

SECTION 7. ADMINISTRATION

7.1 Enforcement and Penalty

7.1.1 Enforcement

The Building Inspector shall enforce this By-Law in the manner and with the powers as provided in Massachusetts General Law, Chapter 40A and this By-Law. The Chief of the Fire Department shall refer to the Building Inspector all violations of this By-Law that are discovered in the course of inspections by that department or otherwise.

If the Building Inspector is requested in writing to enforce a provision or provisions of this By-Law against any person allegedly in violation of the same and such officer declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within 14 days of receipt of such request.

7.1.2 Penalty

Any person violating any provision of this By-Law shall be subject to a fine not exceeding \$300.00 for each offense. Each day or part thereof that any violation continues shall constitute a separate offense.

Note: §7.1.2 was amended by Article 29 at the 1992 Annual Town Meeting.

7.1.3 Non-Criminal Disposition

Note: §7.1.3 was adopted under Article 28 at the 1992 Annual Town Meeting.

In addition to the procedure for enforcement described above, the provisions of this By-Law may also be enforced by non-criminal disposition as provided in Massachusetts General Law, Chapter 40, Section 21D (Section 21D). The penalty for such violation shall be \$50.00 for the first offense, \$100.00 for the second offense and \$200.00 for the third and each subsequent offense. Each Day or part thereof shall constitute a separate offense.

“Enforcing person” as used in this Section 7.1.3 shall mean the Building Inspector and any other Town employee designated by the Board of Selectmen as an enforcing person.

Any enforcing person taking cognizance of a violation of this By-Law or any rule or regulation adopted hereunder shall give the offender a written notice to appear before the clerk of the district court having jurisdiction thereof for the non-criminal disposition thereof in accordance with the provisions of Section 21D. The provisions of Section 21D are incorporated herein by reference.

7.2 Compliance

7.2.1 Conformity Required

Buildings or structures may not be erected, substantially altered, moved or changed in use and land may not be substantially altered or changed in principal use without certification by the Building Inspector that such action is in compliance with then applicable zoning, or without review by him regarding whether all necessary permits have been received from those governmental agencies from which approval is required by

federal, state, or local law. Issuance of a Building Permit or Certification of Use and Occupancy, where required under the Commonwealth of Massachusetts State Building Code, may serve as such certification.

7.2.2 Vested Rights Limitation

Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this By-Law unless the use or construction authorized by the Permit is commenced within a period of not less than six months after the issuance of the Permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

7.3 Design and Site Plan Review

Note: §7.3 was amended by Article 16 at the 2005 Annual Town Meeting.

Note: §7.3 was amended by Article 4 at the 2024 Annual Town Meeting.

Note: §7.3 was amended by Article 4 at the November 2024 Special Town Meeting.

7.3.1 Purpose

- a) To maintain the integrity and character of all zoning districts and adjoining zones by ensuring that proposed development fulfills the purposes and complies with the requirements of the Belmont Zoning By-Law ("this By-Law").
- b) To ensure that development which is subject to this review is planned and designed to minimize impacts on its abutters, the neighborhood, and the environment.
- c) To provide an orderly review procedure where site plans of proposed projects can be approved with reasonable conditions that further the purposes of this By-Law.

7.3.2 Applicability and Waiver

The Planning Board shall hear and decide all applications for Design and Site Plan Review in accordance with the provisions of this Section 7.3.

- a) Design and Site Plan Review is required for any new Building or addition greater than 2,000 gross square feet gross floor area; change in use of a non-residential or multi-family Building greater than 2,000 gross square feet gross floor area in any zoning district; a proposal that requires five (5) or more parking spaces on the lot; or a proposal that reduces the number of on-site parking spaces or changes the configuration of off-street parking, screening, egress, utilities, drainage or lighting.
- b) Design and Site Plan Review is not required for those uses which require a Special Permit (for use) from either the Planning Board or the Board of Appeals. If a Special Permit is required per Section 1.5 of this By-Law, it shall be obtained prior to the submittal of an application for Design and Site Plan Review.
- c) Upon written request, the Planning Board may waive any or all of these requirements for an addition to, or alteration of, an existing Structure affecting less than 2,000 gross square feet, or a reconstruction or change in use of an existing Structure, if it

determines that the addition, alteration, reconstruction, or change in use will not have a significant impact on: vehicular and pedestrian movement within the site and on adjacent streets; public services and infrastructure; environmental, unique and other resources; abutting properties; and community needs.

