

DRAFT FOR 2022 ATM (3/11/2022)

REVISED SECTION I AND SECTION VI NEW DEFINITIONS

ZONING BY-LAW



HINGHAM MASSACHUSETTS

REVISED THROUGH _____, 2022

SECTION I.

Administration and Procedure

I-A. Authority and Purpose

1. This By-Law shall be known and may be cited as the Zoning By-Law of the Town of Hingham and is adopted by virtue of and pursuant to the provisions of Massachusetts General Laws Chapter 40A as amended by Chapter 808 of the Acts of 1975, as amended.
2. The purposes of the By-Law include, but are not limited to, the following: to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic, and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space, and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the Town, including consideration of the recommendations of the Master Plan, if any, adopted by the Planning Board and the comprehensive plan, if any, of the regional planning agency; and, to preserve and increase amenities. Regulations may be promulgated in accordance with the provisions of Massachusetts General Laws Chapter 40A, as amended, in order to fulfill the purposes of this By-Law.
3. Regulations adopted pursuant to these purposes may include, but are not limited to, restricting, prohibiting, permitting, or regulating the use, alteration, size, bulk height, area, and location of buildings and structures and the use of premises in the Town of Hingham.
4. Wherever words of one gender appear in the Zoning By-Law of the Town of Hingham such words shall be construed to include the other gender.

I-B. Basic Requirements

All buildings or structures hereafter erected, reconstructed, altered, enlarged or moved, or use of premises in the Town of Hingham, shall be in conformity with the provisions of this By-Law. Any building, structure, or land shall not be used for any purpose or in any manner other than is permitted in the district in which such building, structure or land is located.

Any use not specifically provided for in a district herein shall be deemed to be prohibited. In accordance with Massachusetts General Laws Chapter 40A, and notwithstanding any provisions to the contrary, this By-Law shall not prohibit, regulate, or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased (1) by the Commonwealth of Massachusetts or any of its agencies, subdivisions, or bodies politic or (2) by a religious sect or denomination, or (3) by a nonprofit educational corporation, provided however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot areas, setbacks, open space, parking, and building coverage requirements in accordance with the provisions of this By-Law. Such uses shall not be exempt from the general or specific regulations of this By-Law other than use regulations.

No use will be permitted which will produce a nuisance or hazard from fire or explosion, toxic or corrosive fumes, gas, smoke, odors, obnoxious dust or vapor, harmful radioactivity, offensive noise or vibration, flashes, objectionable effluent, electrical interference or substantial erosion or flooding

which may affect or impair the normal use and peaceful enjoyment of any property, structure, or dwelling in the neighborhood.

No land within any use district in the Town of Hingham may be used for the collection, treatment, storage, burial incineration of radioactive waste, including but not limited to, wastes classified as low-level radioactive waste.

I-C. Enforcement

Except as otherwise provided, this By-Law shall be enforced by the Building Commissioner. No application of any kind of plans or specifications or intended uses shall be approved by the Commissioner unless they are in all respects in conformity with this By-Law.

1. No building shall be constructed, altered or moved and no use of land or building shall be begun or changed without a permit having been issued by the Building Commissioner. No such permit shall be issued until such construction, alteration or use, as proposed, shall comply in all respects with this By-Law or with a decision of the Board of Appeals. Any application for such a permit shall be accompanied by a plan, accurately drawn, showing the actual shape and dimensions of the lot to be built upon, the exact location and size of all buildings or structures already on the lot, the locations of new buildings to be constructed, together with the lines within which all buildings and structures are to be erected, the existing and proposed use of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this By-Law. A record of all applications, plans, and permits shall be kept on file by the Building Commissioner. Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this By-Law unless the use or construction authorized by this permit is made or commenced within a period of not more than twelve (12) months after the issuance of the permit and, in cases involving construction, unless such construction is carried through to completion as continuously and expeditiously as is reasonable.
2. No premises and no building erected, altered, or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without a certificate of occupancy signed by the Building Commissioner. Such certificate of occupancy shall not be issued until the premises or building and their uses comply with this By-Law. A record of all applications and certificates of occupancy shall be kept on file by the Building Commissioner.

In town house, garden apartment and apartment house developments, and/or any other multi-unit residential developments (exclusive of subdivisions) (herein a "development"), certificates of occupancy shall not be issued by the Building Commissioner for more than 85% of the dwelling units within the development of within an approved phase of the development until:

- a. all "site work improvements", as hereinafter defined, shown on the approved development plans for the entire development, or for an approved phase of the development, and required by the applicable permits or approvals for the development, shall have been fully completed. Site work improvements shall not be considered fully completed until a project engineer has submitted to the Building Commissioner as-built plans (for the entire development or applicable phase of the development) and a certification that such site work improvements have been completed in accordance with the approved development plans or approved phase thereof and the applicable permits or approvals; or

- b. the developer has applied for and obtained a Special Permit A1 from the Board of Appeals requesting relief from the 85% limitation on certificates of occupancy. Each application for a Special Permit A1 pursuant to this section shall include, in addition to all other application requirements, a certification of a project engineer as to the status of site work improvements remaining to be completed, the number and percentage of dwelling units remaining to be completed in the development of phase thereof, and such additional information related thereto as may be requested by the Board of Appeals. Upon making a Finding that:
- (i) a delay in the completion of the remaining site work improvements will not adversely impact the occupants of the completed dwelling units;
 - (ii) is not required for the safe occupancy of additional dwelling units; and
 - (iii) the granting of relief from said limitation will not jeopardize the likelihood of full completion of the site work improvements;

said Finding to be used in lieu of the Special Permit approval criteria contained in Section I-F, 2., the Board of Appeals may partially waive the 85% limitation and allow the Building Commissioner to issue certificates of occupancy in a manner consistent with the first paragraph of this Section I-C, 2.

