

SECTION 10: SPECIAL CONDITIONS

Section 10 covers the most material of any of the proposed Zoning Bylaw amendments and groups several topics under what is being called “Special Conditions”. These topics include Residential Care Continuum (elderly/disabled housing); Independent and Assisted Living; Age Qualified Villages (age-restricted housing for active residents); Open Space Residential Development; Common Driveways; and Wireless Communications Facilities.

Existing Bylaw Sections:

- Section 3J—Age Qualified Village*
- Section 3K—Assisted and Independent Living*
- Section 11—Open Space Residential Development*
- Section 12—Common Driveways*
- Section 13—Wireless Communications Overlay District*

The overall goals for each section of this bylaw follow the section headers (e.g. Residential Care Continuum, Age Qualified Village, etc.). One change worth noting as part of the overall approach to revising the Zoning Bylaw involves assigning a Special Permit Granting Authority. In general, where a development activity involves the construction of multiple structures, these activities should be reviewed by the Planning Board. The placement of buildings, the extent of the site plan and the required infrastructure closely resemble the subdivision process and, therefore, are best suited to review by the Planning Board. As such, the Special Permit Granting Authority for Resident Care Continuums, Independent and Assisted Living and Age Qualified Villages has been changed in these sections to the Planning Board.

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.

10-A. RESIDENTIAL CARE CONTINUUM

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

- 1) Provide more clear dimensional requirements; and*
- 2) Potentially allow for higher densities of age restricted dwellings.*

Commentary on specific sections is provided below.

1. Purposes

To provide a continuum of residential alternatives for the aged, chronically ill, or disabled with the particular goal of assisting them better to cope with their particular

limitations and to lead a productive existence, through the provision of appropriate care, rehabilitation, psychological counseling, and educational programs.

To provide a type of housing which reduces residents' burdens on property maintenance and which minimizes demands on municipal services; and to promote flexibility in land use planning in order to improve site layouts, protection of natural features and environmental values and utilization of land in harmony with neighboring properties.

2. Special Permit Required

A Residential Care Continuum shall be allowed pursuant to the provisions of this Section of the Zoning Bylaw through a Special Permit from the Planning Board. Where dimensional allowances or other standards in this section conflicts with other sections of the Zoning Bylaw, the standards below shall apply.

A. Site Requirements

- (1) The minimum lot tract size shall be twenty five (25) acres.
- (2) The site must lie wholly within the Residential-B (RB) or General Residential (GR) district or may be part of both.
- (3) The minimum front, side and rear yard setbacks shall be fifty (50) feet and the minimum frontage shall be two hundred (200) feet.
- (4) Landscaping and screening is required to obscure visibility from beyond the boundaries of the premises of parking areas, dumpster locations, and loading areas.
- (5) Two parking spaces shall be provided for every three units of assisted living and one for each bedroom in every unit of independent living.
- (6) The residences shall be connected to Town water and sewer.

B. Density Calculations

- (1) The maximum residential density for congregate housing or assisted living facilities as defined in subsection 2.A(2) of this Bylaw shall be twenty (20) units per acre of the entire site provided that the total site area provided that the site meets the requirements for Contiguous Buildable Lot Area in Section 6.3.B of the Zoning Bylaw. All unit calculations shall be rounded down to the nearest whole number.
- (2) The maximum residential density for independent living facilities as defined in subsection 2.A(3) of this Bylaw shall be eight (8) units per acre of the entire site provided that the total site area provided that the site meets the requirements for Contiguous Buildable Lot Area in Section 6.3.B of the Zoning Bylaw. All unit calculations shall be rounded down to the nearest whole number.
- (3) Other site or facility features including, but not limited to, utilities, parking areas, roadways, gathering spaces, and any of the

accessory uses identified in subsection 5.B of this Bylaw shall not detract from the amount of developable land used to calculate residential yield.

3. Application Requirements

An applicant for a Special Permit to develop a Residential Care Continuum shall submit to the Special Permit Granting Authority all applicable information required for a Full Site Plan Review pursuant to Section 13 of this Bylaw.

4. Decision of the Special Permit Granting Authority

The Special Permit Granting Authority may approve, deny, or conditionally approve an application for a Residential Care Continuum. To make their decision, the Special Permit Granting Authority shall, in addition to those criteria listed in Section 2.2, consider the following:

- A. Whether the site is designed to facilitate the care of its intended residences through the use of recreational amenities, walkways, pedestrian connections, medical amenities and other on-site features conducive to independent and/or assisted living.
- B. Whether the site is designed to minimize impacts to the environment and prevent on-site and off-site flooding through the use of high quality stormwater management strategies and compact site design that ensures no net increase in the rate of flow of stormwater off site will occur.
- C. Whether the safety of the residents is ensured through the use of proper grading, landscaping, barriers and other security related features.

COMMENTARY: The need for long lists of criteria of approval is eliminated with the addition of a standard set of Special Permit criteria in the proposed Section 2.2.

10-B. INDEPENDENT AND ASSISTED LIVING

1. A facility devoted either solely to assisted living or in combination with independent living as such uses are defined in Section 14 and M.G.L. Chapter 19D and providing at least some of the services described therein may be permitted on special permit by the Planning Board in an LM, B or GR zoning district provided the SPGA finds that the assisted living and independent living residences will not have adverse effects which overbalance its beneficial effects for either the neighborhood or the town, in view of the particular characteristics of the site and of the proposal in relation to that site. Such a proposal shall comply with these additional dimensional and developmental requirements:
 - A. The minimum lot size shall be five (5) acres.
 - B. The minimum lot area per Assisted Living Residence unit shall be 10,000 square feet for the first unit and 2,500 square feet for each unit after the first.
 - C. The minimum front, side and rear yard setbacks shall be 50 feet and the minimum frontage shall be 200 feet.
 - D. Landscaping and screening is required to obscure visibility from beyond the boundaries of the premises of parking areas, dumpster locations, and loading areas.
 - E. Two parking spaces shall be provided for every three units of assisted living and one for each bedroom in every unit of independent living,
 - F. The residences shall be connected to Town water and sewer.

COMMENTARY: The minimum tract size is taken from the existing provisions for Assisted and Independent living and provides a good threshold to allow for high quality “campus style” design.

10-C. AGE QUALIFIED VILLAGE (AQV)

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

- 1) Maintain the possibility for higher density housing that is age restricted, but designed for more active populations than those that would be served by a Residential Care Continuum;***
- 2) Provide clearer dimensional requirements; and***
- 3) Allow for density bonuses for the provision of affordable housing.***

Commentary on specific sections is provided below.

1. Purposes

The purposes of the AQV Special Permit are to provide alternative housing for a maturing population; to provide a type of housing which reduces residents' burdens on property maintenance and which minimizes demands on municipal services; and to promote flexibility in land use planning in order to improve site layouts, protection of natural features and environmental values and utilization of land in harmony with neighboring properties.

2. Special Permit Required

An Age Qualified Village shall be allowed pursuant to the provisions of this Subsection of the Zoning Bylaw through a Special Permit from the Planning Board.

