## *ARTICLE 1*

To see if the Town will vote to amend the Zoning By-Law of the Town of Framingham as follows:

Amend Section III.A.1. by deleting the existing words in Paragraph i. and replacing with the following words.

“Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structure shall be subject to regulations concerning the bulk and height of structures, yard size, lot area, open space, parking, building coverage, and site plan review requirements in accordance with the provisions of this By-Law.”

Amend Section IV.I. Site Plan Review, Subsection 2, General Provisions, by deleting the following words in the parenthesis as they appear in the second sentence:

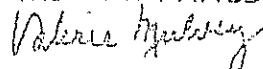
“(excluding subdivisions for detached single-family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under MGL Chapter 40A, Section 3)”

Sponsor: Planning Board

August 3, 2005 Voted: That Town Meeting amend the Zoning Bylaw of the Town of Framingham as set forth under Article 1 of the August 3, 2005 Special Town Meeting as printed in the handout, as amended.

117 voting in favor, 2 opposed, 4 abstentions

A TRUE COPY ATTEST:



TOWN CLERK, FRAMINGHAM

*Town of Framingham  
Special Town Meeting  
August 3, 2005*

*ARTICLE 1  
AMENDMENTS*

August 3, 2005 Voted: That the following proposed language, amending Section III A.2, be deleted from the proposed amendments in Article 1:

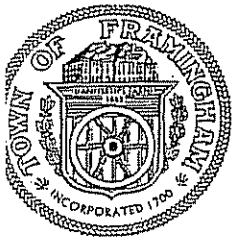
"However, the Planning Board shall be the Special Permit Granting Authority for uses under this section that require a public hearing before the Planning Board pursuant to other provisions of the Zoning Bylaw herein."

August 3, 2005 Voted: That Article 1 be amended by inserting the following words after the word structures, "frontage on an existing public way":

Section III A.1 i would then read as follows:

"i. Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structures shall be subject to reasonable regulations concerning the bulk and height of structures, frontage on an existing public way, and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements"

A TRUE COPY ATTEST:  
*Nakia Mulvey*  
TOWN CLERK, FRAMINGHAM



## FRAMINGHAM PLANNING BOARD

MEMORIAL BUILDING • ROOM B-37 • 150 CONCORD STREET • FRAMINGHAM, MA 01702-8373  
TELEPHONE [508] 620-4837 • FAX [508] 872-0523 • EMAIL: planning.board@framinghamma.org

### PROPOSED ZONING AMENDMENTS

#### Section III.A. Single Residence

1. Amend Section III.A.1.e. by striking the words "public and religious schools and private and", "churches or other places of worship; parish house", "setback, side and rear yard" and "and/or the uses not otherwise covered" and replacing with new wording to read as follows.

Conform III.A.1.e. to proposed new text in III.A.1.i. as follows:

e. Public buildings and grounds not set forth in subsection i. herein; public hospitals and dormitories accessory thereto; passenger stations; water towers; reservoirs; amateur radio towers; private permanent type swimming pools accessory to residential use, subject to ~~set back~~ all dimensional requirements of the District.

*The purpose of the amendment is to conform III.A.1.e. to the proposed new text in III.A.1.i.*

2. Amend Section III.A.1.i. by deleting in its entirety the existing subsection and replacing with the following new subsection i.

"i. Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structures shall be subject to reasonable regulations concerning the bulk and height of structures, and determining yard sizes, lot area, setbacks, open space, parking, and building coverage requirements ~~and site plan review requirements in accordance with the provisions of this By-law~~

*The purpose of this amendment is to make the new subsection consistent with the language in MGL c. 40A, Sect. 3.*

- 3.a. Amend the Section III.A.2. by adding the following sentence after the first sentence.

"However, the Planning Board shall be the Special Permit Granting Authority for uses under this section that require a public hearing before the Planning Board pursuant to other provisions of the Zoning By-Law herein "

- 3.b. And further amend Section III.A.2 a. by deleting this paragraph as follows and reformatting accordingly.

a. ~~Charitable and welfare institutions except as to uses permitted by reason of compliance with paragraph III.A.1.i. of the Bylaw.~~

*The purpose is to eliminate any conflict with the new section III.A.1.i. and revisions to IV.I. and to allow for concurrent hearings before the Planning Board streamlining the review process.*

#### Section IV.G.9.

Special Town Mtg August 3, 2005

8/16/2005

A TRUE COPY ATTEST:

*Valerie M. M... ..*

TOWN CLERK



4. Amend Section IV.G.9. by deleting in its entirety.

*The purpose of this amendment is to again remove any conflicts with the revisions to Sections III.A. and IV.I.*

#### Section IV.I. Site Plan Review

5. Amend Section IV.I.2. by deleting the following words in the first sentence as follows:

"(excluding subdivisions for detached single family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under M G L. Chapter 40A, Section 3)"

*The purpose is not to preclude exempt uses from site plan review.*

6. Amend Section IV.I.2.c. by striking the numbers and words "5,000" and "the addition of 20" and inserting in place thereof the numbers and words as follows.

"c. any new structure, group of structures, substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which either results in the development, redevelopment, reuse, change in use, or an increase of 3,000 square feet of gross floor area or requires 5 or more parking spaces or an off-street loading facility, when any portion of any lot or parcel of land on which said structure or use is located in or lies within 200 feet of a residential district, shall be subject to this Section IV I. in its entirety."

*The purpose of this amendment is to provide the requirement for site plan review for uses listed under the new Section III.A.1.i.*

7. Amend Section IV.I.3. by reformatting existing paragraph b. to c. and adding a new paragraph b. as follows.

"b. The Planning Board, at its discretion and based on a preliminary assessment of the scale and type of development proposed, may waive or modify the requirements for submission of any of the elements in Subsection 5 and the development impact standards in Subsection 6. Such waiver shall be issued in writing with supporting reasons."

*The purpose of this amendment is to provide the Board with the ability to grant reasonable waivers from the submission requirements and standards under Subsections 5 and 6 for exempt uses.*

# *Town of Framingham Special Town Meeting August 3, 2005*

## *ARTICLE 1*

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Amend Section IV.I. Site Plan Review, Subsection 2, General Provisions, by deleting the following words in the parenthesis as they appear in the second sentence:

"(excluding subdivisions for detached single-family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under MGL Chapter 40A, Section 3)"

Sponsor: Planning Board

August 3, 2005 Voted: That Town Meeting amend the Zoning Bylaw of the Town of Framingham as set forth under Article 1 of the August 3, 2005 Special Town Meeting as printed in the handout, as amended.

117 voting in favor, 2 opposed, 4 abstentions

A TRUE COPY ATTEST:  
*Valerie Mulvey*  
TOWN CLERK, FRAMINGHAM

*Town of Framingham  
Special Town Meeting  
August 3, 2005*

*ARTICLE 1  
AMENDMENTS*

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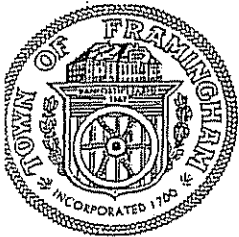
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A TRUE COPY ATTEST:  
*Valerie M. Gentry*  
TOWN CLERK, FRAMINGHAM



## FRAMINGHAM PLANNING BOARD

MEMORIAL BUILDING • ROOM B-37 • 150 CONCORD STREET • FRAMINGHAM, MA 01702-8373  
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1. Amend Section III.A.1.e. by striking the words "public and religious schools and private and", "churches or other places of worship; parish house", "setback, side and rear yard" and "and/or the uses not otherwise covered" and replacing with new wording to read as follows.

Conform III A 1 e. to proposed new text in III A.1 i. as follows:

e. Public buildings and grounds not set forth in subsection i. herein; public hospitals and dormitories accessory thereto; passenger stations; water towers; reservoirs; amateur radio towers; private permanent type swimming pools accessory to residential use, subject to set-back all dimensional requirements of the District.

*The purpose of the amendment is to conform III.A.1.e. to the proposed new text in III.A.1.i.*

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- 3.a. Amend the Section III.A.2. by adding the following sentence after the first sentence.

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~~a Charitable and welfare institutions except as to uses permitted by reason of compliance with paragraph III.A.1.i. of the Bylaw.~~

*The purpose is to eliminate any conflict with the new section III.A.1.i. and revisions to IV.I. and to allow for concurrent hearings before the Planning Board streamlining the review process.*

#### Section IV.G.9.

Special Town Mtg August 3, 2005

8/16/2005

A TRUE COPY ATTEST:

*Valerie Mackenzie*  
TOWN CLERK FRAMINGHAM

4. Amend Section IV.G.9. by deleting in its entirety.

*The purpose of this amendment is to again remove any conflicts with the revisions to Sections III.A. and IV.I.*

Section IV.I. Site Plan Review

5. Amend Section IV.I.2. by deleting the following words in the first sentence as follows:

"(excluding subdivisions for detached single family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under M.G.L. Chapter 40A, Section 3)"

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6. Amend Section IV.I.2.c. by striking the numbers and words "5,000" and "the addition of 20" and inserting in place thereof the numbers and words as follows.

"c. any new structure, group of structures, substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which either results in the development, redevelopment, reuse, change in use, or an increase of 3,000 square feet of gross floor area or requires 5 or more parking spaces or an off-street loading facility, when any portion of any lot or parcel of land on which said structure or use is located in or lies within 200 feet of a residential district, shall be subject to this Section IV.I. in its entirety."

*The purpose of this amendment is to provide the requirement for site plan review for uses listed under the new Section III.A.1.i.*

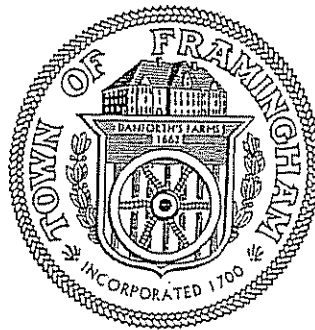
7. Amend Section IV.I.3. by reformatting existing paragraph b. to c. and adding a new paragraph b. as follows.

"b. The Planning Board, at its discretion and based on a preliminary assessment of the scale and type of development proposed, may waive or modify the requirements for submission of any of the elements in Subsection 5 and the development impact standards in Subsection 6. Such waiver shall be issued in writing with supporting reasons."

*The purpose of this amendment is to provide the Board with the ability to grant reasonable waivers from the submission requirements and standards under Subsections 5 and 6 for exempt uses.*

FORM 2

FINAL VERSION OF BY-LAW AS AMENDED



## TOWN OF FRAMINGHAM

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### III. USE AND DIMENSIONAL REGULATIONS

#### A. SINGLE RESIDENCE

1. No building or structure shall be used or arranged or designed to be used in any part and no change shall be made in the use of land or premises, except for one or more of the following purposes:
  - a. A detached dwelling for one family
  - b. The taking of boarders or the letting or renting of rooms by a resident family in a dwelling; but no dwelling so used shall be enlarged, but may be remodeled for the same or like purpose
  - c. Home occupations and home offices, as accessory uses within single family dwellings, or buildings accessory thereto, subject to the following conditions:
    - (1) The home occupation or home office shall be clearly incidental and secondary to the use of the dwelling as a residence, shall be located within the dwelling unit or a single accessory building, and shall not change the residential character thereof.
    - (2) The area utilized for the purpose of the home occupation or home office shall not exceed the smaller of (a) twenty-five (25) per cent of the total floor area of the dwelling unit or (b) four hundred (400) square feet.
    - (3) In a home occupation, not more than one (1) non-resident full-time employee, or equivalent thereof, may be employed in a secretarial or like position. In a home office, not more than two (2) non-resident full-time employees, or equivalent thereof, may be employed. Non-resident employees in a home office need not be secretarial or the like, but shall be employed in a capacity supportive of the practice of the resident professional.
    - (4) Not more than three (3) customers, clients, pupils, or patients for business or instruction shall be present at any one time. Customers, clients, etc. shall be present only between the hours of 8:00 a.m. and 9:00 p.m., Monday through Saturday.
    - (5) There shall be no exterior display or storage of goods or materials, and no exterior indication of the home office or occupation other than one non-illuminated identification sign not to exceed two (2) square feet in area.
    - (6) There shall be no noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in a residential area.
  - d. Family day care home, as an accessory use to a dwelling, allowing not more than six children in care, provided that said dwelling and provider have received a license from the Office for Children to provide family day care, as defined by Chapter 282 of the General Laws
  - e. Public buildings and grounds not set forth in subsection i. herein; public hospitals and dormitories accessory thereto; passenger stations; water towers; reservoirs; amateur radio towers; private permanent type swimming pools accessory to residential use, subject to all dimensional requirements of the District
  - f. Farms, greenhouses, nurseries and truck gardens; stock farms, cemeteries and the raising of live stock and fowls subject to such conditions as may be prescribed by the Board of Health
  - g. A garage on the same lot or in the same building to which it is accessory and in which no business or industry is conducted, except such necessary repair work as is not of a hazardous nature. Garage space shall not be provided on such lot for more than two motor vehicles, except that space for one additional motor vehicle may be provided for each 2,000 square feet of area by which the lot area exceeds 4,000 square feet, but space shall not be provided for more than five motor vehicles in any case. Not more than one commercial vehicle shall be stored on such lot
  - h. Private stables subject to such conditions as may be prescribed by the Board of Health

- i. Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structures shall be subject to reasonable regulations concerning the bulk and height of structures, frontage on an existing public way, and determining yard sizes, lot area, setbacks, open space, parking, and building coverage requirements
2. The following uses shall require a special permit from the Zoning Board of Appeals:
  - a. Licensed establishment for the care of sick, aged, crippled or convalescent persons.
  - b. Private and public golf clubs provided the same are located on a parcel or parcels of land of not less than 50 acres.
  - c. Outdoor recreational facilities such as swimming pools, tennis courts (but not including driving ranges or miniature golf) owned or operated by a non-government agency, subject to the following provisions:
    - (1) The use shall not be conducted as a private gainful business
    - (2) No accessory structure shall be located nearer any lot line than seventy (70) feet
  - d. Conversion of single-family detached dwellings, in existence on March 15, 1939, to use as two-family dwellings, subject to the following provisions:
    - (1) The lot and structure shall conform to the existing area, frontage, width, setback, and lot coverage requirements applicable to the zoning district in which they are located. The Zoning Board of Appeals shall not grant a special permit for a nonconforming lot or structure.
    - (2) The ground coverage of the structure shall not be increased by more than ten percent, nor the height by raising the roof or otherwise. This restriction shall not apply to the construction of porches, bay windows, or similar accessory structures not exceeding four hundred square feet in area, nor to the addition of dormer windows or gables not over twelve feet in width upon the existing roof
    - (3) Off-street parking shall be provided for both dwelling units in accordance with the requirements set forth in Section IV B , including without limitation the requirements for number of parking spaces and setbacks from lot lines. A minimum of 200 square feet of parking area shall be provided for each required parking space.
3. The following uses shall require a special permit from the Planning Board:
  - a. Conversion of a single-family detached dwelling to multifamily use, subject to the following provisions:
    - (1) The structure must have been in existence as a residential structure on March 15, 1939.
    - (2) The total number of dwelling units after conversion shall not exceed the maximum number of single-family lots which could be attained on the parcel in conformance with the use and dimensional regulations of the underlying zoning district, as determined by the Planning Board
    - (3) In connection with an application for a special permit under this section, an applicant shall submit a plan conforming to the requirements for a preliminary subdivision plan under the Planning Board's rules and regulations for the subdivision of land, or an "approval not required plan" if applicable, indicating the number and layout of single-family dwelling lots attainable under the Zoning By-Law without any variance or other special permit, and without any waiver of said rules and regulations
    - (4) An application under this section shall be subject to the Site Plan Review provisions of Section IV I of this By-Law, regardless of the gross floor area of the structure to be converted
    - (5) Any special permit issued under this section shall include the following conditions:
      - (a) the parcel for which the special permit has been granted shall not be further subdivided;
      - (b) the structure for which the special permit has been granted shall not be enlarged by any change to the exterior walls or roof;
      - (c) no variance of any sort shall be issued in conjunction with the use for which the special permit has been granted

b. Assisted Living and Congregate Living Housing for the elderly, including non-profits, not-for-profits and for-profits, subject to the following conditions (1) - (10) for all new construction and for all rehabilitation/reconstruction of such use in an existing building where the existing footprint or floor area ratio (FAR) have increased; and subject to the following conditions (7) - (10) only for the rehabilitation/ reconstruction of such use in an existing building where the existing footprint and floor area ratio (FAR) have not increased:

- (1) the development shall be on a parcel or parcels of land of not less than 5 acres, or not less than 1 acre per 10 units or fraction thereof, whichever acreage calculation is greater in Single Residence and General Residence Districts;
- (2) the development shall be permitted only on a parcel or parcels of land located on a primary or collector roadway or with direct access to a primary or collector roadway;
- (3) the Floor Area Ratio (FAR) shall not exceed .25 in Residential zones. In a Business District or Office and Professional District, the specified Floor Area Ratio for the District shall apply;
- (4) the minimum front setback shall be 150 feet, of which at least 75 feet from the streetline shall be landscaped open space;
- (5) the minimum side setback shall be 50 feet, except where the development abuts a lot in single-family, two-family or three-family use, in which case the minimum side setback shall be 200 feet;
- (6) the maximum height of a structure (excluding chimneys, antennas and other appurtenances necessary for the operation of the building) in a Single Residence or General Residence District shall not exceed 2 1/2 stories and shall not exceed 35 feet when set back more than 300 feet of a single family, two-family or three-family residential lot line and shall not exceed 2 stories and shall not exceed 26 feet within 300 feet of a single family, two-family, or three-family residential lot line; in a Business District or Office and Professional District, the underlying height requirement shall apply;
- (7) developments adjoining or facing residential uses, shall provide year-round opaque screening at the time of occupancy, comprised of walls, fences, berms, or evergreen plantings;
- (8) all parking areas shall be provided with year-round opaque screening at the time of occupancy, comprised of walls, fences, berms, or evergreen plantings;
- (9) developments located in a Single Residence District or General Residence District shall be designed for compatibility with the residential character of the area;
- (10) developments shall be subject to Site Plan Review.

## G. DIMENSIONAL REGULATIONS

### 1. General Requirement

No division of land shall be made which results in the creation of any lot having dimensions smaller than the minimum required by this Section for the building or use located thereon within the district in which such lot is located

### 2. Table of Dimensional Regulations

Minimum lot area, frontage, lot width, setbacks and open space, and maximum height, lot coverage and floor area shall be as specified in the following table of Dimensional Regulations, subject to the further provisions of this Section:

District	Principal Building or Use	Lot Minimum		Minimum Setback		Minimum Landscaped Open Space Surface Ratio	Building Maximums		
		Area (s.f.)	Frontage (ft.)	Front* (ft.)	Side (ft.)		Height	Lot Coverage	Floor Area Ratio
Single Residence R-4	One-family or two-family detached dwellings	43,560	100	30 or more	30	50%	3/35	15%	-
	Any other principal use	43,560	150	30 or more	30	50%	3/35	15%	-
R-3	One-family or two-family detached dwellings	20,000	100	30 or more	15	40%	3/35	25%	-
	Any other principal use	43,560	150	30 or more	30	50%	3/35	15%	-
R-2	One-family or two-family detached dwelling	12,000	65	30 or more	12	35%	3/35	30%	-
	Any other principal use	43,560	150	30 or more	30	50%	3/35	15%	-
R-1	One-family or two-family detached dwelling	8,000	65	30 or more	10	30%	3/35	35%	-
	Any other principal use	43,560	150	30 or more	30	50%	3/35	15%	-
General Residence G	One-family or two-family detached dwelling	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal use	43,560	150	30 or more	30	50%	3/40	15%	-
Neighborhood Bus B-1	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal use	4,000	-	**	-	5%***	3/40	33%	-
Community Bus B-2	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal use	8,000	65	25	15	20%	3/40	-	0.32
General Bus B-3	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal use	8,000	65	25	15	20%	3/40	-	0.32
General Bus B-4	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal use	10,000	65	25	15	20%	6/80	-	0.32
Business B	Any non-residential use	6,000	50	25	15	20%	6/80	-	0.32
	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
Central Business CB	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
	Any other principal or mixed use	-	-	10**	-	5%***	6/80	60%	2.0
Office/Professional P	Residential structure	8,000	65	30 or more	15	30%	3/40	35%	-
	Any other principal use	6,000	50	30 or more	15	20%	3/40	20%	0.32
Planned Re-use PR	One-family or two-family detached dwellings	20,000	100	30 or more	15	40%	3/40	25%	-
	Other uses permissible in Single Res. Districts	43,560	150	30 or more	30	50%	3/40	25%	-
Light Manufacturing M-1	Any non-residential use	6,000	50	50	15	20%	6/80	-	0.32
	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
General Manufacturing M	Any non-residential use	6,000	50	50	15	20%	6/80	-	0.32
	Any residential use	8,000	65	30 or more	10	30%	3/40	35%	-
Open Space/ Recreation OR	Golf course or country club	50 ac	200	100	100	90%	3/40	5%	-
	Any other principal use	5 ac	200	100	100	80%	3/40	10%	-
Geriatric/Elderly G/E <sup>#</sup>	Any Principal Use	3.5 ac	200	20	15	-	3/40	-	0.32
Technology Park TP <sup>5</sup>	Any Principal Use	43,560	100	30	15	-	6/80	-	-

- \* Where shown as "30 or more" the minimum front setback shall be 30 feet from the sideline of a street over 40 feet in width, and 50 feet from the center line of a street 40 feet or less in width
- \*\* Minimum front setback as regulated, except where building lines have already been established in which case building lines must be maintained; to be used for landscaping, pedestrian and vehicular access. Additional uses within the front setback in the CBD are listed under Section IV G 11 a, herein. No parking in the front setback.
- \*\*\* A portion of this requirement may be provided in the public right of way (street trees, etc.)
- # See §IV G 10 for additional Dimensional Regulations for Geriatric Care/Elderly Housing District Uses, including regulations on setback requirements, floor area ratio calculations, and minimum landscape open space requirements within this district.
- § See §III L 5 and III L 7 for additional Dimensional Regulations for Technology Park District uses, including floor area ratio regulations and minimum landscaped open space requirements within this District.