Notwithstanding the foregoing, the Board of Appeals shall not allow, and the Building Commissioner shall not issue, certificates of occupancy for more than 95% of the dwelling units within the development or approved phase of the development until the project engineer has submitted to the Building Commissioner as-built plans and a certification that the site work improvements have been completed in accordance with the approved development plan or approved phase of the development plan and the applicable permits and approvals.

"Site work improvements" as used herein shall include all improvements to be made or constructed in connection with the development (exclusive of dwelling structures), including, but not limited to, roadways, parking lots, sidewalks and walkways, grading, landscaping, utilities, wastewater treatment, drainage and other required infrastructure. For the purpose of this section, the "developer" shall be deemed to include the original applicant and all successors or assigns of the applicant, including any and all parties seeking Building Permits or certificates of occupancy for the initial construction or initial occupancy of one or more dwelling units within the development or applicable phase thereof. The "project engineer" shall be a licensed engineer working on behalf of the developer and shall include the original project engineer at the time of application to the permit granting authority and all successors to the original project engineer.

3. The provisions of this By-Law may be enforced by the Zoning Enforcement Officer by non-criminal disposition pursuant to the provisions of M.G.L. Chapter 40, Section 21D. Any person who violates the provisions of this By-Law may be subject to a penalty of \$100 for the first offense; \$200 for the second offense; and \$300 for the third and each subsequent offense if, after receiving written notice of the violation(s) from the Zoning Enforcement Officer, the person fails to correct the violation(s) within seven (7) days of receipt of such notice, or within such longer time as the Zoning Enforcement Officer may grant in appropriate circumstances. Each day that a violation exists shall be deemed to be a

separate offense from and after delivery of such notice from the Zoning Enforcement Officer.

In the alternative, any person who violates the provisions of this By-Law, or who refuses or neglects to comply with a stop work order or notice of violation by the Zoning Enforcement Officer issued under the provisions of M.G.L. Chapter 40A or the provisions of this By-Law, shall be subject to the enforcement provisions of M.G.L. Chapter 40A, including a fine of \$100 for the first offense; \$200 for the second offense; and \$300 for the third and each subsequent offense. Each day that a violation exists shall be deemed to be a separate offense. Nothing in this section shall prohibit the Zoning Enforcement Officer from seeking injunctive relief as a remedy in accordance with M.G.L. Chapter 40A, Section 7.

I-D. Board of Appeals

1. Establishment

In accordance with the provisions of Chapter 40A of the Massachusetts General Laws, a Board of Appeals consisting of three (3) citizens of the Town who shall be qualified by education or experience to pass upon matters which may be brought before them shall be appointed by the Select Board for a term of three years, the term of one member expiring each year. At least two associates shall be appointed in a like manner. No member of the Board of Appeals shall act on any matter in which the member may have a personal or financial interest, and in such event, an associate member shall be designated to serve on the Board and to act upon the matter.

2. Powers

The Board of Appeals shall have the following powers which shall in no way conflict with the provisions of this By-Law.

a. Appeals - To hear and decide an Appeal taken

- (i) by any person aggrieved by reason of their inability to obtain a permit or enforcement action from the Building Commissioner under the provisions of Massachusetts General Laws Chapter 40A, or of this By-law,
- (ii) by the regional planning agency in which area the Town is situated, or
- (iii) by any person, including an officer or board of the Town of Hingham or of any abutting municipality, aggrieved by an order or decision of the Building Commissioner, in violation of any Provision of Massachusetts General Laws Chapter 40A, or of this By-Law.

b. Special Permits - To hear and decide an application for a Special Permit A1 or Special Permit A2 as provided in this By-Law, only for uses in specified districts which are in harmony with the general purposes and intent of this By-Law 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. A Special Permit shall lapse within a three (3) year period or a shorter period if so specified by the Board, which shall not include any time required to pursue or await the determination of an appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17, and if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if construction has not begun within the period except for good cause.

- c. Variances - To hear and decide a petition with respect to particular land or structures for a Variance from the terms of this By-Law, including a Variance authorizing a use or activity not otherwise permitted in a particular zoning district, where the Board specifically finds that owing to circumstances relating to soil conditions, shape, or topography of such land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of this provision of this By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this By-Law. The Board of Appeals may impose conditions, safeguards, and limitations, both of time and of use, including the continued existence of any particular structure but excluding any condition, safeguard, or limitations based upon the continued ownership of the land or structure to which the Variance pertains by the applicant, petitioner, or any owner. If the rights authorized by a Variance are not exercised within the one (1) year of the date of the authorization, they shall lapse and may be re-established only after a new notice and hearing.