7.3.3 Application Procedures

Each application for Design and Site Plan Review shall be submitted to the Office of Planning and Building (OPB) during regular business hours and shall contain all of the information noted below. Applicants are encouraged to meet with OPB staff planners, abutters to the proposal and informally with the Planning Board to discuss the proposal prior to submittal.

- a) Required application materials include the following:
 1. A completed application form and the applicable fees to address the administrative, advertising and review costs of the Town,
 2. An original and thirteen (13) copies of the application package and plans, and
 3. Site information as required in Section 7.3.4 below.
- b) Within ten (10) days of receipt of the application package, the Office of Planning and Building shall provide copies to the Select Board, Board of Health, Board of Appeals, Department of Public Works and the Fire and Police Departments to request written comments prior to the hearing date. If proposed buildings include housing units that are new or newly affordable, the OPB shall also refer the application to the Belmont Housing Trust. The application may also be provided to other appropriate boards or committees (the Traffic Advisory Committee, or Conservation Commission for example). Comments received by OPB shall be made available to the Applicant upon request prior to the hearing.
- c) The Planning Board shall hold a public hearing within 45 days of OPB receiving the application. Notice of the public hearing shall be placed in a newspaper of general circulation, by posting at Town Hall and the OPB website at least seven (7) days before the hearing. Notice shall be sent by mail to the Applicant and abutters (within 300 feet) prior to the hearing date.
- d) In reviewing the application, the Planning Board shall review whether the proposal adheres with the provisions of the Zoning By-law, including whether:
 1. The dimensions of the proposed Building(s), lot and lot coverage comply with the requirements provided in table form per Section 4 of this By-Law,
 2. The arrangement of parking and loading spaces, internal traffic circulation and traffic controls in relation to the proposed uses of the Building(s) and adjacent uses comply with Section 5.1 of this By-Law,
 3. All Signs comply with Section 5.2 of this By-Law,
 4. All Landscaping complies with Section 5.3 of this By-Law,

5. Any screening of exterior dumpsters or similar trash receptacles complies with Section 5.3 of this By-Law,
 6. All Environmental Controls comply with Section 5.4 of this By-Law,
 7. The proposal conforms to any special site plan provisions in applicable overlay or special districts.
- e) The Planning Board may also review:
1. Protection of directly adjacent premises against significantly detrimental uses by provision for, sound and sight buffers and screening, and preservation of light and air;
 2. Convenience and safety of vehicular and pedestrian movement within the site, the location of driveway vulnerable populations.
 3. Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
 4. Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;
 5. Adequacy of the method of exterior lighting for convenience, safety and security within the site and for protection of neighboring properties, roadways and the night sky;
 6. The relationship of structures and open spaces to neighboring buildings, the natural landscape, parks and other recreational areas or facilities, or other community assets in the area;
 7. The project's incorporation of sustainability and resiliency principles; and
 8. Any other applicable non-discretionary criteria to be considered during Design and Site Plan Review as set out elsewhere in the By-Law.
- f) For any proposed project involving only the creation of ten or fewer new housing units, a change in use of up to 5,000 gross square feet of floor area, reconstruction of an existing Building, or changes to the configuration of off-street parking, screening, egress, utilities, drainage, or lighting, the Planning Board's review should generally focus on the layout of and conditions on the site, and sound and sight buffers and screening, and not on other impacts on nearby properties or any aspect of the site plan which will not change from a prior use.
- g) Within 20 days following the close of the public hearing, the Planning Board shall act on the application. Approval shall require a majority vote of the five (5) members. The associate Planning Board member shall sit on the Board for the purposes of acting on a Design and Site Plan Review application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the Planning Board or in the event of a vacancy on the Board. This time period may be extended at the request of the Applicant.

Note: §7.3.3 c) was amended by Article 6 at the 2010 Special Town Meeting.