### 3. Lot Area Regulations

#### a. Lot Area Requirement

Where a minimum lot area is specified in Section IV G.2, no principal building or use shall be located on any lot of lesser area (such minimum lot area to be determined as set forth in these Lot Area Regulations, Section IV G.3), except as may be permitted hereinafter; and no such area shall include any portion of a street.

#### b. Residential Area Districts

The Single Residence and General Residence Districts are divided into four Area Districts, as follows:

- Area District No. 1, 2A and 2B (R-4);
- Area District No. 2C, 2D and 2E (R-3);
- Area District No. 3 (R-2); and
- Area District No. 4 (R-1 and G)

#### c. Irregularly-Shaped Lots

When the distance between any two points on lot lines is less than 50 feet, measured in a straight line, the smaller portion of the lot which is bounded by such straight line and such lot lines shall be excluded from the computation of the minimum lot area unless the distance along such lot lines between such two points is less than 150 feet in such cases where the Minimum Lot Area is less than 20,000 square feet, as set forth in the Table of Dimensional Regulations, Section IV G.2. Otherwise, when the distance between any two points is less than 80 feet, measured in a straight line, the smaller portion of the lot which is bounded by such straight line and such lot lines shall be excluded from the computation of the minimum lot area, unless the distance along such lot lines between such two points is less than 240 feet. In all cases, the principal use shall not be located on such excluded area of the lot.

#### d. Uplands Area Requirement

For the purpose of this Section, any lot laid out to be a buildable lot must contain upland area totaling at least 100 percent of the minimum lot area requirement for the zoning district in which the land is situated. In addition, a minimum of 70 percent of the required minimum lot area must be contiguous upland area, and shall be the location for the principal structure on the lot. Portions of a lot excluded from the computation of a minimum lot area, as provided under subsections IV G 3 c, above, shall not be used to meet the upland area requirements, herein.

A lot for single or two family residential use, shall be exempt from this subsection d. Uplands Area Requirement, provided such lot conformed to all zoning requirements at the time of recording or endorsement.

The term "upland" is defined herein as land which is not "Land under Water Bodies and Waterways", "Freshwater Wetlands", or "Vernal Pool Habitat" as set forth in the Framingham Wetlands Protection By-Law [Town of Framingham By-Laws Article V, Section 18.2], as well as land which is not an area of special flood hazard, as described under subsection III H 1, herein.



#### 4. Lot Frontage and Width Regulations

##### a. Lot Frontage Requirement

Where a minimum lot frontage is specified in Section IV G 2, no principal building or use shall be located on a lot which fronts a lesser distance on a street, except as may be permitted hereinafter

##### b. Lot Width Requirement

Each lot shall have a width such that the center of a circle having a minimum diameter of 80% of the required frontage of the lot can be passed along a continuous line from the sideline of the street along which the frontage of the lot is measured to any point of the building or proposed building on the lot without the circumference intersecting any side lot line

In addition, each lot shall have a width such that the entire portion of the parcel from the lot frontage to the required front setback line shall have a minimum width equal to the required lot frontage as specified in Section IV G 2, and such that the portion of the lot where any line passes through a principal building on the lot shall also have a minimum width equal to the required lot frontage as specified in Section IV G 2

#### 5. Setback Regulations

##### a. Front and Side Setback Requirements

Where a minimum depth of setback is specified in Section IV G 2, no building or structure shall be erected within the specified distance from the applicable lot line, except as permitted hereinafter.

##### b. Projections into Setbacks

1. Uncovered steps and ramps, and walls and fences no greater than six feet in height above the natural grade, may be permitted in a setback

##### c. Corner Clearance

In any district where a front setback is required, no building, fence or other structure may be erected and no vegetation may be maintained between a plane two and one-half feet above curb level and a plane seven feet above curb level within that part of the lot bounded by the sidelines of intersecting streets and a straight line joining points on such sidelines 25 feet distant from the point of intersection of such sidelines or extensions thereof.

##### d. Side Setback Abutting Residential District

Where a side lot line of a lot in a non-residential district, abuts a Single Residence or General Residence Zoning District, there shall be a minimum side setback requirement for buildings on such lot of 30 feet; except in the Central Business (CB) or Neighborhood Business (B-1) Districts, where such minimum side setback requirement for buildings on such lot shall be 10 feet. This setback regulation for such lot in a non-residential district shall not be applicable if such lot is for a single family or two family residential use "

##### e. Determination of Lot Lines

Where the designation of a front or side lot line for the purpose of determining required yards is unclear because of the particular shape or type of lot, the Building Commissioner shall designate the appropriate front or side lot line

##### f. Exception for Existing Alignment

In Single Residence, General Residence and Office and Professional Districts, if the alignment of existing principal buildings on adjacent lots on each side of a lot fronting the same street in the same district is nearer to the street line than the required front setback, the average of the existing alignments of all such buildings within 200 feet of said lot shall be the required front setback

##### g. Special Permit for Limited Accessory Structures

1. Limited Accessory Structures – A structure that does not require a building permit, including but not limited to, a shed, dog house, pool house, oil or natural gas tank covers, wood storage bins, or any other similar accessory structure

2. The Zoning Board of Appeals may authorize by Special Permit the placement of Limited Accessory Structures within the minimum side setback, provide that the board can find that the structure is in keeping with, and not substantially detrimental to, the surrounding neighborhood.
3. Dimensional Regulations for Limited Accessory Structures – A Limited Accessory Structure:
  - a. Shall be no larger than 120 square feet of gross floor area,
  - b. Shall not be more than twelve (12) feet in height as measured from the average natural grade at a distance of up to three (3) feet from the structure,
  - c. Shall not be located within the required front setback or any closer to that setback than the primary structure.
  - d. For a residential use, the accessory structure may be located at a distance from the lot line not less than one-third (1/3) of the required minimum side setback.
  - e. For a non-residential use, the accessory structure may be located at a distance from the lot line not less than one-half (1/2) of the required minimum side setback.
4. No more than three (3) Limited Accessory Structure shall be permitted within the required side setbacks on any one lot.

## 6. Open Space Regulations

### a. Open Space Requirement

Where a minimum percentage of open space is specified in Section IV G.2, no principal building or use shall be located or substantially altered on any lot in which such space is not provided

### b. Open Space in Front Setback

In any district where a front setback is required, landscaped open space ten feet in depth shall be provided along the entire width of the lot at the front lot line. Said strip may be interrupted by necessary vehicular and walkway entrances and exits.

### c. Usable Open Space for One-family and Two-family Dwellings

All one-family and two-family detached dwellings shall have a minimum of 800 square feet of usable open space per bedroom.

### d. Open Space in Setback Abutting Residential District or Uses

In any district where a non-residential use abuts or faces a residential zoning district or a single family or two family use, a landscaped open space buffer at a minimum depth of 15 feet, shall be provided and maintained in order to separate, both physically and visually, the residential use from the non-residential use; except in the Central Business (CB) or Neighborhood Business (B-1) Districts where such minimum open space depth shall be 5 feet. The landscaped open space buffer strip shall be continuous except for required vehicular access and pedestrian circulation.

The buffer strip shall include a combination of deciduous and/or evergreen trees and lower-level elements such as shrubs, hedges, grass, ground cover, fences, planted berms, and brick or stone walls. Such open space buffer strips shall provide a strong visual barrier between uses at pedestrian level and shall create a strong impression of spatial separation.

### e. Landscaping Requirement

In every district and for all uses and structures, which are subject to site plan review, landscaping shall be provided in accordance with the purpose, intent, objectives and standards of Section IV K.8. of this By-Law, as feasible. All off-street parking plans and site plans, required under Sections IV B or IV I shall include a landscape plan and planting schedule prepared by a registered landscape architect. Landscaped buffer strips along street right of ways shall be in accordance with this Section IV G.6 Open Space Regulations, except in Districts where a larger buffer is required. Site constraints shall be considered in applying the standards of Section IV K.8, which may be waived in accordance with Section IV K.10 c.

## 7. Building Height and Bulk Regulations

### a. Maximum Height Requirement

Where a maximum height of buildings is specified in Section IV G 2., no building or part of a building shall exceed the specified number of stories and furthermore, no building or part of a building shall exceed the specified feet above average finished grade, except as permitted hereinafter

**b. Exceptions to Maximum Height Requirement**

1. The maximum height requirement specified in Section IV G 2 shall not apply to accessory structures or appurtenances normally built above the roof level and necessary for the operation of the building or use. Such structures shall not be intended for human occupancy, and shall be erected only to serve the purpose for which they are intended. Except for chimneys and penthouses for stairways and mechanical installations, no such accessory structure or appurtenance shall exceed a height of 80 feet from the average grade.
2. Steeples, monuments and towers not used for communication purposes and not intended for occupancy may be erected to a greater height than specified by Section IV G 2 if a special permit is granted by the Zoning Board of Appeals after a public hearing.

**c. Bulk (Lot Coverage and Floor Area) Requirements**

For any building or group of buildings on a lot, including accessory buildings, the percentage of the lot covered by such buildings (Lot Coverage) or the ratio of the gross floor area of the building to the area of the lot (Floor Area Ratio) shall not exceed the maximum specified in Section IV G 2.

**d. Height Requirements Near Residential Districts**

In addition to the height limitations as set forth under subsection a. and subsection b. herein, the following additional requirements shall apply for all buildings (except for those in single-family or two family use), in non-residential zoning districts, when such building is in close proximity to a single residence or general residence zoning district:

1. Buildings located less than 50 feet from a single residence or general residence district shall be a maximum of 30 feet in height above finished grade.
2. In the Central Business District (CB) and Neighborhood Business District (B-1), buildings located less than 50 feet from a single residence or general residence district may be exempted by the above height restriction, up to a maximum of 40 feet in height above finished grade, by special permit, in accordance with the requirements of Section V.E. of this By-Law, if the Special Permit Granting Authority determines that the proposed building would be consistent with the historic development pattern of the existing commercial center of the area, and that such building would not be more intrusive on the residential district than a building 30 feet in height. The Planning Board shall be the Special Permit Granting Authority under this subsection.
3. In all non-residential zoning districts where the maximum building height for a use is designated as 6 stories and 80 feet above finished grade, as specified in Section IV G 2. Table of Dimensional Regulations, the following height requirement shall apply when such use is in close proximity to a single residence or general residence zoning district:

DISTANCE FROM RESIDENTIAL DISTRICT	BUILDING HEIGHT
equal to or greater than 50 but less than 200 feet	40 feet.
equal to or greater than 200 but less than 300 feet	50 feet.
equal to or greater than 300 but less than 400 feet	60 feet.
equal to or greater than 400 feet	80 feet

For the purposes of this subsection, when a zone line runs along a street, the width of the right of way of the street shall be included in the calculation for distance from a residential zoning district.

**8. Exemptions from Dimensional Regulations**

**a. Single Lot Exemption for Single and Two-Family Use**

A lot for single or two-family residential use shall be exempt from any increase in area, frontage, width, setback (i.e., yard), lot coverage or depth requirements resulting from the adoption or amendment of this By-Law, provided that:

1. The lot was not held in common ownership with any adjoining land at the time of recording or endorsement, whichever occurs sooner;
2. The lot conformed to existing zoning requirements at such time;
3. The lot has at least 5,000 square feet of area and at least 50 feet of frontage; and
4. The lot conforms to the open space and lot coverage requirements and to any other provisions of this By-Law except for lot area, frontage and setback requirements.

**b. Common Lot Exemption for Single and Two-Family Use**

A lot for single or two-family residential use shall be exempt from any increase in area, frontage, width, setback (i.e., yard), lot coverage or depth requirements resulting from the adoption or amendment of this By-Law for five years from the effective date of such adoption or amendment, provided that:

1. The plan for such lot was recorded or endorsed as of January 1, 1976;
2. The lot was held in common ownership with any adjoining land as of January 1, 1976;
3. The lot conformed to the existing zoning requirements as of January 1, 1976;
4. The lot has at least 7,500 square feet of area and at least 75 feet of frontage.

This exemption shall not apply to more than three such adjoining lots held in common ownership.

**c. Single and Two Family Residential Structure**

Alteration, reconstruction, extension or structural change (collectively "alteration") to a non-conforming single or two family residential structure, which is considered a non-conforming structure due to its location on a lot with insufficient area, width and/or frontage, shall not be considered an increase in the non-conforming nature of the structure and shall be permitted by right if, at the time of application, the structure and alteration will comply with all then current open space, lot coverage and building height requirements, and the alteration will comply with all then current setback requirements, as set forth in Section IV G. of these By-Laws, and further provided that such alteration does not result in the conversion of a structure from a single family use to a two-family use.

**9. Dimensional Regulations for Geriatric Care/Elderly Housing District Uses**

**a. Special Setback Requirements**

Buildings on adjoining lots within the Geriatric Care/Elderly Housing District must meet the setback requirements specified by Section IV G. 2 for the district, but may be integrated with walkways and breezeways which interconnect buildings and provide pedestrian connections. Further, a minimum setback from the Geriatric Care/Elderly Housing District Boundary Line shall be as follows: 70 foot setback for a one-story or two-story building within the District, and 100 feet setback if building exceeds 2 stories, but a 50 foot setback from an Open Space District Boundary Line, regardless of height.

**b. Floor Area Ratio Calculation Exemptions**

Floor area ratio calculations within a Geriatric Care/Elderly Housing District shall not include the gross floor area of garages, attics, and basements of Independent Living Housing units which are not designed to be used or occupied as living areas.

**c. Open Space Requirements in the District**

Minimum Landscaped Open Space shall be 30 percent of the total Lot Area.

**10. Dimensional Regulations and Design Guidelines in the Central Business District**

**a. Special Setback Requirements**

1. Minimum front setback requirements shall be as regulated, except in areas where building lines have already been established, in which case building lines must be maintained
2. No parking is permitted in the front setback area. The front setback may be used for landscaping and open space, cafes (when approved by special permit), pedestrian uses and access, and vehicular access only.

b. Design Standards

1. New construction or exterior renovation of existing structures in the Central Business District shall maintain a sense of history, pedestrian scale and pedestrian oriented character in order to enhance the quality of development in the District.
2. The Planning Board may require applicants, in need of a special permit for use in the Central Business District, to utilize façade easements in order to protect the values of historic structures. Such requirement would be applicable only where a development proposal, associated with such special permit, would result in the demolition or major exterior renovation of buildings, which are listed on the Inventory of Cultural Resources or are in a National Register District.

## I. SITE PLAN REVIEW

### 1. Purpose

The purpose of this section is to protect the health, safety, convenience and general welfare of the inhabitants of the Town by providing for a review of plans for uses and structures which may have significant impacts on traffic, municipal and public services and utilities, environmental quality, community economics, and community values in the Town

### 2. General Provisions

The Planning Board shall conduct site plan review and approval. Notwithstanding any provision of this By-Law to the contrary, any structure, use, alteration or improvement which meets any of the following criteria shall require site plan review and approval as set forth in this section:

- a. any new structure, or group of structures under the same ownership on the same lot or contiguous lots, or any substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which results in the development of any off-street parking or loading facilities (except for residences requiring fewer than five stalls) and less than 8,000 square feet of gross floor area, and except for residences requiring fewer than five stalls, any new construction or expansion, alteration or enlargement of a parking facility and/or off-street loading facility and/or any facility for the storage or sale of any type of new or used vehicle, including construction vehicles, truck trailers and/or any vehicle which would normally require licensing by the Commonwealth of Massachusetts shall be subject to the provisions of the first paragraph of Section IV I.5, herein with regard to Contents and Scope of Applications;
- b. any new structure, or group of structures under the same ownership on the same lot or contiguous lots, or any substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which results in the development of, redevelopment of, reuse of, change in use of, or an increase of at least 8,000 square feet of gross floor area, or which requires the provision of 30 or more new or additional parking spaces under this By-Law, or which results in a floor area ratio (FAR) greater than 0.32, shall be subject to this Section IV I in its entirety;
- c. any new structure, group of structures, substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which either results in the development, redevelopment, reuse, change in use, or an increase of 3,000 square feet of gross floor area or requires 5 or more parking spaces or an off-street loading facility, when any portion of any lot or parcel of land on which said structure or use is located in or lies within 200 feet of a residential district, shall be subject to this Section IV I in its

For purposes of this Section IV I, the calculation of increase in floor area shall be based on the aggregate of all new structures, improvements, alterations or enlargements, calculated from the date of enactment of this section

### 3. Basic Requirements

- a. Notwithstanding anything contained in this By-Law to the contrary, no building permit shall be issued for, and no person shall undertake, any use, alteration or improvement subject to this section unless an application for site plan review and approval has been prepared for the proposed development in accordance with the requirements of this section, and unless such application has been approved by the Planning Board.
- b. The Planning Board, at its discretion and based on a preliminary assessment of the scale and type of development proposed, may waive or modify the requirements for submission of any of the elements in Subsection 5 and the development impact standards in Subsection 6. Such waiver shall be issued in writing with supporting reasons
- c. No occupancy permit shall be granted by the Building Commissioner until the Planning Board has given its approval that the development and any associated off-site improvements conform to the approved application for site plan review and approval, including any conditions imposed by the Planning Board

#### 4. Application and Review Procedure

- a. Prior to the filing of an application pursuant to this section, the applicant, as defined in Section I E 1 herein, shall submit a preliminary draft of such application to the Building Commissioner, who shall advise the applicant as to the pertinent sections of this Zoning By-law
- b. The applicant shall submit to the Planning Board ten (10) copies of the application for site plan approval, conforming to the requirements of this Section IV I. Upon receiving the completed application, the Planning Board shall forthwith transmit one copy each to the Building Commissioner, the Engineering Department, the Planning Department, the Police Department, the Fire Department, the Board of Public Works and such other departments and boards as the Planning Board may determine appropriate.
- c. Such agencies shall, within 35 days of receiving said copy, report to the Planning Board on (1) the adequacy of the data and the methodology used by the applicant to determine impacts of the proposed development and (2) the effects of the projected impacts of the proposed development. Said agencies may recommend conditions or remedial measures to accommodate or mitigate the expected impacts of the proposed development. Failure by any such agency to report within the allotted time shall constitute approval by that agency of the adequacy of the submittal and also that, in the opinion of that agency, the proposed project will cause no adverse impact.
- d. The Planning Board shall not render a decision on said application until it has received and considered all reports requested from Town departments and boards, or until the 35-day period has expired, whichever is earlier. Where circumstances are such that the 35-day period is insufficient to conduct an adequate review, the Planning Board may, at the written request of the applicant, extend such period to 60 days.
- e. The Planning Board shall hold a public hearing on any properly completed application within 65 days after filing, shall properly serve notice of such hearing, and shall render its decision within 90 days of said hearing. The hearing and notice requirements set forth herein shall comply with the requirements of G. L. c. 40A section 11, and with the requirements of Section V L. of this By-Law. All costs of the notice requirements shall be at the expense of the applicant.
- f. In reviewing the impacts of a proposed development, the Planning Board shall consider the information presented in the application for site plan approval, including all items specified in Section IV I 5.; all reports of Town departments submitted to the Planning Board pursuant to Section IV I 4 (c); and any additional information available to the Planning Board, submitted to the Planning Board by any person, official or agency, or acquired by the Planning Board on its own initiative or research.

#### 5. Contents and Scope of Applications

An application for site plan review and approval under Section IV I 2 a shall be prepared by qualified professionals, including a Registered Professional Engineer, a Registered Architect, and/or a Registered Landscape Architect, and shall be limited to a parking plan, pursuant to subsection 5 f, herein, containing items 1-15 as set forth in subsection 5 a, below, an environmental impact assessment, as set forth in subsection 5 g (2), below, and a parking impact assessment, as set forth in subsection 5 g (5), below. The Planning Board may require additional information be provided by the applicant, including but not limited to a Traffic Impact Assessment, should traffic and circulation matters or other development related issues be deemed important considerations to a site plan evaluation and decision.

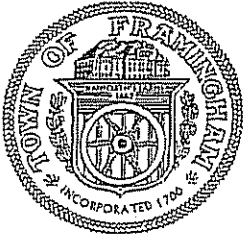
An application for site plan review and approval under Section IV I 2 b or 2 c shall be prepared by qualified professionals, including a Registered Professional Engineer, a Registered Architect, and/or a Registered Landscape Architect, and shall include:

- a. A site plan at a scale of one inch equals twenty feet (1"=20'), or such other scale as may be approved by the Planning Board, containing the following items and information:
  1. Topography of the property, including contours at a 2 foot interval based on the Mean Sea Level Datum of 1927
  2. Location of all buildings and lot lines on the lot, including ownership of lots, and street lines, including intersections within 300 ft.

FORM 2

ANNOTATED COMPARISON





## FRAMINGHAM PLANNING BOARD

MEMORIAL BUILDING • ROOM B-37 • 150 CONCORD STREET • FRAMINGHAM, MA 01702-8373  
TELEPHONE [508] 620-4837 • FAX [508] 872-0523 • EMAIL: [planning\\_board@framinghamma.org](mailto:planning_board@framinghamma.org)

### ARTICLE 1 ANNOTATED COMPARISON

#### Section III.A.1.e.

- e. ~~Public buildings and grounds; public and religious schools and private and~~ not set forth in subsection i. herein; public hospitals and dormitories accessory thereto; ~~churches or other places of worship; parish houses; passenger stations; water towers; reservoirs; amateur radio towers; private permanent type swimming pools accessory to residential use, subject to set back, side and rear yard~~ all dimensional requirements of the District and/or the uses not otherwise covered.