A. Site Requirements

- (1) The minimum lot tract size shall be ten (10) acres.
- (2) Zoning District - an AQV shall be located only in Residential-B (RB), General Residential (GR), Business (B), and Limited Manufacturing (LM), and Highway Business (HB) Districts.
- (3) The minimum setbacks along the perimeter of the development shall be fifty (50) feet and the minimum frontage shall be one hundred and fifty (150) feet.
- (4) Minimum frontyard setbacks for units along proposed roadways shall be twenty (20) feet.
- (5) Minimum side yard setbacks between buildings shall be fifteen (15) feet. Individual dwelling units may be attached pursuant to Section 10-C.4.
- (6) Minimum rear yard setbacks for lots that are interior to the development shall be thirty (30) feet.
- (7) Landscaping and screening is required to obscure visibility from beyond the boundaries of the premises of parking areas, dumpster locations, and loading areas.

- (8) The development shall be connected to Town water and sewer.
- (9) Project Maintenance - in every AQV there shall be an organization of the owners of the dwelling units which shall be responsible for the maintenance and repair of internal roads and driveways, snow plowing, landscape maintenance, utility services and maintenance and repair of other common elements and facilities serving the residents, and the Town of Walpole shall not be responsible thereof.
- (10) Parking - two parking spaces shall be provided for each dwelling unit (with the exception of one bedroom units, which shall require one parking space per unit), in reasonable proximity to the dwelling, or in garages.
- (11) The site shall be designed to facilitate pedestrian movement throughout the development and to encourage passive recreation. Where possible, the site shall be connected to adjacent amenities including non-residential operations that can serve the residents and/or open space through the use of walkways.

COMMENTARY: This Section combines many of the standards listed in the existing Zoning Bylaw under Section 3J(4) and 3J(6). More definitive standards have also been provided for setbacks.

B. Density Calculations

- (1) The maximum residential density for AQV housing shall be one unit of housing for every nine thousand (9,000) square feet of the total site area provided that the site meets the requirements for Contiguous Buildable Area in Section 6.3.B of the Zoning Bylaw. All unit calculations shall be rounded down to the nearest whole number.
- (2) Where a minimum of 15% of all housing units is proposed within an AQV, the Planning Board may increase the site density up to one unit of housing for every six thousand (6,000) square feet of the total site area provided that the site meets the requirements for Contiguous Buildable Area in Section 6.3.B of the Zoning Bylaw. As a condition of the Special Permit, these dwelling units shall be permanently deed restricted to be affordable to households that earn less than 80% of the median income for the Boston Metropolitan Statistical Area (MSA). Fractions of a unit shall be rounded up to the nearest whole number. Restrictions on these units and management of occupancy shall be performed in a manner that ensures these housing units are incorporated into the Commonwealth of Massachusetts Subsidized Housing Inventory.
- (3) Other site or facility features including, but not limited to, utilities, parking areas, roadways, gathering spaces shall not detract from the amount of developable land used to calculate residential yield.

COMMENTARY: The base maximum density has remained the same at one unit per 9,000 square feet. However, a 50% density bonus has been offered if an applicant is willing to provide 15% of the units as affordable. This will provide an incentive to increase the Town's stock of affordable housing as an alternative to using 40B since the state Comprehensive Permit requirements are 25% affordable.

3. Building and Dwelling Unit Requirements

The following requirements shall apply to all buildings and dwelling units in an AQV:

- A. Dwelling units can be attached, or detached as single units, or a combination of these types.
- B. Dwelling Units Per Building - no building shall contain more than four dwelling units.
- C. Maximum Height - no building constructed in an AQV shall exceed 35 feet in height.
- D. Maximum Number of Bedrooms - no dwelling unit constructed in an AQV shall contain more than three bedrooms. The average bedroom count per unit in an AQV shall not exceed 2.25.

COMMENTARY: This Section uses many of the building standards in the existing AQV Bylaw but adds a bedroom density cap that does not currently exist. This will keep an applicant from providing the majority of housing as three-bedroom units.

4. Application Requirements

An applicant for a Special Permit to develop an AQV shall submit to the Special Permit Granting Authority all applicable information required for a Full Site Plan Review pursuant to Section 13 of this Bylaw.

5. Decision of the Special Permit Granting Authority

The Special Permit Granting Authority may approve, deny, or conditionally approve an application for an AQV. To make their decision, the Special Permit Granting Authority shall, in addition to those criteria listed in Section 2.2, consider the following:

- A. Whether the site is designed to facilitate the enjoyment of its residents through the use of recreational amenities, walkways, pedestrian connections other on-site features conducive to community living.
- B. Whether the site is designed to minimize impacts to the environment and prevent on-site and off-site flooding through the use of high quality stormwater management strategies and compact site design that ensures no net increase in the flow of stormwater off site will occur.

- C. Whether the safety of the residents is ensured through the use of proper grading, landscaping, barriers and other security related features.

COMMENTARY: The need for long lists of criteria of approval is eliminated with the addition of a standard set of Special Permit criteria in the proposed Section 2.2.

10-D. OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD)

Approach: *This section was drafted to accomplish six primary objectives:*

- 1) Completely revise the existing OSRD provisions (Section 11) to create the desired effect;*
- 2) Provide a clear design process that will allow for more usable open space and better development design;*
- 3) Provide density bonuses for affordable housing;*
- 4) Allow for OSRD in the Water Resource Protection Overlay District;*
- 5) Clarify the relationship between this Special Permit and the subdivision process; and*
- 6) Clarify all plan requirements and administrative processes.*

Commentary on specific sections is provided below.

1. Purpose and Intent

A. The primary purposes for OSRD are the following:

- (1) to allow for greater flexibility and creativity in the design of residential developments;
- (2) to encourage the permanent preservation of contiguous open space, scenic vistas, agricultural land, forestry land, wildlife and rare species habitat, other natural resources and features, including aquifers, water bodies, areas of critical environmental concern, wetlands, aquifers and other water resources, and historical and archeological resources, in a manner that is consistent with the Town of Walpole's Master Plan and Open Space and Recreation Plan;
- (3) to encourage a more efficient and compact form of residential development that consumes less open land and natural materials and conforms to existing topography and natural features better than a Conventional Development Plan permitted under the Zoning Bylaw;
- (4) to minimize the total amount of disturbance to natural and cultural resources;
- (5) to facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economic and efficient manner; and
- (6) to promote affordable housing through an incentive-based density bonus.

2. Applicability

A. Zoning Classification: Only proposed development located in the Rural, Residence A and Residence B Districts shall be eligible for an OSRD

Special Permit. Applicability shall also include those areas where these residential districts are within established Overlay Districts subject to any restrictions imposed by the Overlay District.

- B. Subdivision Land Area: Any proposed residential development in the Town of Walpole that is on a parcel of twenty (20) acres or more or on contiguous parcels totaling twenty (20) acres or more may apply for a Special Permit application to the Planning Board for an OSRD in accordance with the provisions of this Section. Any Special Permit application submitted under the provisions of this subsection that involves the subdivision of land shall also be subject to the approval of the Planning Board under the Rules and Regulations Governing the Subdivision of Land in the Town of Walpole.