- h) As appropriate, the Applicant may also be required to receive an Order of Conditions from the Conservation Commission, approval from the Board of Health, or a Stormwater Permit from the Town Engineer, prior to the Planning Board acting upon an application.
- i) Any appeal may be filed with Board of Appeals in conjunction with an appeal from the denial or grant of a Building Permit for the subject site.
- j) No Building Permit shall be issued to the Applicant (or his/her designee) until the Planning Board has filed its written decision with the Town Clerk or after 20 days has elapsed from the close of the public hearing without a decision being filed.
- k) The Planning Board is authorized to establish rules and regulations for Design and Site Plan Review consistent with the provisions of this Section 7.3 and the remainder of this By-Law.
- l) Provided that they meet the following criteria, any rules and regulations established pursuant to Section 7.3.3(k) may include provisions for the assessment of reasonable fees for the use of outside consultants for peer review in accordance with G.L. c. 44, § 53G:
 - 1. **Fee Schedules:** the rules and regulations shall include a schedule of reasonable fees or cost limits.
 - 2. **Consultant Engagement:** the rules and regulations shall provide that the Planning Board may engage outside consultants to evaluate applications in order to:
 - Assess the necessity and appropriateness of proposed mitigation measures.
 - Determine the scope and details of required mitigation measures.
 - Review compliance with the conditions and standards outlined in this Section 7.3 and other applicable By-law provisions.
 - 3. **Standardization:** the rules and regulations shall provide a process for the Planning Board or its designee to solicit or engage outside consultants. They may include provisions for the Planning Board or its designee to maintain a list of pre-approved outside consultants.
 - 4. **Selection Criteria:** the rules and regulations shall provide that the Planning Board shall select outside consultants and determine the scope of their services based on:
 - Clearly-defined needs, issues, or questions;
 - The consultant's qualifications and expertise, including whether the consultant meets the minimum qualifications set out in G.L. c. 44, § 53G; and
 - The absence of a conflict of interest as required by G.L. c. 44, § 53G.
 - 5. **Use of Consultant Findings:** the rules and regulations shall provide that the Planning Board shall review and consider the outside consultants' findings, recommendations, or other work product in deciding whether to grant Design and Site Plan Approval, and if so, whether to impose conditions, for the application for which the outside consultant was engaged.

6. **Appeals:** as required by G.L. c. 44, § 53G, the rules and regulations shall provide for an administrative appeal on the basis that the consultant has a conflict of interest or does not possess the minimum, required qualifications.

m) Design and Site Plan Review Application Requirements

7.3.4 Design and Site Plan Submittal Requirements

Each application for Design and Site Plan Review shall include the following information unless, prior to submittal, the Planning Board has determined that certain materials are not germane to the decision being made, and authorizes their omission:

- a) Site plans at a scale of 1"=20' prepared and stamped by a professional engineer (P.E.) or a Registered Professional Land Surveyor (RPLS). (The Board may approve another scale or waive the PE/RPLS requirement in specific circumstances.) The plans shall show
 1. All new buildings, additions, adjacent structures
 2. Streets, sidewalks and crosswalks
 3. All existing and proposed open spaces
 4. Site development details shall include existing and proposed walls, fences, outdoor lighting, street furniture, new paving and ground surface materials.
 5. Points of vehicular and pedestrian access/egress shall be shown.
 6. All utilities, easements or service facilities, insofar as they relate to the project, shall be shown.
 7. Proposed site grading, including existing and proposed grades at property lines shall be shown.
- b) Building elevations or drawings shall be provided at a scale of 1/8" = 1' or other appropriate scale.
- c) A brief narrative describing the proposal. The narrative should address issues such as the hours of operation, the number of seats for restaurants, clubhouses, or places of public assembly, anticipated number and frequency of events at clubhouses, places of public assembly, or anticipated pupil enrollment and use schedule for schools for profit, number of parking spaces, the square footage of the site and buildings, and potential impacts on open spaces. For multi-family proposals a table with the number, type and size of dwelling units should be provided.
- d) A brief narrative describing the applicability or non-applicability of the Stormwater Management and Erosion Control Bylaw and, if the Bylaw applies, how the applicant intends to comply. This requirement may be satisfied by demonstrating that the applicant has received a Stormwater Management and Erosion Control Permit in accordance with Section 60-325 of the General Bylaws of the Town of Belmont.

7.3.5 Decision Criteria

The Planning Board must grant Design and Site Plan Approval if the proposed project fulfills all requirements of this By-Law.