#### Section III.A.1.i.

- i. ~~Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structures shall be subject to reasonable regulations concerning the bulk and height of structures, frontage on an existing public way, and determining yard sizes, lot area, setbacks, open space, parking, and building coverage requirements and site plan review requirements in accordance with the provisions of this By law. Facilities, including structures and site improvements, owned and operated by a non-profit organization recognized by the Commonwealth of Massachusetts as such, Chapter 180, as amended, Massachusetts General Laws, operated for religious, charitable, educational, scientific, or literary purposes, or to prevent cruelty to animals or children and not of a correctional nature, which are used for the non-profit work of the organization, including the administration of such organization's affairs, provided that:~~
- ~~(1) The contiguous area of the site, including the area of any ponds or lakes located thereon, shall be not less than 40 acres, and~~
  - ~~(2) No facilities, other than an access roadway and its necessary appurtenances, shall be located nearer to any lot line than one hundred feet, and~~
  - ~~(3) The total area of lot coverage by buildings, including accessory buildings, shall not exceed 6 percent, and~~
  - ~~(4) The total area of lot coverage by all facilities, including structures and site improvements which can include but not be restricted to buildings, accessory buildings, parking areas, roadways, driveways, sidewalks, pedestrian trails, and bicycle paths, shall not exceed 20 percent of total lot area, and~~
  - ~~(5) The maximum height of buildings shall be three stories not to exceed forty feet, as defined in the BOCA Basic Building Code. Structures such as steeples, monuments, towers, and silos, not intended for occupancy by persons, may be erected to a height of sixty feet, and~~

- (6) ~~There shall be provided facilities for off street parking in accordance with Section IV of the Town of Framingham Zoning By Law. Passenger car parking spaces shall be not less than eight feet six inches in width. Bus and single unit truck parking spaces shall be not less than eleven feet in width and thirty five feet long. At least one parking space shall be provided for each employee, plus one parking space for every three persons visiting the facilities in private vehicles, based on the maximum number of persons to be accommodated on the property at one time, plus one parking space for every bus or single unit truck; and,~~
- (7) ~~Entrances to the lot from public or private ways shall be a minimum of thirty feet wide with edge radii of fifty five feet. The entrance width shall be measured at the interior points of curvature of the edge radii. Entrances restricted to passenger cars only may have edge radii of thirty feet, and~~
- (8) ~~Any sign may not exceed six square feet in area and ten feet in height, including supporting structures and light sources, and must be of a design in keeping with reasonable aesthetic standards and the character of the neighborhood. Signs must be fixed in position so as not to rotate or oscillate. No sign shall project over a street or way used by the public, or shall constitute a hazard to vehicular or pedestrian traffic by its location or the direction and amount of its illumination. Lighting of signs shall be a continuous illumination, not flashing, blinking, or varying in color. Lighting by exposed neon or fluorescent tubes is prohibited, and~~
- (9) ~~Exterior lighting shall be continuous illumination, not flashing, blinking, or varying in color. Exterior lighting fixtures shall be designed and placed so that the light source shall be completely shielded or diffused so as not to produce glare or excessive lighting on abutting premises, and~~
- (10) ~~The premises shall be used for the prescribed purpose only in conformity with a site plan bearing the recommendations of the Planning Board. Said site plan shall show, among other things, the following data:~~
- ~~(a) Area of site~~
  - ~~(b) Area, size, and location of all existing and proposed building, structures, parking spaces, driveway openings, service areas, and other open uses, sufficient existing and proposed topographical data to show impact of development on the site and surrounding properties, including but not limited to drainage, and cut and fill, all facilities for sewage, refuse, and other waste disposal and for surface water drainage, all landscape features (such as fences, walls, and planting areas) on the lot, signs, and exterior lighting, except for the seasonal display of lights for the purpose of celebrating holidays.~~
  - ~~(c) Maximum area of site to be used for each purpose and a description of such purpose.~~
  - ~~(d) Maximum number of employees to be accommodated at one time.~~
  - ~~(e) If the public is to be admitted to the premises in the usual course of the use of the facilities, the nature of the activities for which the public is to be admitted and the maximum number of persons expected to be accommodated at one time.~~
  - ~~(f) The number of parking spaces and loading berths to be provided and the proposed layout, including access, roads, circulation and maneuvering space, grading, drainage, safety precautions or devices, and surfacing material to be used.~~
  - ~~(g) Hours of operation of the facilities as established by the Board of Selectmen.~~
  - ~~(h) Hours of operation of the facilities open to the public, as established by the Board of Selectmen.~~
  - ~~(i) Existing and estimated future traffic patterns in roadways affected by the facility, including traffic counts and roadway capacity.~~

- ~~(j) Facility water supply requirement and quantity and type of waste waters to be discharged.~~
- ~~(k) There shall also be shown on said plan additional information, if any, necessary for the Planning Board to determine compliance with this By Law.~~
- ~~(11) Use of the facility shall be subject to such conditions as may be prescribed by the Board of Health.~~
- ~~(12) Any person desiring a building permit under this section shall submit eight copies of the site plan to the Planning Board, and one copy to the Board of Health, by registered or certified mail, return receipt requested. The Board of Health shall notify the applicant and the Planning Board by certified or registered mail within thirty days of receipt of said plan of its approval, with or without conditions, or its disapproval, stating in detail its reasons therefor. No building permit shall be issued until the Planning Board has made recommendations to the Building Commissioner or has allowed 60 days to elapse after receipt of the site plan without acting thereon.~~
- ~~(13) In making recommendations to the Building Commissioner under this paragraph, the Planning Board shall assure to a degree consistent with a reasonable use of the site for the purposes permitted:
  - ~~(a) Protection of adjoining premises and the general neighborhood against detrimental or offensive uses on the lot, considering characteristics of the neighborhood, noise, odor, dust or other nuisances.~~
  - ~~(b) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties, or improvements.~~
  - ~~(c) Adequacy of water supply, the methods of disposal for snow, sewage, refuse, and other wastes, the methods of drainage for surface water, and snow removal.~~
  - ~~(d) Provision for off street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the lot.~~
  - ~~(e) Adequacy of all other municipal facilities relative to fire and police protection and municipal services to meet the needs of the uses proposed on the site.~~~~
- ~~(14) Before the Planning Board makes its recommendations to the Building Commissioner a public hearing shall be held by the Planning Board.~~

### Section III.A.2.

- 2. The following uses shall require a special permit from the Zoning Board of Appeals: However, the Planning Board shall be the Special Permit Granting Authority for uses under this section that require a public hearing before the Planning Board pursuant to other provisions of the Zoning By Law herein:
  - ~~a. Charitable and welfare institutions except as to uses permitted by reason of compliance with paragraph III.A.1.i. of the Bylaw.~~
  - ab. Licensed establishment for the care of sick, aged, crippled or convalescent persons
  - be. Private and public golf clubs provided the same are located on a parcel or parcels of land of not less than 50 acres
  - cd. Outdoor recreational facilities such as swimming pools, tennis courts (but not including driving ranges or miniature golf) owned or operated by a non-government agency, subject to the following provisions:
    - (1) The use shall not be conducted as a private gainful business
    - (2) No accessory structure shall be located nearer any lot line than seventy (70) feet

de. Conversion of single-family detached dwellings, in existence on March 15, 1939, to use as two-family dwellings, subject to the following provisions:

(1) The lot and structure shall conform to the existing area, frontage, width, setback, and lot coverage requirements applicable to the zoning district in which they are located. The Zoning Board of Appeals shall not grant a special permit for a nonconforming lot or structure.

(2) The ground coverage of the structure shall not be increased by more than ten percent, nor the height by raising the roof or otherwise. This restriction shall not apply to the construction of porches, bay windows, or similar accessory structures not exceeding four hundred square feet in area, nor to the addition of dormer windows or gables not over twelve feet in width upon the existing roof.

(3) Off-street parking shall be provided for both dwelling units in accordance with the requirements set forth in Section IV B., including without limitation the requirements for number of parking spaces and setbacks from lot lines. A minimum of 200 square feet of parking area shall be provided for each required parking space.

#### Section IV.G.9.

#### ~~9. Dimensional Regulations for Educational and Institutional Uses~~

##### ~~a. General Requirement~~

~~Educational and institutional uses listed in Section III.A.1.e. and located in a residential district shall be subject to the dimensional regulations specified by Section IV.G.2. for buildings other than a one-family or two-family detached dwelling.~~

##### ~~b. Exception for Family Day Care Homes~~

~~Family day care homes, as listed in Section III.A.1.d., must comply with the dimensional regulations of Section IV.G.2. for a one-family detached dwelling in the district within which the facility is located.~~

##### ~~c. Special Requirements for Large Facilities~~

~~Facilities listed under Section III.A.1.i. shall be subject to the dimensional regulations of said section in lieu of the requirements of Section IV.G.2.~~

#### 910. Dimensional Regulations for Geriatric Care/Elderly Housing District Uses

##### a. Special Setback Requirements

Buildings on adjoining lots within the Geriatric Care/Elderly Housing District must meet the setback requirements specified by Section IV G.2. for the district, but may be integrated with walkways and breezeways which interconnect buildings and provide pedestrian connections. Further, a minimum setback from the Geriatric Care/Elderly Housing District Boundary Line shall be as follows: 70 foot setback for a one-story or two-story building within the District, and 100 feet setback if building exceeds 2 stories, but a 50 foot setback from an Open Space District Boundary Line, regardless of height.

##### b. Floor Area Ratio Calculation Exemptions

Floor area ratio calculations within a Geriatric Care/Elderly Housing District shall not include the gross floor area of garages, attics, and basements of Independent Living Housing units which are not designed to be used or occupied as living areas.

##### c. Open Space Requirements in the District

Minimum Landscaped Open Space shall be 30 percent of the total Lot Area

## 1011. Dimensional Regulations and Design Guidelines in the Central Business District

### a. Special Setback Requirements

1. Minimum front setback requirements shall be as regulated, except in areas where building lines have already been established, in which case building lines must be maintained.
2. No parking is permitted in the front setback area. The front setback may be used for landscaping and open space, cafes (when approved by special permit), pedestrian uses and access, and vehicular access only.

### b. Design Standards

1. New construction or exterior renovation of existing structures in the Central Business District shall maintain a sense of history, pedestrian scale and pedestrian oriented character in order to enhance the quality of development in the District.
2. The Planning Board may require applicants, in need of a special permit for use in the Central Business District, to utilize façade easements in order to protect the values of historic structures. Such requirement would be applicable only where a development proposal, associated with such special permit, would result in the demolition or major exterior renovation of buildings, which are listed on the Inventory of Cultural Resources or are in a National Register District.

## Section IV.I.

### 2. General Provisions

The Planning Board shall conduct site plan review and approval. Notwithstanding any provision of this By-Law to the contrary, any structure, use, alteration or improvement which meets any of the following criteria (~~excluding subdivisions for detached single family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under M.G.L. Chapter 40A, Section 3~~) shall require site plan review and approval as set forth in this section:

- a. any new structure, or group of structures under the same ownership on the same lot or contiguous lots, or any substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which results in the development of any off-street parking or loading facilities (except for residences requiring fewer than five stalls) and less than 8,000 square feet of gross floor area, and except for residences requiring fewer than five stalls, any new construction or expansion, alteration or enlargement of a parking facility and/or off-street loading facility and/or any facility for the storage or sale of any type of new or used vehicle, including construction vehicles, truck trailers and/or any vehicle which would normally require licensing by the Commonwealth of Massachusetts shall be subject to the provisions of the first paragraph of Section IV I 5, herein with regard to Contents and Scope of Applications;
- b. any new structure, or group of structures under the same ownership on the same lot or contiguous lots, or any substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which results in the development of, redevelopment of, reuse of, change in use of, or an increase of at least 8,000 square feet of gross floor area, or which requires the provision of 30 or more new or additional parking spaces under this By-Law, or which results in a floor area ratio (FAR) greater than 0.32, shall be subject to this Section IV I in its entirety;
- c. any new structure, group of structures, substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which either results in the development, redevelopment, reuse, change in use, or an increase of 5,000 3,000 square feet of gross floor area or requires ~~the addition of 205~~ or more parking spaces or an off-street loading facility, when any

portion of any lot or parcel of land on which said structure or use is located in or lies within 200 feet of a residential district, shall be subject to this Section IV I. in its entirety."

For purposes of this Section IV I, the calculation of increase in floor area shall be based on the aggregate of all new structures, improvements, alterations or enlargements, calculated from the date of enactment of this section.

### 3. Basic Requirements

a. Notwithstanding anything contained in this By-Law to the contrary, no building permit shall be issued for, and no person shall undertake, any use, alteration or improvement subject to this section unless an application for site plan review and approval has been prepared for the proposed development in accordance with the requirements of this section, and unless such application has been approved by the Planning Board

b. The Planning Board, at its discretion and based on a preliminary assessment of the scale and type of development proposed, may waive or modify the requirements for submission of any of the elements in Subection 5 and the development impact standards in Subsection 6. Such waiver shall be issued in writing with supporting reasons.

cb. No occupancy permit shall be granted by the Building Commissioner until the Planning Board has given its approval that the development and any associated off-site improvements conform to the approved application for site plan review and approval, including any conditions imposed by the Planning Board.

Date TM Convened: August 3, 2005TOWN MEETING CERTIFICATION1. Quorum

A quorum was present at the town meeting, including any adjourned sessions thereof. According to our town charter or by-law, our quorum requirement for town meeting is [80] registered voters. (Please write "0" if the town has no quorum requirement.)

2. Service of the Warrant (Please check one)

The service of the town meeting warrant was in accordance with:

[    ] 1. town by-law;

[    ] 2. a previous vote of the town; or

[ X ] 3. a procedure accepted by the Attorney General; and

any adjournments of the Town Meeting were made in accordance with the town by-law or vote of Town Meeting.

3. Attachments

(a) *a copy of the complete Town Meeting warrant*, including the opening of the warrant, including all articles, the closing, and the officer's return of service.

(b) *a copy of the text referred to*, but not set forth in the warrant articles.

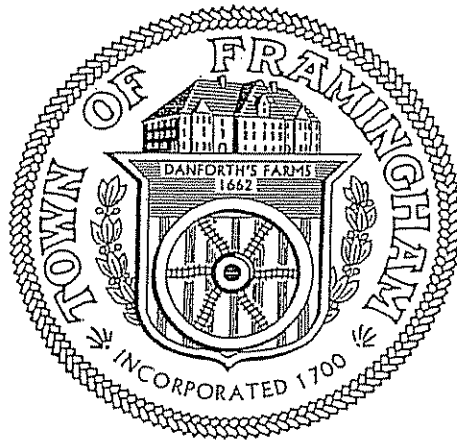
NOTE: Sometimes a warrant article will not contain the actual text of a proposed amendment to the town by-laws, but rather will refer to text set forth or located elsewhere, such as in the town clerk's office or the office of the planning board. Here it will be necessary for you to send us a copy of the text referred to, or a copy of what is on file and available for inspection. Otherwise, we will not know what the article proposes.

I hereby certify the above information to be complete and accurate.

Attest: Valerie Mulvey  
Town Clerk

Date: August 16, 2005

# TOWN OF FRAMINGHAM SPECIAL TOWN MEETING

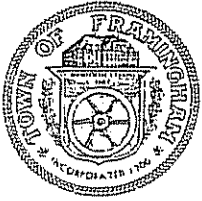


## WARRANT AND BACKGROUND MATERIAL

AUGUST 3, 2005

VALERIE MULVEY, TOWN CLERK





# Town of Framingham

## Valerie Mulvey, Town Clerk

To: Town Meeting Members

From: Valerie Mulvey, Town Clerk

Date: July 15, 2005

Re: Special Town Meeting

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The Special Town Meeting will commence Wednesday, August 3, 2005 at 7:30 PM in Nevins Hall at the Memorial Building.

This book contains the warrant and background information for this meeting. If other information becomes available it will be provided to you by the sponsors.

If you require additional information or assistance, please contact the Town Clerk's office.

Warrant

# COMMONWEALTH OF MASSACHUSETTS

## TOWN OF FRAMINGHAM

MIDDLESEX, SS

### SPECIAL TOWN MEETING WARRANT

To Steven B. Carl, one of the Constables of the Town of Framingham,

Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby required to notify and warn the Inhabitants of the Town of Framingham qualified to vote in Elections and Town Affairs, and more particularly the elected Town Meeting Members, to meet in Nevins Hall, in the Memorial Building in the Town of Framingham on:

Wednesday, August 3, 2005

at half-past seven o'clock P.M., and thereto act on the following article:

#### ARTICLE 1

To see if the Town will vote to amend the Zoning By-Law of the Town of Framingham as follows:

Amend Section III.A.1. by deleting the existing words in Paragraph i. and replacing with the following words.

"Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structure shall be subject to regulations concerning the bulk and height of structures, yard size, lot area, open space, parking, building coverage, and site plan review requirements in accordance with the provisions of this By-Law"

Amend Section IV.I. Site Plan Review, Subsection 2, General Provisions, by deleting the following words in the parenthesis as they appear in the second sentence:

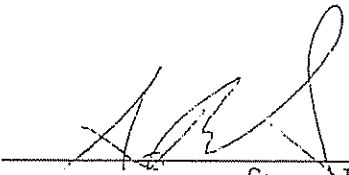
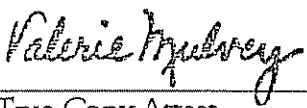
"(excluding subdivisions for detached single-family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under MGL Chapter 40A, Section 3)"

Sponsor: Planning Board

MIDDLESEX, SS.

Framingham, MA  
August 3, 2005

By virtue of this Warrant, I have notified the inhabitants of the Town of Framingham to meet as within directed by publishing a true and attested copy of the same in one issue of The MetroWest Daily News, a newspaper of general circulation in said Framingham, at least fourteen days before the date of said meeting, namely July 20, 2005; also by posting a true and attested copy of the same in more than ten public places fourteen days before the date of said meeting; namely on July 20, 2005.

  
\_\_\_\_\_  
Steven B. Carl  
Constable  
\_\_\_\_\_  
A True Copy Attest  
Valerie Mulvey, Town Clerk

## Exhibit 23



**TOWN OF FRAMINGHAM**  
**Inspectional Services Division**  
**Department of Building Inspection**  
Memorial Building, Room B-10  
150 Concord Street  
Framingham, Massachusetts 01702-8368

Joseph R. Mikielian, C.B.O.  
Building Commissioner

Telephone: 508-620-4838  
Fax: 508-628-1362  
Email: [building.dept@framinghamma.org](mailto:building.dept@framinghamma.org)

**By Hand Delivery, Regular U.S. Mail, and  
Certified Mail, Return Receipt Requested**  
**Certified Mail Receipt No. 7003-1010-0003-4744-2983**

August 11, 2005

James T. Cuddy, President  
South Middlesex Non-Profit Housing Corporation  
300 Howard Street  
Framingham, MA 01702

**Re: 517 Winter Street- proposed change of use permit**

Dear Mr. Cuddy:

On July 13<sup>th</sup> 2005 you applied for a change of use building permit from an existing nursing home to a non-profit educational use group facility at 517 Winter Street.

Your permit application states that you are requesting a change of use from I-2 to R-2. After a careful review, it is determined that the subsequent zoning amendment made by the Town Meeting on August 3, 2005 applies to your request. G.L. c. 40A, § 6, ¶ 1, requires that you obtain the building permit prior to the first public notice date for amendments to the By-Law, which appeared in the Metrowest Daily News on July 14, 2005. As you had not met this requirement, I must now under the Massachusetts State Building Code 780 CMR 111.1 deny your application for this "change of use" for the following reasons:

- 1 A copy of the complete proposed educational program with detailed specific information and documentation, including Articles of Organization, a description of the

faculty or instructor positions likely to be working on site, and a description of the program and its educational objectives, is required in order to confirm your contention that the proposed use meets all the standards and requirements for an exemption under MGL 40A, Section 3 (Dover Amendment) for educational purposes on land owned by a nonprofit educational corporation.

2. The voted Town of Framingham Zoning By-Law amendment now requires Site Plan review from the Town of Framingham Planning Board for your proposed use. A copy of the Zoning Bylaw amendments promulgated by Town Meeting on August 3, 2005 is attached for your review.

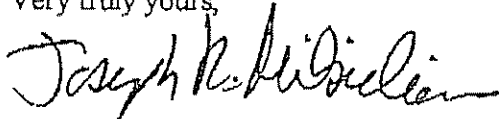
3. A stamped floor plan with further documentation is required to confirm compliance with 780 CMR 3400.3 Applicability- #8 Residential use groups: "A change from any other use group to a residential use group (R) or any alteration or change of occupancy within a residential use group shall comply with the requirements of the code for new construction..."

4. An off-street parking plan and lot in compliance with the Town Zoning By-Laws, Section IV.B.1 "Number of spaces required" for a residential care facility at one per four (4) occupants plus one per two (2) employees. The Planning Board will review the parking lot under Site Plan review

The above denial does not necessarily constitute all possible requirements for your permit issuance, but represent all that can be determined at this time based on your limited application documentations.

If you have any further questions please contact me at the office, Monday through Friday at 508-620-4838.

Very truly yours,



Joseph R. Mikielian, C.B.O.  
Building Commissioner/Director of Inspectional Services

cc: George P. King Jr., Town Manager  
Christopher J. Petrini, Town Counsel  
John B. Grande, Planning Board Administrator  
James D. Hanrahan, Esq., Counsel for South Middlesex Non-Profit Housing Corporation

*Town of Framingham  
Special Town Meeting  
August 3, 2005*

*ARTICLE 1*

To see if the Town will vote to amend the Zoning By-Law of the Town of Framingham as follows:

Amend **Section III.A.1.** by deleting the existing words in Paragraph i. and replacing with the following words.

"Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structure shall be subject to regulations concerning the bulk and height of structures, yard size, lot area, open space, parking, building coverage, and site plan review requirements in accordance with the provisions of this By-Law."

Amend **Section IV.I. Site Plan Review, Subsection 2, General Provisions**, by deleting the following words in the parenthesis as they appear in the second sentence:

"(excluding subdivisions for detached single-family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under MGL Chapter 40A, Section 3)"

Sponsor:      Planning Board

**August 3, 2005 Voted:** That Town Meeting amend the Zoning Bylaw of the Town of Framingham as set forth under Article 1 of the August 3, 2005 Special Town Meeting as printed in the handout, as amended.

117 voting in favor, 2 opposed, 4 abstentions

A TRUE COPY ATTEST:  
*Valerie Mulvey*  
TOWN CLERK, FRAMINGHAM



*Town of Framingham  
Special Town Meeting  
August 3, 2005*

*ARTICLE 1  
AMENDMENTS*

August 3, 2005 Voted: That the following proposed language, amending Section III.A 2, be deleted from the proposed amendments in Article 1:

"However, the Planning Board shall be the Special Permit Granting Authority for uses under this section that require a public hearing before the Planning Board pursuant to other provisions of the Zoning Bylaw herein."