COMMENTARY: The overall approach has been modified from what was originally proposed. The OSRD Special Permit is now proposed as a purely voluntary process.

- C. Contiguous Parcels: To be eligible for consideration as an OSRD, the total tract shall consist of one parcel or set of contiguous parcels including those parcels separated by a public right-of-way. Properties containing land area in non-residential districts may use the land area within non-residential districts to meet the open space requirements. Only the lot area zoned for residential uses shall be used for purposes of establishing a Yield Plan under Subsection 6.
- D. Land Division: To be eligible for consideration as an OSRD, the proposed development must involve either (i) a subdivision of land, (ii) a division of land not subject to the subdivision control law (Approval Not Required) pursuant to M.G.L. c. 41, s. 81P, and/or (iii) a condominium on land not so divided or subdivided.

3. Authority

- A. The Planning Board shall act as the Special Permit granting authority for all OSRD applications.

4. Pre-Application Conference

- A. Conference: The applicant for an OSRD Special Permit is strongly encouraged to attend a pre-application conference at a regular business meeting of the Planning Board. If one is requested, the Planning Board may invite a representative of the Conservation Commission, Board of Health, and any other municipal agent that will receive a copy of the OSRD application. The purpose of a pre-application conference is to attempt to streamline the formal application process, to minimize the applicant's costs of engineering and other technical experts, and to commence discussions with the Planning Board at the earliest possible stage in the development. With the consent of the applicant, and at the

expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSRD Special Permit.

COMMENTARY: A pre-application meeting has proven to be a very effective way to limit the amount of time and money the applicant will eventually spend on permitting and design. The information suggested below in Subsection B is readily available information that most developers will gather during their early planning phases.

- B. Materials: Applicants choosing to request a pre-application conference should attempt to develop the maps/illustrations listed below. The applicant is strongly encouraged to submit these materials in both hard copy and electronic format where possible. This information need not be prepared by an engineer but should reasonably reflect existing conditions:
- (1) Site Context Map. This map shall illustrate the parcel in connection to its surrounding neighborhood. The map should show land features within one thousand (1,000) feet of the site but may be expanded to include important features beyond one thousand (1,000) feet such as drainage pathways, transit routes or other resources. A standard USGS quadrangle may be used as a Site Context Map along with any other readily available data in Geographic Information System (GIS) format. These documents enable the Planning Board to understand the site in relation to what is occurring on adjacent properties;
 - (2) Existing Conditions Map. Based upon existing data sources and field inspections, this base map shall locate and describe noteworthy resources that could be protected through sensitive subdivision layouts. These resources shall include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature non-degraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property. Where appropriate, photographs of these resources should accompany the map;
 - (3) The most current available aerial photography or any other GIS data readily available through the Commonwealth of Massachusetts or other sources; and
 - (4) Other Information. In addition, applicants are invited to submit any other available information otherwise required in Sketch Plan or Definitive Plan submittals.

5. Four-Step Design Process

Unless waived by the Planning Board, at the time of the application for an OSRD Special Permit, applicants are required to demonstrate that the following four-step design process was performed by a certified Landscape Architect (LA), or by a Qualified Design Team (QDT).

- A. Step One: Identifying Conservation Areas and the Potentially Developable Area. The certified LA or QDT shall first identify and delineate two categories of conservation areas at the site and delineate the potentially developable areas as follows:
- (1) Primary Conservation Areas. This consists of those areas protected by federal, state, or local laws, including but not limited to wetland resource areas, areas of critical environmental concern, outstanding resource waters, estimated rare species habitat (as designated by Natural Heritage and Endangered Species Program), flood hazard areas, and floodplains; and,
 - (2) Secondary Conservation Areas. This consists of those elements of the natural landscape that are not protected by law, but the maintenance of which in their natural state would provide environmental, aesthetic, pastoral, historical, or other value to the environment or community, such as steep slopes (typically greater than twenty-five percent (25%)), mature woodlands (non-invasive trees with caliper of twenty inches or greater measured at four feet), wetland buffer zones, vernal pools, prime farmland and prime agricultural soils, large open meadows, critical wildlife habitats, priority habitats (as designated by Natural Heritage and Endangered Species Program) and important cultural features such as historic structures and archeological sites, stone walls, heritage landscapes, scenic views or other unique geological features on or adjacent the site.
 - (3) Potentially Developable Areas. After identifying the conservation areas, the certified LA or QDT shall then delineate the Potentially Developable Areas (PDA), which, to the maximum extent feasible, shall consist of land outside identified Primary and Secondary Conservation Areas.
- B. Step Two: Locating House Sites. Within the PDA, the certified LA or QDT shall then locate the approximate sites of individual houses or structures and delineate the private yards and shared amenities, so as to reflect an integrated neighborhood that conforms to the existing topography and natural or historic features of the site.
- C. Step Three: Aligning the Streets and Trails. The certified LA or QDT shall then align streets to access the house lots/ units and lay out sidewalks and walking trails to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.
- D. Step Four: Lot Lines. If applicable the certified LA or QDT shall then delineate the lot lines according to Section 10-D.8 of this Bylaw.

COMMENTARY: The four step design process is the heart of the OSRD application. This process is not present in the existing Zoning Bylaw. These four steps provide the

applicant and the Planning Board valuable information about the existing conditions of the site and the location of natural features that should be preserved or used as focal points to add value to the development.

6. Plan Requirements

Applicant for OSRD Special Permits shall not be required to submit materials for a Full Site Plan Review pursuant to Section 13 of the Zoning Bylaw. The following plans are required as part of the OSRD Special Permit application:

- A. Conventional Development Yield Plan: The maximum number of allowable housing units shall be derived from and delineated on a Conventional Development Yield Plan (hereafter referred to as “Yield Plan”). In the case of a subdivision of land, the Yield Plan shall show the maximum number of lots or units that would be deemed buildable upon the site under a conventional subdivision process according to a reasonable application of the *Rules and Regulations Governing the Subdivision of Land* in the Town of Walpole and all other applicable state and local rules and regulations.

The applicant shall have the burden of proof with regard to the Basic Maximum Number of lots/dwelling units or additions, alterations or extensions of existing structures permitted under the Zoning Bylaw. The Planning Board may request further information related to the proposed yield, including but not limited to an approved wetland and resource delineation (incl. an Abbreviated Notice of Resource Area Delineation, soil tests and percolation tests). At a minimum, the Yield Plan shall show the following:

- (1) Existing Conditions Plan:
 - (a) Property boundary, north arrow, date, and scale;
 - (b) Existing topography at two-foot contour intervals;
 - (c) Name and address of record owner, applicant, and designer, engineer, and surveyor;
 - (d) Names of all direct abutters as determined by the Assessor’s Office;
 - (e) Property area;
 - (f) Zoning District(s) with summary of applicable dimensional, height and bulk regulations; and
 - (g) Location of wetlands and surface waters with appropriate jurisdictional buffers as determined by a field survey of wetland resources.
- (2) Yield Determination Plan:
 - (a) All information required in the Existing Conditions Plan;

- (b) Street layout;
- (c) Footprints of structures;
- (d) Setbacks applicable to the underlying Dimensional Regulations;
- (e) Existing topography in two (2) foot intervals;
- (f) Wetland resource areas; and
- (g) General location of stormwater and wastewater management structures.