- b) The Board may establish reasonable conditions for mitigation or for other regulatory purposes to any Design and Site Plan Approval. The Board may require that some or all of any conditions of Approval be secured by a deposit of money or an Irrevocable Letter of Credit in the Town's favor. This performance guarantee shall bear a reasonable relationship to the expected costs of completing the specified work being secured.
- c) If the Design and Site Plan Review application does not conform to the requirements of this By-Law, the Planning Board shall either deny the application, or approve the application subject to conditions sufficient to ensure compliance. If the Planning Board denies the application, it shall, at the applicant's request, identify the deficiencies in writing.
- d) Design and Site Plan Approval shall lapse if on-site construction is not commenced within three (3) years from the date of Approval. The Planning Board, in its sole discretion, may extend this date for good cause shown. If the Approval lapses, a new submittal and hearing will be required.
- e) Upon completion of the project, the developers shall submit "as-built" plans to the Office of Planning and Building for review. Upon acceptance of the plans by Office of Planning and Building and the Planning Board, the developer may submit a written request for a release of the performance guarantee, as may be applicable. This provision may be waived by the Planning Board in when it is deemed unnecessary based on the scale or scope of the project or when as-built plans specifically will not provide any meaningful new information.
- f) An approval does not relieve the applicant of the responsibility of obtaining other required approvals and/or permits from local boards, state or federal agencies.

7.3.5 Revisions to an Approved Site Plan:

- a) The Applicant, property owner, Building Commissioner or the Planning Board may petition to modify a Design and Site Plan Approval based on unforeseen site characteristics, infrastructure or economic issues, or other appropriate circumstances. Any such petition that proposes changes to the approved plan shall include a revised site plan.
- b) OPB shall review each petition and, if it determines that the proposed modification is de minimis, shall approve the petition. Otherwise, it shall refer the petition to the Planning Board.
- c) The Planning Board shall review each petition referred to it to determine whether the proposed modification is minor, material, or major. In undertaking such review, the Planning Board may consider the reason for the petition.

1. If the Planning Board determines the proposed modification is minor, the Planning Board may approve the changes by majority vote without a public hearing.
2. If the Planning Board determines the proposed modification is material but not major, the Planning Board may hold a new public hearing at the expense of the Applicant.
3. If the Planning Board determines the proposed modification is major, it may require the applicant to submit a new application for Design and Site Plan Approval.
4. Upon approving a petition to make a minor or material modification to a Design and Site Plan Approval, the Planning Board shall detail the approved modification in writing and the applicant shall submit a revised site plan consistent with the Planning Board's decision.

7.4 Special Permits

Note: §7.4 was adopted by Article 17 at the 2005 Annual Town Meeting.

Note: §7.3 was amended by Article 4 at the November 2024 Special Town Meeting.

7.4.1 Special Permit Granting Authority

At various places in this By-Law, authority for acting on particular Special Permits is assigned to the Planning Board or the Board of Appeals. Where no Board is specifically designated, the Board of Appeals shall act as the Special Permit Granting Authority (SPGA).

Pursuant to Chapter 40A, Section 9 of the General Laws, the Planning Board shall have an associate member for the purposes of acting on a Special Permit application in the case of absence, inability to act, or conflict of interest, on the part of any member of the Planning Board or in the event of a vacancy on the Board. Said associate member shall be appointed by the Select Board.

Note: §7.4.1 was amended by Article 6 at the 2010 Special Town Meeting.

7.4.2 Applicability

a) Special Permits are required for

1. Specified expansions, alterations and/or changes to non-conforming structures and uses as defined in Section 1.5. The criteria listed therein shall apply to those petitions.
2. Those uses noted in Section 3.3 and,
3. Where otherwise specifically provided for within this By-Law.

b) Where a Special Permit is required to allow a use, no Design and Site Plan Review pursuant to Section 7.3 is necessary from the Planning Board.

7.4.3 Special Permit Criteria

The following shall be the basis for decisions on Special Permits, except as may be more specifically provided elsewhere in this By-Law. Special Permits shall be granted only if the Special Permit Granting Authority determines that the proposal's benefits to the Town will outweigh any adverse effects for the Town or the vicinity, after consideration of the following preferred qualities, among other things:

a) Location

1. There shall be adequate provisions for water, sewerage, stormwater drainage for the proposed use and no additional adverse impacts should be created.
2. The site should be able to accommodate the proposed use without substantial environmental impacts, impacts to valuable trees or other natural resources.
3. The site should be able to accommodate the proposed use without substantial impacts on municipal infrastructure and with minimum traffic impacts on abutting residential neighborhoods.

b) Activity Type and Mix

1. Residential proposals should serve housing needs of local residents, broaden the diversity of housing within the Town and/or provide affordable housing opportunities pursuant to Section 6.10 of this By-Law.

