



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
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July 22, 2025

Carin A. Kale, Town Clerk
Town of Hamilton
P.O. Box 429
Hamilton, MA 01936

**Re: Hamilton Annual Town Meeting of April 5, 2025 - Case # 11741
Warrant Articles # 4-1, 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, and 4-8 (Zoning)**

Dear Ms. Kale:

Articles 4-1, 4-2, 4-3 4-4, 4-6, 4-7, and 4-8 – We approve the zoning by-law amendments adopted under Articles 4-1, 4-2, 4-3, 4-4, 4-6, 4-7, and 4-8 at the Hamilton Annual Town Meeting of April 5, 2025. Our comments on Articles 4-7 and 4-8 are provided below.

Article 4-5 - By agreement with Town Counsel pursuant to G.L. c. 40, § 32, we have extended our deadline for a decision on Article 4-5 for 60 days. Our decision on Article 4-5 will now be due on **September 21, 2025**. The signed extension agreement is attached.

Article 4-7 – Under Article 4-7, the Town amended Section 10.6, “Site Plan Review” and Section 11 by deleting text shown in strikethrough and inserting new text shown in bold and underline all as shown in a documents labeled Appendix I. Except for text that prohibits the filing of a building permit until the Planning Board approves the site plan, that we disapprove because it conflicts with G.L. c. 40A, § 7, we approve Article 4-7. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). In addition, we offer comments below for the Town’s consideration regarding certain approved portions of Article 4-7.

I. Summary of the Article 4-7

The new Section 10.6 requires site plan review for: (1) new construction and certain changes to existing structures; (2) uses that require over five parking spaces, including hospitals, camps, churches, farm stands, multi-family structures, government buildings, and building in commercial or office use; (3) certain industrial and scientific research uses; (4) certain stables providing boarding or services for more than six horses; (5) greenhouses for commercial production of plants or produce; (6) alterations which increase the commercial, industrial, institutional, or multi-family floor area within an existing building or which change the number of separately leasable or saleable spaces within an existing building; and (7) wind energy facilities in the Commercial Overlay District. Section 10.6.4. “Projects Requiring Approval.” Section 10.6.5

allows an abbreviated site plan review for certain projects and Section 10.6.6 exempts certain projects from the site plan review process. Section 10.6.10 imposes site plan review criteria and standards to guide the Planning Board in its review of a site plan application. Section 10.6.12, "Final Action," authorizes the Planning Board to approve the site plan, approve it with conditions, or deny it.

II. Section 10.6.4's Prohibition on Applying for a Building Permit Until a Site Plan is Approved Conflicts with G.L. c. 40A, § 7

Section 10.6.4 prohibits an applicant from applying for a building permit until the Planning Board approves the site plan as follows (with emphasis added):

Projects Requiring Approval. No Building Permit shall be **applied for or** issued for any construction or alteration subject to this Section, as specified below, until a site plan has been approved by the Planning Board as set forth herein.

We disapprove and delete the text above in bold and underline because it is inconsistent with G.L. c. 40A, § 7. General Laws Chapter 40A, Section 7 authorizes the Building Inspector to withhold a building permit where there is a violation of the Town's zoning by-laws as follows:

The inspector of buildings, building commissioner or local inspector, or if there are none, in a town, the board of selectmen, or person or board designated by local ordinance or by-law, shall be charged with the enforcement of the zoning ordinance or by-law and shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of any zoning ordinance or by-law; and no permit or license shall be granted for a new use of a building, structure or land which use would be in violation of any zoning ordinance or by-law.

There is no provision in G.L. c. 40A, §7 that authorizes the Town to prohibit the filing of a building permit. Rather under Section 7, the Building Inspector is authorized to withhold a building permit if the applicant failed to receive site plan approval. Because the Town cannot prohibit an applicant from filing a building permit application until the applicant receives site plan approval, the above text in bold and underline conflicts with G.L. c. 40A, §7 and we disapprove it.

III. Comments on Section 10.6's Approved Provisions

A. Site Plan Review for G.L. c. 40A, § 3 Protected "Dover Amendment" Uses

Section 10.6.4 requires site plan review for uses that enjoy G.L. c. 40A, § 3, "Dover Amendment" protections, including schools, churches, farmstands, greenhouses, and stables. We approve Section 10.6.4's site plan requirement for these uses, but site plan review for Dover Amendment protected uses is limited to the application of reasonable regulations provided in G.L. c. 40A, § 3. Jewish Cemetery Assoc. of Mass., Inc. v. Bd. of Appeals of Wayland, 85 Mass. App. Ct. 1105, *2 (2014) (upholding site plan review by-law applicable to Dover Amendment protected uses but limited to imposing reasonable regulations on protected uses).