August 3, 2005 Voted: That Article 1 be amended by inserting the following words after the word structures, "frontage on an existing public way":

Section III.A.1.i would then read as follows:

"i. Charitable and philanthropic buildings for religious purposes or 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; provided, however, that such land or structures shall be subject to reasonable regulations concerning the bulk and height of structures, frontage on an existing public way, and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

A TRUE COPY ATTEST:  
*Valerie Mulvey*  
TOWN CLERK, FRAMINGHAM

## Exhibit 24

*Bowditch  
& Dewey*  
ATTORNEYS

Direct telephone: (508) 416-2404  
Direct facsimile: (508) 929-3016  
Email: [jhanrahan@bowditch.com](mailto:jhanrahan@bowditch.com)

August 19, 2005

Joseph R. Mikielien, Building Commissioner  
Town of Framingham  
Inspectional Services Division  
Department of Building Inspection  
Memorial Building, Room B10  
150 Concord Street  
Framingham, MA 01702-8368

Re: 517 Winter Street, Framingham ("Property")

Dear Mr. Mikielien:

As you know this office represents South Middlesex Non-Profit Housing Corporation ("SMNPHC"). I am in receipt of your letter dated August 11, 2005 to James T. Cuddy, the agency's Executive Director, in response to an Application for Change of Use submitted to the Town on July 12, 2005 and accepted for filing on July 13, 2005.

With respect to your request for further information to support the requirements for exemption pursuant to M.G.L. c. 40A § 3 (the "Dover Amendment"), please note that by letter dated July 12, 2005, a copy of which is attached as Exhibit A, I provided a detailed explanation of the non-profit educational program proposed (the "Sage House Program") for 517 Winter Street, Framingham, Massachusetts. Additionally, following a phone conversation with you on July 12, by letter dated July 13, 2005, I provided you with copies of the Articles of Organization and By-Laws for SMNPHC. A second copy of that letter is attached as Exhibit B.

To expand on the information on the educational program set forth in my July 12 letter, I offer the following description of the Sage House Family Treatment Program provided to me by SMNPHC.

**Sage House Family Treatment Program**

- Sage House will house up to 15 families and will provide a structured and comprehensive rehabilitative environment to families as they learn new skills for living in recovery. In addition to recovery skills, families will be provided with a high level of parenting support and education.

- The Program will be fully staffed according to the Department of Public Health-BSAS staffing requirements providing staff on-site at all times, 24 hours a day, 7 days a week. The Clinical Director and Family Therapist will be Master's level professionals and will direct the day to day clinical service provision. The program will provide a wide range of services in a family focused treatment and recovery educational model; utilizing a comprehensive community based approach to support and sustain a culture of recovery. These educational services will include:

- on-site family-based services
- individualized substance abuse treatment plans
- individual and group counseling
- parenting skills education
- domestic violence and trauma support and education
- mental health assessment
- structure for the children
- aggressive housing search
- educational/vocational assessment and referral
- job training and search
- access to physical health care
- access to self-help resources
- aftercare and discharge planning
- identification of and referral to any needed linkage or resource
- A Family Treatment Plan (FTP) will be developed to include both parent and children's service components. The parents will be assisted in developing skills and abilities necessary for achieving an independent lifestyle. Elements of the FTP for parents will include:
  - individual, group and family counseling
  - child development education

- conflict resolution
- job readiness and search
- housing and aftercare plan

Daily living skills will also be addressed including budgeting, nutrition and meal planning, and housekeeping. Parents will attend groups on health education including family planning, tobacco cessation, HIV, STD's and other communicable diseases as well as groups on domestic violence, gambling, and stress management.

- The Sage community substance abuse treatment methodology will be based on a modified relational model. Program participants will meet weekly in group therapy sessions to learn how their addiction or addictive behaviors developed over time and how their relationships with family members and others were a part of that process. The Sage program will have a clinical structure that fosters support for developing and maintaining healthy self-esteem and building of strong spousal and other family relationships. The focus of all staff interventions will be to educate individuals to reduce the amount of shame often felt by people who are addicted; in order to foster the growth and development of self esteem.

Scientific-based approaches used by the program staff will include cognitive therapy, Dialectical Behavioral skills training modules, group and individual counseling, Motivational Enhancement Therapy, and the Relational Model. Utilizing Prochaska and DiClemente's stages of change assessment is critical in assessing each client's stage of readiness for treatment.

- Parenting skills training will include family time which will be structured by staff to help develop and nurture healthy relationships and to expand the parents' capacity for effective parenting. Each parent will be expected to attend a weekly child development educational group, parenting skills training, and to participate in a parenting process group. These sessions will be reinforced in case management with a focus on learning developmental milestones of children, how children process and understand information, and developmentally appropriate interventions to make parenting more effective. The parenting process group, facilitated by staff, will focus on peer support and guidance.

As set forth in my July 12 letter, the Sage House Program qualifies for protection under the Dover Amendment. The Dover Amendment provides in pertinent part:

“no zoning ... by-law shall regulate or restrict the use of land or structures ... for educational purposes on land owned ... by a non-profit educational corporation”.

To qualify for protection under the Dover Amendment, SMNPHC must (1) use the Property for educational purposes, as defined by the relevant case law; and (2) qualify as a non-profit educational corporation.

The courts have construed the term “educational purpose” under the Dover Amendment broadly. Among uses the courts have found to satisfy the educational purpose requirement of the Dover Amendment are the following: residential care facility which teaches money management, health, cooking and hygiene to adult residents with mental disabilities (Gardner-Athol Area Mental Health Association v. Zoning Board of Appeals of Gardner, 401 Mass. 12 (1987)); a “village” for the elderly located on a college campus that included two hundred independent living units and an academic curriculum (Lasell College v. City of Newton, 1 LCR 80 (Land Court 1993)); a facility combining housing with training for single mothers, AID’s counseling, and assistance to homeless families recovering from addiction (Congregation of the Sisters v. Town of Framingham, 2 LCR 125 (Land Court 1994)); home for adolescent victims of sexual and/or physical abuse operated by non-profit educational corporation (Caldeira v. Zoning Board of Appeals, 3 LCR 195 (Land Court 1995)); group residence for elderly and mentally ill persons (Campbell v. City Counsel of Lynn, 415 Mass. 772 (1993)); renovated barn for shelter and education for up to three mentally handicapped adults (Watros v. Greater Lynn Mental Health & Retardation Ass’n, Inc., 421 Mass. 106 (1995)). The description of the Sage House Program set forth above falls well within the meaning of “educational purpose” described in the controlling Massachusetts cases.

The second criteria for protection under the Dover Amendment is that the subject Property must be owned or leased by:

“...the Commonwealth or any other agencies, subdivisions or bodies politic, or by a religious sect or denomination, or by a *non-profit educational corporation...*” (emphasis added).

SMNPHC is a charitable corporation established pursuant to M.G.L. c. 180. SMNPHC’s Articles of Organization authorize it to engage in educational activities. Accordingly, SMNPHC qualifies as a non-profit educational corporation for purposes of the Dover Amendment.

With respect to your request for stamped floor plans, with further documentation in compliance with 780 C.M.R. 3400.3, SMNPHC has engaged an architect to prepare such plans and documentation and we expect to be able to provide this to you early in September

Your letter indicates that a zoning by-law amendment voted on recently by Town Meeting now requires Site Plan Review for this Property. Your letter does not, however, indicate the specific basis for your determination that Site Plan Review is required. The Site Plan Review provisions of the Framingham Zoning By-law, Section IV(1)(2) sets forth the criteria for Site Plan Review. Please provide us with your determination as to which section of the By-Law is implicated by this project so that we can assess the application requirements and

prepare an adequate response. It is unclear, even assuming that the Town Meeting amendment is a valid amendment and that it does not violate the Dover Amendment, as to the process for Site Plan Review for a project that is protected under the provisions of M.G.L. c. 40A § 3. The Site Plan Review Section gives the Planning Board broad discretion to require a number of submissions and studies, most of which are beyond the permissible scope of reasonable dimensional regulation which a municipality is allowed to review under the Dover Amendment. Please provide clarification both of the project elements which, in your opinion trigger Site Plan Review, and the sections of the Site Plan Review by-law applicable to the proposed use.

Finally, I must bring to your attention the provisions of the federal Fair Housing Act, 42 U.S.C. § 3601 et. seq. (the "Act") which protects persons such as those SMNPHC plans to serve at Sage House from discriminatory exclusion from housing opportunities. The Act and its associated regulatory and case law define handicapped persons to include recovering alcoholics and drug addicts, such as those for whom SMNPHC plans to serve at Sage House. Specifically, within the meaning of 42 U.S.C. § 3602(h), as interpreted at 24 C.F.R. § 100.201(a)(2), the Act protects as handicapped persons those persons with:

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. *The term physical or mental impairment includes*, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, *drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.* Emphasis added.

Federal law shields Sage House's prospective residents from discrimination based on disability that denies them available housing through actions, statements, and other interference with housing opportunities. Discriminatory housing practices unlawful under the Act include discrimination by persons or entities based on handicap in the availability, terms, conditions, privileges, reasonable accessibility of housing, by activities such as: making unavailable of housing related transactions; making statements that indicate discriminatory preferences; or interfering with any person in the exercise or enjoyment of housing. 42 U.S.C. 3604, 3605, 3606, and 3617. Further, the Act applies to Town zoning laws through 42 U.S.C. § 3615 which prohibits discriminatory land use decisions by municipalities, even when decisions are authorized by local ordinance.

In a memorandum dated June 21, 2005, to Framingham Town Manager George P. King, a copy of which is attached hereto as Exhibit C, you agreed to a number of measures specific to 517 Winter Street which go beyond the typical requirements of the Building Department when presented with an application for change of use. Specifically, you have agreed to refer the application documentation to town counsel for review. I am not aware that this is your customary practice for applications for change of use from one residential use to another. Secondly, you have agreed to advise the Board of Selectman if my client applied for a Dover Amendment exemption in this Application. Unless it has been your practice to notify the Board

Joseph R. Mikielian, Building Commissioner  
August 19, 2005  
Page 6

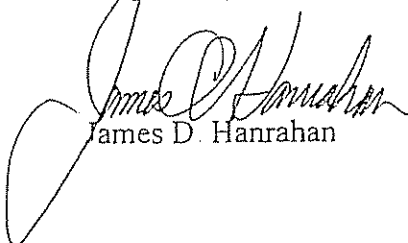
of Selectmen of all applications for residential group homes, such notification is likely a violation of the Fair Housing Act. Subjecting programs that serve persons with disabilities to different siting requirements than non-disabled persons interferes with housing opportunities for persons with handicaps and displays a discriminatory preference that violates the Fair Housing Act. Such actions also violate the Massachusetts Fair Housing Act, M.G.L. c. 151B.

Under state law, it is illegal for anyone to directly or indirectly prevent or attempt to prevent the construction, purchase, sale or rental of any dwelling or land covered by chapter 151B, or to aid or abet another in doing any acts specified by 804 C.M.R. 2.01, such as interfering with another person in the exercise or enjoyment of a housing right, or directly or indirectly or indirectly preventing or attempting to prevent the construction, purchase, sale or rental of any dwelling or land covered by M.G.L. c. 151B § 4.

I have always found your office to be professional and fair in the application of law. In the past, we have presented a number of applications for Dover Amendment uses to your office and, until now, those Applications have been treated in a non-discriminatory manner. We trust that, despite the new procedures outlined in your memo of June 21, 2005, your past practices will continue and the Sage House Program will not be subject to procedures, delays, or requirements that discriminate against its proposed occupants.

I look forward to working with you to complete the process of opening the Sage House Program at Winter Street. I hope you are able to look beyond the political controversy which has engulfed this proposed program and apply the law, as you have in the past, fairly and reasonably. Remember we are talking about mothers and fathers looking only for the opportunity to remain in recovery and raise their children in a safe, clean home. These are fifteen (15) families struggling to overcome the devastation of substance abuse problems. Further delays in opening this important program will impair our efforts to help them. We will continue to work with you in a cooperative and open manner and hope that you will work with us to expedite and not further delay this process.

Very truly yours,



James D. Hanrahan

JDH/smm  
Enclosures

cc: James T. Cuddy w/encl.  
Jerry Desilets w/encl.



## Exhibit 25



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October 24, 2005

Kelli E. Gunagan, Esq.  
Assistant Attorney General  
Office of the Attorney General  
1350 Main Street  
Springfield, MA 01103

Re: Town of Framingham Zoning By-Law Amendments  
Adopted at Special Town Meeting on August 3, 2005  
Response to Letters of South Middlesex Non-Profit Housing  
Corporation dated August 25, 2005 and September 9, 2005

Dear Ms. Gunagan:

This letter is in response to your letters of September 8, 2005 and September 12, 2005, wherein you copied me on two letters sent to you by South Middlesex Non-Profit Housing Corporation ("SMNPHC"), the first dated August 25, 2005 ("August letter"), and the second dated September 9, 2005 ("September letter"), with enclosures. For the reasons described below, it is the Town of Framingham's position that the Town Meeting's Amendments to its Zoning By-Law ("Amendments") which were adopted at a Special Town Meeting on August 3, 2005 are proper, in accordance with G.L. c. 40A, §3 and other pertinent statutes, are very similar to other zoning bylaws approved by the Office of the Attorney General, and should be approved by the Attorney General in this instance in accordance with G.L. c. 40, §32.

ANALYSIS

**A. The Attorney General's Scope of Review of the By-Law Amendments Under G.L. c. 40, §32 is a Limited One, and the Attorney General is Required to Approve Said Amendments if They Are Capable of any Legal Application**

The authority of local governments to regulate the use of private property through zoning is based in the state's generalized police power. See generally Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). Inherent to this expansive regulatory power is the

understanding that local government must have the flexibility to address rapidly changing local conditions. Zoning regulations will be found to be constitutionally valid unless clearly arbitrary and unreasonable and unless they have no substantial relation to the public health, safety, morals or general welfare. See id.

The power of the Attorney General to disapprove by-laws pursuant to G.L. c. 40, §32 ("Section 32") is a limited one. See Concord v. Attorney Gen., 336 Mass. 17, 24-25 (1957). Every "presumption is to be made in favor of the validity of municipal by-laws." Town of Amherst v. Attorney Gen., 398 Mass. 793, 796 (1986). If a proposed by-law is capable of any interpretation or application that would make it a legal one, then it must be approved under Section 32. See Concord v. Attorney Gen., 336 Mass. at 24-25. "The Massachusetts Constitution reaffirms the customary and traditional liberties of the people with respect to the conduct of their local government . . . Art. 2, §1, of the Amendments to the Constitution of Massachusetts ("Home Rule Amendment"), as amended by art. 89. In the exercise of this right to local government, towns have the power to pass by-laws for the purpose of preserving peace and order. G.L. c. 40, § 21. The town exceeds its power only when it passes a by-law inconsistent with the Constitution or laws of the Commonwealth." See Town of Amherst, 398 Mass. at 796. Accordingly, bylaws can be invalidated only when they violate the Constitution or laws of the Commonwealth. There is no evidence that the Amendments should not be approved, especially taking into account the deferential standard of review that the Attorney General is required to apply when reviewing by-laws.

Contrary to the assertions made by SMNPHC in its August and September letters, the Town has complied with all legal requirements, both procedurally and substantively, in its adoption of the Amendments at the Special Town Meeting. The Amendments in no way violate any protections of the Constitution, and SMNPHC makes no claim to that effect. Furthermore, despite SMNPHC's claims that the Amendments violate G.L. c. 40A, §3 (hereinafter referred to as the "Dover Amendment" or "Section 3"), the Amendments do not violate either the language or intent of Section 3 and are instead a means by which to better ensure compliance with the requirements of this section of the law. As established below, there is no support for SMNPHC's claim that the courts of the Commonwealth forbid the use of site plan review prior to the issuance of a building permit, as a means to identify which aspect of the proposed project may be subject to "reasonable regulations" in accordance with Section 3. Instead, Section 3 envisions that Dover Amendment uses are to be reviewed prior to issuance of a building permit. A community cannot "reasonably regulate" the height and bulk of structures, and determine yard sizes, lot areas and setbacks, all permitted under the Dover Amendment, without a process that allows for a review of these project components in connection with the issuance of a building permit. See generally Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass. App. Ct. 794 (2003). Although it is clear that Section 3 requires that Dover Amendment uses be shown significant deference, it is equally clear that, wherever possible, these uses are expected to comply with reasonable zoning requirements. See id.

The Amendments are a direct response to the continual evolution of judicial interpretations of Section 3 over the past decade, specifically the precise role that courts envision municipalities should take when reviewing Dover Amendment uses. The Amendments were

adopted by the Town to replace currently existing provisions that either had become ineffective in helping the Town to meet its responsibilities under Section 3, or were contrary to the deference intended to be shown to such uses. It is not, nor will it always be, an easy task to achieve the appropriate balance between protected uses and reasonable zoning regulations, as intended by the Dover Amendment. The Town believes that the Amendments will provide the best possible means to achieve this balance. For this reason, and for the other reasons set forth in this letter, the Town respectfully requests that the Office of the Attorney General approve the Amendments adopted by the Town.

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**B. The Amendments Were A Proper Legislative Act by the August 3, 2005  
Special Town Meeting and Must be Regarded as Presumptively Valid**

Keeping in mind the deferential standard of review that the Attorney General must employ when examining a bylaw enactment under Section 32, we now address the principal arguments raised by SMNPHC in its letters. A party attacking a zoning amendment has the burden of proof, requiring that he prove by a preponderance of the evidence that the zoning regulation is arbitrary and unreasonable, or substantially unrelated to the public health, safety, morals, or general welfare. See McLean Hospital Corp. v. Town of Belmont, 56 Mass. App. Ct. 540; 547 (2002). For the reasons described herein, SMNPHC cannot meet its burden of proving that the Amendments are arbitrary, unreasonable or substantially unrelated to the public health, safety, morals or general welfare.

SMNPHC states in its August Letter that the Amendments were a response to pressure from a local Framingham citizen group known as Stop Tax Exempt Private Properties Sprawl ("STEPPS") and that the underlying motives for the Amendments were as a "means to halt SMNPHC's plans" to use its Framingham property as a drug rehabilitation facility, and that the Amendments merely constitute an attempt by the Town to have "an opportunity to regulate multiple facets of a development unrelated to reasonable dimensional restrictions" so that the Town could "severely curtail the perceived proliferation of non-profit educational uses in the Town." See SMNPHC August letter, at pp. 1-2.

SMNPHC's assertions are based predominately upon its fear that the Amendments will be applied to its property. As might be anticipated from any property owner whose property may be affected by changes in zoning, SMNPHC seeks to counter the lawful action of the citizens of the Town by arguing that the changes were proposed solely as a means by which to cause it harm. However, despite SMNPHC's claims to the contrary, the adoption, amendment, or repeal of local zoning by-laws "by the voters at town meeting is not only the exercise of an independent police power; it is also a legislative act carrying a *strong presumption of validity*." See Durand v. Bellingham, 400 Mass. 45, 50-51 (2003) (emphasis added), citing Sylvania Elec. Prods. Inc. v. Newton, 344 Mass. 428, 433 (1962). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Id., citing Crall v. Leominster, 362 Mass. 95, 101 (1972). "Such an analysis is not affected by consideration of the various possible motives that may have inspired legislative action." Id., citing Merriam v. Secretary of the Commonwealth, 375 Mass. 246, 253 (1978).

Despite all the varying opinions that may have been voiced by the citizens of the Town prior to the adoption of the Amendments (the expressions of which is an integral part of our democratic process), the Town's decision to amend the Zoning By-Law ("By-Law") at this time was the culmination of a lengthy review process undertaken by the Framingham Planning Board and other town officials over approximately a two year period. The process that resulted in the issuance of the Notice of the Public Hearing for the Amendments in July, 2005, predates by years the date that SMNHPC purchased the parcel at 517 Winter Street in Framingham. Therefore, SMNHPC's assertions that the Amendments were proposed in response to SMNHPC's acquisition of 517 Winter Street is directly contradicted by the uncontroverted facts that both the need for and the review process that resulted in the Amendments originated before SMNHPC's acquisition of the Winter Street parcel.

Over the past several years, the Town had become increasingly aware that existing provisions in the By-Law were no longer appropriate to comply with the direction of the courts, and as some of these provisions had been added at different times they now were subject to conflicting and inconsistent interpretations regarding their application to review of Section 3 uses. One of the purposes of the ongoing review process was to respond to the direction set forth by the courts of the Commonwealth in recent years in interpreting the scope and nature of municipal rights and responsibilities under Section 3. For example, one section of a prior version of the Bylaw completely shows Section 3 uses were exempted from site plan review. This exception is not supported by recent case law. See Campbell v. City Council of Lynn, 415 Mass. 772, 778 (1993) ("[L]ocal officials *may not grant blanket exemptions* from the requirements [identified in Section 3] to protected uses . . . officials may, however, on an appropriate showing, decide that facially reasonable zoning requirements . . . cannot be applied . . . because application of the requirements would nullify the protection granted to the use . . .") (emphasis added); Trustees of Tufts College v. Medford, 415 Mass. 753, 760 (1993) ("Because local zoning laws are intended to be uniformly applied, an educational institution . . . bears the burden of proving that the local requirements are unreasonable as applied to it . . . *local officials may not grant blanket exemptions* from the requirements to protected uses") (emphasis added); and Green v. Central Middlesex Ass'n for Retarded Citizens, 64 Mass App.Ct. 1106 (2005) (unpublished 1:28 decision) (Requirements of a by-law are presumptively valid under the Dover Amendment and require an educational institution to prove local requirements are unreasonable as applied to it, a town may not choose to grant blanket exceptions to such uses).

The courts have clarified in recent years that "the Dover Amendment is intended to encourage a degree of accommodation between the protected use and matters of critical municipal concern." Trustees Of Boston College v. Board Of Aldermen Of Newton, 58 Mass App. Ct. 794, 801, fn 7 (2003), citing Trustees of Tufts College v. Medford, 415 Mass. 753, 760 (1993); Martin v. The Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, 434 Mass. 141, 144, (2001). The Town had found that, under the existing provisions of the By-Law, it was no longer able to provide for a clear and uniform system that allowed for "balanced accommodation" between the protected uses and matters of critical municipal concern. The Amendments resulted from a review process that sought to reconcile these inconsistencies, to improve the overall functioning of the By-Law regarding these uses, and to respond to recent

court decisions that have provided further guidance on how to properly bring about the delicate balance required under the Dover Amendment. The Amendments were not directed to a specific parcel of land, although the Winter Street parcel and other parcels may be subjected to its provision

**C. Site Plan Review may be Applied to Dover Amendment Uses Consistent with State Law**

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SMNPHC argues in its August letter that the Amendments represent a decision to subject Section 3 uses to site plan review. ~~This is not correct. Rather, the Amendments represent a~~ decision by the Town to no longer "exempt" certain uses, including Section 3 uses, from site plan review and to instead require uniformity in the application of these provisions of the By-Law. Despite SMNPHC's beliefs that blanket exemptions are the only proper way in which to address Section 3 uses, granting blanket exemptions from local zoning requirements is exactly what the courts have found to be inappropriate in recent years. See Trustees of Tufts College, 415 Mass. at 760; City Council of Lynn, 415 Mass. at 778 (1993); Central Middlesex Ass'n., 64 Mass. App. Ct. at 1106 (2005).

