

SECTION 2: ADMINISTRATION

Existing Bylaw Section: Section 8 – Board of Appeals and Section 9– Administration

Approach: This section was drafted to accomplish four primary objectives:

- 1) Include the evaluation criteria or “findings” required under the review of a special permit.*
- 2) Ensure consistency within the Table of Uses as to the designated Special Permit Granting Authority.*
- 3) Include the submission and procedural requirements for a special permit or variance.*
- 4) Include an appeal procedure*

Commentary for specific provisions is provided throughout this document along with more specific references to those sections of the existing bylaw that are directly related to these revisions.

1. Board of Appeals.

There shall be a Board of Appeals composed of five (5) members and two (2) associate members appointed by the Board of Selectmen in accordance with the requirement of state law for overlapping 5- year terms. The Board shall adopt rules for the conduct of its business and shall elect annually one of its members to serve as Chairman. The Board shall have the powers and duties set forth in the General Laws and in this Bylaw, and, in particular, shall have the authority to:

- A. Hear and decide appeals from decisions of the Building Inspector in accordance with G.L. c. 40A, §7 and Section 2 and 3 of this Bylaw;
- B. Hear and decide petitions for variances in accordance with G.L. c. 40A, §10 and Section 2 of this Bylaw; and
- C. Hear and decide applications for special permits under G.L. c. 40A, §9 and Section 2 of this Bylaw, except where this Bylaw expressly designates the Planning Board as the special permit granting authority.

COMMENT: This section identifies the particular sections of the zoning by-law where the Board of Appeals has jurisdiction.

2. Special Permits

- A. General

Special Permits may be granted by the Board of Appeals and the Planning Board (the Special Permit Granting Authority or “SPGA”), as provided in this Bylaw, only for uses which are in harmony with the purposes and intent of this Bylaw and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use.

Ten (10) copies of the special permit application and ten (10) copies of an accompanying site plan shall be submitted to the Town Clerk, who shall forthwith transmit nine (9) of said applications and accompanying site plans to the appropriate Special Permit Granting Authority (SPGA), either the Board of Appeals or the Planning Board, as the case may be. Said site plan shall show, among other things, all existing and proposed buildings, structures, parking spaces, driveway openings, driveways, service areas, and other open uses, all facilities for sewage, refuse and other waste disposal, and for surface water drainage, and all landscape features such as fences, walls, planting areas, and walks.

The SPGA shall within five days after receipt of an application for a special permit transmit one copy of such application and accompanying site plan to the following Town agencies: Conservation Commission, Town Engineer, Planning Board/Town Planner, Board of Health, Building Inspector, Fire Department, Police Department, and Sewer & Water Commission. Said Town agencies may, in their discretion, investigate the application and report in writing their recommendations to the SPGA as they deem appropriate and shall send copies thereof to the SPGA and to the applicant; provided, however, that failure of any such agency to make recommendations on a special permit application within 35 days of receipt by such agency of said special permit application from the SPGA shall be deemed lack of opposition thereto.

When an application for a Special Permit is submitted to the Board of Appeals or the Planning Board, as the case may be, the SPGA shall hold a public hearing within sixty-five (65) days of the filing date of the application and shall render a decision within ninety (90) days from the date of the public hearing, which shall be in writing and filed with the Town Clerk pursuant to requirements of G.L. Chapter 40A, § 9 and 11. Failure to take final action upon an application within the said ninety (90) day period shall be deemed to be a grant of the permit applied for. In order to allow adequate time for the above referenced Town agencies to comment on the special permit application, the SPGA shall not close a public hearing on any application for a special permit until at least 40 days have elapsed after the receipt by the SPGA of the application.

Notice of the hearing shall be given by publication in a newspaper of general circulation in the town once in each two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing, and by posting said notice in the Town Hall for a period of not less than fourteen (14) days before the date of the hearing. Notice shall be sent by mail, postage prepaid, to parties in interest, including the petitioners, abutters, owners of land directly opposite on any public or private street or way, owners of land within three hundred (300) feet of the property line, including owners of land in another municipality, all as they appear on the most recent applicable tax lists, the Planning Board and the

Planning Board of every abutting municipality. The Assessors shall certify the names and addresses of the parties in interest.

Where, in the opinion of said Boards, the Special Permit may be granted, it may impose appropriate conditions and safeguards in writing and make them a part of its authorization, said Boards may require a bond or other security for compliance with the terms of its authorization. A Special Permit granted under this authority shall lapse within a two-year period or a shorter period, if so specified, including any time required to pursue or await the determination of an appeal pursuant to G.L. Chapter 40A, §17, and if a substantial use thereof has not sooner commenced, except for good cause, or, in case of a permit for construction, if construction has not begun within the period except for good cause.