COMMENTARY: The Yield Plan is a conceptual subdivision plan that provides the Planning Board with enough information to reasonably determine how many homes could be developed using the standard zoning provisions.

B. Sketch Plan: The Sketch Plan will demonstrate to the Planning Board and other agencies that the four-step design process was followed. The Sketch Plan shall contain the following information:

- (1) Existing Conditions Plan:
 - (a) Property boundary, north arrow, date, and scale;
 - (b) Existing topography at two (2) foot contour intervals;
 - (c) Name and address of record owner, applicant, and designer, engineer, and surveyor;
 - (d) Names of all direct abutters as determined by the Assessor's Office;
 - (e) Property area;
 - (f) Zoning District(s) with summary of applicable dimensional, height and bulk regulations; and
 - (g) Location of wetlands and surface waters with appropriate jurisdictional buffers as determined by a field survey of wetland resources.

- (2) Conservation Area Plan:
 - (a) Property boundary, north arrow, date and scale;
 - (b) Existing topography at two (2) foot contour intervals;
 - (c) Location of all individual Primary and Secondary Conservation Areas;
 - (d) Perimeter of aggregate Primary Conservation Areas;
 - (e) Perimeter of aggregate Secondary Conservation Areas;
 - (f) Number of units allowed by the Yield Plan; and
 - (g) Number of additional units being pursued through density bonuses.

- (3) Development Plan:

- (a) All information required in the Existing Conditions Plan;
- (b) Perimeter of proposed Potentially Developable Area;
- (c) Location of units;
- (d) Street layout;
- (e) Lotting locations with associated setbacks and lot areas;
- (f) Setbacks;
- (g) Location and extent of landscaped areas and buffers;
- (h) Location of management areas for stormwater runoff;
- (i) A brief narrative prepared by the QDT describing the approach to managing both on-site and off-site stormwater runoff;
- (j) Location of management areas for wastewater disposal if applicable;
- (k) A brief narrative prepared by the QDT describing the approach to managing wastewater disposal; and
- (l) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds, with an accompanying brief narrative explaining their general purpose.

COMMENTARY: The Sketch Plan actually illustrates how the OSRD Plan would look once the number of homes calculated in the Yield Plan is located in a way that is sensitive to the four-step Design process.

7. Procedures

- A. Application: An application for an OSRD Special Permit, or for an amendment thereto, shall include an OSRD Sketch Plan and a Conventional Development Yield Plan, as described above in Section 10-D.6.
- B. Submittal and Distribution: An applicant for an OSRD Special Permit shall submit the contents required in this Section of the Zoning Bylaw in accordance with the Special Permit procedures outlined in Section 2 of the Zoning Bylaw.
- C. Site Visit: Whether or not conducted during the pre-application stage, the Planning Board may conduct a site visit during the public hearing process. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or his or her agents if requested by the applicant.
- D. Technical Experts: The Planning Board may engage technical experts, at the applicant's expense, as reasonably necessary in connection with its review of the application materials.
- E. Other Requirements: The procedural and substantive Special Permit requirements set forth in this Section shall be in addition to any other

requirements of the Subdivision Control Law (Massachusetts General Laws Chapter 41) and other provisions of this Bylaw.

F. Relationship between the Sketch Plan and the Definitive Subdivision Plan:

- (1) The approval of an OSRD Special Permit may run concurrently or be followed by the submittal of a Definitive Subdivision Plan. The Definitive Subdivision Plan shall be reviewed by the Planning Board for compliance with the Rules and Regulations Governing the Subdivision of Land and for compliance with the Sketch Plan. A Definitive Subdivision Plan shall be considered not to substantially comply with the Sketch Plan if the Planning Board determines that any of the following changes exist:
 - (a) An increase in the number of building lots or dwelling units;
 - (b) A decrease in the open space acreage or significant change in configuration;
 - (c) A change in the lot layout, unit placement or overall development pattern that results in the loss of or encumbrance upon any resource previously identified in the Four Step Design Process;
 - (d) A significant change to the stormwater management facilities; and/or
 - (e) A significant change in the wastewater management systems.

COMMENTARY: Once a Sketch Plan is approved and the applicant moves to the Definitive Plan stage of the process, the “hard” engineering involved with these plans may necessitate minor deviations from the original Sketch Plan. It is therefore important to define for the applicant what is acceptable and what would constitute a violation of the Special Permit approval. These provisions above, in Subsection 7.F.(1) let the applicant know what the boundaries are for altering important site features.

- (2) If the Planning Board determines that the Definitive Subdivision Plan does not substantially comply with the Sketch Plan or special conditions included in the original Special Permit approval, the Board may require an amendment to the Special Permit; and
- (3) The Planning Board may conditionally approve a Definitive Subdivision Plan that does not substantially comply with the Sketch Plan so long as the proposed changes are consistent with the purposes and intent of this Bylaw. However, such conditional approval must identify where the plan does not substantially comply with the OSRD-SP Plan and shall be conditional upon the applicant applying for, and the Planning Board granting, an amendment to the OSRD Special Permit such that the revised

OSRD-SP Plan is consistent with the significant changes identified by the Planning Board. The conditional approval shall also require that the applicant file its application for an amendment to the OSRD Special Permit within a specified time period.

COMMENTARY: The provisions in Subsection (3) above provide a final layer of protection to the applicant if unforeseen circumstances for the applicant to deviate substantially from the original Sketch Plan while still providing a good OSRD project.

- G. The public hearing on the application for an amendment to the OSRD Special Permit shall be limited to the significant changes identified by the Planning Board in their conditional approval of the Definitive Subdivision Plan. The Planning Board may only review and consider factors and impacts associated with the significant changes in deciding whether to grant an amendment to the OSRD Special Permit.

8. Reduction of Dimensional Requirements and Permitted Uses

- A. The Planning Board may modify lot size, shape, frontage, setbacks and other dimensional requirements for lots within an OSRD, subject to the following limitations:
- (1) Lots having reduced area or frontage shall not have frontage on a street or way other than a street or way created by the OSRD. The Planning Board may waive this limitation to the extent it determines that such waivers will substantially further the purposes and intent of this Bylaw;
 - (2) Lot frontage may be reduced to fifty (50) feet;
 - (3) At least fifty percent (50%) of each required setback for the applicable zoning district shall be maintained in the OSRD. The Planning Board may further reduce the applicable setbacks to the extent it determines that such reduction(s) will substantially further the purposes and intent of this Bylaw; and
 - (4) Minimum lot size shall be eight thousand (8,000) square feet for single family homes. . The Planning Board may reduce this minimum lot size to the extent it determines that such reduction(s) will substantially further the purposes and intent of this Bylaw.