SMNPHC's August Letter further argues that the practical effect of the Amendments will require that its property be subject to site plan review should the Town ultimately determine that SMNPHC's proposed use is a Dover Amendment use.<sup>1</sup> However, what SMNPHC has failed to acknowledge is that, if strictly applied, the prior version of Section III A.1 i. of the By-Law would most likely have resulted in an outright prohibition of SMNPHC's proposed use of its property pursuant to Section III A.1 i.(1) – (9). Application of this now repealed section of the By-Law would have, at the very least, subjected SMNPHC to site plan review pursuant to Section III A.1 i.(10)-(14). Despite the fact that Section IV I.2. exempted Section 3 uses from the requirements of site plan review under that Section of the By-Law, it is not necessarily true that it would have exempted SMNPHC's property from the provisions of site plan review as defined under the prior Section III A.1 i.(10). The problem of conflicting provisions is one of the problems that the Town endeavored to eliminate through the Amendments.

SMNPHC also mischaracterizes the nature of site plan review permitted under the By-law and the Amendments thereto. Site plan review is not a zoning restriction or limitation. The

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<sup>1</sup> This is a determination that the Town has not yet been able to make, based on the fact that SMNPHC has failed to fully address the Town's ongoing requests for supporting documentation and further information on the educational services that are expected to be provided at this site. To date, SMNPHC's responses to the Building Commissioner's denial of its application for a "Change of Use" have included providing documentation of its non-profit status and some additional information on what aspects of its program it believes meet the "educational" requirement for protection pursuant to Section 3. It appears that SMNPHC's interpretation of Section 3 is that once a non-profit organization determines that its proposed use is a Dover Amendment use, the Town is prohibited from conducting any additional form of review to determine if what is being proposed actually meets the legal requirements of Section 3 to be afforded the protections of that section. SMNPHC's assertions are obviously not consistent with case law under the Dover Amendment. In addition, despite the fact that SMNPHC stated it would provide other information as requested by the Building Commissioner to insure compliance with local zoning and with state building code, no further information has been forthcoming. Instead, SMNPHC has appealed the decision of the Building Commissioner to the Town's Zoning Board of Appeals.

Supreme Judicial Court has recognized site plan review as "regulation of a use rather than a prohibition . . . contemplating primarily the imposition for the public protection of reasonable terms and conditions." Y.D. Dugout, Inc. v. Board of Appeals of Canton, 357 Mass. 25, 31 (1970). The conclusion that "site plan review has to do with *regulation of permitted uses, not their prohibition*, as would be the case with a special permit or a variance" has been repeatedly affirmed by the Courts. Osberg v. Planning Bd. of Sturbridge, 44 Mass. App. Ct. 56, 57 (1997) (emphasis added), citing Bowen v. Board of Appeals of Franklin, 36 Mass. App. Ct. 954, 955 (1994). SMNPHC further fails to recognize the critical distinction that the site plan review contemplated by the Amendments is required to be performed in association with the issuance of a building permit (allowing a project to proceed) and not a special permit (which is discretionary in nature). Therefore, any assertion by SMNPHC that site plan review would result in an outright denial of its project is not supported as a matter of fact or law.

In reliance on its misunderstandings of the law as enumerated above, SMNPHC further argues that the prior version of Section IV I.2. of the By-Law "specifically (and properly)" exempted all Section 3 uses from site plan review and is in keeping with the holding of The Bible Speaks v. Board of Appeals of Lenox, 8 Mass. App. Ct. 19 (1979). SMNPHC specifically asserts that the Appeals Court in The Bible Speaks "invalidated the provisions of a local zoning ordinance that imposed certain site plan requirements on educational uses." See SMNPHC's August Letter, p. 3. A balanced reading of The Bible Speaks, however, leads more logically to the conclusion that the Appeals Court's findings in that case do not support the assertion that the case stands for a general ban on application of site plan review to Section 3 uses. In actuality, The Bible Speaks Court found that "the full impact of the [site plan] requirements . . . must also be appraised in light of the provisions of § 6 of the by-law, which makes educational uses, such as the plaintiff's, special exceptions *dependent on the discretionary grant of a special permit by the board*." See id. at 32 (emphasis added). The extensive site plan review utilized in The Bible Speaks was not limited to reasonable dimensional considerations identified within Section 3 or to any identified health and safety concerns associated with the site. Instead, the process constituted "an assessment of the probable impact of its project on attendance in the public schools, increase in vehicular traffic, increases in municipal service costs, load on public utilities or the future demand for them, public safety, police and fire protection, changes in surface drainage, increased consumption of water and increase in refuse disposal." See id. at n.12

SMNPHC assumes that merely because the general site plan review defined under Section IV.I. can in some instances require a variety of different reports, that therefore all of these requirements will be applied to Section 3 uses. Nothing in the language of the Amendments supports such a conclusion. The Town obviously will be limited by the previously cited cases to insure that site plan review of any Section 3 use is implemented in a manner that does not infringe upon the rights afforded those uses pursuant to Section 3. In fact, the Amendment to Section IV I 3 b states that "[t]he Planning Board, at its discretion and based on a preliminary assessment of the scale and type of development proposed, may waive or modify the requirements for submission of any of the elements in Subsection 5 and the development impact standards in Subsection 6. Such waiver shall be issued in writing with supporting reasons."

The Attorney General should be aware that the Town is mindful of the cautionary language provided by your office regarding the application of site plan review to Section 3 uses:

It is our view that the requirement for site plan review is not facially inconsistent with state law to ascertain whether a protected use complies with reasonable regulations concerning yard size, lot area, setbacks, open space, parking, and building coverage requirements. However, we caution the town not to implement site plan review in a manner that infringes on the rights given under G.L. c. 40A, Section 3.

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See Danvers #2366 (Attorney General's Office, The Municipal Law Unit, March 19, 2003).<sup>2</sup>

Contrary to SMNPHC's assertions, it is not necessary for the Town to have fashioned a separate form of site plan review or to craft specific language that defines the exact process to be applied to Section 3 uses. "Under the Dover Amendment, which places restrictions on municipal zoning of nonprofit education institutions, it is not necessary that local zoning requirements be drafted specifically for application to educational use in order to be considered reasonable." Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass. App. Ct. 794, 802 (2003).

In further support of its argument that site plan review as applied to Section 3 uses is per se improper, SMNPHC also cites to a footnote in Petrucchi v. Board of Appeals of Westwood, 45 Mass. App. Ct. 818, 824, n.9 (1998). According to SMNPHC, this footnote stands for the proposition that "the proposed exempt [Section 3] use could not be made subject to either variance procedures or site plan review, a conclusion in accord with Trustees of Tufts College v. Medford." SMNPHC August Letter, p. 4. However the exact statement by the Appeals Court in the Petrucchi footnote was:

The commissioner and the board determined that, short of relocation, Petrucchi would have to obtain a variance, after site plan review. On Petrucchi's second motion for partial summary judgment, the [lower court] judge ruled that the proposed exempt use could not be made subject to either variance procedures or site plan review, a conclusion in accord with Trustees of Tufts College v. Medford, 415 Mass. 753, 760, 765 (1993). The board has not questioned that ruling in this appeal.

The Appeals Court included the above-quoted text in footnote 9 to indicate that the board had not chosen to question the lower court's ruling on appeal. Petrucchi did not adjudicate the question.

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<sup>2</sup> In addition to the Town of Danvers, the towns of Burlington, Groton Concord, and Sudbury, as well as the cities of Marlborough and Newton, to name only a few, have by-laws or ordinances that do not exempt Section 3 uses from site plan review, but instead implement the use of site plan review in such a manner that does not infringe upon the rights afforded to those uses. The Attorney General has approved the by-laws in the towns mentioned, notwithstanding the fact that they do not confer blanket exemptions on Dover Amendment uses from site plan review, and therefore may permit appropriately tailored site plan review to such uses within the parameters of Section 3.



In no way can it be said that this footnote constitutes a wholesale adoption by the Appeals Court of the premise that site plan review can never be applied to Section 3 uses in association with a building permit.

In further support of its assertion that site plan review of Section 3 uses is impermissible, SMNPHC next references a decision of the Land Court, Trustees of Boston College v. Board of Aldermen of the City of Newton, Misc. Case No. 121573 (Mass. Land Ct. 1987). This case, while instructive, does not rise to the level of precedent and is actually of little assistance to SMNPHC's argument.<sup>3</sup> In this case, the Land Court (Sullivan, C.J.) held not that the site plan review provisions of the City of Newton's ordinance "as applied to non-profit religious and educational uses, violates the provisions of G.L. c. 40A, § 3," but rather the following:

Upon consideration of the *foregoing facts and arguments* and in light of the case law I find that Section 30-24 of the Newton Zoning Ordinance, *as applied* to non-profit religious and educational uses, violates the provisions of G.L. c. 40A, s.3, and further *that the conditions imposed by the site plan approval exceed in general the proper scope of site plan review* and constitute as a whole an unreasonable interference with the protected statutory use.

*Id.* at 15 (emphasis added). Again, the Land Court did not find site plan review inappropriate in all instances, but that in this case the application of site plan review by the City of Newton under the facts of the particular case had exceeded the allowable scope of review pursuant to Section 3.

The Appeals Court's consideration of a subsequent case, involving the same parties, further negates SMNPHC's argument that site plan review is always inappropriate when applied to Section 3 uses. Instead, the Appeals Court held:

The Dover Amendment is intended to encourage a degree of accommodation between the protected use and matters of critical municipal concern. (citations omitted). Here, unfortunately, those accommodations effectively were negated when the proposed order failed to attract a super majority of the board, resulting in denial of the permits. *Moreover, that denial also put aside any opportunity for the board reasonably to regulate a permitted use through site plan review.* See Osberg v. Planning Bd. of Sturbridge, 44 Mass. App. Ct. 56, 57, 687 N.E.2d 1274 (1997), and cases cited.

Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass. App. Ct. 794, 800 (2003) (emphasis added). Thus, the Appeals Court's decision in this later case actually is in opposition to SMNPHC's assertion that the application of site plan review to Section 3 uses is per se improper.

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<sup>3</sup> In fact, this case appears to only have ever been cited once by the Land Court in its subsequent decisions. In that instance, it was cited for the proposition that courts must be "careful to establish a nexus between the legitimate goal of the challenged regulation and its effect on the proposed project and the institution's plans." Assembly of God Church of Attleboro v. Zoning Board of Appeals of Attleboro, Misc. Case Nos. 224472, 224930 (Mass. Land Ct. 1999).

Finally, it must be emphasized that the cases cited by SMNPHC considered the use of site plan review in combination with the special permit process, not the issuance of a building permit as applicable to the Amendments in this instance. SMNPHC has not presented a supportable argument that the courts in the Commonwealth have conclusively determined that site plan review is impermissible for review of Section 3 uses. Instead SMNPHC has merely shown support for the Attorney General's determination that site plan review is not facially inconsistent with state law, but must instead be implemented in a manner that does not infringe on the rights under Section 3.

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**D. SMNPHC's Claim that the Town failed to Provide Adequate Notice as to the Amendments' General Intent Lacks Merit and is Unsupported by Case Law**

SMNPHC's remaining arguments in its August Letter all deal with the issue of notice and focus on the differences between the language of the Warrant as compared to the language of the final Amendments adopted by Town Meeting. According to SMNPHC, the August 3, 2005 Special Town Meeting could not change the language of the proposed Amendments to be more expansive or have any greater impact than the language that was originally included in the Warrant and specifically identified as part of the Planning Board Hearing Notice. See SMNPHC August Letter, Issues 2-4.

G L. c. 40A, § 5 states that "no defect in the form of any notice shall invalidate any zoning ordinance or by-laws unless such defects is found to be misleading." The leading case which addresses the adequacy of notice, as well as subsequent changes to proposed amendments prior to final adoption by a town, is Town of Burlington v. Dunn, 318 Mass. 216 (1945). According to the Supreme Judicial Court in Dunn, G L. c. 39, § 10 requires only that:

[T]he warrant shall state the subjects to be acted upon at the meeting and that no action shall be valid unless the subject matter thereof is contained in the warrant. This means only that the subjects to be acted upon must be sufficiently stated in the warrant to appraise voters of the *nature of the matters* with which the meeting is authorized to deal. It does not require that the warrant contain an accurate forecast of the precise action which the meeting will take upon those subjects.

Id. at 219 (emphasis added). As SMNPHC notes, the Town posted and published a Warrant for a Special Town Meeting to be held on August 3, 2005. Because the Warrant indicated that the proposed amendments were to deal with Sections III A.1. and IV I., these references were enough to put the public on notice that changes were being considered to these sections of the By-Law.

In the present case, it became apparent as part of the public hearing process that deletion of the original language identified in the Warrant left residual provisions in the By-Law that would be rendered substantively meaningless or confusing by the Amendments. It is perfectly acceptable and understandable that there should be changes to the text of the proposed amendments after the hearing before the Planning Board because "the purpose of such public

hearing is to obtain public sentiment so that proper revisions can be made.” Doliner v. Town Clerk of Millis, 343 Mass. 10, 13 (1961). Insofar as these sections were corollary provisions of the original Sections III A.1. and IV I. of the Zoning By-Law, the Special Town Meeting decided to delete such provisions that would become meaningless or to amend the language to provide the needed clarity, to avoid future confusion as to their meaning or application. These deletions and amendments did not fundamentally change the character of the Amendments; rather they instead were designed to perfect the implementation of the proposed Amendments.<sup>4</sup> See Dunn, 318 Mass. at 218-219.

SMNPHC’s reference to Fish v. Town of Canton, 322 Mass. 219 (1948), in support of its notice argument is completely misplaced. In Fish, the Supreme Judicial Court addressed the extreme instance of a case where the town stated in its warrant that it intended to amend a particular section of its Zoning By-Law, when indeed it was looking to either completely repeal or effect major revisions to its entire by-law. See id. In contrast, in the case of Framingham, the Town proposed, considered, and voted to amend the language of Sections III A.1. and IV I., as identified in the Warrant and in the notice, which is fully consistent with and permissible under the holding in Dunn. The repeal of the corollary provisions of the By-law that were not specifically identified in the warrant or public hearing notice were nonetheless within the general identity of the proposed amendments and were designed merely to harmonize, perfect and give true effect to the proposed amendments of Section III A.1. and IV I. See Fish, 322 Mass. at 223, citing Dunn, 318 Mass. at 218-219.

In the current instance, the warrant sufficiently apprised the voters of the subject matter of the vote. See id. All of the provisions of the Amendments were within the reasonable notice of the Warrant and notice. See Johnson v. Town of Framingham, 354 Mass. 750 (1968). The Town was within its right at the Special Town Meeting to vote to pass the Articles as written “or take any other action thereon.” Nelson v. Town of Belmont, 274 Mass. 35, 42-43 (1931) “It is a settled principle that warrants for town meetings are to be liberally interpreted and are not to be construed with great strictness. It is sufficient if intelligible notice of the subject to be considered is given. Substantial certainty as to the nature of the business to be acted upon is all that is required”. Id.

**E. The Amendments Sufficiently Describe How Site Plan Review Should be Applied to Section 3 Uses and Sufficiently Guide the Discretion of the Building Commissioner**

SMNPHC argues in its September Letter that the By-Law does not specifically define what provisions in Section IV I. will be applied to Section 3 uses, and therefore the Amendments are “fatally flawed because [they do] not offer any standard for how Site Plan Review applies to

<sup>4</sup> If the Attorney General should reach the unlikely conclusion that the technical conforming ancillary amendments of the non-Section III A.1. and IV I. provisions that were made to give effect to the main revisions are somehow procedurally defective on notice grounds, G.L. c. 40A, § 5 clearly indicates that the Attorney General may disapprove those technical ancillary amendments while approving the main amendments to Section III A.1. and IV I. that indisputably satisfied the notice requirements

a Dover Amendment protected use.” However, the Town is not required to include such a provision in the By-Law because the Commonwealth has already provided the relevant standard in Section 3. This section clearly states that “such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.” Greater specificity in the By-Law could run afoul of state direction under Section 3, create needless confusion, and possibly negate the Town’s effort to maintain neutrality in application of the By-Law.

As explicated above, the Town understands and recognizes that not all of the provisions of Section IV.I. would be applicable to Dover Amendment uses because state law limits the application of site plan review in such circumstances. The Town included an amendment to this section (now Section IV.I.3 b) which states that the Planning Board “may waive or modify the requirements for submission of any of the elements in Subsection 5 and the development impact standards in Subsection 6” to allow for the necessary flexibility in dealing with a variety of uses, including Section 3 uses. What will be required from a Section 3 applicant for site plan review will depend upon, be reflective of, and conditioned by with “reasonable regulation” is permitted within the contours of Section 3.

In Framingham, the Building Commissioner also serves as the Zoning Enforcement officer and he/she is the “gate keeper” who initially, and routinely, makes determinations as to whether a use complies with local zoning. See Fitzsimmons v. Board of Appeals of Chatham, 21 Mass. App. Ct. 53, 56 (1985). Given the great variety of factual considerations associated with different types of Section 3 uses, every property will require the evaluation of different factors, but always as in keeping with the requirements of Section 3. Based on a determination of the Building Commissioner, different applicants may be required to provide a slightly differing set of documentation, which could range from a mere written description of the proposed project to plans, drawings and full narratives. The Building Commissioner must then make an initial determination regarding what “reasonable regulation” might require further site plan review by the Planning Board and will advise the applicant as to the nature and particulars of the documentation that should be submitted to permit this review to occur.

By way of example, in response to SMNPHC’s application, the Building Commissioner specifically informed SMNPHC that it needed to submit “An off-street parking plan and lot in compliance with the Town Zoning By-Laws, Section IV.B.1 “Number of space required” for a residential care facility as one space for every four (4) occupants plus one per two (2) employees. The Planning Board will review the parking lot under Site Plan review.” See August 11, 2005 Letter to SMNPHC from Joseph Mikielian, Building Commissioner, Town of Framingham. This response gave SMNPHC a clear and specific indication that Site Plan review would include (but not necessarily be limited to) parking requirements for the proposed use, which is clearly in keeping with both the language and intent of Section 3.

### CONCLUSION

For the foregoing reasons, the Town respectfully submits that the Amendments adopted at the August 3, 2005 Special Town Meeting are fully consistent with applicable law and were

October 24, 2005

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adopted in accordance with proper procedures and notice. None of the reasons advanced in the South Middlesex Non-Profit Housing Corporation's letters of August 25, 2005 and September 9, 2005 warrant rejection of the Amendments. The Amendments are consistent with (and nearly mirror in some instances) site plan review by-laws approved by the Office of the Attorney General on past occasions. Under G.L. c. 40, §32 and applicable case law, the Town of Framingham respectfully requests the Office of the Attorney General to approve the By-Law Amendments approved by the Framingham Special Town Meeting of August 3, 2005.

If you have need any further information or have any questions regarding the Amendments or this letter, please give me a call.

Very truly yours,

/s

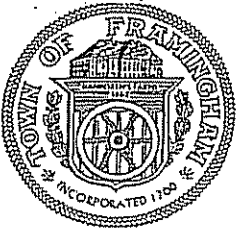
Christopher J. Petrini  
Town Counsel

cc: Framingham Board of Selectmen  
Framingham Planning Board  
Framingham Zoning Board of Appeals  
George P. King, Jr., Town Manager  
John W. Grande, Planning Board Administrator  
Joseph R. Mikielian, Building Commissioner  
Eugene F. Kennedy, Zoning Board of Appeals

*2005.10.24 Town Counsel Response Letter to Attorney General's Office - FINAL (600-109)*

## Exhibit 26





## FRAMINGHAM PLANNING & ECONOMIC DEVELOPMENT

150 CONCORD STREET • MEMORIAL BUILDING • ROOM B-2

FRAMINGHAM, MA 01702-8325

TELEPHONE: 508.620.4852

FAX: 508.820-9645

### MEMORANDUM

TO: Framingham Zoning Board of Appeals  
FROM: Gene Kennedy, Senior Planner  
CC: Kathleen Bartolini, Director of Planning and Economic Development  
Planning Board  
RE: ZBA #05-58 517 Winter Street  
DATE: 10/25/05

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Attached please find the following documents:

1. Memorandum from the Department of Planning and Development
2. Memorandum from Christopher Petrini, Town Counsel to Joseph Mikielian, Building Commissioner, dated October 24, 2005
3. Letter from Christopher Petrini, Town Counsel to the Attorney General's office dated October 24, 2005

*Dedicated to excellence in public service.*







TOWN OF FRAMINGHAM  
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October 24, 2005

Kelli E. Gunagan, Esq.  
Assistant Attorney General  
Office of the Attorney General  
1350 Main Street  
Springfield, MA 01103

Re: Town of Framingham Zoning By-Law Amendments  
Adopted at Special Town Meeting on August 3, 2005  
Response to Letters of South Middlesex Non-Profit Housing  
Corporation dated August 25, 2005 and September 9, 2005

Dear Ms. Gunagan:

This letter is in response to your letters of September 8, 2005 and September 12, 2005, wherein you copied me on two letters sent to you by South Middlesex Non-Profit Housing Corporation ("SMNPHC"), the first dated August 25, 2005 ("August letter"), and the second dated September 9, 2005 ("September letter"), with enclosures. For the reasons described below, it is the Town of Framingham's position that the Town Meeting's Amendments to its Zoning By-Law ("Amendments") which were adopted at a Special Town Meeting on August 3, 2005 are proper, in accordance with G.L. c. 40A, §3 and other pertinent statutes, are very similar to other zoning bylaws approved by the Office of the Attorney General, and should be approved by the Attorney General in this instance in accordance with G.L. c. 40, §32.