General Laws Chapter 40A, Section 3 protects various uses from a Town's zoning power, including agriculture, educational uses, religious uses, and childcare facilities as follows:

No zoning . . . by-law . . . shall . . . prohibit unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products.....

No zoning . . . by-law shall...prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes...; 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 area, setbacks, open space, parking and building coverage requirements.

No zoning . . . bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; 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 area, setbacks, open space, parking and building coverage requirements.

Together, these provisions establish that a Town by-law may not unreasonably regulate, prohibit, or require a special permit for agricultural uses, educational uses, religious uses, and childcare facilities, but may impose reasonable regulations, including in eight areas for religious, education and childcare uses as follows: the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements. See The Bible Speaks v. Bd. of Appeals of Lenox, 8 Mass. App. Ct. at 33. Local zoning requirements serving "legitimate municipal purposes" may be applied to Dover Amendment uses. Trustees of Tufts Coll. V. City of Medford, 415 Mass. 753, 757-758 (1993) (citing MacNeil v. Town of Avon, 386 Mass. 339, 341 (1982)).

As in Jewish Cemetery Assoc., it appears reasonable for the Town to use a limited site plan review as the process by which it reasonably regulates Dover Amendment protected uses, including imposes requirements on bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements for religious, educational and childcare uses. The Town should consult closely with Town Counsel during the site plan review process so that Section 10.6 is a limited site plan review of G.L. c. 40A, § 3 protected uses. The Town should discuss this issue in more detail with Town Counsel.

B. Section 10.6.4's Site Plan Review for Government Uses

Section 10.6.4 requires site plan review for government uses that require more than five parking spaces. We approve this portion of Section 10.6.4. However, the Town's authority to regulate state and federal entities is limited. "The doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the

contrary.” Greater Lawrence Sanitary Dist. v. Town of North Andover, 439 Mass. 16 (2003); see also Teasdale v. Newell & Snowling Const. Co., 192 Mass. 440 (1906) (holding local board of health could not require state park commissioners to obtain license to maintain stable on park land). Similarly, municipalities may not regulate federal governmental entities in a manner that impedes with their purpose. Cf. First Nat’l Bank v. Missouri, 263 U.S. 640, 656 (1926) (state laws may not regulate federal entities if “such laws interfere with the purposes of their creation [or] tend to impair or destroy their efficiency as federal agencies”); Palfrey v. City of Boston, 101 Mass. 329 (1869) (federal internal revenue stamps not subject to state or local property tax). The requirement for site plan review for government uses cannot impermissibly interfere with the operation of state or federal entities. The Town should discuss the proper application of this section with Town Counsel.

C. Section 10.6.10’s Requirement Regarding Infrastructure Capacity

Section 10.6.10 (6) requires the Planning Board to review site plans for consistency with infrastructure capacity, including water supply, utilities, drainage and streets. The application of Section 10.6.10 (6) to site plan review for a multi-family structure as required under Section 10.6.4 (2) could raise concern under federal and state law, including the federal Fair Housing Act (FHA) and Massachusetts Anti-Discrimination Law. The Town should consult with Town Counsel to determine if future amendments are needed to address this issue, as discussed below.

As part of the site plan review process, Section 10.6.10 (6) authorizes the Planning Board to consider the relationship of the proposed multi-family structure requiring more than five parking spaces and the Town’s infrastructure capacity. In applying this site plan provision, the Town should be aware of recent Land Court decisions analyzing the question whether a potential impact on essential public services, is a lawful consideration in the context of multi-family housing. In two recent decisions the Land Court determined that consideration of potential increased costs for educating school-aged children is not a lawful consideration when reviewing a special permit application for multi-family housing.