COMMENTARY: The provisions above provide the limits to which the Planning Board may reduce standard setbacks and lot sizes in order to accommodate more compact subdivisions that use OSRD.

9. Open Space Requirements

- A. Minimum Open Space:

- (1) A minimum of forty percent (40%) of the tract shown on the Sketch Plan shall be open space and must be preserved as such in perpetuity in accordance with this subsection; and
- (2) For any property within the WRPOD - "Water Resource Protection Overlay District" a minimum of sixty percent (60%) of the tract shown on the OSRD plan shall be open space and must be preserved as such in perpetuity in accordance with this subsection.

COMMENTARY: The minimum open space requirements listed above are designed to provide considerable percentages of open space in each subdivision, especially those in the WRPOD.

- B. Wetlands: The applicant may include a percentage of existing natural wetland area(s) in the dedicated open space. The percentage of wetland allowed in the dedicated open space shall not exceed the overall percentage of wetland on the site under existing conditions.

Sample Calculation

Existing Conditions:

12 acre site with 3 acres of wetland

$3 \div 12 = 25\%$ wetland coverage

Open Space Requirements:

50% Open Space = 6 acres

Wetland Allowance:

6 acres * 25% wetland coverage = 1.5 acres

Open Space can be 4.5 acres of upland and 1.5 acres of wetland

COMMENTARY: The calculations above allow an applicant to include a specific percentage of wetland in the dedicated open space. The amount is determined by how much of the site is wetland area under existing conditions. A sample calculation is provided to illustrate how this percentage of wetland is to be determined for individual sites.

- C. Contiguous: The open space shall be contiguous. Contiguous shall be defined as being connected. Open space will still be considered connected if it is separated by a roadway or right-of-way. The Planning Board may allow two separate open space areas that are disconnected if it furthers the purposes and intent of this Bylaw.
- D. Accessible: Based on the assessment of the primary and secondary resources identified within the four-step design process, providing deeded public access within the protected open space areas is strongly encouraged. For protected open space maintained for active agricultural purposes (e.g. uses including the raising of livestock, equestrian facilities or residential use of a historic structure) or other uses not conducive to

open public access, public access may be limited or completely excluded.

- E. Uses of Open Space: The open space shall be suitable for and protected and maintained for wildlife habitat, conservation, historic preservation (landscapes and/or structures), outdoor education, passive and active outdoor recreation, park purposes, agriculture, horticulture, forestry, and/or a combination of these uses. It shall also be served by suitable access for such purposes. The Planning Board may permit up to five percent (5%) of the open space to be paved (pervious paving materials are encouraged) or built upon for structures accessory to the dedicated use or uses of such open space (for example, pedestrian walks and bike paths).
- F. Wastewater/Stormwater Structures: At the discretion of the Planning Board subsurface wastewater and stormwater management systems serving the OSRD may be located within the open space. Surface systems that are determined by the Planning Board to be “soft” (non-structural) stormwater management systems and resemble natural features may be included as part of the Open Space. These systems may include, but shall not be limited to, vegetated swales, bio-retention facilities, or constructed wetlands. Large-scale retention and detention basins shall not be considered eligible for inclusion on the Open Space.

COMMENTARY: Subsections “E” and “F” above allow for certain disturbances to take place within the dedicated open space. In general, these uses are those that will blend in to natural areas, such as low impact stormwater management, or those that will provide passive access, such as walking trails.

- G. Long-Term Protection: The protected open space shall be subject to a recorded conservation restriction enforceable by the Town providing that such land shall be perpetually kept in an open state, preserved exclusively for the purposes set forth herein, and maintained in a manner which will ensure its suitability for its intended purposes. Unless modified by the Board, such open space shall include a Conservation Restriction (CR) as defined under M.G.L. 184 and shall be conveyed, by easement or fee, to one or more of the following:
- (1) The Town or its Conservation Commission;
 - (2) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; or
 - (3) A corporation or trust owned jointly or in common by the some or all owners of lots within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lot(s) in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust that shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have

assented to allow the Town to perform maintenance of such open space and facilities if the trust or corporation fails to provide adequate maintenance and deemed to have granted the Town an easement for this purpose. In such event, the Town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the Town may perform it. The trust or corporation shall be liable to the Town for the reasonable expenses associated with such maintenance performed by it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

- H. Approval under MGL 184: After approval of an OSRD Special Permit, the Board shall review the final CR approved by the Executive Office of Energy and Environmental Affairs (EEA) and determine that it is in substantial compliance with the approved plans and the CR presented during the public hearing. If not in substantial compliance, an amendment to this Special Permit shall be sought and obtained, after public hearing, prior to issuance of the Building Permit. The Board may waive the MGL 184 requirements if approval of the CR by EEA or the Town is withheld.

10. Design Standards

The following General Design Standards shall apply to all OSRD projects and shall govern the development and design process:

- A. The landscape should be preserved in its natural state. Tree and soil removal shall be minimized and saved trees shall be protected during construction. Native and non-invasive trees with a caliper greater than twenty (20) inches (measured at four (4) feet) shall be preserved to the greatest extent practicable.
- B. Any grade changes shall be in keeping with the general appearance of the neighboring undeveloped and developed areas. Individual building sites shall be oriented so as to maintain any scenic vistas, historic structures, heritage landscapes, natural topography, and to take advantage of natural drainage patterns.
- C. Streets or driveways shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cuts and fills; and, to preserve and enhance views and vistas on or off the subject parcel.
- D. All proposed landscaping shall be designed to compliment and add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties and public ways.

- E. The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized, whether these exist on the site or on adjacent properties.
- F. All aspects of new construction, including but not limited to building materials, fenestration, roof pitch, height, façade proportion, fences, roof features (i.e. dormers, atrioms, turrets, eave breaks, skylights), door placement, porches, decks and trim details, shall be compatible with the architectural heritage of the neighboring structures and the Town of Walpole.
- G. Variable lot sizes and lot shapes are encouraged as is a mix of housing types and house sizes to reduce monotony and repetition.
- H. Roof massing shall be consistent with recognized historic roof patterns.
- I. Garages shall be recessed at least five (5) feet from the front building wall of the house. Side entry and detached garages are strongly encouraged.
- J. Walkways and/or bicycle paths shall be provided to link residences with parking areas, existing or future trails, streets or ways, recreation facilities (including parkland and open space) and adjacent land uses where appropriate.