B. Finding and Determination

- (1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:
 - (a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;
 - (b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;
 - (c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;
 - (d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;
 - (e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;
 - (f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;
 - (g) shall not adversely effect the character of the immediate neighborhood; and
 - (h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The SPGA shall also impose in addition to any applicable conditions specified in this bylaw such additional conditions as it finds reasonably

appropriate to safeguard the neighborhood, or otherwise serve the purposes of this bylaw

A Special Permit granted under this authority shall lapse within a two-year period or a shorter period, if so specified, including any time required to pursue or await the determination of an appeal pursuant to M.G.L. Chapter 40A, §17 and if a substantial use thereof has not sooner commenced, except for good cause, or, in case of a permit for construction, if construction has not begun within the period except for good cause.

COMMENT: This section reassigns the current evaluation criteria and “findings” from Subsection 2.7 in the existing Table of Uses. Revisions also include statements regarding conditions of approval (i.e. buffers, limiting hours of operations, number of occupants, etc.) that may be considered by the SPGA in order to mitigate off-site impacts. In accordance with state law, other provisions clarify the submission and review process when either Planning Board or Board of Appeals have jurisdiction over the project.

3. Variances

The Board of Appeals may grant, upon appeal or upon petition, with respect to particular land or structure thereon, a variance from the terms of this Bylaw where the Board of Appeals find that, owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner and that desirable relief may be granted without substantial detriment to the public good and without nullifying or derogating from the intent or purpose of this Bylaw. 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 my owner. If the rights authorized by a variance are not exercised within one (1) year of the date of the authorization, they shall lapse and may be re-established only after a new notice and hearing.

In the case of a variance, a petition shall be filed with the Town Clerk who shall forthwith transmit it to the Board of Appeals. The Board shall hold a public hearing within sixty-five (65) days of the receipt of the petition from the Town Clerk and shall render a decision within one hundred (100) days from the date of filing, which shall be in writing and filed with the Town Clerk pursuant to requirements of G.L. Chapter 40A, §11. Failure by the Board to take final action upon a petition within the said one hundred (100) day period shall be deemed to be a grant of the variance applied for, unless the deadline is extended by mutual, written agreement of the parties.

COMMENT: This section seeks to clarify the appeals process for Variances from the Board of Appeals.

4. Appeals and Procedures

An appeal to the Board of Appeals may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Inspector, by the Metropolitan Area Planning Council, and by any person, including an officer or board of the Town or of any abutting Town, aggrieved by an order or decision of the Building Inspector in violation of any provision of this Bylaw.

In case of an appeal made to the Board of Appeals, a petition for a variance, and an application for a Special Permit to the Board of Appeals or the Planning Board, as the case may be, a Public Hearing shall be held thereon. Notice of the hearing shall be given by publication in a newspaper of general circulation in the town once in each two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing, and by posting said notice in the Town Hall for a period of not less than fourteen (14) days before the date of the hearing. Notice shall be sent by mail, postage prepaid, to parties in interest, including the petitioners, abutters, owners of land directly opposite on any public or private street or way, owners of land within three hundred (300) feet of the property line, including owners of land in another municipality, all as they appear on the most recent applicable tax lists, the Planning Board and the Planning Board of every abutting municipality. The Assessors shall certify the names and addresses of the parties in interest.

A petition shall be filed with the Town Clerk who shall forthwith transmit it to the Board of Appeals. The Board shall hold a public hearing within sixty-five (65) days of the receipt of the petition from the Town Clerk and shall render a decision within one hundred (100) days from the date of filing. Failure by the Board to take final action upon a petition within the said one hundred (100) day period shall be deemed to be a grant of the appeal or the variance applied for.

COMMENT: This section seeks to clarify the submission and review procedures for a Special Permit with either the Planning Board or Board of Appeals.

5. Board of Appeals Decisions, Repetitive Petitions

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

- A. 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
- B. the Board of Appeals finds changes in the conditions upon which the previous unfavorable action was based, describes said changes in its record, and similarly consents.

In those instances in which the Planning Board was the original SPGA, no additional action by the Board of Appeals is required in accordance with the requirement of state law.

COMMENT: In accordance with state law, this section seeks to clarify the review process for projects with different Special Permit Granting Authorities (SPGA) and repetitive petitions brought back to the SPGA within a two-year timeframe of denial.

6. Appeal of a Decision of the Board of Appeals or the Planning Board

Appeal of a decision of the Board of Appeals or the Planning Board shall be made directly to a court of a competent jurisdiction in accordance with the requirement of M.G.L. Chapter 40A Section 17.