In Bevilacqua Co. v. Lundberg, No. 19 MISC 000516 (HPS), 2020 WL 6439581, at *8–9 (Mass. Land Ct. Nov. 2, 2020), judgment entered, No. 19 MISC 000516 (HPS), 2020 WL 6441322 (Mass. Land Ct. Nov. 2, 2020) the court ruled that the Gloucester City Council’s denial of a special permit to construct an eight-unit multi-family building based on the potential fiscal impact of the proposed development on the Gloucester public schools was “legally untenable.” Id. at *9. Because the right to a public education is mandated and guaranteed by the Massachusetts Constitution (see McDuffy v. Secretary of the Executive Office of Educ., 415 Mass. 545, 621 (1993) and Hancock v. Comm’r of Education, 443 Mass. 428, 430 (2005)), “[a denial of] a special permit to build housing because the occupants of that housing might include children who will attend public schools is [a denial of the children’s] constitutional right under the Massachusetts Constitution to a public education.” Bevilacqua Co., 2020 WL 6439581, at *8 (citing McDuffy and Hancock). “Therefore, notwithstanding the fiscal impact to a municipality from the construction of housing that may result from the obligation to educate children in the public schools, fiscal impact, as a reason for denying permits to construct housing, must give way when it runs afoul of the constitutional obligation of Massachusetts municipalities to provide a public education to all children.” Id. at *9.

The Bevilacqua decision also raises, but does not resolve, the question whether consideration of fiscal impacts from potential increase in demands on other essential public services is similarly unlawful in the context of multi-family housing:

Generally, a municipality may not condition the availability of fundamental public services, such as fire protection, on the ability of any particular member of the public to pay taxes sufficient to support those services. Emerson College v. City of Boston, 391 Mass. 415 (1984) (city may not charge “augmented fire services availability” fee for fire protection for properties requiring additional protection). That prohibition against denying members of the public the right to fundamental public services based on ability to pay is especially applicable when it comes to the right to a public education mandated and guaranteed by the Massachusetts Constitution.

Id. at *8.

Similarly, in 160 Moulton Drive LLC v. Shaffer, No. 18 MISC 000688 (RBF), 2020 WL 7319366, at *13-15 (Mass. Land Ct. Dec. 11, 2020), judgment entered, No. 18 MISC 000688 (RBF), 2020 WL 7324778 (Mass. Land Ct. Dec. 11, 2020), the court rejected the town’s argument that the financial impact of educating the number of school-aged children projected to live in the apartments would be greater than the increased tax revenue, thus making the apartment use “substantially more detrimental” (in the language of the applicable by-law) than the existing restaurant use. “The Town cannot deny a permit on the grounds that its own property tax scheme is insufficient to provide for the needs of its inhabitants. Whether the Town has enough funds to provide public education for its school-aged children is simply not a matter for the Board to consider in reviewing special permit applications.” Id. at *14 (citing Bevilacqua Co., 2020 WL 6439581 at *8-9).

The court in 160 Moulton Drive LLC echoed the Bevilacqua court’s question whether increased demand for any essential public service is a lawful consideration when reviewing a special permit for multi-family housing:

Denial of a special permit on the grounds that increased tax revenue would not support the education of the children living therein is tantamount to conditioning the availability of public services on the ability of the residents to pay for them, which I find to be unreasonable and arbitrary. See Emerson College v. City of Boston, 391 Mass. 415 (1984).

160 Moulton Drive, 2020 WL 7319366 at *14.

In light of the holdings in Bevilacqua and 160 Moulton Drive LLC that the potential fiscal impact of educating school-age children is a legally untenable ground for denial of a permit for multi-family housing, and the open question whether a reviewing board may consider the impact on other essential public services, we strongly encourage the Town to consult closely with Town Counsel regarding whether the site plan criteria in Sections 10.6.10 (6) should be enforced when reviewing a site plan application for a multi-family structures and whether it should be amended at a future town meeting.

D. Section 10.6.12's Final Action on Site Plan

Section 10.6.12 authorizes the Planning Board to approve, approve with cautions, and deny a site plan. We approve Section 10.6.12. However, the Planning Board authority to disapprove site plan review for as-of-right uses is limited. Site plan approval acts as a method for reasonably regulating as-of-right uses rather than for prohibiting them. Y.D. Dugout, Inc. v. Bd. of Appeals of Canton, 357 Mass. 25, 31 (1970). Where "the specific area and use criteria stated in the by-law [are] satisfied, the [reviewing] board [does] not have discretionary power to deny...[approval], but instead [is] limited to imposing reasonable terms and conditions on the proposed use." Prudential Ins. Co. of America v. Westwood, 23 Mass. App. Ct. 278, 281- 82 (1986), quoting from SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 105 n.12 (1984). Therefore, the Town cannot deny site plan approval for by-right uses, including Dover Amendment protected uses. The Town should discuss this issue in more detail with Town Counsel.