The Board of Appeals may, from time to time, establish and amend rules and regulations for the administration of its powers hereunder.

3. Procedure

In the case of every Appeal made to the Board of Appeals, every petition for a Variance, and every application for a Special Permit to said Board under the provisions of this By-Law, the Board shall hold a public hearing thereon. Notice of the hearing shall be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 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 day of the hearing. Notice shall be sent by mail, postage prepaid, to parties in interest including the petitioner, abutters, owners of land directly opposite on any public street or way, abutters of abutters within three hundred (300) feet of the property line of the petitioner, as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the Planning Board and the Planning Boards of every abutting municipality. The Assessors shall certify to the Board the name and addresses of the parties in interest. In the case of an Appeal from a decision of the Building Commissioner and 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. 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 Variance applied for.

In the case of a Special Permit, an application 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 filing and shall render a decision within ninety (90) days from the close of the public hearing. Failure to take action within the said ninety (90) day period shall be deemed to be a grant of the permit applied for.

4. Repetitive Petitions

Board of Appeals Decisions - No appeal, application, or petition which has been unfavorably and finally acted upon by the Board of Appeals shall be acted favorably upon within two (2) years after the date of final unfavorable action unless (a) all but one of the members

of the Planning Board consent thereto 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 by unanimous vote finds specific and material changes in the conditions upon which the previous unfavorable action was based, describes such changes in its records, and similarly consents.

I-E. Zoning Administrator

In accordance with such qualifications as may be established by the Select Board, the Board of Appeals shall appoint, from time to time, a Zoning Administrator, to serve at its pleasure, which appointment shall be subject to confirmation by the Select Board. Said Administrator shall be empowered to carry out such duties and powers as may be delegated by the Board of Appeals in accordance with Massachusetts General Laws Chapter 40A, Section 13, which statute shall govern the rights of aggrieved persons.

I-F. Planning Board

1. Powers

The Planning Board shall have the following powers which shall in no way conflict with the provisions of this By-Law.

- a. Site Plan Review – To hear and decide an application for Site Plan Review in accordance with Section I-I of this By-Law.
- b. Special Permits – To hear and decide an application for a Special Permit A3 for uses in specified districts that are in harmony with the general purposes and intent of this By-Law. A Special Permit A3 shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use.
- c. One associate member of the Planning Board shall be appointed in the manner herein provided for a term of one (1) year to act on Special Permit A3 applications if necessary. The associate member of the Planning Board shall be appointed by the following procedure: (a) the Planning Board shall appoint a then current associate member of the Board of Appeals; or (b) if no then current associate member of the Board of Appeals is appointed by the Planning Board, the Planning Board and the Select Board shall jointly appoint an associate member to the Planning Board, provided that preference shall be given to former Planning Board members and former regular or associate members of the Board of Appeals. No member of the Planning Board shall act on any matter in which the member may have a personal or financial interest, and in such event, the associate member shall be designated to serve on the Planning Board and to act upon the matter.

The Planning Board may, from time to time, establish and amend rules and regulations for the administration of Site Plan Review and Special Permits which it is empowered to grant.

2. Repetitive Petitions

No application which has been unfavorably and finally acted upon by the Planning Board shall be acted favorably upon within two (2) years after the date of final unfavorable action unless four members of the Planning Board (a) 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)

find specific and material changes in the conditions upon which the previous unfavorable action was based and describe such changes in its records.

3. **Procedures for Special Permit Application, Hearing and Decision**
Each application to the Planning Board for a Special Permit A3 shall be filed with the Town Clerk, with duplicate copies submitted in accordance with the regulations of the Planning Board. The Planning Board shall hold a public hearing on the application, as provided in the Massachusetts General Laws Chapter 40A, within 65 days of the filing of a complete application.

The Planning Board may grant, grant with conditions, deny, or grant leave to withdraw, an application for a Special Permit A3. A copy of the decision may be filed with the Town Clerk and the Planning Board, and shall be furnished the applicant and property owner, in accordance with Massachusetts General Laws Chapter 40A.

The applicant shall be responsible for filing a certified copy of the decision in the Registry of Deeds or, where applicable, in the Land Court. Prior to the issuance of a Building Permit, the applicant shall present to the Building Commissioner evidence of such recording.

4. **Lapse**
Except for good cause, a Site Plan Review approval or Special Permit A3 shall lapse in three (3) years after the date of issue, or such shorter period as may be specified by the Planning Board, which shall not include any time required to pursue or await the determination of an appeal pursuant to Massachusetts General Laws, Chapter 40A, Section 17.

I-G. Costs

The costs of professional consultants, experts or assistance incurred by the Board of Appeals or Planning Board shall be borne by the applicant. However, the costs to be paid by the applicant shall not exceed the reasonable and usual charges of said consultants or other experts for such services. The applicant shall deposit with their application an appropriate portion of the anticipated review costs as determined by the Boards' administrators as security for payment on such costs. No occupancy permit may be issued in accordance with Section I-C of this By-Law until the applicant has paid or reimbursed the Town for all such costs.