11. Decision of the Planning Board

- A. The Planning Board may grant an OSRD Special Permit if it determines that the proposed OSRD has less detrimental impact on the tract and advances further the interests of the community than a Conventional Development Plan (CDP) for the tract, after considering the following factors:
 - (1) Whether the OSRD achieves greater flexibility and creativity in the design of residential developments than a Conventional Development Plan;
 - (2) Whether the OSRD promotes permanent preservation of open space, scenic vistas, agricultural land, forestry land, wildlife and rare species habitat, other natural resources and features, including aquifers, water bodies, areas of critical environmental concern, and wetlands, and historical and archeological resources in a manner that is consistent with the Town of Walpole Master Plan and Open Space and Recreation Plan;
 - (3) Whether the OSRD promotes a more efficient and compact form of development that consumes less open land and natural materials and conforms to existing topography and natural features better than a Yield Plan;
 - (4) Whether the OSRD reduces the total amount of disturbance on the site as compared with a Yield Plan;

- (5) Whether the OSRD furthers the goals and policies of the Town of Walpole Master Plan and Open Space and Recreation Plan as amended from time to time;
- (6) Whether the OSRD facilitates the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner than a Yield Plan;
- (7) Whether the OSRD Special Permit Plan and other supporting documentation complies with all provisions of this Section;
- (8) Whether the proposed construction of housing, landscape and streetscape is in harmony with the overall architectural heritage and historic character of the Town of Walpole.

12. Increases in Permissible Density

A. Allowable density bonuses for open space and affordable housing are listed below. These bonuses may be used individually or in some combination to potentially increase the number of units allowed on a site. The aggregate density bonus for an OSRD shall not exceed fifty percent of the Basic Maximum Number. Common Driveway OSRD proposals are not eligible for density bonuses.

- (1) Open Space: In all applicable Districts, the Planning Board at its discretion may increase the number of dwelling units beyond the Basic Maximum Number and award a ten percent (10%) density bonus for each additional five percent (5%) of upland open space that is designated as protected under the OSRD. However, this density bonus shall not exceed twenty-five percent (25%) of the Basic Maximum Number.
- (2) Affordable Housing: For every one dwelling unit restricted to occupancy for a period of not less than ninety-nine (99) years by persons or families who qualify as low or moderate income, as those terms are defined for the area by the Commonwealth's Department of Housing and Community Development (DHCD) and that shall be eligible for inclusion in and count toward the Town's "Subsidized Housing Inventory," as maintained by DHCD or any successor agency, the Planning Board may award a density bonus of two (2) market-rate dwelling units. However, this density bonus shall not result in a number of units that exceeds fifty percent (50%) of the Basic Maximum Number.

COMMENTARY: Subsections 12.A(1) and (2) above provide the applicant an opportunity to increase the yield of the subdivision through density bonuses. The more aggressive bonus provided above is for the inclusion of affordable housing. In these cases, applicants could increase their yield by fifty percent through an incremental addition of affordable units. For example, if a property would ordinarily yield twenty

units, an applicant could increase the yield to twenty-nine units if he or she includes three affordable units.

13. Adoption of Rules and Regulations

The Planning Board may, after notice and hearing, adopt rules and regulations to implement the provisions of Section 10-D, including but not limited to specifying the content and number of required plans, application procedures, filing and review fees, design criteria, development standards, and other general requirements consistent with this Bylaw.

10-E. COMMON DRIVEWAYS

Approach: *This section was drafted to accomplish three primary objectives:*

- 1) *Expand the conditions under which a Common Driveway may be allowed;*
- 2) *Provide additional design standards for a Common Driveway; and*
- 3) *Provide added protection to the Town in the form of a surety;*

Commentary on specific sections is provided below.

1. Purpose

The purposes of providing access to more than one residence or business, rather than by individual driveways on each lot are:

- A. To enhance public safety by reducing the number and frequency of points at which vehicles may enter upon the ways used by the public;
- B. Encourage the protection and preservation of significant natural features such as wetland, riparian corridors, mature trees, stone walls, landscaped areas, scenic vistas and other open space areas;
- C. To preserve, protect and enhance other natural resources, including aquifer recharge areas, wetlands and flood plains, by reducing the area of land that is cleared, excavated, filled and/or covered with impervious surface; and,
- D. To encourage residential development at a lower density or impact than would otherwise be allowed by the minimum dimensional requirements of the Town of Walpole Zoning Bylaw, Section 6, and thereby to reduce the amount of public roadways and utilities to be maintained by the Town.

2. Applicability

A Common Driveway is a driveway used as common access to no more than three lots or dwelling units. Common Driveways shall access lots from no more than one access point on an existing street or a street shown on an approved subdivision plan. A Common Driveway shall access lots over a portion of the approved frontage of one of the lots served and shall require a Special Permit from the Planning Board.

COMMENTARY: *The existing Zoning Bylaw only allows Common Driveways under strict site conditions, including only when a wetland crossing would otherwise be required. This proposed bylaw broadens the opportunity to wherever a developer or resident feels it would be advantageous. The opportunity provides a lower impact solution to housing access that also reduces the municipal burden associated with accepting and maintaining new roads.*

3. Application Requirements

An application for a Special Permit for a Common Driveway shall be filed in accordance with Section 2 of the Zoning Bylaw and shall be accompanied by ten copies of the Common Driveway Plan, and a proposed Common Driveway Agreement. The Special Permit application shall be exempt from those requirements listed in Section 13 for Full Site Plan Review. The Common Driveway Plan shall contain: the Common Driveway; the Common Driveway easement; the area of the lots served which falls within seventy-five (75) feet of the Common Driveway easement; the width and proposed surface of the Common Driveway with a cross-section including berms and cleared shoulders; and the locations of turnarounds for emergency vehicles. The Planning Board may require a locus plan showing the entire area of the lots served, the adjoining access road, and the Common Driveway. The Common Driveway Agreement shall name the party(ies) responsible for the maintenance of the Common Driveway. Violation of the Common Driveway Agreement shall constitute a violation of any approved Special Permit and shall be enforced accordingly.

The Common Driveway Plan shall be prepared and stamped by a Registered Professional Engineer and/or a Registered Professional Land Surveyor as applicable. A note shall be placed on the plan, and the deed for each lot served by a Common Driveway shall include, a restrictive covenant stating that the Common Driveway shall never be considered for acceptance as a town road and that all maintenance and repair of the Common Driveway and drainage facilities shall be the responsibility of the owners of the properties served by the Common Driveway; and, further that all lots accessed by the Common Driveway shall never be further subdivided so as to create additional buildable lots, and this shall be set forth as a condition of any favorable action under this Section in the decision on the Special Permit, and on the accompanying plan, restrictive covenant, and all deeds to the lots so affected.

4. Review Procedures

The Planning Board shall be the Special Permit Granting Authority for Special Permits for Common Driveways. The procedure for approval of Special Permits for Common Driveways shall follow all applicable procedures outlined in Section 2 of the Zoning Bylaw.

5. Design Standards

All Common Driveways shall conform to the following design standards:

- A. The location and construction of Common Driveways shall minimize soil disturbance, vegetation removal, and drainage impacts, and preserve existing trees of over twelve (12) inches in caliper and other natural features of special significance to the greatest practicable extent.
- B. Common Driveways shall have a minimum surface width of sixteen (16) feet, exclusive of two foot shoulders on either side cleared of brush and trees. The Planning Board may require one foot wide Cape Cod berms and/or swales to direct drainage and infiltrate runoff.