Article 4-8 - Under Article 4-8, the Town amended Section 9.2, Flood Plain Overlay District," by deleting text shown in strikethrough and inserting new text shown in bold and underline all as shown in a document labeled Appendix J. The Town amended Section 9.2 as part of a federal requirement for communities that choose to participate in the National Flood Insurance Program (NFIP).

Section 9.2 appears to follow the "Massachusetts 2020 Model Floodplain Bylaw" provided by the Massachusetts Department of Conservation and Recreation Flood Hazard Management Program. (DCR Flood Hazard Management Program). See <https://www.mass.gov/guides/floodplain-management/#-2020-massachusetts-mo>. The DCR Flood Hazard Management Program is the state coordinating office for the NFIP and, according to their website, they have provided the Model Floodplain Bylaw to Massachusetts communities "to assure that their local bylaws...contain the necessary and proper language for compliance with the" NFIP. For this reason, we approve Article 4-8. The Town should consult with Town Counsel and the DCR Flood Hazard Management Program with any questions regarding the application of Section 9.2.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
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cc: Town Counsel Thomas W. McEnaney



TOWN OF HAMILTON, MA
Office of the Town Clerk
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978-468-5570, EXT 3

July 24, 2025

PUBLIC NOTICE - TOWN BULLETIN
Adoption of Amendment to the Zoning By-laws of the Town of Hamilton

This is to inform you in accordance with M.G.L. Chapter 40 §32, that the attached amendments to the Town of Hamilton Zoning By-laws adopted under Warrant Articles 4-1, 4-2, 4-3, 4-4, 4-6, 4-7, and 4-8 of the Warrant for the Annual Town Meeting that convened on April 5, 2025 have been approved by the Attorney General's Office on July 22, 2025. Note that the words "applied for or" in Article 4-7 (see Section 10.6.4, page 119) were disapproved and are deleted because it is inconsistent with M.G.L. c.40A §7. Zoning by-laws will be in effect retroactive to the date of the town meeting at which it was approved.

Claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within 90 days of this posting. Copies of the full text of the by-laws are attached hereto and may be obtained at the Town Clerk's Office, 650 Asbury Street, Hamilton, MA during the following hours: Monday, Wednesday and Thursday 8:30 am – 4:30 pm, Tuesday 8:30 am – 6:30 pm, and Friday 8:30 am – 12:30 pm.

ATTEST:

Carin A. Kale

Carin A. Kale, CMMC
Town Clerk

I have this day 7/24/2025 posted said Town Bulletin at: Interim Town Hall Asbury St, Police/Fire Station, S. Hamilton Post Office, Hamilton Post Office, Council on Aging Senior Center

Philip W. Stevens

Philip W. Stevens
Constable, Town of Hamilton

SECTION 9.0 SPECIAL DISTRICT REGULATIONS

9.1 GROUNDWATER PROTECTION OVERLAY DISTRICT (GPOD).

9.1.1 Purpose. The purpose of the Groundwater Protection Overlay District (GPOD) is:

1. To promote the health, safety and general welfare of the Town by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of Hamilton.
2. To preserve and protect existing and potential sources of drinking water supplies and recharge areas;
3. To conserve the natural resources of the Town; and
4. To prevent temporary and permanent contamination of the environment.

9.1.2 Overlay District. The GPOD is an overlay district and shall be superimposed on the other zoning districts established by this By-law. This overlay district shall apply to all new construction, reconstruction or expansion of existing buildings, and new or expanded uses. Applicable activities or uses which fall within the Well Head Protection District must additionally comply with the requirements of the GPOD. Uses that are prohibited in the underlying districts shall not be permitted in the GPOD.

9.1.3 Location. The GPOD shall consist of those areas shown on the Hamilton Groundwater Protection Overlay District Map, dated May 1985, amended May 2000 to include the aquifer protection districts of neighboring communities that lie within the Town of Hamilton, amended October 2004, and amended Fall 2015 to incorporate Weston & Sampson's Zone II delineations map dated January 2013. Said map is hereby incorporated into the Zoning By-law by reference, and shall be on file with the Town Clerk.

9.1.4 Dimensional Requirements. Regardless of the minimum Lot size of the underlying zone, there shall be a minimum lot area of eighty thousand (80,000) square feet **per dwelling unit** in the GPOD. See Section 4.0 for Computation of Lot Area. **(Revised ATM April 5, 2025)**

9.1.5 Lot Partially in the GPOD. Any Lot, which has one-third (1/3) or more of its total area falling in the GPOD, must meet all the requirements of the GPOD.