ANALYSIS

**A. The Attorney General's Scope of Review of the By-Law Amendments Under G.L. c. 40, §32 is a Limited One, and the Attorney General is Required to Approve Said Amendments if They Are Capable of any Legal Application**

The authority of local governments to regulate the use of private property through zoning is based in the state's generalized police power. See generally Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). Inherent to this expansive regulatory power is the

understanding that local government must have the flexibility to address rapidly changing local conditions. Zoning regulations will be found to be constitutionally valid unless clearly arbitrary and unreasonable and unless they have no substantial relation to the public health, safety, morals or general welfare. See id.

The power of the Attorney General to disapprove by-laws pursuant to G.L. c. 40, §32 ("Section 32") is a limited one. See Concord v. Attorney Gen., 336 Mass. 17, 24-25 (1957). Every "presumption is to be made in favor of the validity of municipal by-laws." Town of Amherst v. Attorney Gen., 398 Mass. 793, 796 (1986). If a proposed by-law is capable of any interpretation or application that would make it a legal one, then it must be approved under Section 32. See Concord v. Attorney Gen., 336 Mass. at 24-25. "The Massachusetts Constitution reaffirms the customary and traditional liberties of the people with respect to the conduct of their local government . . . Art. 2, §1, of the Amendments to the Constitution of Massachusetts ("Home Rule Amendment"), as amended by art. 89. In the exercise of this right to local government, towns have the power to pass by-laws for the purpose of preserving peace and order. G.L. c. 40, § 21. The town exceeds its power only when it passes a by-law inconsistent with the Constitution or laws of the Commonwealth." See Town of Amherst, 398 Mass. at 796. Accordingly, bylaws can be invalidated only when they violate the Constitution or laws of the Commonwealth. There is no evidence that the Amendments should not be approved, especially taking into account the deferential standard of review that the Attorney General is required to apply when reviewing by-laws.

Contrary to the assertions made by SMNPHC in its August and September letters, the Town has complied with all legal requirements, both procedurally and substantively, in its adoption of the Amendments at the Special Town Meeting. The Amendments in no way violate any protections of the Constitution, and SMNPHC makes no claim to that effect. Furthermore, despite SMNPHC's claims that the Amendments violate G.L. c. 40A, §3 (hereinafter referred to as the "Dover Amendment" or "Section 3"), the Amendments do not violate either the language or intent of Section 3 and are instead a means by which to better ensure compliance with the requirements of this section of the law. As established below, there is no support for SMNPHC's claim that the courts of the Commonwealth forbid the use of site plan review prior to the issuance of a building permit, as a means to identify which aspect of the proposed project may be subject to "reasonable regulations" in accordance with Section 3. Instead, Section 3 envisions that Dover Amendment uses are to be reviewed prior to issuance of a building permit. A community cannot "reasonably regulate" the height and bulk of structures, and determine yard sizes, lot areas and setbacks, all permitted under the Dover Amendment, without a process that allows for a review of these project components in connection with the issuance of a building permit. See generally Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass.App.Ct. 794 (2003). Although it is clear that Section 3 requires that Dover Amendment uses be shown significant deference, it is equally clear that, wherever possible, these uses are expected to comply with reasonable zoning requirements. See id.

The Amendments are a direct response to the continual evolution of judicial interpretations of Section 3 over the past decade, specifically the precise role that courts envision municipalities should take when reviewing Dover Amendment uses. The Amendments were

adopted by the Town to replace currently existing provisions that either had become ineffective in helping the Town to meet its responsibilities under Section 3, or were contrary to the deference intended to be shown to such uses. It is not, nor will it always be, an easy task to achieve the appropriate balance between protected uses and reasonable zoning regulations, as intended by the Dover Amendment. The Town believes that the Amendments will provide the best possible means to achieve this balance. For this reason, and for the other reasons set forth in this letter, the Town respectfully requests that the Office of the Attorney General approve the Amendments adopted by the Town.

**B. The Amendments Were A Proper Legislative Act by the August 3, 2005  
Special Town Meeting and Must be Regarded as Presumptively Valid**

Keeping in mind the deferential standard of review that the Attorney General must employ when examining a bylaw enactment under Section 32, we now address the principal arguments raised by SMNPHC in its letters. A party attacking a zoning amendment has the burden of proof, requiring that he prove by a preponderance of the evidence that the zoning regulation is arbitrary and unreasonable, or substantially unrelated to the public health, safety, morals, or general welfare. See McLean Hospital Corp. v. Town of Belmont, 56 Mass. App. Ct. 540, 547 (2002). For the reasons described herein, SMNPHC cannot meet its burden of proving that the Amendments are arbitrary, unreasonable or substantially unrelated to the public health, safety, morals or general welfare.

SMNPHC states in its August Letter that the Amendments were a response to pressure from a local Framingham citizen group known as Stop Tax Exempt Private Properties Sprawl ("STEPPS") and that the underlying motives for the Amendments were as a "means to halt SMNPHC's plans" to use its Framingham property as a drug rehabilitation facility, and that the Amendments merely constitute an attempt by the Town to have "an opportunity to regulate multiple facets of a development unrelated to reasonable dimensional restrictions" so that the Town could "severely curtail the perceived proliferation of non-profit educational uses in the Town." See SMNPHC August letter, at pp. 1-2.

SMNPHC's assertions are based predominately upon its fear that the Amendments will be applied to its property. As might be anticipated from any property owner whose property may be affected by changes in zoning, SMNPHC seeks to counter the lawful action of the citizens of the Town by arguing that the changes were proposed solely as a means by which to cause it harm. However, despite SMNPHC's claims to the contrary, the adoption, amendment, or repeal of local zoning by-laws "by the voters at town meeting is not only the exercise of an independent police power; it is also a legislative act carrying a *strong presumption of validity*." See Durand v. Bellingham, 400 Mass. 45, 50-51 (2003) (emphasis added), citing Sylvania Elec. Prods. Inc. v. Newton, 344 Mass. 428, 433 (1962). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Id., citing Crall v. Leominster, 362 Mass. 95, 101 (1972). "Such an analysis is not affected by consideration of the various possible motives that may have inspired legislative action." Id., citing Merriam v. Secretary of the Commonwealth, 375 Mass. 246, 253 (1978).

Despite all the varying opinions that may have been voiced by the citizens of the Town prior to the adoption of the Amendments (the expressions of which is an integral part of our democratic process), the Town's decision to amend the Zoning By-Law ("By-Law") at this time was the culmination of a lengthy review process undertaken by the Framingham Planning Board and other town officials over approximately a two year period. The process that resulted in the issuance of the Notice of the Public Hearing for the Amendments in July, 2005, predates by years the date that SMNHPC purchased the parcel at 517 Winter Street in Framingham. Therefore, SMNHPC's assertions that the Amendments were proposed in response to SMNHPC's acquisition of 517 Winter Street is directly contradicted by the uncontroverted facts that both the need for and the review process that resulted in the Amendments originated before SMNHPC's acquisition of the Winter Street parcel.

Over the past several years, the Town had become increasingly aware that existing provisions in the By-Law were no longer appropriate to comply with the direction of the courts, and as some of these provisions had been added at different times they now were subject to conflicting and inconsistent interpretations regarding their application to review of Section 3 uses. One of the purposes of the ongoing review process was to respond to the direction set forth by the courts of the Commonwealth in recent years in interpreting the scope and nature of municipal rights and responsibilities under Section 3. For example, one section of a prior version of the Bylaw completely shows Section 3 uses were exempted from site plan review. This exception is not supported by recent case law. See Campbell v. City Council of Lynn, 415 Mass. 772, 778 (1993) ("[L]ocal officials *may not grant blanket exemptions* from the requirements [identified in Section 3] to protected uses . . . officials may, however, on an appropriate showing, decide that facially reasonable zoning requirements . . . cannot be applied . . . because application of the requirements would nullify the protection granted to the use . . .") (emphasis added); Trustees of Tufts College v. Medford, 415 Mass. 753, 760 (1993) ("Because local zoning laws are intended to be uniformly applied, an educational institution . . . bears the burden of proving that the local requirements are unreasonable as applied to it . . . *local officials may not grant blanket exemptions* from the requirements to protected uses") (emphasis added); and Green v. Central Middlesex Ass'n for Retarded Citizens, 64 Mass.App.Ct. 1106 (2005) (unpublished 1:28 decision) (Requirements of a by-law are presumptively valid under the Dover Amendment and require an educational institution to prove local requirements are unreasonable as applied to it; a town may not choose to grant blanket exceptions to such uses).

The courts have clarified in recent years that "the Dover Amendment is intended to encourage a degree of accommodation between the protected use and matters of critical municipal concern." Trustees Of Boston College v. Board Of Aldermen Of Newton, 58 Mass. App. Ct. 794, 801, fn.7 (2003), citing Trustees of Tufts College v. Medford, 415 Mass. 753, 760 (1993); Martin v. The Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, 434 Mass. 141, 144, (2001). The Town had found that, under the existing provisions of the By-Law, it was no longer able to provide for a clear and uniform system that allowed for "balanced accommodation" between the protected uses and matters of critical municipal concern. The Amendments resulted from a review process that sought to reconcile these inconsistencies, to improve the overall functioning of the By-Law regarding these uses, and to respond to recent

court decisions that have provided further guidance on how to properly bring about the delicate balance required under the Dover Amendment. The Amendments were not directed to a specific parcel of land, although the Winter Street parcel and other parcels may be subjected to its provision.

**C. Site Plan Review may be Applied to Dover Amendment Uses Consistent with State Law**

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SMNPHC argues in its August letter that the Amendments represent a decision to subject Section 3 uses to site plan review. This is not correct. Rather, the Amendments represent a decision by the Town to no longer "exempt" certain uses, including Section 3 uses, from site plan review and to instead require uniformity in the application of these provisions of the By-Law. Despite SMNPHC's beliefs that blanket exemptions are the only proper way in which to address Section 3 uses, granting blanket exemptions from local zoning requirements is exactly what the courts have found to be inappropriate in recent years. See Trustees of Tufts College, 415 Mass. at 760; City Council of Lynn, 415 Mass. at 778 (1993); Central Middlesex Ass'n., 64 Mass. App. Ct. at 1106 (2005).

SMNPHC's August Letter further argues that the practical effect of the Amendments will require that its property be subject to site plan review should the Town ultimately determine that SMNPHC's proposed use is a Dover Amendment use.<sup>1</sup> However, what SMNPHC has failed to acknowledge is that, if strictly applied, the prior version of Section III.A.1.i. of the By-Law would most likely have resulted in an outright prohibition of SMNPHC's proposed use of its property pursuant to Section III.A.1.i.(1) – (9). Application of this now repealed section of the By-Law would have, at the very least, subjected SMNPHC to site plan review pursuant to Section III.A.1.i.(10)-(14). Despite the fact that Section IV.1.2. exempted Section 3 uses from the requirements of site plan review under that Section of the By-Law, it is not necessarily true that it would have exempted SMNPHC's property from the provisions of site plan review as defined under the prior Section III.A.1.i.(10). The problem of conflicting provisions is one of the problems that the Town endeavored to eliminate through the Amendments.

SMNPHC also mischaracterizes the nature of site plan review permitted under the By-law and the Amendments thereto. Site plan review is not a zoning restriction or limitation. The

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<sup>1</sup> This is a determination that the Town has not yet been able to make, based on the fact that SMNPHC has failed to fully address the Town's ongoing requests for supporting documentation and further information on the educational services that are expected to be provided at this site. To date, SMNPHC's responses to the Building Commissioner's denial of its application for a "Change of Use" have included providing documentation of its non-profit status and some additional information on what aspects of its program it believes meet the "educational" requirement for protection pursuant to Section 3. It appears that SMNPHC's interpretation of Section 3 is that once a non-profit organization determines that its proposed use is a Dover Amendment use, the Town is prohibited from conducting any additional form of review to determine if what is being proposed actually meets the legal requirements of Section 3 to be afforded the protections of that section. SMNPHC's assertions are obviously not consistent with case law under the Dover Amendment. In addition, despite the fact that SMNPHC stated it would provide other information as requested by the Building Commissioner to insure compliance with local zoning and with state building code, no further information has been forthcoming. Instead, SMNPHC has appealed the decision of the Building Commissioner to the Town's Zoning Board of Appeals.

Supreme Judicial Court has recognized site plan review as "regulation of a use rather than a prohibition . . . contemplating primarily the imposition for the public protection of reasonable terms and conditions." Y.D. Dugout, Inc. v. Board of Appeals of Canton, 357 Mass. 25, 31 (1970). The conclusion that "site plan review has to do with *regulation of permitted uses, not their prohibition*, as would be the case with a special permit or a variance" has been repeatedly affirmed by the Courts. Osberg v. Planning Bd. of Sturbridge, 44 Mass. App. Ct. 56, 57 (1997) (emphasis added), citing Bowen v. Board of Appeals of Franklin, 36 Mass. App. Ct. 954, 955 (1994). SMNPHC further fails to recognize the critical distinction that the site plan review contemplated by the Amendments is required to be performed in association with the issuance of a building permit (allowing a project to proceed) and not a special permit (which is discretionary in nature). Therefore, any assertion by SMNPHC that site plan review would result in an outright denial of its project is not supported as a matter of fact or law.

In reliance on its misunderstandings of the law as enumerated above, SMNPHC further argues that the prior version of Section IV.I.2. of the By-Law "specifically (and properly)" exempted all Section 3 uses from site plan review and is in keeping with the holding of The Bible Speaks v. Board of Appeals of Lenox, 8 Mass. App. Ct. 19 (1979). SMNPHC specifically asserts that the Appeals Court in The Bible Speaks "invalidated the provisions of a local zoning ordinance that imposed certain site plan requirements on educational uses." See SMNPHC's August Letter, p. 3. A balanced reading of The Bible Speaks, however, leads more logically to the conclusion that the Appeals Court's findings in that case do not support the assertion that the case stands for a general ban on application of site plan review to Section 3 uses. In actuality, The Bible Speaks Court found that "the full impact of the [site plan] requirements . . . must also be appraised in light of the provisions of § 6 of the by-law, which makes educational uses, such as the plaintiff's, special exceptions *dependent on the discretionary grant of a special permit by the board*." See id. at 32 (emphasis added). The extensive site plan review utilized in The Bible Speaks was not limited to reasonable dimensional considerations identified within Section 3 or to any identified health and safety concerns associated with the site. Instead, the process constituted "an assessment of the probable impact of its project on attendance in the public schools, increase in vehicular traffic, increases in municipal service costs, load on public utilities or the future demand for them, public safety, police and fire protection, changes in surface drainage, increased consumption of water and increase in refuse disposal." See id. at n.12.

SMNPHC assumes that merely because the general site plan review defined under Section IV.I. can in some instances require a variety of different reports, that therefore all of these requirements will be applied to Section 3 uses. Nothing in the language of the Amendments supports such a conclusion. The Town obviously will be limited by the previously cited cases to insure that site plan review of any Section 3 use is implemented in a manner that does not infringe upon the rights afforded those uses pursuant to Section 3. In fact, the Amendment to Section IV.I.3.b. states that "[t]he Planning Board, at its discretion and based on a preliminary assessment of the scale and type of development proposed, may waive or modify the requirements for submission of any of the elements in Subsection 5 and the development impact standards in Subsection 6. Such waiver shall be issued in writing with supporting reasons."

The Attorney General should be aware that the Town is mindful of the cautionary language provided by your office regarding the application of site plan review to Section 3 uses:

It is our view that the requirement for site plan review is not facially inconsistent with state law to ascertain whether a protected use complies with reasonable regulations concerning yard size, lot area, setbacks, open space, parking, and building coverage requirements. However, we caution the town not to implement site plan review in a manner that infringes on the rights given under G.L. c. 40A, Section 3.

See Danvers #2366 (Attorney General's Office, The Municipal Law Unit, March 19, 2003).<sup>2</sup>

Contrary to SMNPHC's assertions, it is not necessary for the Town to have fashioned a separate form of site plan review or to craft specific language that defines the exact process to be applied to Section 3 uses. "Under the Dover Amendment, which places restrictions on municipal zoning of nonprofit education institutions, it is not necessary that local zoning requirements be drafted specifically for application to educational use in order to be considered reasonable." Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass. App. Ct. 794, 802 (2003).

In further support of its argument that site plan review as applied to Section 3 uses is per se improper, SMNPHC also cites to a footnote in Petrucci v. Board of Appeals of Westwood, 45 Mass. App. Ct. 818, 824, n.9 (1998). According to SMNPHC, this footnote stands for the proposition that "the proposed exempt [Section 3] use could not be made subject to either variance procedures or site plan review, a conclusion in accord with Trustees of Tufts College v. Medford." SMNPHC August Letter, p. 4. However the exact statement by the Appeals Court in the Petrucci footnote was:

The commissioner and the board determined that, short of relocation, Petrucci would have to obtain a variance, after site plan review. On Petrucci's second motion for partial summary judgment, the [lower court] judge ruled that the proposed exempt use could not be made subject to either variance procedures or site plan review, a conclusion in accord with Trustees of Tufts College v. Medford, 415 Mass. 753, 760, 765 (1993). The board has not questioned that ruling in this appeal.

The Appeals Court included the above-quoted text in footnote 9 to indicate that the board had not chosen to question the lower court's ruling on appeal. Petrucci did not adjudicate the question.

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<sup>2</sup> In addition to the Town of Danvers, the towns of Burlington, Groton Concord, and Sudbury, as well as the cities of Marlborough and Newton, to name only a few, have by-laws or ordinances that do not exempt Section 3 uses from site plan review, but instead implement the use of site plan review in such a manner that does not infringe upon the rights afforded to those uses. The Attorney General has approved the by-laws in the towns mentioned, notwithstanding the fact that they do not confer blanket exemptions on Dover Amendment uses from site plan review, and therefore may permit appropriately tailored site plan review to such uses within the parameters of Section 3.



In no way can it be said that this footnote constitutes a wholesale adoption by the Appeals Court of the premise that site plan review can never be applied to Section 3 uses in association with a building permit.

In further support of its assertion that site plan review of Section 3 uses is impermissible, SMNPHC next references a decision of the Land Court, Trustees of Boston College v. Board of Aldermen of the City of Newton, Misc. Case No. 121573 (Mass. Land Ct. 1987). This case, while instructive, does not rise to the level of precedent and is actually of little assistance to SMNPHC's argument.<sup>3</sup> In this case, the Land Court (Sullivan, C.J.) held not that the site plan review provisions of the City of Newton's ordinance "as applied to non-profit religious and educational uses, violates the provisions of G.L. c. 40A, § 3," but rather the following:

Upon consideration of the *foregoing facts and arguments* and in light of the case law I find that Section 30-24 of the Newton Zoning Ordinance, *as applied* to non-profit religious and educational uses, violates the provisions of G.L. c. 40A, s.3, and further *that the conditions imposed by the site plan approval exceed in general the proper scope of site plan review* and constitute as a whole an unreasonable interference with the protected statutory use.

*Id.* at 15 (emphasis added). Again, the Land Court did not find site plan review inappropriate in all instances, but that in this case the application of site plan review by the City of Newton under the facts of the particular case had exceeded the allowable scope of review pursuant to Section 3.

The Appeals Court's consideration of a subsequent case, involving the same parties, further negates SMNPHC's argument that site plan review is always inappropriate when applied to Section 3 uses. Instead, the Appeals Court held:

The Dover Amendment is intended to encourage a degree of accommodation between the protected use and matters of critical municipal concern. (citations omitted). Here, unfortunately, those accommodations effectively were negated when the proposed order failed to attract a super majority of the board, resulting in denial of the permits. *Moreover, that denial also put aside any opportunity for the board reasonably to regulate a permitted use through site plan review.* See Osberg v. Planning Bd. of Sturbridge, 44 Mass. App. Ct. 56, 57, 687 N.E.2d 1274 (1997), and cases cited.

Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass. App. Ct. 794, 800 (2003) (emphasis added). Thus, the Appeals Court's decision in this later case actually is in opposition to SMNPHC's assertion that the application of site plan review to Section 3 uses is per se improper.

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<sup>3</sup> In fact, this case appears to only have ever been cited once by the Land Court in its subsequent decisions. In that instance, it was cited for the proposition that courts must be "careful to establish a nexus between the legitimate goal of the challenged regulation and its effect on the proposed project and the institution's plans." Assembly of God Church of Attleboro v. Zoning Board of Appeals of Attleboro, Misc. Case Nos. 224472, 224930 (Mass. Land Ct. 1999).

Finally, it must be emphasized that the cases cited by SMNPHC considered the use of site plan review in combination with the special permit process, not the issuance of a building permit as applicable to the Amendments in this instance. SMNPHC has not presented a supportable argument that the courts in the Commonwealth have conclusively determined that site plan review is impermissible for review of Section 3 uses. Instead SMNPHC has merely shown support for the Attorney General's determination that site plan review is not facially inconsistent with state law, but must instead be implemented in a manner that does not infringe on the rights under Section 3.

**D. SMNPHC's Claim that the Town failed to Provide Adequate Notice as to the Amendments' General Intent Lacks Merit and is Unsupported by Case Law**

SMNPHC's remaining arguments in its August Letter all deal with the issue of notice and focus on the differences between the language of the Warrant as compared to the language of the final Amendments adopted by Town Meeting. According to SMNPHC, the August 3, 2005 Special Town Meeting could not change the language of the proposed Amendments to be more expansive or have any greater impact than the language that was originally included in the Warrant and specifically identified as part of the Planning Board Hearing Notice. See SMNPHC August Letter, Issues 2-4.

G.L. c. 40A, § 5 states that "no defect in the form of any notice shall invalidate any zoning ordinance or by-laws unless such defects is found to be misleading." The leading case which addresses the adequacy of notice, as well as subsequent changes to proposed amendments prior to final adoption by a town, is Town of Burlington v. Dunn, 318 Mass. 216 (1945). According to the Supreme Judicial Court in Dunn, G.L. c. 39, § 10 requires only that:

[T]he warrant shall state the subjects to be acted upon at the meeting and that no action shall be valid unless the subject matter thereof is contained in the warrant. This means only that the subjects to be acted upon must be sufficiently stated in the warrant to appraise voters of the *nature of the matters* with which the meeting is authorized to deal. It does not require that the warrant contain an accurate forecast of the precise action which the meeting will take upon those subjects.