I-H. Special Permits

1. **Procedures for Application, Hearing and Decision.** Each application for a Special Permit shall be filed with the Town Clerk, with duplicate copies submitted in accordance with the regulations of the Special Permit Granting Authority (SPGA). The SPGA shall hold a public hearing on the application, as provided in Massachusetts General Laws Chapter 40A, within 65 days of the filing of a complete application.

The SPGA may grant, grant with conditions, deny, or grant leave to withdraw an application for a Special Permit. A copy of the decision shall be filed with the Town Clerk, and shall be furnished to the applicant and property owner, in accordance with Massachusetts General Laws Chapter 40A.

The applicant shall be responsible for filing a certified copy of the decision in the Registry of Deeds or, where applicable, in the Land Court. Prior to the issuance of a Building Permit, the applicant shall present to the Building Commissioner evidence of such recording.

2. **Approval Criteria**
An applicant is not entitled to a Special Permit. Except where Findings specific to a particular use are otherwise expressly set forth in this By-Law, the SPGA may approve such application for a Special Permit if it finds that, in its judgment:
 - a. use of the site is in harmony with the general purpose and intent of this By-Law;
 - b. the proposed use complies with the purposes and standards of the relevant specific sections of this By-Law;
 - c. the specific site is an appropriate location for such use, structure, or condition, compatible with the characteristics of the surrounding area;
 - d. the use as developed and operated will create positive impacts or potential adverse impacts will be mitigated;
 - e. there will be no nuisance or serious hazard to vehicles or pedestrians;
 - f. adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use; and
 - g. the proposal meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction.

I-I. Site Plan Review

1. **Purpose**
The purpose of this Section is to provide a comprehensive procedure for the review of land disturbance and site alterations in connection with certain uses and land development to ensure compliance with the provisions of this By-Law, to minimize adverse impacts of such land disturbance and site alterations, and to promote development which is harmonious with surrounding areas.
2. **Applicability**
Site Plan Review shall be conducted by the Planning Board or its designee and may be subject to professional consultant review consistent with Section I-G, for all projects which meet the following criteria. The word "development", as used in Section I-I, shall refer to any land disturbance, use of the land, or alteration of a site that is subject to Site Plan Review regardless of size or scope of such work.
 - a. **Major Site Plan**
 - (i) All Special Permits A2 and Special Permits A3 or any modification of a Special Permit A2 or Special Permit A3.
 - (ii) All projects which result in:
 - (A) land disturbance or an alteration of drainage patterns over a combined area equal to or greater than 20,000 sf; or
 - (B) land disturbance or an alteration of drainage patterns over a combined area equal to or greater than 5,000 sf in areas with slopes exceeding 10%.

- (iii) a larger common plan of development that would disturb more than one acre in the aggregate.
 - b. Minor Site Plan
 - (i) All projects which result in:
 - (A) a land disturbance or an alteration of drainage patterns over an area of 5,000 square feet or more (but less than 20,000 square feet); or
 - (B) a land disturbance or an alteration of drainage patterns of 2,500 square feet or more (but less than 5,000 square feet) in areas with slopes greater than 10%.
- 3. Exemptions.
Notwithstanding the foregoing, the following types of projects shall be exempt from Site Plan Review:
 - a. normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act, Massachusetts General Laws Chapter 131, Regulation 310 CMR 10.04;
 - b. routine maintenance of existing landscaping, gardens or lawn areas;
 - c. the construction of fencing that will not alter existing terrain or drainage patterns;
 - d. installation of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter terrain, ground cover, or drainage patterns; or
 - e. road widening or improvement projects; provided that road projects that (i) increase the amount of impervious area by greater than or equal to a single lane width, (ii) disturb more than one acre, and (iii) discharge to the Town's municipal stormwater system, shall meet the applicable requirements of the Town of Hingham MS4 Permit.
- 4. Procedures
 - a. Pre-Application Submittal. Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the Planning Board.
 - b. Each application to the Planning Board for Site Plan Review shall be filed with the Town Clerk, with duplicate copies submitted in accordance with the regulations of the Planning Board.
 - c. Notice of a Site Plan Review hearing shall be given in accordance with M.G.L. c. 40A, Section 11.
 - d. The Planning Board shall review and act upon the Site Plan, with such conditions as may be deemed appropriate, and notify the applicant of its decision. The decision of the Planning Board shall require an affirmative vote of three members

and shall be in writing. The Planning Board shall act within seventy-five (75) days of its receipt of the Site Plan Review application, provided that, if the Planning Board or its designee, which may include its review consultants, have requested (no later than forty (40) days after receipt of the application) additional information or submittals from the applicant, such supplemental information shall be delivered no later than sixty (60) days after receipt of the application. If such additional information is not received by such sixtieth day, the Planning Board may extend its period of review until the date that is fifteen (15) days after receipt of all such supplemental information from the applicant. The foregoing timeframes do not preclude the Planning Board from requiring (after such fortieth day) submission of supplemental information not previously requested.