9.1.6 Boundary in Doubt. If the location of the GPOD boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the Zoning Board of Appeals. Any application for a special permit for this purpose shall be accompanied by adequate documentation. The burden of proof shall be upon the owner(s) of the land to show where the bounds should be located. At the request of the owner(s), the Town may engage a professional engineer, hydrologist, geologist, or soil scientist to determine more

1. *Curb Cut Permit.* A curb cut permit has been obtained pursuant to Section 6.2.5 above;
2. *Location.* The common Driveway shall lie entirely within the Lots to which it provides access, and shall comply with all Driveway regulations in this Section.
3. *Easement.* An easement providing for maintenance and snow removal and running with the land in perpetuity has been executed by the owner(s) of the Lots sharing the Driveway and recorded at the Registry of Deeds, and evidence thereof is submitted to the Building Commissioner.
4. *Frontage.* The common Driveway is not being used to satisfy zoning frontage requirements.

6.3 SIGNS (Revised ATM April 6, 2019).

General Provisions:

6.3.1 Permanent and Temporary Signs. All permanent signs require a building permit. Temporary signs do not require a building permit but must comply with all other provisions of the Section 6.3, excluding real estate for-sale signs.

1. All permanent signs within the Historic District also require a certificate of appropriateness from the Historic District Commission.
2. All signage on town property requires prior approval of the Board of Selectmen.
3. All signage on school property requires prior approval of the school superintendent.

6.3.2 Residence Districts. In every residential district, signs will be permitted as follows:

1. No more than two (2) temporary signs per contiguous lots within the same ownership.

6.3.3 Business District.

1. No more than three (3) signs are permitted per business establishment.
 - a. A-frame or sandwich board signs, whether temporary or permanent, shall only be permitted by special permit.
 - b. Only one sign may project from the exterior wall surface of the business establishment. Any sign projecting over a pedestrian path shall have a clear space of not less than 12 feet below all parts of such signs. Projecting signs are not allowed over vehicular pathways except by Special Permit.
 - c. Signs that are inside the business establishment but legible from the exterior shall be counted as one of the three permitted signs.

6.3.4 Standards.

1. No sign shall be illuminated by other than white light unless specifically approved by zoning decision.
2. No sign shall be internally illuminated, flashing, intermittently illuminated, or animated.
3. No sign shall have rotating or moving lights, have any visibly moving parts, or have any noise making devices.
4. All illuminated signs in residential districts are to be turned off between the hours of 11 p.m. and 6 a.m.
5. No sign shall impede pedestrian or vehicular traffic.
6. Roof signs or signs projecting above a roof line are prohibited.
7. A sign in the residence districts shall not exceed a total area of three (3) square feet.
8. A sign in the business district shall not exceed a total area of six (6) square feet.
9. The maximum square footage of any sign is determined by the area of the sign measured from the topmost display element to underside of display elements, and from exterior edge to exterior edge of display element. Support structures are not included in the area of the sign. Maximum square footage restrictions apply to a single side of any signage display. If a sign is proposed to be double-sided, both sides must be identical in appearance and content.
10. Any signage associated with any abandoned or defunct business or function must be removed.

6.3.5 Definitions.

1. A-frame or sandwich board sign: A portable sign that can stand upright without additional supports.
2. Permanent Signage: Signs other than temporary signs.
3. Sign: A name, identification, description, display, or illustration which is painted or represented directly or indirectly on a building or other outdoor surface which directs attention to or is designed or intended to direct attention to the signboard or to an object, product, place, activity, person, institution, organization, or business and including the space enclosed within the extreme edges of the sign for each face, not including the supporting structure or where attached directly to a building wall or surface, the outline

enclosing all the characters of the word(s). Each display surface shall be considered to be a separate sign.

4. Temporary Signage: Signs in place for no more than two months in any calendar year. Prior to any national, state, or local election and thereafter, there may be up to five (5) lawn signs per lot. (Revised ATM April 5, 2025)

6.3.6 Special Permit Granting Authority: The Special Permit Granting Authority for this Section 6.3 is the Planning Board.

1. Other and larger signs may be allowed by Special Permit in any district provided such signage is for a specified period not to exceed one year.