Note: §7.4.3 b) 1 was amended by Article 26 at the 2003 Annual Town Meeting.

2. The use should complement the character and the scale of existing buildings/uses/activities in the neighborhood and not create undesirable impacts.
3. The use shall be beneficial to the Town and fulfill a need.

c) Visual Concerns

1. Views from public ways and developed properties should be considerately treated in the site arrangement.
2. The visual impact of parking and service areas should be minimized and should be screened from abutting premises.
3. Departure from the architectural scale of buildings on abutting and nearby premises should be minimized, except where the departure would serve a town purpose.

d) Access

1. Vehicular and pedestrian access/egress should be safe and convenient and shall be designed to minimize impacts on the abutting public ways.
2. Pedestrian and vehicular movement within the site should be safe and convenient, and arranged to minimize impacts on abutters.

e) Process

1. A proposal that has been developed in consultation with municipal staff and those likely to be substantially impacted by it is preferred.
 2. Mitigation to ameliorate negative impacts is required.
- f) Special Permit applications for use shall comply with the criteria within Section 7.3.5 Design and Site Plan Review.

At the time of application, the Applicant shall submit documentation regarding each of the above considerations which are germane, including information regarding consultative efforts made with municipal staff, neighborhood groups or other affected parties.

7.4.4 Procedures

- a) It is recommended that the Applicant meet with municipal staff and abutters to the proposal prior to the application being filed.

Each application for Special Permit shall be filed with the Town Clerk. Ten (10) copies of said application and supporting plans or other materials, including one having the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the Office of Planning and Building.

- b) The Office of Planning and Building shall refer the application to the SPGA and the Planning Board (if not acting as the SPGA), Select Board, Board of Health, Fire and Police Departments, Department of Public Works and/or other boards or authorities, as appropriate, for technical review and comment. If proposed buildings include housing units that are new or newly affordable based on the compliance with Section 6.10, the OPB shall also refer the application to the Belmont Housing Trust. Failure of a department or board to make recommendation within 35 days of receipt of the application shall be deemed a lack of opposition thereto.
- c) The Special Permit Granting Authority shall hold a public hearing within 65 days of the filing of the application and shall render a decision within 90 days from the date the public hearing is closed. The required time limits for a public hearing and for rendering a final decision may be extended by written agreement between the petitioner and the Special Permit Granting Authority. A copy of such agreement shall be filed in the Office of the Town Clerk.
- Failure of the Special Permit Granting Authority to take final action within 90 days from the date of the close of the public hearing or within any extended time, if applicable, shall be deemed to be a grant of the Special Permit subject to the procedures found in MGL, Chapter 40A, Section 9.

7.4.5 Special Permit Limitations

A Special Permit, if granted, shall be subject to any general or specific rules prescribed herein, and may be made subject to appropriate conditions, safeguards, and limitations on time or use. A Special Permit shall lapse within a two-year period or a shorter period if so specified by the Board, not including any time required to pursue or await the determination of an appeal pursuant to MGL, Chapter 40A, Section 17 if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun within the period except for good cause.

7.5 Development Impact Report

Note: §7.5 was adopted under Article 13 at the 2003 Special Town Meeting.

Note: §7.3 was amended by Article 4 at the November 2024 Special Town Meeting.

7.5.1 Purpose

The purpose of a Development Impact Report (DIR) is to enable the applicable board and municipal officials to identify the environmental/social/physical and/or infrastructure impacts of the requested activity and to determine if the impacts can be mitigated. The DIR shall identify the methods to be used to mitigate and to minimize adverse impacts on the neighborhood and the Town.

7.5.2 Applicability

A DIR may be required by the Planning Board or Board of Appeals during a review of any application for a Special Permit or a variance for a non-residential or multi-family Structure or use which could have significant, deleterious environmental, physical or social impacts on the neighborhood and/or the Town and its infrastructure. This provision is adopted pursuant to Section 53G, Chapter 44, MGL and as such, the DIR shall be at the expense of the Applicant.

- a) At their discretion, the Planning Board or the Board of Appeals may require a DIR upon the submittal of any application for a Special Permit, Design and Site Plan Review Approval or a Comprehensive Permit.
- b) If the Applicant is required to file an Environmental Impact Report with the MEPA Unit of the Executive Office of the Environmental Affairs, the Draft or Final Environmental Impact Report may be submitted to fulfill the requirements of this Section. This decision is at the discretion of the Board reviewing the application.