- e. The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein.
- f. Where the Planning Board serves as the Special Permit Granting Authority, it may consolidate its Site Plan Review and Special Permit procedures. Where the Board of Appeals serves as the SPGA, joint hearings of the Board of Appeals and the Planning Board may be held at the discretion of the Boards.
- g. An application for a building permit to perform work subject to Site Plan Review shall be accompanied by an approved Site Plan and evidence of recording of the Site Plan Review decision unless the Planning Board's review (including any extensions thereto) has expired without any action by the Planning Board.
- h. A final certificate of occupancy shall not be issued until the applicant has complied with or satisfied all conditions to the Site Plan Review decision, except for those conditions, which by their terms are intended to be satisfied after occupancy of the structures for which the certificate of occupancy is sought.

5. Submittal Requirements

All applications for Site Plan Review shall include the following information prepared by qualified registered professionals, either shown on wet-stamped and signed plans or other supporting documentation to demonstrate compliance with the Design and Performance Standards in Section I-I,6:

- a. Existing conditions and locus plan; diagram and statement of the ownership, area, dimensions, boundaries and principal elevations of the subject property; location of structures, other site improvements and conditions, and wetland resources within 100 feet of property line;
- b. Site layout plan showing the scaled and dimensioned location and footprint of existing and proposed buildings and structures, traffic circulation, access and egress drives, parking, fences, walls, walks, outdoor lighting, loading facilities, refuse facilities, and areas for snow storage, and applicable zoning setback lines;
- c. Architectural plans, if applicable, including building elevations and floor layouts;
- d. Detail sheets if applicable, including profile and representative cross sections of proposed driveways and parking areas;

- e. Zoning analysis of compliance with all relevant dimensional provisions of this By-Law, including parking requirements;
- f. Utility plan, which shall include all facilities for wastewater disposal and location of fire hydrants;
- g. Landscape plan, which shall include the following:
 - (i) the location, general type and quality of existing vegetation, wooded areas, and other landscape features such as earth berms, walls, fences, and other hardscape, and
 - (ii) the location of proposed plantings, including schedule with botanical and common name, quantity, and size of all proposed landscape material, and proposed earth berms, walls, fences, and other hardscape.
- h. Tree Protection and Mitigation Plan for Protected Trees, which shall include:
 - (i) A tree protection plan which shall include the following information; provided, that the tree protection plan may be combined with the landscape plan (in subsection g) provided that all Protected Trees can be clearly identified; otherwise, a separate tree protection plan shall be required at such scale as is necessary to identify all Protected Trees.
 - (A) The location, height, species, and Critical Root Zone of all existing Protected Trees, including Significant Trees, and all Protected Trees, including Significant Trees, that were removed within twelve (12) months prior to application for any demolition permit, building permit or other application for zoning approval or relief, with an indication of those Protected Trees to be removed and those to be retained, as applicable;
 - (B) The location, caliper, species, and planting schedule of trees to be replanted to mitigate the removal of any Protected Tree(s), if applicable; and
 - (C) For any Single-Family Dwelling lots or Two-Family Dwelling lots, the tree protection plan shall also show the Tree Yard.

A narrative maintenance plan for the protection of the Critical Root Zone for all Protected Trees that are within an area of the site to be disturbed during construction.
- i. Grading and drainage plan, which shall include existing and proposed topography at 1-foot intervals, spot grades where applicable, drainage analysis, stormwater improvements, calculated area of disturbance, cut and fill analysis, and erosion controls;
- j. A construction schedule and construction traffic management plan that shall include the proposed travel route for construction vehicles and material deliveries, the location of parking for construction workers, and measures that will be undertaken to reduce construction related traffic; and

- k. such other materials necessary to enable the Planning Board to make a positive determination on the proposed project, including, without limitation, any information required under subsection j below if necessary; and
 - l. Major Site Plans shall require the following additional submissions:
 - (i) Analysis of compliance of the construction activities and the proposed project with the most current versions of the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Massachusetts Stormwater Handbook, Massachusetts Erosion Sediment and Control Guidelines, and, if applicable, additional requirements under the Town of Hingham MS4 Permit for projects that disturb more than one acre and discharge to the Town's municipal stormwater system, and an Operations and Management Plan for both the construction activities and ongoing post-construction maintenance and reporting requirements;
 - (ii) Site Lighting Plan showing the location, height, photometric, orientation, and specifications for all outdoor site lighting, including information on the intensity and range of illumination for each source of light proposed with low cutoff dark sky compliant lighting fixtures and no overspill onto adjoining properties greater than 0.25 foot candle; and
 - (iii) Transportation Impact Assessment (TIA) detailing the expected impact of the development on transportation infrastructure. For proposed development and/or redevelopment in excess of 25,000 gross square feet or generating more than 100 vehicle trips in any one hour as determined using the latest edition of Trip Generation published by the Institute of Transportation Engineers for the appropriate land use(s), the required TIA shall substantially conform to the Institute of Transportation Engineers' "Traffic Access and Impact Studies for Site Development: A Recommended Practice," latest edition and the Massachusetts Department of Transportation's (MassDOT's) Transportation Impact Assessment (TIA) Guidelines. In addition, the applicant shall submit a Transportation Demand Management (TDM) plan as part of the TIA.
6. Design and Performance Standards
- To the extent practicable, the proposed project shall be located to preserve and enhance the natural features of the site, to avoid disturbances of environmentally sensitive areas, to minimize adverse impacts of development on adjoining properties, to minimize the alteration of the natural features of the site and to preserve and enhance scenic points, historic buildings and places and similar community assets which add value and attractiveness to the Town. In conducting a Site Plan Review, the Planning Board shall review the Site Plan for consistency with the following design and performance standards.
- a. Land Disturbance
Site/building design shall minimize land disturbance to natural topography to preserve natural drainage patterns on the site.
 - b. Site Design
Placement of buildings, structures, or parking facilities shall not detract from the site's scenic qualities and shall blend with the natural landscape.