Id. at 219 (emphasis added). As SMNPHC notes, the Town posted and published a Warrant for a Special Town Meeting to be held on August 3, 2005. Because the Warrant indicated that the proposed amendments were to deal with Sections III A.1. and IV.I., these references were enough to put the public on notice that changes were being considered to these sections of the By-Law.

In the present case, it became apparent as part of the public hearing process that deletion of the original language identified in the Warrant left residual provisions in the By-Law that would be rendered substantively meaningless or confusing by the Amendments. It is perfectly acceptable and understandable that there should be changes to the text of the proposed amendments after the hearing before the Planning Board because "the purpose of such public

hearing is to obtain public sentiment so that proper revisions can be made.” Doliner v. Town Clerk of Millis, 343 Mass. 10, 13 (1961). Insofar as these sections were corollary provisions of the original Sections III.A.1. and IV.I. of the Zoning By-Law, the Special Town Meeting decided to delete such provisions that would become meaningless or to amend the language to provide the needed clarity, to avoid future confusion as to their meaning or application. These deletions and amendments did not fundamentally change the character of the Amendments; rather they instead were designed to perfect the implementation of the proposed Amendments.<sup>4</sup> See Dunn, 318 Mass. at 218-219.

SMNPHC’s reference to Fish v. Town of Canton, 322 Mass. 219 (1948), in support of its notice argument is completely misplaced. In Fish, the Supreme Judicial Court addressed the extreme instance of a case where the town stated in its warrant that it intended to amend a particular section of its Zoning By-Law, when indeed it was looking to either completely repeal or effect major revisions to its entire by-law. See id. In contrast, in the case of Framingham, the Town proposed, considered, and voted to amend the language of Sections III.A.1. and IV.I., as identified in the Warrant and in the notice, which is fully consistent with and permissible under the holding in Dunn. The repeal of the corollary provisions of the By-law that were not specifically identified in the warrant or public hearing notice were nonetheless within the general identity of the proposed amendments and were designed merely to harmonize, perfect and give true effect to the proposed amendments of Section III.A.1. and IV.I. See Fish, 322 Mass. at 223, citing Dunn, 318 Mass. at 218-219.

In the current instance, the warrant sufficiently apprised the voters of the subject matter of the vote. See id. All of the provisions of the Amendments were within the reasonable notice of the Warrant and notice. See Johnson v. Town of Framingham, 354 Mass. 750 (1968). The Town was within its right at the Special Town Meeting to vote to pass the Articles as written “or take any other action thereon.” Nelson v. Town of Belmont, 274 Mass. 35, 42-43 (1931) “It is a settled principle that warrants for town meetings are to be liberally interpreted and are not to be construed with great strictness. It is sufficient if intelligible notice of the subject to be considered is given. Substantial certainty as to the nature of the business to be acted upon is all that is required”. Id.

**E. The Amendments Sufficiently Describe How Site Plan Review Should be Applied to Section 3 Uses and Sufficiently Guide the Discretion of the Building Commissioner**

SMNPHC argues in its September Letter that the By-Law does not specifically define what provisions in Section IV.I. will be applied to Section 3 uses, and therefore the Amendments are “fatally flawed because [they do] not offer any standard for how Site Plan Review applies to

<sup>4</sup> If the Attorney General should reach the unlikely conclusion that the technical conforming ancillary amendments of the non-Section III.A.1. and IV.I. provisions that were made to give effect to the main revisions are somehow procedurally defective on notice grounds, G.L. c. 40A, § 5 clearly indicates that the Attorney General may disapprove those technical ancillary amendments while approving the main amendments to Section III.A.1 and IV.I. that indisputably satisfied the notice requirements.

a Dover Amendment protected use." However, the Town is not required to include such a provision in the By-Law because the Commonwealth has already provided the relevant standard in Section 3. This section clearly states that "such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." Greater specificity in the By-Law could run afoul of state direction under Section 3, create needless confusion, and possibly negate the Town's effort to maintain neutrality in application of the By-Law.

As explicated above, the Town understands and recognizes that not all of the provisions of Section IV.I. would be applicable to Dover Amendment uses because state law limits the application of site plan review in such circumstances. The Town included an amendment to this section (now Section IV.I.3.b) which states that the Planning Board "may waive or modify the requirements for submission of any of the elements in Subsection 5 and the development impact standards in Subsection 6" to allow for the necessary flexibility in dealing with a variety of uses, including Section 3 uses. What will be required from a Section 3 applicant for site plan review will depend upon, be reflective of, and conditioned by with "reasonable regulation" is permitted within the contours of Section 3.

In Framingham, the Building Commissioner also serves as the Zoning Enforcement officer and he/she is the "gate keeper" who initially, and routinely, makes determinations as to whether a use complies with local zoning. See Fitzsimmons v. Board of Appeals of Chatham, 21 Mass. App. Ct. 53, 56 (1985). Given the great variety of factual considerations associated with different types of Section 3 uses, every property will require the evaluation of different factors, but always as in keeping with the requirements of Section 3. Based on a determination of the Building Commissioner, different applicants may be required to provide a slightly differing set of documentation, which could range from a mere written description of the proposed project to plans, drawings and full narratives. The Building Commissioner must then make an initial determination regarding what "reasonable regulation" might require further site plan review by the Planning Board and will advise the applicant as to the nature and particulars of the documentation that should be submitted to permit this review to occur.

By way of example, in response to SMNPHC's application, the Building Commissioner specifically informed SMNPHC that it needed to submit "An off-street parking plan and lot in compliance with the Town Zoning By-Laws, Section IV.B.1 "Number of space required" for a residential care facility as one space for every four (4) occupants plus one per two (2) employees. The Planning Board will review the parking lot under Site Plan review." See August 11, 2005 Letter to SMNPHC from Joseph Mikielian, Building Commissioner, Town of Framingham. This response gave SMNPHC a clear and specific indication that Site Plan review would include (but not necessarily be limited to) parking requirements for the proposed use, which is clearly in keeping with both the language and intent of Section 3.

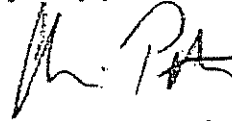
### CONCLUSION

For the foregoing reasons, the Town respectfully submits that the Amendments adopted at the August 3, 2005 Special Town Meeting are fully consistent with applicable law and were

adopted in accordance with proper procedures and notice. None of the reasons advanced in the South Middlesex Non-Profit Housing Corporation's letters of August 25, 2005 and September 9, 2005 warrant rejection of the Amendments. The Amendments are consistent with (and nearly mirror in some instances) site plan review by-laws approved by the Office of the Attorney General on past occasions. Under G.L. c. 40, §32 and applicable case law, the Town of Framingham respectfully requests the Office of the Attorney General to approve the By-Law Amendments approved by the Framingham Special Town Meeting of August 3, 2005.

If you have need any further information or have any questions regarding the Amendments or this letter, please give me a call.

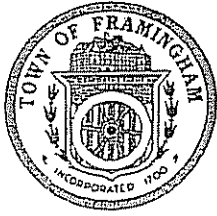
Very truly yours,



Christopher J. Petrini  
Town Counsel

cc: Framingham Board of Selectmen  
Framingham Planning Board  
Framingham Zoning Board of Appeals  
George P. King, Jr., Town Manager  
John W. Grande, Planning Board Administrator  
Joseph R. Mikielian, Building Commissioner  
Eugene F. Kennedy, Zoning Board of Appeals

*2005 10 24 Town Counsel Response Letter to Attorney General's Office - FINAL (600-109)*



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MEMORANDUM

To: Joseph Mikielian, Building Commissioner

From: Christopher J. Petrini  
Town Counsel

cc: Board of Selectmen  
Planning Board  
George P. King, Jr., Town Manager  
Zoning Board of Appeals

Date: October 24, 2005

Re: Opinion Letter in Response to South Middlesex Non-Profit Housing Corporation August 19, 2005 Letter of Denial of an Application for Change of Use for 517 Winter Street

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INTRODUCTION

This memorandum is in response to the August 19, 2005 letter sent by counsel for the South Middlesex Non-Profit Housing Corporation ("SMNPHC"), which is a wholly owned subsidiary of South Middlesex Opportunity Council, Inc. ("SMOC"), to the Town of Framingham's ("Town") Building Commissioner, Joseph R. Mikielian, ("Building Commissioner"). This memorandum also addresses certain aspects of recent statements apparently made to the local press by representatives of SMNPHC, the filing of an appeal on September 9, 2005, by SMNPHC to the Zoning Board of Appeals ("ZBA"), appealing the Building Commissioner's August 11, 2005 Denial of its application for a Change of Use Permit from an I-2 to a R-2 use ("Denial") and letters sent to the Attorney General's Office in opposition to the Town's adoption of amendments to its Zoning By-Law at the Special Town Meeting held on August 3, 2005.

In this memorandum, I will address what I consider to be the most relevant issues that have been raised by SMNPHC in the aforementioned materials and filings, based on information provided to date, and specifically the claim that the Denial violates both G.L. c. 151B, § 4 ("Chapter 151B") and the federal Fair Housing Act, 42 U.S.C. § 3601 et. seq ("FHA").

### FACTS

On July 13, 2005, the Department of Building Inspection ("Department") received a building permit application from SMNPHC for a change of use, with no additional construction, for a "family shelter, providing temporary housing for families, supported by a program designed to assist formerly homeless families in finding and maintaining permanent housing" for the former nursing home at 517 Winter Street ("Property"). SMNPHC provided both its Articles of Organization and related By-laws. According to the letter accompanying the Change of Use Application, the facility on the Property, would house up to 15 families, or 35-40 individuals, at any one time. The staff is expected to be comprised of, at a minimum, one program director, one clinical doctor, one family therapist, one child services coordinator, one child case worker, and eight to nine recovery specialists. Each parent participant in the recovery program will have an individualized plan that details expectations for living in recovery, adult educational goals, steps towards obtaining and maintaining employment and a program involving the care and well-being of children. Each child resident of the program also has an individualized plan, overseen by child health and educational specialists, which outlines childhood education and details specific school and daily supervision requirements.

On August 11, 2005, the Building Commissioner, denied SMNPHC's application for a change of use building permit. The denial was based on the following:

- (1) SMNPHC's failure to provide the necessary information to allow a determination as to whether the proposed use for the Property would meet the requirements of G.L. c. 40A, § 3 ("Section 3"), to be considered a non-profit educational use;
- (2) the August 3, 2005 Town Meeting amendment to the Zoning By-Law ("By-Law"), which required site plan review by the Planning Board for the proposed change of use;
- (3) SMNPHC failed to provide a stamped floor plan with associated documentation to confirm compliance with 780 CMR 3400.3; and
- (4) SMNPHC had not supplied an off-street parking plan showing compliance with Section IV.B 1 of the By-Law.

On August 19, 2005, SMNPHC responded in a letter ("August 19<sup>th</sup> Letter") addressed to the Building Commissioner, further detailing the proposed use of the site and providing legal arguments as to why its counsel believed that SMNPHC's request for change of use could not legally be denied. SMNPHC listed 23 functions for the proposed use of the facility in this letter, including providing a structured and comprehensive rehabilitative environment, family-based

services, individualized substance abuse treatment plans, individual and group counseling, parenting skills education, domestic violence and trauma support and education, mental health assessment, structure for the children, aggressive housing, educational/vocational assessment and referral, job training and search, access to physical health care, aftercare and discharge planning, and child development education.

The August 19<sup>th</sup> Letter further asserts that the proposed use is a protected use under Section 3 and therefore cannot be subject to Site Plan Review, that it is unclear what provision in the Amendment would trigger site plan review for the proposed use, and that drug addiction is considered a physical or mental impairment under 42 U.S.C. § 3602(h) of the FHA, and therefore federal law protects prospective residents from discrimination that denies them available housing based on this disability. SMNPHC then asserts that it believes the Town may be subjecting it to a more stringent review process than would be required for non-disabled persons, which violates the FHA and G.L. c. 151B, both of which prohibit housing discrimination against individuals with disabilities.

### ANALYSIS

I will address the following legal issues that were raised in the August 19<sup>TH</sup> Letter from SMNPHC. These legal issues include:

- 1.) Whether SMNPHC has provided the necessary documentation to support its claim that it qualifies as a non-profit educational corporation which intends to use the property at 517 Winter Street for educational purposes as required by G.L. c. 40A, § 3 ("Section 3") and defined by relevant case law.
  - 2.) Whether drug addiction qualifies as a handicap under the FHA and Chapter 151B.
  - 3.) Whether there is any underlying basis to SMNPHC's claim that in denying its application could arguably be a violation of Section 3, the FHA, or Chapter 151B.
1. **Has SMNPHC provided the Town with the necessary documentation to support its claim that it qualifies as a non-profit educational corporation?**

As correctly indicated in its August 19<sup>th</sup> Letter, to qualify for protection under the Dover Amendment, SMNPHC must show that (1) it qualifies as a non-profit educational corporation; and (2) its proposed use of the Property is for educational purposes as defined by law, which in this instance requires a review of relevant case law. A showing under the first of these two requirements is relatively easily done, and requires no more than providing the Town with proof that it is a corporation whose articles of organization permit it to engage in educational activities. Educational activities must be stated as a corporate purpose of the nonprofit corporation, but they do not need to be the primary purpose. See Gardner-Athol Area Mental health Ass'n v. Zoning Bd. of Appeals of Gardner, 401 Mass. 12, 15-16 (1987). SMNPHC has provided the Town with the required documentation and therefore meets the first criteria.



The second criteria, that the proposed use is an educational use, requires a more complex evaluation in that it involves varying interpretations by the courts. In evaluating this criteria, the courts have used its own broad, and somewhat nebulous, definitions of education; dictionary definitions of education; and even considerations of whether the proposed facility meets the requirements for tax exemptions under G.L. c. 59, § 5. See e.g., Commissioner of Code Inspection of Worcester v. Worcester Dynamy, 11 Mass. App. Ct. 97, 99 (1980) ("Education has been long recognized in the courts of this Commonwealth as a broad and comprehensive term."); Harbor Schools v. Board of Appeals of Haverhill, 5 Mass. App. Ct. 600, 605 (1977); Fitchburg Housing Auth. v. Board of Zoning Appeals of Fitchburg, 380 Mass. 869, 875 (1980) ("the process of developing and training the powers and capabilities of human beings" and preparing persons "for activity and usefulness in life"). The Supreme Judicial Court has indicated that "the primary or dominant purpose of the [] facility would be educational." Whitinsville Retirement Society v. Town of Northbridge, 394 Mass. 757, 760 (1985), citing to Cummington School of Arts, Inc. v. Board of Assessors of Cummington, 373 Mass. 597, 603 (1977). "Merely an 'element of education,' however, provided not by a formal program or trained professionals, but only informally gleaned from the interplay among residents . . . is not within the meaning of 'educational purpose' pursuant to G.L. c. 40A, § 3." Id. at 761. In understanding this inquiry, it does not matter, however, that the facility consists of live-in accommodations, that it primarily serves adults, that the subjects taught are not within a traditional notion of academic instruction, or that the instructors are not certified by the state. See Harbor Schools, Supra 5 Mass. App. Ct. at 605; Fitchburg Housing Auth., Supra 380 Mass. at 873.

It is arguable based on what SMNPHC has provided to the Town to date is enough to make a determination that the primary purpose of the facility is for drug rehabilitation, not education. However, it is more likely than not that the courts would find that a significant component of SMNPHC's proposed use is educational in that it is intended to prepare its residents "for activity and usefulness in life." Commissioner of Code Inspection, 11 Mass. App. Ct. at 99. The Land Court and the Appeals Court broadly define "educational uses" as noted above. You also will recall in the case of Framingham that the Land Court specifically found that a methadone clinic with counseling facilities met the Dover Amendment requirement of an educational facility. See Spectrum Health Sys., Inc. v. Framingham Zoning Bd. of Appeals, 9 LCR 113 (2001).

In conclusion, although it is arguable that SMNPHC's proposed use of the Property is primarily for use as a drug rehabilitation facility with only a secondary educational purpose, that a reviewing will find that the proposed use of the Property as stated by SMNPHC is an educational use within the meaning of Section 3.

Assuming that the proposed use for the property is found to be an educational use protected by the Dover Amendment, either at the local level or by the courts, the use of the Property is still subject to "reasonable regulations" concerning bulk, dimensions, open space and parking. See Trustees of Tufts College v. Medford, 415 Mass. 753, 757 (1993). In this instance, the application of site plan review would primarily appear to be limited to parking concerns. "[P]arking, as it affects physical conditions on and around an educational use, is a legitimate municipal concern and a proper subject of local zoning regulation." Trustees of Tufts College,

415 Mass. at 762. Therefore, the Property would at the least require a review locally to determine whether it complies with reasonable local zoning requirements and if it does not, a reasonable agreement needs to be reached to provide for acceptable parking for this facility.

**2. Does drug addiction qualify as a handicap under the FHA or Chapter 151B?**

It is a well settled point of law "that individuals recovering from drug or alcohol addiction are handicapped under the FHA. See, e.g., United States v. Southern Management Corp., 955 F.2d 914, 917-23 (4th Cir.1992); Elliott v. City of Athens, 960 F.2d 975, 977 n. 2 (11th Cir.1992), cert. denied, 506 U.S. 940, 113 S.Ct. 376, 121 L.Ed.2d 287 (1992); Oxford House, Inc. v. Township of Cherry Hill, 799 F.Supp. 450, 458-60 (D.N.J.1992); United States v. Borough of Audubon, NJ, 797 F.Supp. 353, 358-59 (D.N.J.1991)." Oxford House, Inc. v. Town of Babylon, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993). In addition, it has been determined that the FHA applies to municipalities. See Keith v. Volpe, 858 F.2d 467, 482 (9th Cir. 1988).

Pursuant to Chapter 151B, an individual is handicapped if they are:

- (a) a person with a physical or mental impairment which substantially limits one or more major life activities. Major life activities include walking, seeing, hearing, speaking, breathing, learning, and working;
- (b) a person with a record of having this kind of impairment; and
- (c) a person who is perceived as having this kind of impairment.

Decisions issued by the Massachusetts Commission Against Discrimination ("MCAD") indicate that MCAD recognizes individuals recovering from drug and alcohol addiction as handicapped, at least in the context of employment issues. See eg. Price v. H.T. Berry Company, Inc., Docket No. 00-BEM-0262 (MCAD, April 9, 2004); Cahillane v. Monsanto Corporation, Docket No. 89-SEM-0229 (MCAD, March 12, 1996). However, in searching for available case law on this subject, it appears that the appellate courts of the Commonwealth have not yet addressed the issue of whether under state law individuals recovering from these addictions are handicapped. It does, however, seem probable that the state courts would look to both MCAD and the federal courts for guidance in determining whether these individuals are within the meaning of handicapped. Therefore, it is reasonable to assume that the state courts would find that an individual recovering from drug or alcohol addiction would be entitled to the protections of G.L.c. 151B.<sup>1</sup>

**3(a). Is there validity to SMNPHC's assertions that denying its application and requiring application of site plan review to its Property could be found by the courts to constitute a violation of Section 3?**

---

<sup>1</sup> There is at least one Superior Court case in which individuals recovering from these addictions were found to be disabled pursuant to state law. See Granada House, Inc. v. City of Boston, 1997 WL 106688 (Mass. Superior Ct. Feb. 28, 1997).

SMNPHC states in its August 19<sup>th</sup> letter that it would constitute a violation of the Dover Amendment to subject its property to a site plan review. As noted above, it is likely that the courts would find SMNPHC's proposed use of the Property to be a protected use under Section 3. Such a determination, however, would not relieve SMNPHC of its statutory obligation to comply with reasonable zoning requirements. It is uncertain at this time whether the Amendments adopted by Town vote at Special Town Meeting held on August 3, 2005 ("Amendments"), will in actuality result in a requirement that the Property undergo site plan review. It is likely, assuming the Amendments are approved by the Attorney General's Office, that site plan review would be triggered by Section IV.1.2.c., which requires such review for any "change in use of an existing structure or group of structures which results in the . . . change in use . . . or requires 5 or more parking spaces or an off-street loading facility . . ." Undeniably this is a "change in use" which would be subject to site plan review pursuant to this section of the amended By-Law.

SMNPHC contests the validity of site plan review for Dover Amendment uses. The validity of the Amendments is an issue that presently is under review by the Attorney General's office. SMNPHC has sent two letters to the Attorney General seeking disapproval, one dated August 25 and the second dated September 7, 2005. I have sent a comprehensive letter to the Attorney General dated October 24, 2005, wherein I have responded to SMNPHC's claims and generally discussed the legality and appropriateness of the Amendments. Moreover, as I indicated previously in my July 22, 2005 Opinion, whether the proposed changes to the By-Law could be applied to SMOC is directly guided by G.L. c. 40A, § 6, ¶1, which states "a zoning ordinance or bylaw 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 on such ordinance or by-law." Since the Planning Board filed its Notice of Public Hearing with the Town Clerk on July 11th, SMOC filed its application for a building permit for a change of use with the Building Commissioner on July 13th, newspaper notice of the proposed by-law changes was published in the Metrowest Daily News on July 14 and 21, 2005, and no building permit was issued prior to the first publication of notice of the proposed changes to the By-Law, SMOC is required to comply with the Amendment to the Zoning By-Law, assuming they are approved by the Attorney General.

Therefore, SMNPHC would be subject to the zoning changes in the Amendments, unless the Attorney General does not approve the Amendments. As the Attorney General may only disapprove a town by-law if the by-law violates state substantive or procedural law, it is my opinion that the Attorney General likely will approve the Amendments. See Town of Amherst v. Attorney General, 398 Mass. 793, 796 (1986).

**3(b). Is there validity to SMNPHC's assertions that denying its application for failure to comply with local zoning requirements would be found by the courts to constitute a violation of the Fair Housing Act?**

---

I next will address SMNPHC's assertions that requiring SMNPHC to comply with site plan review would violate the FHA. Before commencing this analysis, I must emphasize that it is never possible to predict with complete certainty how a court may evaluate a FHA claim or

any other claim by SMNPHC. The assessment contained herein sets forth my best opinion based on the information provided to date.