7.5.3 Consultant Selection and Requirements

- a) The appropriate Board shall develop a Scope of Work to guide the completion of the DIR. This Scope may be coordinated with other boards and/or professional staff. Upon the completion of the Scope of Work, the Board shall send out a "Request for Proposal" to at least three (3) qualified consulting firms. The Board shall review all responses and choose the optimum proposal.
 1. The selected consultant must have an educational degree in or related to the field at issue, or
 2. Have three or more years of practice in the field at issue, and
 3. Provide suitable references for similar activities in other communities.
- b) The Applicant may appeal the selection of the consultant to the Board of Selectmen if they believe that the selected consultant has a conflict of interest or does not possess the minimum required qualifications. The time required for action on the application is extended pending the appeal. The Selectmen have one (1) month from the date of the appeal to render a decision.

- c) The Applicant shall then be required to make a payment to the Town of Belmont in the exact sum of the proposal selected. This money shall be placed in a separate, interest-bearing escrow account administered by the Town Treasurer pursuant to Section 53G, Chapter 44, MGL. An annual report on such accounts shall be submitted by the Treasurer to the Town Administrator.

7.5.4 Contents of the Scope of Work

The appropriate Board may waive or add to the list of concerns noted below pursuant to the specifics of each application. It is recommended that the Applicant work with the Board to participate in the preparation of the Scope. The contents could include the following:

a) Physical Environment

1. Provide a description and impact analysis that the development will have on the general topography, vegetation, geologic, scenic and historical features and open space of the site.
2. Provide a description and impact analysis on properties abutting the site. This analysis may include traffic, lighting, noise, shadowing and emissions impacts.
3. Identify historic archeological sites, geological, botanical, existing or potential trails and accesses to open space areas and how they will be maintained or enhanced.

b) Surface Water

1. Provide a narrative on the following:
 - i. the methods and degree to which water is recycled back into the ground. Estimate increase of peak run-off and volume of run-off over a 24-hour period caused by altered surface conditions;
 - ii. the maintenance and improvement of the flow and quality of surface waters including Best Management Practices (BMP) to be employed; and,
 - iii. methods to prevent flooding onto adjacent properties.
2. Describe the location, extent and type of existing water bodies or wetlands on the site and the proposed alterations to such, including both existing and proposed surface drainage characteristics within and adjacent to the site.

c) Erosion Controls

1. Describe the erosion control and soil stabilization methods, timing and locations to be used during construction.
 - i. approximate the size and location of land to be cleared at any given time and the length of time soil will be exposed;
 - ii. identify methods for protecting soil stockpiles; and
 - iii. detail any other erosion control issues.

2. Evaluate the effectiveness of the proposed soil erosion control methods on the site and on the surrounding areas. Also review the permanent methods to be used to control erosion and sedimentation.
- d) Town Services and Infrastructure
1. Estimate traffic flow at peak periods employing ITE standards and procedures. Detail the proposed on-site and projected off-site circulation patterns to the project. Detail pedestrian and bicycle movements and any proposed enhancements. Are new traffic controls (re: signals, signage, striping, etc.) or upgrades to existing controls necessary?
 2. Estimate the effect/impacts of the project on police and fire protection services, public works, educational services, sewer capacity, and the water supply system.
- e) The appropriate Board may require the submission of information which could be required by the MEPA Unit if an EIR were required under applicable MEPA regulations.

7.5.5 Results of the DIR Process

- a) The selected consultant shall complete the Scope of Work developed in Section 7.5.4 above and submit ten (10) copies of a written report to the appropriate Board and the Applicant. This Report and any accompanying maps shall also be submitted in electronic format.
- b) The Board shall employ the Report in reaching its decision on the application. Mitigation recommendations from the Report may be incorporated into a final decision on the application. If the DIR demonstrates that one or more of the decision-making criteria, objectives or standards cannot be met, the DIR may be the basis for disapproval of the application.
- c) Upon the satisfactory completion of the Scope of Work, the consultant shall be compensated the agreed upon fee and the Applicant shall receive any remaining interest from the account. In no case shall the fee exceed the agreed upon amount unless authorized in advance by the Applicant and the appropriate Board.