COMMENT: This section seeks to clarify the appeals process for all decisions of the Planning Board and Board of Appeals.

7. Subdivision Phasing

A. Purpose

The purpose of this section of the Zoning Bylaw is to allow the Town to provide, in a planned and rational manner, the basic facilities necessary for the health, safety, and welfare of its citizens, and to adequately support Walpole's existing and future population, through the adoption of design criteria which will coordinate residential growth with the provision of community services and the preservation of community character. This section of the Zoning Bylaw shall be considered together with the Master Plan; the Water Master Plan; the Open Space Plan; the 201 Facilities Plan; and Metro Plan prepared by the Metropolitan Area Planning Council, as all may be amended from time to time, in order to:

- (1) Carry out the purposes of the Zoning Act, which empowers municipalities to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements, and to encourage the most appropriate use of land throughout the community;
- (2) Protect and enhance the character of the community and its historical and natural resources; and
- (3) Ensure that the rate of single-family residential development does not overly burden the fiscal capacity of the Town to absorb the costs of incremental service demands in light of the fiscal constraints imposed on the Town by Proposition 2½. To this end, Subsection 2.7 will help to:
 - (a) Provide a degree of predictability as to the location and speed of residential growth;
 - (b) Provide for the most compact, efficient, and cost effective municipal services; and
 - (c) Discourage rapid rise in service costs which will cause hardship, especially to persons of limited income who live, or may come to live, in the community.

B. Applicability

Beginning on the effective date of Subsection 2.7 of the Zoning Bylaw, no building permit for new single-family residential construction shall be issued unless in accordance with the regulations contained herein. This section of the Zoning Bylaw shall be in effect until December 31, 2010, at which time it shall automatically cease to be effective, unless otherwise extended for a longer period of time in accordance with applicable provisions of Massachusetts law.

This section of the Zoning Bylaw shall apply to all developments as defined as "DEVELOPMENT" in Section 15. For purposes of this section of the Zoning Bylaw, adjacent or contiguous parcels of land which were under common ownership at the time of adoption of this Bylaw shall be considered as within a single tract of land.

C. Procedures

The issuance of building permits for the construction of new single-family detached dwellings on lots within a development as defined as "DEVELOPMENT" under Section 15 shall be in conformance with an approved development schedule as formulated under the procedures set forth hereunder.

- (1) Each development shall be evaluated in relation to the design criteria table in Section 2.7.D. Points assigned in each category of design criteria for which the applicant seeks credit are to be cumulatively totaled for each proposed development. The cumulative total of points shall then be correlated to the development phase table in Section 2.7.E to establish the number of building permits that may be issued within each development phase by virtue of the proposed number of lots and the established rates of development within said table.
- (2) Said development schedule shall be approved, or modified and approved (including the imposition of reasonable conditions), by the Planning Board, and recorded at the Norfolk County Registry of Deeds and filed with the Town Clerk before any building permit can be issued for any lot within the proposed development. A proper notation referencing the approved development schedule shall be inscribed on a plan showing a development as defined as "DEVELOPMENT" under Section 14.
- (3) Before approval of a development schedule, the applicability of each design criteria for which the applicant seeks credit shall be demonstrated to the reasonable satisfaction of the Planning Board.
- (4) If a proposed development schedule is modified and approved (including the imposition of reasonable conditions) by the Planning Board, findings and reasons therefore shall be given in a written decision, and said decision shall be filed with the Town

Clerk, and a copy of said decision shall be sent by registered mail to the applicant. If the applicant wishes to rebut any of the findings and reasons for a modification of a proposed development schedule, a written notification of such rebuttal shall be filed by the applicant with the Town Clerk and Planning Board within ten (10) days of the filing of the Planning Board's decision. Within twenty (20) days of the filing of the Planning Board's decision, the Planning Board shall then respond to the specific rebuttals presented by the applicant. Failure of the Planning Board to respond to the rebuttal within said twenty (20) day period shall be deemed an approval of the development schedule as originally submitted.

D. Design Criteria Table

The points established hereunder for each particular category of design criteria are absolute, shall be awarded in multiples of five (5), and, except for category (h) below, shall not be varied by the Planning Board in the approval of a development schedule.

NOTE: Points cannot be awarded for both Open Space Residential Development {(a)} and Preservation of the Environment {(i) through (m)} criteria.