"Congress enacted the FHA as Title VIII of the Civil Rights Act of 1968 to prohibit housing discrimination on the basis, inter alia, of race, gender, and national origin. In 1988, Congress expanded the coverage of the FHA by enacting the Fair Housing Act Amendments. The FHA, as amended, makes it unlawful: To Discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap . . . As amended, the FHA applies to zoning ordinances and to the zoning of group homes. . . The use of zoning provisions to discriminate against handicapped persons is proscribed by the FHA." Granada House, Inc. v. City of Boston, 1997 WL 106688 (Mass. Superior Ct. Feb. 28, 1997) (citations omitted).

Under the FHA, a plaintiff can establish a violation showing (1) discriminatory intent; or (2) disparate impact; or (3) by showing that the defendant failed to make reasonable accommodations in rules, policies, or practices so as to afford people with disabilities an equal opportunity to live in a dwelling. See Macone v. Town of Wakefield, 277 F.3d 1, 5 (2002); Oxford House, Inc., 819 F. Supp. at 1182, citing 42 U.S.C. § 3604(f)(3)(B). In order to show an intentional violation of the FHA, SMNPHC would need to establish that the Amendments to the By-Law were undertaken with the intent to preclude housing for the type of residents intended to use the Property. At the time the Amendments were adopted by the Town, no one other than SMNPHC knew with certainty as to what use was to be made of the Property. There was speculation and some references had been made that it could possibly be used for drug rehabilitation services, but SMNPHC did not actually submit its application until after the Planning Board had filed its Notice of Public Hearing for the Amendments with the Town Clerk on July 11, 2005.

A review of the July 12, 2005 letter accompanying SMNPHC's application indicates that it intended to use the property as "a family shelter, providing temporary housing for families, supported by a program designed to assist formerly homeless families in finding and maintaining permanent housing." The letter contains no direct reference that the Property is to be used for individuals recovering from drug or alcohol addiction, but instead contains references that some of the services to be provided on site involve assistance for "living in recovery." As the Town was not aware of the nature of the intended use of the Property prior to the initiation of the By-Law amendment process, it is unlikely that SMNPHC could establish that the Amendments were undertaken with discriminatory intent. Moreover, insofar as the Amendments simply attempt to treat all uses the same and not treat Section 3 uses more or less favorably than other uses except as required by Section 3, we should be able to argue that the fact that the Amendments make changes seeking uniformity, general applicability militate against a finding that they constitute evidence of intentional discrimination.

In order to establish disparate impact, SMNPHC would have to prove that the Amendments will either directly or indirectly result in precluding SMNPHC from using the Property for the use proposed. State law envisions a review by local government and sets limits on what a municipality may require of these types of uses pursuant to Section 3. That the Town

has chosen to devise a method by which it could provide a uniform system of site plan review, without precluding the use, can hardly be argued to have a disparate impact. At most it may be an inconvenience, one that is borne by all individuals seeking a change of use in the Town. As noted in my October 24<sup>th</sup> letter to the Attorney General, it is important that the site plan review process set forth in the bylaws is in connection with the issuance of a building permit, not with the issuance of a special permit (which is, by definition, discretionary and much more likely to result in a denial).

Finally, it is also unlikely that SMNPHC, under the facts as they currently exist, could establish that waiving all zoning requirements without any form of review is a "reasonable accommodation." "An accommodation is reasonable if it does not cause any undue hardship or fiscal or administrative burdens on the municipality." See Granada House, slip op. at 7; see also Rakuz v. Spunt, 39 Mass.App.Ct. 171, 176 (1995); Peabody Properties, Inc. v. Sherman, 418 Mass. 603, 608 (1994). In the current instance, SMNPHC has demanded that the Town not apply any aspect of local zoning to its use of the Property. As SMNPHC initially failed to provide the Town with the necessary information to make a decision as to whether it met the requirements to be considered a protected use pursuant to Section 3, and continues to assert that it is in no way required to subject itself to any form of review under local zoning, and as such review will not result in precluding the use, SMNPHC is unlikely to persuade a court that such an accommodation is reasonable. The Town should be able to present probative evidence that such an extensive and unnecessary waiver would undoubtedly "undermine the basic purpose that the zoning ordinance seeks to achieve" which is to provide some form of review for Section 3 uses to ensure compliance with "reasonable regulations" concerning bulk, dimensions, open space and parking. Trustees of Tufts College v. Medford, 415 Mass. 753, 757 (1993). As site plan review prior to the issuance of a building permit will not result in precluding the proposed use on this Property, any claim by SMNPHC that it was denied a reasonable accommodation would seem to be uncertain, and something that the Town should be able to rebut.

**3(c). Is there validity to SMNPHC's assertions that denying its application for failure to comply with local zoning requirements would be found by the courts as a violation of Chapter 151B?**

---

The relevant portions of Section 4 of Chapter 151B states that it is unlawful "for any person to directly or indirectly induce, attempt to induce, prevent, or attempt to prevent the sale, purchase, or rental of any dwelling or dwellings . . ." to handicapped individuals as identified by the statute. A review of relevant case law indicates that even if individuals recovering from drug or alcohol addiction were determined to be handicapped pursuant to Chapter 151B, there is nothing to indicate that Section 4 of Chapter 151B was intended to be applied against a municipality. See Macone v. Town of Wakefield, 16 Mass.L.Rptr. 506, 2003 WL 21960670 (Mass.Super. Jul 16, 2003), 62 Mass. App. Ct. 1105 (Oct. 14, 2004) (unpublished 1:28 order). The lower court in Macone found:

[i]n interpreting G.L. c. 151B, § 4, the court may look to the analogous federal statute, however, the court is not bound by interpretations of the federal statute in construing state law. While, in this case, the court may look to 42 USC 3601 et

seq., the Fair Housing Act, for guidance, it is unclear whether the legislature intended G.L. c. 151B, § 4 to apply to the interaction between a developer and a municipality. In construing the General Laws of Massachusetts, however, “the word ‘person’ ordinarily does not describe the State or its subdivisions.” Commonwealth v. Dowd, 37 Mass. App. Ct. 164, 166 (1994). Furthermore, G.L. c. 151B, § 4(13)(a) talks about the sale, purchase or rental of a dwelling. The statute does not include the words construction, licensing, or granting permits. Then plain language of the statute refers to a buyer-seller relationship rather than the developer-municipality relationship involved in this case. In the light of these considerations, the court believes a significant question has been raised as to whether the facts of this case present a cause of action under G.L. c. 151B.

Id., slip op. at 2. The Appeals Court did not further address this finding, other than to note that the lower court had accepted, without deciding, whether such a claim could be brought by the plaintiff against a municipality. See Macone v. Town of Wakefield, 62 Mass. App. Ct. 1105 (Oct. 14, 2004) (unpublished 1:28 order).

The conclusion that a claim pursuant to Chapter 151B would likely be inapplicable against a municipality is further supported by a review of 804 CMR §2 01(2), which indicates that persons intended to be covered by Section 4 of this chapter are:

Owners of single or multiple family dwellings, commercial space, or land intended for such use; licensed real estate brokers, managing agents, lessees, sublessees, or assignees of such dwellings, commercial space or land; those having the right of ownership or possession, or right to rent, lease or sell, or negotiate for the sale or lease of such dwellings, commercial space or land; agents or employees of any such persons herein mentioned; or any organization of unit owners in a condominium or housing cooperative.

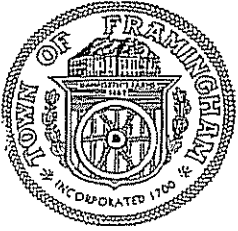
The Attorney General’s Office has stated that Chapter 151B “makes it unlawful for an owner, licensed real estate broker, or other covered person to refuse to rent, lease, sell, negotiate for sale or otherwise to deny to or withhold from any person or group of persons such accommodations because of a disability.” Fair Housing Rights For Individuals with Disabilities, Mass. Attorney General (1999), available at <http://www.ago.state.ma.us/sp.cfm?pageid=1633>. Therefore, I believe it more likely than not that a court would find that Chapter 151B, Section 4 does not cover municipalities, as the courts typically “apply the plain language used in the statute when that language is unambiguous.” ROPI Ltd. Partnership v. Katin, 431 Mass. 601, 603 (2000); Crenshaw v. Macklin, 430 Mass. 633, 634 (2000); Commissioner of Revenue v. Cargill, Inc., 429 Mass. 79, 82 (1999).

### CONCLUSION

Although it is likely that a court would conclude that the use proposed for the Property by SMNPHC is a protected use pursuant to G.L. c. 40A, § 3, it does not relieve SMNPHC from compliance with “reasonable regulations” concerning bulk, dimensions, open space and parking,

or from site plan review, if it is triggered by the By-Law. Individuals recovering from drug and alcohol dependency have been recognized as handicapped under federal law and are likely to be recognized as handicapped under state law as well. Under the facts as they currently exist, and absent the provision of contrary evidence of discrimination, it is my opinion that it is more likely than not (but not a certainty) that SMNPHC cannot show discriminatory intent, disparate impact, or that the Town failed to make "reasonable accommodations" for its use in order to successfully assert a claim pursuant to the FHA. Based on the information provided to date it is my opinion that it is more likely than not that SMNPHC will be unable to pursue a claim under G.L. c. 151B, Section 4 against the Town as the language of that statute does not appear to have been intended to include application to municipalities.

*2005 10.04 Memo to J. Mikielian on SMNPHC Building Permit Denial and Appeal (600-109)*



## FRAMINGHAM PLANNING & ECONOMIC DEVELOPMENT

150 CONCORD STREET • MEMORIAL BUILDING • ROOM B-2  
FRAMINGHAM, MA 01702-8325  
TELEPHONE: 508.620.4852  
FAX: 508.820.9645

### MEMORANDUM

TO: Framingham Zoning Board of Appeals  
FROM: Gene Kennedy *gk* Senior Planner  
CC: Kathleen Bartolini, Director of Planning and Economic Development  
Planning Board  
RE: 517 Winter Street  
SMNPHC - Sage House Family Treatment Program  
DATE: 10/25/05

I have reviewed the application requesting that the ZBA overturn the decision of the Building Commissioner at the above location. I offer the following comments for your consideration.

The project would include the conversion of a former nursing home to a family shelter. The former use, the Framingham Nursing Home, was a 55 bed long term care facility. South Middlesex Non-Profit Housing Corporation (SMNPHC) proposes to use the property as a "...family shelter providing temporary housing for families, supported by a program designed to assist formerly homeless families in finding and maintaining permanent housing". It is expected that this program will house up to 15 families (35 to 40 individuals) and be staffed by up to 14 counseling, social work and recovery specialists. SMNPHC has indicated that between 2 and 6 staff will be present at any one time and that staff will be on site 24 hours per day throughout the year. No site or building plans have been submitted to the Building Department so it is not possible to confirm whether or in what manner the proposed number of individuals could be accommodated in the building. There is also no information regarding the future plans for the property. For example, because the 2 acre parcel is within the Residence 1 District (8,000 s.f. lots with 65' of frontage) it could be subdivided into 3-5 single family house lots while retaining the existing building on a separate parcel.

By letter dated August 11, 2005, the Building Commissioner determined that the project represents a change of use from an institutional (i.e., nursing home) to a residential (i.e., multi family housing) use category. Based on this interpretation and the information submitted by the Applicant that states that they consider SMNPHC to be a 'non-profit educational institution' for purposes of M.G.L. Chapter 40A, Section 3, the Applicant contends that the site plan review provisions of the by-law enacted in August do not apply to the proposed use.

Unlike a Special Permit or a Variance, both of which carry the discretion of the permit granting authority to deny the request, a site plan review process carries less discretion for the permit

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granting authority. If the submitted plans conform to the performance criteria stated in the zoning by-law then the plan is typically approved. The language adopted in August is similar to language found in other community by-laws (i.e., Danvers, Sudbury, Newton) where non-profit educational and religious uses are regulated via height and bulk, setback and parking controls within the context of a site plan review process to ensure that the project complies with community guidelines. Framingham chose to empower the Planning Board to administer the site plan review process since that Board currently conducts this review for other uses (commercial, office and residential) under Section IV.I. The August amendments also included language that allows the Planning Board to waive certain submission requirements should the Board determine that the nature of the proposed use does not require a traffic or fiscal impact statement or other special studies.

The Applicant has indicated that they should be considered a non-profit educational use. The zoning amendments adopted in August clarified the regulatory requirements for non-profit educational uses, including establishment of a site plan review process. The Applicant should conform to these requirements. Thank you for the opportunity to provide comments.

## Exhibit 27

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From "Peter C S. Adams" &lt;adamsp@cs.umb.edu&gt;

Subject Re: Social services discussion tuneup

Date Mon, 19 Sep 2005 15:59:04 -0400

[Part 1 text/plain ISO-8859-1 (8.4 kilobytes)] ([View Text in a separate window](#))

I hesitate to send this, because it could too easily be interpreted as "fanning the flames." Some false accusations have been made against STEPPS and they have been countered already. But now we see something different: the use of negative generalizations as an attempt to reframe arguments and discourage discussion. We at STEPPS are against something, as are many groups, and it is hardly surprising that many things we say are negative. That does not mean they are dehumanizing or fear mongering or even inaccurate, and I find it a bit chilling that anyone would attempt to make such a generalization. Negative speech is half of free speech, and if it is discouraged, then free speech is not as free as it should be.

I don't want to get into the inherent contradiction of someone complaining about other people's "vitriol and mean spiritedness" and then calling them "an embarrassment to Framingham" other than to ask at what point Framingham stops being embarrassed. Were you embarrassed for our town when SMOC's Jim Cuddy called our Board of Selectmen a "public circus"? How about when SMOC agreed to a moratorium on new activities in Worcester but refused to even meet with Framingham? Or when two different groups complained that their towns were "becoming another Framingham"? Did Chief Carl embarrass the town when he wanted to know why the number of Level 3 sex offenders living in Framingham has doubled in less than 18 months?

> Here are a few examples of what STEPPS folks have said publicly which  
 > support my three points quoted above:  
 > <sup>3</sup>We don't need to import more charity cases into Framingham.<sup>3</sup> From  
 > STEPPS website, supporting my argument #1.

Please read on. The message you are referring to continues, "We already do our share." This supports no argument of yours (although the term "charity case" is emotionally loaded, it is not dehumanizing). It supports our argument that Framingham already does enough and it's time for others to step up and do their share. We have never said that there should be no social services in Framingham, just that enough is enough.

> <sup>3</sup>We are concerned that this lovely building (listed as #444 in the town  
 > inventory of historic sites) is in danger, as SMOC is not known for  
 > keeping their properties in good condition. If their plans go ahead,  
 > there will be 25-45 children of unknown age housed there, supervised by  
 > single parents who are addicts or recovering addicts.<sup>2</sup> STEPPS website,  
 > supporting arguments #1 and #3.

These are all statements of fact, although you could argue whether SMOC is, in fact, known for not keeping its properties in good repair. Certainly they keep SOME of their properties in good repair, but they also have some that look like slums.

Otherwise, all of that is taken from SMOC itself, although they won't tell you the program they are proposing has more than half its clients fail in just a six to nine month period, meaning every six to nine months, they would be moving in eight drug users (53% of 15) who will relapse while living in our neighborhood. If that sounds good to you then we'll just have to disagree, but I don't see how those statements are dehumanizing or use fear mongering.

> We do not want our children exposed to, or put at a safety risk by, the  
 > residents of this facility. STEPPS website, supporting my arguments #1  
 > and #3.

I fail to see how that is dehumanizing, but I'll admit there is fear. There are many people in the neighborhood who are in fear living next to a drug rehab shelter. Many studies have shown drug use to be the #1 contributor to crime. DPH says as much on their own web site. Are they engaging in fear mongering?

> Changes to this property could have a devastating effect on hundreds of  
 > families. STEPPS website, supporting my argument #3.

This statement may be fear mongering, but that does not make it false. We believe that it is true. We have already seen several houses go up for sale in the vicinity of 517 Winter since SMOC announced it was buying it for a drug rehab shelter. We have also seen studies predicting loss of value on our properties from proximity to the shelter. But we are more worried about the loss in value TOWN WIDE and the associated loss of spending power by the town on items like public safety, schools, and maintenance on public property. When we start having to skimp on those, we really are in a downward cycle.

> Facilities like these negatively affect property values. One study done  
 > by a real estate agent found that homes in a 5/8 mile radius of a  
 > facility like the SMOC shelter had lost 15% of their value, and the  
 > closer they were, the more value they had lost. If the 285 homes within  
 > 5/8 of a mile of 517 Winter Street averages a 15% loss in property  
 > values, that would cost the town almost \$2 million in lost revenues!  
 > STEPPS website, supporting arguments #2 and #3.

If you find figures you dislike to be "fear mongering," then I suppose we'll just have to disagree. This does not support your erroneous second point at all, as it is a general one and this is a specific one. If you are going to try to claim that social services have \*no\* effect on the town's fiscal difficulties, please go ahead.

> We are the dumping ground for the whole region's social problems and it  
> is harming our town. From frambors supporting arguments #1 and #3.

Again, this is taken out of context. I'll admit that the term "dumping ground" could be considered dehumanizing, but I disagree about it being fear mongering. You are on the PILOT committee -- would you care to refute this statement? Can you show that social services have grown in other communities as fast as in Framingham over that past ten years? Or that there are as many social service programs per capita in other towns as there are here?

> Let's also hope they don't see the ugly derelicts who are attracted to  
> the wet shelters which give the false impression that Framingham is a  
> town full of vagrants... From frambors, supporting argument #1 and #3

This is taken out of context. It was a sarcastic response to your own use of the word "ugly" to describe the STEPPS message "Enough is enough" (although I'm sure you meant it in a nice way).

> Many people will not come to Framingham because of all the shelters.  
> Valid or not, Framingham has a bad reputation and that hurts, not just  
> psychologically, but financially. And it's a feedback loop -- as the  
> town sinks into debt, it cuts services, making it even less attractive  
> to move here. From frambors, supporting argument #2, #3

Again, feel free to refute this, rather than simply calling it fear mongering. Also, please explain how this is "erroneously blam[ing] the social service agencies and their clients for Framingham's current fiscal difficulties." And before you start, note that I (as the author of this example) never said that I assigned blame on social services for the town's fiscal problems, merely partial blame. Again, if you feel they are blameless, feel free to make your case

> This cycle must stop if Framingham is to survive. From frambors,  
> supporting argument #3

I agree that this was fear mongering, but that does not make it inaccurate. If you disagree, feel free to refute it. Can we continue to take on more and more tax free properties housing children that must be educated at our expense indefinitely? If not, when exactly will enough be enough?

> I'm glad to know that I am not even close to being alone in my belief that  
> Framingham is not harmed by their presence in our community. To everyone  
> else, let's try to disagree without being personally disagreeable.

I concur. I, too, have received many private emails of support. There are a lot of strong feelings on this topic in the town and we need to be able to discuss them rationally. I hope that in the future we will both be able to stake out our positions without being called embarrassments to the town or some other epithet.

By the way, the central thesis of your three points seems to have been to meld STEPPS and CCFILE into one similar entity in the public eye. This is not only untrue, it is not logically supportable by your points. It is the logical equivalent of saying that because horses and cows are both brown quadrupeds, therefore horses are cows. In fact, while a few CCFILE members have also joined STEPPS, the two organizations have nothing to do with each other.

peter

--

Peter Adams, STEPPS webmaster  
<http://www.makingpages.org/STEPPS>  
"Enough is enough"

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From Tony Siciliano <[ajsiciliano@yahoo.com](mailto:ajsiciliano@yahoo.com)>

Subject REJECT: Re: An update on the telephone game

Date Mon, 14 Nov 2005 09:20:30 -0800 (PST)

[Part 1 text/plain iso-8859-1 (1.3 kilobytes)] ([View Text in a separate window](#))

[REJECT: You're not allowed to defame anyone here. There are better ways to get your point across.]

Karen et al,

These dregs are all clients of SMOC. Cuddy and Desilets could care less about their criminal backgrounds and deviant tendencies. As long as they are part and parcel of keeping SMOC alive and well, then expect more of the same. The property at 517 Winter Street will also be populated by criminals. You can expect events of a similar variety to occur there should SMOC win on this issue.

Karen Aylward <[karenaylward@rcn.com](mailto:karenaylward@rcn.com)> wrote:

I would also like to know what is going on there. There is a sex offender living there who was recently released from prison who works in Marlborough. What is he doing there living in the same room as innocent women. Are they being looked after as they sleep?(I have been in there also delivering donations and have seen the scattered cots ) And why is Mary Mulvey still living there? Does she really live there? She seems to be in the police blotter every other week. (sometimes more than once in a week)

I think someone should confirm addresses before putting them in the paper

Karen Aylward

Tony Siciliano  
[ajsiciliano@yahoo.com](mailto:ajsiciliano@yahoo.com)



Yahoo! FareChase - Search multiple travel sites in one click.

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From "Peter C.S. Adams" <adamsp@cs.umb.edu>

Subject Re: Police coverage for SMOC

Date Wed, 16 Nov 2005 10:58:01 -0500

[Part 1 text/plain US-ASCII (1.5 kilobytes)] ([View Text in a separate window](#))

Thus spake Gary\_Chedekel@concentra.com <Gary\_Chedekel@concentra.com>:

> is there any reason that SMOC as well as the other social service agencies

> cannot be forced to contribute to additional Framingham police coverage?

As nonprofits, they are exempt from taxation, and because of the Dover Amendment, towns have little or no control over them. When the PILOT committee has finished its work and makes its recommendations, they will presumably include a means for the town to ask for PILOT money. Some responsible social service agencies will pay, as they do in Boston, but the fact is, the payments will be voluntary. Irresponsible social service agencies will simply refuse.

> I realize that they are free (for many of their locations) from contributing  
> to the town's R/E fund but they should not be permitted to eat away at our  
> resources.

Welcome to STEPPS! That has been our question from day one. Unfortunately, there is no way to force them to pay for the services they use, even if they use the services disproportionately, as is the case with the wet shelter. All we can do is put enough pressure on them to get them to reform or move. After a little pressure from the town, SMOC agreed to a few small reforms that should have been in place on day one of the wet shelter's existence. But the fact that they were willing to discuss the changes at all is a hopeful sign. The pressure we bring on them can have results.

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Peter Adams, STEPPS webmaster

<http://www.steps.info>

"Enough is enough"

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<http://frambors.syslang.net/cgi-bin/>

10/21/2007