7.6 Board of Appeals

7.6.1 Membership

There shall be a Board of Appeals consisting of five regular and three associate members to be appointed by the Board of Selectmen as provided in Massachusetts General Law, Chapter 40A. All members shall be residents of the Town. In making the appointments, the Board of Selectmen shall consider those persons best qualified to carry out the statutory responsibilities of the Board. One regular member shall be appointed each year for a term of five years. One associate member shall be appointed each year for a term of three years. In case of absence, inability to act or conflict of interest on the part of any member or in the event of a vacancy on the Board, the chairperson of the Board of Appeals may designate an associate member to serve. Any member may be removed for cause by the Board of Selectmen upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. No regular or associate member of the Board of

Appeals shall represent before such Board any party or interest in any matter pending before it.

7.6.2 Powers

The Board of Appeals shall act as a Permit Granting Authority and a Special Permit Granting Authority and shall have the following powers in accordance with the provisions of Massachusetts General Law, Chapter 40A and this By-Law.

- Appeals - To hear and decide an appeal taken by any person aggrieved by reason of his (her) inability to obtain a permit or enforcement action from the Building Inspector under the provisions of Massachusetts General Law, Chapter 40A and/or this By-Law, by the Metropolitan Area Planning Council or by any person including an officer or board of the Town of Belmont or of an abutting town aggrieved by an order or decision of the Building Inspector in violation of any provision of Massachusetts General Law, Chapter 40A or of this By-Law.
- Special Permits - To hear and decide on application for Special Permits as provided in this By-Law in cases where the Board of Appeals is designated as Special Permit Granting Authority.

Pursuant to the provisions of Massachusetts General Law, Chapter 44, Section 53G, the Board of Appeals shall promulgate rules requiring any applicant for a Special Permit pursuant to Section 6.8.5 to pay a review fee, in an amount to be determined by the Board of Appeals, to cover the reasonable costs of the Board of Appeals for the employment of any independent consultants determined to be needed to assist in the review of the Special Permit application. Such consultants shall be qualified professionals in the relevant fields of expertise determined by the Board of Appeals.

Note: §7.6.2 was amended by Article 33 at the 1998 Annual Town Meeting.

- Variances - To hear and decide a petition with respect to particular land or structures for a Variance from the terms of this By-Law, where the Board specifically finds that:
 1. Owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and
 2. The desired relief may be granted without substantial detriment to the public good, and
 3. Without nullifying or substantially derogating from the intent or purposes of this By-Law.

Variances authorizing a use or activity not otherwise permitted in a particular zoning district may be granted only for accessory uses, and uses within existing structures without extension thereof except that the Board of Appeals upon petition may modify a Use Variance granted prior to January 1, 1976.

Note: §7.6.2 was amended by Article 36 at the 1991 Annual Town Meeting.

In acting on Variances, the Board of Appeals may impose conditions, safeguards and limitations both of time and use, including the continued existence of any particular

structures but excluding any condition, safeguard or limitation based upon the continued ownership of the land or structure to which the Variance pertains by the Applicant, petitioner or any owner. If the rights authorized by a Variance are not exercised within one year of the date of the authorization, they shall lapse and may be reestablished only after a new notice and hearing.

7.6.3 Procedure

- a) **Hearing.** In the case of every appeal made to the Board of Appeals, every petition for a Variance and every application for a Special Permit to said Board under the provisions of this By-Law, the Board shall hold a public hearing thereon. Notice of the hearing shall be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing. Notice shall be sent by mail, postage prepaid, to parties in interest including the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within 300 feet of the property line including owners of land in another municipality all as they appear on the most recent applicable tax lists, the Planning Board and the Planning Board of every abutting municipality. The Assessors shall certify to the Board the names and addresses of the parties in interest.
- b) **Filing.** A petition for a Variance and an application for a Special Permit to the Board of Appeals shall be filed by the petitioner with the Town Clerk and a copy of said petition or application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the Board of Appeals. A notice of appeal from a decision of the Building Inspector shall specify the grounds for such appeal and shall be filed by the petitioner with the Town Clerk, and a copy of said notice of appeal, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the office or board whose order or decision is being appealed and to the Board of Appeals.

Any such petition, application or appeal shall include ten copies of said petition, application or appeal and any supporting plans or other materials. If Design and Site Plan Review is required, a total of fifteen (15) copies of the petition, application or appeal and supporting plans or other material shall be required.

Note: §7.6.3 b) was amended by Article 34 at the 1995 Annual Town Meeting.