- c. **Character and Scale of Buildings**
The design of the project shall minimize unreasonable departure from the character and scale of buildings in the vicinity or as previously existing on, or approved for, the site.
- d. **Preservation of Existing Vegetation, including Protected Trees, and mitigation** priority shall be given to the preservation of existing stands of trees, trees at site perimeter, and contiguous vegetation with adjacent sites, as follows:
 - (i) The landscape shall be preserved in its natural state insofar as practical by minimizing removal of Significant Trees. Every effort shall be made through the design, layout, and construction of any project to save as many Significant Trees as possible.
 - (ii) For each inch of Diameter at Breast Height (DBH) of the Protected Tree(s) removed no less than one-half (0.5) inch of caliper of new, non-invasive species of tree(s) shall be replanted. Each new tree must have a minimum caliper of three (3) inches. If the Protected Tree to be removed is an overstory tree species (being a tree with a typical mature height of over forty (40) feet), the replacement tree(s) shall be an overstory tree species.
 - (iii) Clearing of other vegetation and alteration of topography shall be replicated with native vegetation planted in disturbed areas as needed to enhance or restore wildlife habitat, if any.
- e. **Limit of Clearing**
Development envelopes for structures, driveways, wastewater disposal, lawn and landscape areas, and utility work shall be designated to limit clearing and grading.
- f. **Finished Grade**
Finished grades should be limited to no greater than a 3:1 slope wherever possible, while preserving, matching, or blending with the natural contours of the land to the greatest extent possible. Where the finished grade will be greater than 3:1, the slope shall be protected with erosion control blankets or comparable slope stabilization practices to protect the slope from erosion until it is stabilized. Finished grade shall be no higher than the trunk flare(s) of Protected Trees to be retained.
- g. **Stormwater Management**
The proposed project shall include adequate provisions or measures to prevent pollution of surface or groundwater, minimize erosion and sedimentation, prevent changes in groundwater levels, increased run-off, and potential for flooding, and minimize adverse impacts to neighboring properties by flooding from excessive run-off.
 - (i) The applicant shall demonstrate compliance with the Massachusetts Stormwater Management Standards, the Massachusetts Stormwater Handbook, Massachusetts Erosion Sediment and Control Guidelines, and, if applicable, additional requirements under the Town of Hingham MS4 Permit for projects that disturb more than one acre and discharge to the Town's municipal stormwater system to ensure that the peak rate and total volume of surface water run-off from the site shall not be increased nor degraded in quality after construction.

- (ii) Sustainable low impact design and environmentally responsible green infrastructure improvements shall be incorporated wherever feasible.
- h. Utilities
- The proposed development shall be adequately served by public or private wastewater collection and treatment systems; public water system or private well; electrical distribution, telephone, cable, and fire alarm systems and may be served by a natural gas distribution system. All electrical distribution, telephone, cable, and fire alarm systems shall be installed underground.
- i. Pedestrian and Vehicular Access; Traffic Management
- The proposed development and/or redevelopment shall be designed with a forecast for the next seven years from the time of application to (i) minimize hazards to public health and safety as a result of traffic; (ii) provide safe access and circulation to and within the site for expected vehicles, pedestrians, and emergency vehicles; (iii) provide off-site improvements, where required, to offset the predicted impact of the development on the transportation infrastructure; (iv) reduce the impact of the proposed development on the transportation infrastructure serving the area and the Town by incorporating transportation demand management strategies; and (v) minimize the impact on scenic roads, historic districts, natural resources, and community character. The development shall not degrade safety for pedestrians, bicyclists, transit riders, motor vehicle occupants, or property.
- (i) Driveways. Each development shall be served by an adequate driveway.
 - (A) The Board may, in certain circumstances, allow additional driveways where the access is shared or the project has frontage on two separate streets. Notwithstanding the foregoing, when the Planning Board finds that it is required for public safety, at least two (2) means of access to public ways and/or adequate private ways, , shall be required, one (1) of which, upon approval of the Planning Board, maybe restricted to emergency vehicle use.
 - (B) All driveways shall be designed to afford adequate sight distance to pedestrians, bicyclists, and motorists exiting to public ways. Improvements may be required on the public way to facilitate vehicular turning movements in or out of the site and allow for safe pedestrian access to adjoining sidewalks, paths, walking trails or bikeways.
 - (C) Driveways shall be limited to the minimum width for safe entering and exiting, and shall in no case exceed 24 feet in width unless waived by the Planning Board to accommodate truck traffic or additional travel lanes where required to facilitate safe and efficient circulation within the development. The location of driveway openings in relation to adjacent streets and driveways shall provide for the convenience and safety of vehicular, pedestrian, and bicycle movement within the site, and shall comply with the driveway spacing guidelines as identified in MassDOT's *Project Development & Design Guidelines*. The number of curb cuts on state and local roads shall be minimized.