- C. No Common Driveway shall be connected or attached to any other driveway. No Common Driveway shall be extended without prior approval of the Planning Board.
- D. Common Driveways shall be located within an easement which may allow space for installation of water lines and utilities as needed.
- E. Common Driveways shall be constructed using a minimum twelve (12) inches thick of sorted gravel sub-base. The base course and top course for paved driveways shall each be a minimum one and one half (1 1/2) inches in thickness. Surfacing with bank gravel, pea stone, crushed stone or another permeable or semi-permeable surface is allowable.
- F. Common Driveways shall not exceed three hundred (300) feet in length, measured from the street line to the end of the shared portion of the driveway.
- G. No driveway, parking or turning area or other impervious area shall be located above major components of a septic system, including septic tanks, leaching fields, and distribution boxes, except where approved by the Board of Health.
- H. To provide better traffic safety and reduce the visual impacts of traffic on abutting properties, the Planning Board may require Common Driveways to be set back from lot lines and/or screened with a buffer of trees and/or shrubs.
- I. Turnarounds for emergency vehicles shall be provided in a design acceptable to the Planning Board, who will distribute a copy of any plans to the Fire Department.
- J. Sight distances at the entrance of a Common Driveway along the intersecting road shall be at least one hundred and fifty (150) feet along the intersected roadway.
- K. Subject to review and approval of the U.S. Postal Service, mail boxes for residential units being served by the Common Driveway shall have a mailbox located along the public right-of-way.
- L. Signage required for emergency response systems shall be provided along the public way at the intersection with the common driveway.
- M. A permanent storage shed, not to exceed forty (40) square feet in floor area and five (5) feet in height, shall be constructed and used for the temporary storage of household trash and recycling for all lots being served by the Common Driveway. The exterior walls of shed shall be sided in natural wood materials or a cement-fiber material. It shall have no openings directly facing the public way and shall be located directly along the public right-of-way and the entrance to the Common Driveway.

6. Surety

An acceptable amount and form of surety for construction of the Common Driveway and drainage system shall be agreed to by the Planning Board and the applicant prior to approval of the Special Permit. The Planning Board's inspection agent shall inspect the site and if it finds that all construction, including grading, loaming and seeding, clean up of earth materials and construction debris is complete, the agent shall so certify to the Planning Board. Thereafter, the Planning Board may release surety held under this Subsection.

SECTION 10-F. WIRELESS COMMUNICATIONS

Existing Bylaw Section: Section 3-I – Wireless Communications Services District

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

- 1) Reorganize the bylaw and use the existing zoning districts rather than an overlay district approach to better differentiate between highway coverage and infill facilities. The revised bylaw will also include updated performance measures for regulating capacity or expansion issues within the existing wireless network.***
- 2) Improve provisions to address the visual, safety and other aesthetics issues.***
- 3) Modify the incentives for the use of Town-owned property consistent with state law.***

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. Objectives.

This Section permits the use of wireless communication facilities within the town, regulates their impacts and accommodates their location and use in a manner intended to:

- A. Protect the scenic, historic, environmental and natural or man-made resources of the town;
- B. Protect property values;
- C. Minimize any adverse impacts on the residents of the town (such as, but not limited to, attractive nuisance, noise and falling objects) with regard to the general safety, welfare and quality of life in the community;
- D. Provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of wireless communication facilities;
- E. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify wireless communication facilities;
- F. Encourage the use of certain existing structures and towers;
- G. Minimize the total number and height of towers located within the community;
- H. Require tower sharing and clustering of wireless communication facilities where they reinforce the other objectives in this section; and

- I. Be in compliance with the Federal Telecommunications Act of 1996.

COMMENT: This section includes additional provisions for minimizing the community character issues associated with how wireless facilities can impact open space or historic preservation related resources.

2. Applicability.

- A. The requirements of this Section shall apply to all wireless communication facilities, except where federal or state law or regulations exempt certain users or uses from all or portions of the provisions of this Section. Therefore this Section 10-F shall not apply to any federally licensed amateur radio operator or business such as a company with radio-dispatched trucks or public safety agency.
- B. No wireless communication facility shall be considered exempt from this Section by sharing a tower or other structure with such exempt uses.

COMMENT: This section includes additional terms (defined in Section 14 of this proposed bylaw) other than those currently defined in Subsection 1-C of the existing zoning bylaw. Definitions such as “Camouflaged” or “Concealed” are included to govern more recent approaches to regulating wireless facilities.

3. Location of facilities.

- A. Criteria and priority for location of facilities.
 - (1) Wireless communication facilities shall be located according to the following priorities:
 - (a) Within an existing structure concealed;
 - (b) Within an existing structure and camouflaged;
 - (c) Camouflaged on an existing structure, such as but not limited to an existing electric transmission tower or an existing radio antenna, a water tower, or building, and of a compatible design;
 - (d) Co-located with existing wireless communication service facilities;
 - (e) If adequately demonstrated to the SPGA in the special permit process that each of the five types of locations is not feasible, erection of a new facility which complies with the

other requirements of this Section and where visual impact can be minimized and mitigated.

- (2) Applicants shall demonstrate that they have investigated locations higher in priority ranking than the one for which they are applying and whether sites are available and, if applicable, under what conditions.
- B. Locations where facilities are permitted by right. A concealed wireless communication facility may be installed in a structure on a lot in a commercial district provided all the requirements for a wireless communication facility building permit are met.
- C. Locations where facilities are permitted by special permit. A wireless communication facility may be installed in the locations indicated in Sections 10-E.3.C(1) and (2) provided all prescribed conditions are met and the SPGA grants a special permit.
- (1) Institutional, agricultural, natural resource or commercial uses in residential districts.
 - (a) A concealed wireless communication facility may be installed as an accessory use in a building or in a structure on a building on a lot on which a public, semi-public/institutional, agricultural, or commercial use in a residential district (as provided in Section 5-B (Schedule of Use Regulations) is the principal use.
 - (b) A wireless communication facility may be installed if it is co-located with an existing electrical power transmission line tower, an existing nonconforming transmitting or receiving tower, or a water tower, provided that the wireless communication facility is camouflaged and does not exceed the height of the tower as of the effective date of this Bylaw.
 - (c) For the purposes of this section, an electrical power transmission tower, an existing transmitting or receiving tower or antenna for commercial activities other than a wireless communication facility (as provided in Section 4.B) shall be considered to be a commercial use in a residential district.
 - (2) Uses in commercial districts. A wireless communication facility may be installed on a lot in a B, CBD, HB, LM, or IND district provided the wireless communication facility is camouflaged and does not exceed the height controls under Section 10-E.4.E, below.

- D. Locations with nonconforming situations. The SPGA may grant a special permit to:
- (1) Modify a pre-existing nonconforming wireless communication facility, subject to the provisions of Section 9 of this Bylaw; or
 - (3) Allow an existing wireless communication facility to be reconstructed with a replacement wireless communication facility if it decreases the degree of nonconformity.