POSITIVE DESIGN ELEMENTS	POINTS
a. All lots are located within an Open Space Residential Development approved in accordance with Section 10-C of the Zoning Bylaw.	10
b. The total number of proposed lots within the development is:	
50% less than what can be reasonably expected under a maximum build-out of the tract	30
33% less than what can be reasonably expected under a maximum build-out of the tract	25
25% less than what can be reasonably expected under a maximum build-out of the tract	20
 <i>The maximum build-out of the tract shall be proven by the submission of a plan showing a subdivision conforming to all applicable provisions of the Town of Walpole Zoning Bylaw, Subdivision Rules and Regulations, Wetland Bylaw, and Board of Health Regulations.</i>	
c. Exclusive of those lots counted under (b) above, the lot size of at least 75% of the lots within the development is equal to or exceeds 125% of the minimum required lot area for the zoning district in which the land is located, exclusive of land identified as a "Resource Area" as defined by M.G.L. c. 131 § 40, and/or the Town of Walpole Wetlands Bylaw.	15
d. Exclusive of those lots counted under (a), (b), or (c) above, all lots within the development contain contiguous land other than that located within an area identified as a "Resource Area" as defined by M.G.L. c. 131 § 40, and/or the Town	10

- of Walpole Wetlands Bylaw, the area of which is at least 100% of the minimum required lot area for zoning compliance in which the land is located.
- e. The development dedicates land, acceptable to the Town, for a suitable site for a school, or land for other municipal purposes. 5 to 30 discretionary
 - f. The development provides land for active recreational use (for example, playing fields, tennis courts, neighborhood parks, playgrounds, or swimming facilities) in contiguous areas of at least:
 - 4,000 square feet per lot 10
 - 2,000 square feet per lot 5
 - g. The development permanently sets aside or preserves an area of at least five contiguous acres to be used for agricultural purposes. 10 for each five acre area
 - h. The applicant of the development is to provide other arrangements to mitigate the impacts of the development upon public facilities including (but not limited to) fire, police, education, public infrastructure, transportation, water conservation, and/or recreation. 5 to 20 discretionary
 - i. The development is designed so as to preserve, enhance, or provide desirable access to public or semi-public recreation lands, conservation lands, trail networks or open space. 5
 - j. The development provides a one hundred (100) foot buffer zone, including existing or planted vegetation, adjacent to any non-residential uses or zoning districts that in the opinion of the Planning Board provides a significant beneficial impact. 10
 - k. The development is designed so as to preserve land of significant historical, cultural or archaeological value. 10
 - l. The development is designed so as to preserve or enhance scenic roadside views or vistas from existing public ways. 5

NEGATIVE DESIGN ELEMENTS

POINTS

- m. The development is located on land that was enrolled under the provisions of M.G.L., c.61, 61A, or 61B, or was used in connection with an agricultural operation conducted by the Commonwealth of Massachusetts or any of its political subdivisions at any time prior to the filing of an application for definitive subdivision approval or endorsement that approval under the subdivision control law is not required. -40
- n. The development is located on land that was rezoned by private petition from a nonresidential district to a residential district or from a less intense residential district to a more intense residential district at the request of the owner or designee. -100

E. Development Phase Table

The numerical values hereunder established are absolute, and shall not be varied by the Planning Board in the approval of a development schedule. When correlating the proposed number of lots and cumulative points derived from the design criteria table to the rate of total lot build-out per development phase, all fractions of numbers shall be rounded to the nearest whole number to establish the number of building permits that may be issued in one development phase.

		Cumulative Points Derived from Design Criteria Table											
		<0	0	5	10	15	20	25	30	35	40	45	50+
# of Proposed Lots		Rate of Total Lot Build-Out Per Development Phase (percent)											

1-5	75	85	100	100	100	100	100	100	100	100	100	100
6-10	40	50	55	60	65	70	75	80	85	90	95	100
11-20	20	27	35	43	50	58	67	74	80	87	93	100
21-40	12	17	25	33	40	48	55	62	70	78	88	100
41+	8	12	20	27	35	42	50	58	66	75	87	100

F. Protection from Zoning Changes

In the case of a development whose completion has been constrained by Subsection 2.7 of the Zoning Bylaw of the Town of Walpole, the protection of the land area within said development from zoning changes as provided in M.G.L. c. 40A § 6 shall be extended to the minimum time for completion of the development allowed under Subsection 2.7.

G. Planning Board Regulations

The Planning Board shall, insofar as practical under law, adopt regulations applicable to the implementation of Section 2.7.

COMMENT: Other than minor formatting (i.e., changing numerical heading designations to letter designations for consistency with the formatting of the remainder of the bylaw and inserting proper references to the remainder of the bylaw), no substance or wording of this Section has been changed from that previously approved by the Town Meeting.