- (ii) Interior Circulation. The proposed development shall assure safe interior circulation within its site by providing separate accommodations for pedestrians, bicycles, and vehicular traffic.
- (iii) Sight Distance. Acceptable sight distance shall be provided and maintained at all driveways and intersections affected by the Development. At a minimum, these site distances shall meet the stricter of the MassDOT or the American Association of State Highway Transportation Officials (AASHTO) standards for safe-stopping sight distance (SSD) and for intersection sight distance (ISD) where exiting traffic may degrade the performance of the intersecting roadway. Determination of required sight distance shall be based on the higher of: a) the measured 85th percentile vehicle travel speed along the intersecting roadway approaching the driveway or intersection; or b) the regulatory (posted) or statutory speed limit. Where necessary, the required sight distance shall be adjusted to account for the grade of the intersecting roadway, the number of travel lanes to be crossed or design vehicle, following AASHTO guidelines.
- (iv) Traffic Calming Features. Traffic calming measures such as raised crosswalks, raised intersections, curblines extensions, speed humps, rumble strips, sign/pavement marking treatments and/or landscaped islands may be required.

j. Lighting

The proposed development shall not produce lighting so as to unreasonably interfere with the use and enjoyment of property within the Town. Lighting practices and systems shall: reduce light pollution, light trespass and glare in order to preserve and enhance the natural, scenic, and aesthetic qualities of the Town; conserve energy and decrease lighting cost without decreasing night-time safety, security, and productivity; and preserve the night sky as a natural resource to enhance nighttime enjoyment of property within the Town.

- (i) Shielding. All outdoor light fixtures shall be shielded so as to meet the goals of this section.
- (ii) Light Trespass. Direct light from the light source is to be confined within the property boundaries and shall not cause overspill on adjacent property or into the night sky. Light trespass shall be limited to 0.25 foot-candles at the property line.
- (iii) Height of Fixtures. Luminaires attached to a building for area lighting shall be mounted no higher than fifteen (15) feet above grade. Pole mounted exterior lighting fixture types shall be mounted no higher than twenty (20) feet above grade.

7. Approval Criteria

The Planning Board shall grant, or grant with conditions, Site Plan Approval if it finds in its judgment that:

- a. The proposed development will not adversely affect the health, safety and welfare of the prospective occupants, the occupants of neighboring properties, and users of the adjoining streets or highways, and the welfare of the Town generally.

- b. The proposed development meets all applicable Design and Performance Standards, or it is impractical to meet one or more of such Standards and a waiver of such Standard(s) will not adversely impact the interests set forth in subsection 7.a above or any potential adverse impacts will be mitigated.

8. Conditions of Approval

The Planning Board may impose reasonable conditions in furtherance of the objectives of the Design and Performance Standards. The Planning Board shall limit the proposed development so that its impact on each of the municipal services, ways, utilities and other resources does not exceed its existing design capacity. This limitation shall be imposed upon the proposed development regardless of the intensity of development otherwise permitted by this Zoning By-Law. In addition to such other conditions as may be imposed by the Planning Board under this Section I-I, Site Plan Approvals shall be subject to the following conditions, as applicable:

a. Pre-Construction Meeting

For all projects requiring erosion control installation or any clearing a pre-construction review meeting with inspection of the erosion control installation and marked limits of clearing shall be required as a condition of approval for all projects. Projects that disturb one or more acres individually, or cumulatively if phased development is proposed, shall be required as a condition of any approval to provide a Stormwater Pollution Prevention Plan for review by the Planning Board or their designee not less than three weeks prior to the start of any work.

b. Limits of Work; Tree Protection Areas

During clearing and/or construction activities, the marked limit of work shall be maintained until all construction work is completed and the site is cleaned up. All vegetation beyond the limit of work shall be retained in an undisturbed state and no stockpiling of topsoil or storage of fill, materials, or equipment may occur within the protected area. Without limiting the foregoing, Protected Trees to be retained shall be surrounded by temporary protective fencing or other appropriate measures before any clearing or grading occurs, and maintained until all construction work is completed and the site is cleaned up. Protective barriers shall be large enough to encompass the Critical Root Zone of all Protected Trees to be preserved.

c. Inspections

Inspections shall be required during construction, and prior to issuance of a certificate of occupancy, of all elements of the project related to or affecting erosion control, limits of work, and tree protection areas during construction and the approved drainage and stormwater system installed for the project, as well as the condition of the tree protection areas. The Planning Board may require, at the applicant's expense, the establishment of a consultant fee account pursuant to Massachusetts General Laws Chapter 44 Section 53G, to fund the cost of such inspections.

d. As-Built Plan Requirement

Upon project completion an as-built plan must be submitted to the Building Commissioner prior to the issuance of a certificate of occupancy, and in no event later than two years after the completion of construction. In addition to such other requirements as are imposed by the Building Commissioner, the as-built plan must demonstrate substantial conformance with the stormwater system design and performance standards of the approved project plans.