COMMENT: This section addresses the infill and capacity phases within the wireless industry. It also tackles the aesthetic issues of wireless facilities by employing on the three strategies: concealment (e.g. putting the facility inside an existing structure), camouflage (e.g. put the facility on an existing structure and make it blend in), or disguise (e.g. make it look like something else like a flagpole, tree etc.).

4. Dimensional, screening and other site development requirements.

- A. Shelters and accessory buildings. Any communication equipment shelter or accessory building shall be designed to be architecturally similar and compatible with the surrounding area. Whenever feasible, a building shall be constructed underground.
- B. Setbacks. Any new tower shall be set back at least one time the height of the tower plus ten (10) feet from each lot line of the site on which the tower is located. Any non-concealed antenna shall be set back at least one time the height of the antenna, as measured from the ground level, from each lot line of the site on which the antenna is located. However, if the antenna is being attached to an existing tower whose setback is already approved, either by right, by special permit or by variance, and if the SPGA determines that the addition of the antenna does not materially alter the basis of that prior approval, then no new, independent setback requirement shall be created by the addition of the antenna. In nonresidential districts or on Town of Walpole owned land, the SPGA may grant a special permit to allow a lesser setback if it makes a finding that such lesser setback provides adequate safety, promotes co-location or improves design, and will not negatively impact the appearance and character of the neighborhood.
- C. Security and signs. The area around the wireless communication facility shall be completely secure from trespass or vandalism. A sign not larger than one (1) square foot shall be posted adjacent to the entry gate indicating the name of the facility owner(s) and a twenty-four (24) hour emergency telephone number. Advertising on any antenna, tower, fencing, accessory building or communication equipment shelter is prohibited.

- D. Lighting. Unless required by the Federal Aviation Administration, no exterior night lighting of towers or the wireless communication facility is permitted except for manually operated emergency lights for use when operating personnel are on site.
- E. New towers. Any new freestanding tower shall be of a monopole construction. New towers shall not exceed the minimum height necessary to provide adequate coverage within the Town of Walpole. Erection of a new tower that exceeds the height restrictions listed in Section 6.B is not permitted unless the applicant demonstrates in the special permit process that adequate coverage within the Town of Walpole cannot be met for the locations permitted under Section 10-E.3.

COMMENT: This section was amended from the existing subsection 3-I(3) to include additional provisions for equipment shelters and modified setbacks.

5. Justification of need.

- A. Coverage area. The applicant shall provide a map of the geographic area in which the proposed facility will provide adequate coverage.
- B. Adequacy of other facility sites controlled by the applicant. The applicant shall provide written documentation of any facility sites in the Town and in abutting towns or cities in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. Said documentation shall demonstrate that these facility sites do not already provide, or do not have the potential to provide by site adjustment, adequate coverage.
- C. Capacity of existing facility sites. The applicant shall provide written documentation that it has examined all facility sites located in the Town and in abutting towns in which the applicant has no legal or equitable interest to determine whether those existing facility sites can be used to provide adequate coverage.
- D. Adequate coverage through the least disruptive means. The applicant shall provide written documentation that the proposed facility uses the least disruptive technology (through the use of repeaters or other similar technology as it may be developed subsequent to adoption of this Bylaw) in which it can provide adequate coverage in conjunction with all facility sites listed above.

COMMENT: Unlike the existing zoning requirements, this section requires the applicant to fully demonstrate need for the proposed wireless communications facility in advance of approving a special permit application.

6. Application procedure.

- A. Applicant. The applicant or co-applicant for any permit for a wireless communication facility must be a licensed carrier who has authority from the FCC to provide wireless communication services for the facility being proposed. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of the filing of the application for the permit.
- B. Permits. Each application for a permit by right under Section 3(B) must contain site plans with sufficient detail that would enable the Town to determine whether the proposed facility meets the requirements of Subsection 3 of this Section. Any wireless communications facility requiring a special permit shall be subject to the Site Plan Review requirements of Section 13 of this Zoning Bylaw.
- C. Special permit granting authority (SPGA). The Board of Appeals shall be the SPGA for permits under this section.
- D. Approval criteria.
 - (1) A special permit shall be granted under this section only if the SPGA shall find that the project is in harmony with the general purpose and intent of this Bylaw and the SPGA's regulations. In addition, the SPGA shall make all the applicable findings before granting the special permit, as follows:
 - (a) That the applicant is not already providing adequate coverage or is unable to maintain adequate coverage without the special permit;
 - (b) That the applicant is not able to use existing facility sites either with or without the use of repeaters to provide adequate coverage;
 - (c) That the proposed wireless service facility minimizes any adverse impact on historic resources, scenic views, residential property values, and natural or man-made resources;
 - (d) That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities;
 - (e) That the facility shall comply with the appropriate FCC regulations regarding emissions of electromagnetic radiation and that the required monitoring program is in place and shall be paid for by the applicant; and
 - (f) That the applicant has agreed to rent or lease available space on any tower it controls within Walpole or its

contiguous towns, under the terms of a fair market lease, without discrimination to other wireless service providers.

- (2) If a special permit is granted, in addition to such terms and conditions as may be authorized by Section 2 of this Bylaw, the SPGA may impose such additional conditions and safeguards as public safety, welfare and convenience may require.
- (3) Any decision by the SPGA to deny a special permit under this section shall be in conformance with the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

COMMENT: This section reformats and expands the submission and review requirements, evaluation criteria, site design requirements, and other factors listed in subsection 3-I 3(a..x) of the existing zoning bylaw.

E. Term of permit.

- (1) Each special permit shall be valid for a fixed or conditional period of time as determined by the special permit granting authority. A special permit for any wireless communication service facility that exceeds height provisions of Section 6.B shall be valid for a maximum of fifteen (15) years. At the end of the approved time period, the facility shall be removed by the carrier or a new special permit shall be required.
- (2) All permitted and special permitted wireless communication facility carriers shall periodically file with the Town, every five (5) years (or sooner if specified in a special permit), on operational aspects of the facility including: power consumption; power radiation; frequency transmission; the number, location, and orientation of antennas; and types of services provided.

COMMENT: This section was added to reflect a reasonable duration used to permit and review prior approvals of wireless communication facilities.

7. Removal requirements.

Any wireless service facility that ceases to operate for a period of one year shall be removed. Cease to operate is defined as not performing the normal functions associated with the wireless service facility and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the facility site shall be remediated such that all wireless communication facilities that have ceased to operate are removed. If all facilities on a tower have ceased to operate, the tower (including the foundation) shall also be removed and the site shall be revegetated by the owner. Existing trees shall only be removed if necessary to complete the required removal. The applicant shall, as a condition of the special permit, provide a financial surety or other form of financial

guaranty acceptable to the SPGA, to cover the cost of removal of the facility and the remediation of the landscape, should the facility cease to operate.

COMMENT: This section expands the existing requirements for removal of a wireless facility (listed in subsection 3-I.3(x)).