- c) **Time limits.** The Board of Appeals shall hold a hearing on any appeal, petition for a Variance, or application for a Special Permit, within 65 days of the Board's receipt of the notice of appeal, petition or application. The decision of the Board shall be made within 100 days after the date of filing of an appeal or petition, except in regard to applications for Special Permits, on which the Board shall render a decision within 90 days from the date of the public hearing.

The required time limits for a public hearing and for rendering a decision may be extended by written agreement between the petitioner and the Board of Appeals. A copy of such agreement shall be filed in the Office of the Town Clerk.

Failure by the Board of Appeals to act within 100 days after the date of the filing of the appeal or petition as the case may be, or within such extended time as is applicable, and failure by the Board to render a decision within 90 days of the required public hearing on a Special Permit application or within such extended time as is applicable, shall be deemed to be the grant of the appeal, petition or application, subject to the following requirements:

1. The petitioner who seeks such approval by reason of the failure of the Board to act within the time prescribed shall notify the Town Clerk, in writing, within 14 days from the expiration of said 100 days in the case of appeals and Variance petitions, and said 90 days in the case of Special Permit applications, or any extended time if applicable, of such approval and that notice has been sent by the petitioner to parties in interest.
 2. The petitioner shall send such notice to parties in interest by mail, and each such notice shall specify that appeals, if any, shall be made pursuant to Massachusetts General Law, Chapter 40A, Section 17, and shall be filed within 20 days after the date the Town Clerk received such written notice from the petitioner that the Board failed to act within the time prescribed.
 3. After the expiration of 20 days without notice of appeal to a Court of competent jurisdiction, or, if appeal has been taken, after receipt of certified records of the Court indicating that such approval has become final, the Town Clerk shall issue a certificate stating the date of approval, the fact that the Board failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded by the Town Clerk to the petitioner.
- d) Documentation. Upon the granting for a Variance or Special Permit, or any extension, modification or renewal thereof, the Board shall issue to the owner and to the Applicant if other than the owner a copy of its decision, certified by the Board containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such Variance or Special Permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the Planning Board and Town Clerk.

No Variance or Special Permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, and if it is a Variance or Special Permit which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the application for the Special Permit or petition for the Variance accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed and no appeal has been filed and that the grant of the application or petition resulting from such failure to act has become final or that if an appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the names of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or Applicant.

7.7 Repetitive Petitions

7.7.1 To Town Meeting

No proposed change in this By-Law which has been unfavorably acted upon by the Town Meeting shall be considered by the Town Meeting within two years after the date of such unfavorable action unless adoption of the proposed change has been recommended in the final report of the Planning Board to the Town Meeting.

7.7.2 To Board of Appeals or other SPGA

No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals or other Special Permit Granting Authority shall be acted favorably upon within two years after the date of final unfavorable action unless:

- 1) all but one of the members of the Planning Board consent to a re-petition after notice is given to parties in interest of the time and place of the proceedings to consider consent, and
- 2) the Board of Appeals or other SPGA finds specific and material changes in the conditions upon which the previous unfavorable action was based, described such changes in its records and similarly consents.

7.8 Amendment

This By-Law may be amended from time to time at an Annual or Special Town Meeting. An amendment may be initiated by the submission to the Board of Selectmen of a proposed change by the Board of Selectmen, the Board of Appeals, an individual owning land in the Town to be affected by the amendment, registered voters of the Town pursuant to Massachusetts General Law, Chapter 39, Section 10, the Planning Board and the Metropolitan Area Planning Council. Within 14 days of the receipt of the proposed change, the Board of Selectmen shall submit it to the Planning Board. A public hearing shall be held by the Planning Board within 65 days after the proposed change is submitted to the Planning Board. The Town Meeting shall not act upon any zoning amendment until the same has been reported on by the Planning Board as herein provided or until 21 days has elapsed after the Planning Board hearing without submission of such report.

Any petition for the alteration of the boundaries of any zoning district shall be accompanied by an accurate plan, size 20" by 30", at a scale no smaller than 80 feet to the inch showing the changes proposed by the petition. The Planning Board in its report to the Town on any petition to alter the boundaries of any zoning district or on its own initiative shall file with the Town a similar plan showing the changes recommended. No action shall be taken by the Town except as to acceptance without amendment of the plan filed by the petitioner, or plan filed by the Planning Board as aforesaid, or on some modification of either plan, made or approved by the Town Engineer.

7.9 Validity

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

7.10 Effective Date

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

This page is left intentionally blank.