- e. Maintenance of Protected and Replacement Trees
Each Protected Tree retained, and all new trees planted to mitigate the removal of Protected Tree(s), shall be maintained in good health for a period of no less than twenty-four (24) months from the date of final inspection, or issuance of a Certificate of Occupancy, if applicable. Should such tree(s) die or be removed within such twenty-four (24) month period, the owner of the property shall be required to replace such tree with a tree consistent with the requirements within nine (9) months from the death or removal of such Protected Tree or new tree.

9. Waivers; Minor Modifications; Administrative Review

- a. Upon written request of the applicant, the Planning Board may waive any of the submittal requirements deemed by the Planning Board to be not necessary for its review of the application. In addition, the Planning Board may waive other such requirements of this Section I-I, including the requirement for a public hearing, where the Planning Board determines that the project constitutes a minor modification to an approved Site Plan.
- b. In order to constitute a minor modification, the proposed work must be limited to modifications to an approved Site Plan which, in the Planning Board's determination, do not materially or adversely affect conditions governed by the Site Plan Review design and performance standards set forth in this Section I-I.
- c. The Planning Board may, by a majority vote of the Board, establish an administrative process for Site Plan Review of certain Minor Site Plans. Pursuant to administrative review, the Planning Board may delegate to the town planner and/or to a designated Board member the authority to determine whether a project constitutes a Minor Site Plan. The Planning Board designee may refer any Minor Site Plan application to the Planning Board for its review in lieu of administrative review if, in such designee's discretion, the scope of the project merits review by the Board. In addition, any applicant may request Site Plan Review by the Planning Board in lieu of administrative review at the time of application, or any applicant aggrieved by a Minor Site Plan Review decision of the designee may reapply for Site Plan Review by the Planning Board and such review shall be considered a new application for Site Plan Review, except that a separate fee shall not be required.

10. Appeal

Any decision of the Planning Board pursuant to this Section I-I may be appealed in accordance with MGL c. 40A, s. 17.

I-J. Amendment

This By-Law may be amended from time to time at an annual or special Town Meeting. An amendment may be initiated by the submission to the Select Board of a proposed change by the Select Board, the Board of Appeals, an individual owning land in the Town to be affected by the amendment, registered voters of the Town pursuant to Massachusetts General Laws Chapter 39, Section 10, the Planning Board, or the regional planning agency. Within fourteen (14) days of the receipt of a proposed change, the Select Board shall submit it to the Planning Board for review and a report. A public hearing is held by the Board within sixty-five (65) days after the proposed change is submitted to the Board.

1. Repetitive Amendments

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

I-K. Validity

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

I-L. Effective Date

The effective date of an amendment to this By-Law shall be the date on which such amendment was adopted by a favorable two-thirds (2/3) vote of Town Meeting subject to its publication in a Town bulletin or pamphlet and posting or publication in a newspaper as provided in Massachusetts General Laws Chapter 40, Section 32.

SECTION VI. NEW DEFINITIONS

Critical Root Zone (CRZ)

The minimum area beneath the canopy of a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The CRZ is represented by a concentric circle centering on the tree's trunk and extending outward towards the tree's dripline. The minimum area of the CRZ shall be dependent on the required minimum radius of the CRZ; the required minimum radius of the CRZ shall be determined by multiplying a Tree's DBH (in inches) by twelve (12) inches, with the resulting product constituting the minimum radius of the CRZ. Example: A tree with a DBH of twenty (20) inches shall have a CRZ with a minimum radius of 20 feet ($20'' \times 12'' = 240''$ or 20').

Diameter at Breast Height (DBH)

The standard measure of Tree size. It means the diameter of the trunk of a Tree measured in inches outside the bark at a height of four and one-half feet (4 feet 6 inches) above the existing grade at the base of the Tree. If a Tree splits into multiple trunks below the measurement point, the DBH shall be measured at the narrowest point beneath the split. All measurements shall be rounded up to the nearest inch.

Protected Tree

A tree with the following characteristics: (a) currently exists or was removed within twelve (12) months prior to application for a demolition permit, building permit, or zoning approval or relief, (b) is not designated as Invasive by the Massachusetts Invasive Plant Advisory Group, (c) has or had a DBH of six (6) inches or greater, (d) in the case of a single-family dwelling lot or two-family dwelling lot, has or had any portion of the four and one-half feet (4 feet 6 inches) of its stem growing in the Tree Yard of such lot, and (e) in the case of a lot for any other use, is or was located anywhere on such property. Notwithstanding the foregoing, the following shall not be considered Protected Trees: (x) shade trees pursuant to MGL Chapter 87, (y) trees on public property, (z) trees that are hazardous due to disease, age, or shallow roots, as certified in writing by a certified arborist.

Significant Tree

A Protected Tree which has a DBH of thirty (30) inches or greater.

Special Permit Granting Authority or SPGA

The Board of Appeals or the Planning Board as provided in the applicable section of this Zoning By-Law.

Tree Yard

The 10' area of a Single-Family Dwelling lot or Two-Family Dwelling lot located adjacent to all front, side, and rear lines of a lot.