6.4 STANDARDS FOR NONRESIDENTIAL BUILDINGS' CONSTRUCTION, USE AND OPERATION.

6.4.1 General. Nonresidential Buildings and uses permitted in the Table of Uses shall conform to the following minimum standards for construction, use and operation as evidenced by detailed plans submitted to the Building Commissioner for review and certified as to compliance by the architects and/or engineers responsible for such plans. In the event of any reasonable doubt by the Building Commissioner as to compliance with the following minimum standards, he or she shall refer the building permit in such cases to the Zoning Board of Appeals for resolution.

1. *Waste Disposal and Water Service.* Water service, and waste and refuse disposal methods shall comply with pertinent health regulations and shall be in accordance with the approved site plan.

2. *Storage.* Equipment, including company owned or operated vehicles, shall not be stored between the Street line and the front line of structures on the subject Lot, or if there be no Structure within fifty (50) feet of the Street line, and in no case to be visible from the Street.

3. *Screening.* Screening by fences, walls and/or evergreen planting, in accordance with an approved site plan, shall be provided, erected and maintained to shield the business uses of land and Buildings from any adjoining residential property.

SECTION 7.0 SPECIAL REGULATIONS

7.1 ADULT ENTERTAINMENT USES.

7.1.1 Purpose. It has been documented in numerous towns and cities throughout the Commonwealth of Massachusetts and elsewhere in the United States that Adult Entertainment Uses are distinguishable from other business uses and that Adult Entertainment Uses degrade the quality of life in the areas of a community where they are located. Studies have shown

SECTION 11.0 DEFINITIONS

ARTICLE 4 4-3 p. 137

ARTICLE 4 4-4 p. 128

~~ARTICLE 4 4-5 p. 127~~ NO DECISION

ARTICLE 4 4-8 pgs 132-136

be deemed granted. The Zoning Board of Appeals' decision shall be filed with the Town Clerk and sent to the applicant by certified mail.

10.8.7 Appeal. The Zoning Board of Appeals' decision pursuant to this Section may be appealed to a court of competent jurisdiction in accordance with G.L. c. 40A, s. 17 or otherwise.

10.8.8 File. The Zoning Board of Appeals shall maintain a file of all requests for reasonable accommodation under the FHA and/or the ADA and a file of all decisions made on such requests. The file(s) may be reviewed in the office of the Zoning Board of Appeals upon request during regular business hours.

10.8.9 Other Laws. While a request for a reasonable accommodation is pending, all laws and regulations otherwise applicable to the premises that are the subject of the request shall remain in full force and effect.

10.8.10. Effective Date. The provisions of this Section shall apply only to requests for reasonable accommodation made after adoption of this By-law. Any person who has previously submitted a request for a reasonable accommodation may resubmit the request for processing pursuant to the procedures set forth in this Section.

SECTION 11.0 DEFINITIONS

In this By-law, the following terms shall have the meanings described below:

Section 3.0 Use Regulations

ARTICLE 4 4-5
NO DECISION

Accessory Dwelling Unit: A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same Lot as a Principal Dwelling, subject to otherwise applicable dimensional and parking requirements, that:

- (a) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the Principal Dwelling sufficient to meet the requirements of the Building Code for safe egress;
- (b) is not larger in Gross Floor Area than $\frac{1}{2}$ the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller; and
- (c) is subject to such additional restrictions as may be imposed by a municipality including, but not limited to, additional size restrictions, and restrictions or prohibitions on Short-term Rental as defined in section 1 of chapter 64G.

Accessory Use or Building: A use or building which is subordinate and customarily incidental to and located on the same lot with the principal use or building to which it is accessory, except uses accessory to scientific research, scientific development or related production, as set forth in this By-law, which uses need not be located on the same lot as the principal use.

Large Accessory Dwelling Unit: A Detached Accessory Dwelling Unit, measured in Gross Floor Area, that is larger than 900 square feet but which shall not exceed 2,000 square-feet. In no event may the size of a Large Accessory Dwelling Unit exceed 50 percent of the Gross Floor Area of the Principal Dwelling.

Owner/Ownership: The individual(s) or entity, such as a trust, limited liability company, or corporation, in whom record title is held.

ARTICLE

4 4-4

"

Adult Entertainment Use: An establishment, a building or portion thereof, or a use of land having a substantial or significant portion of its business activity, stock in trade, or other matter or materials for sale, rental, distribution, or exhibition which is distinguished or characterized by sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31, or a depiction, description or representation thereof, or emphasis thereon, including but not limited to adult bookstores, adult cabarets, adult motion picture theaters, adult paraphernalia stores, and adult video stores as hereafter defined.

Adult Bookstore: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, or other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31. For the purpose hereof, the words "substantial or significant" shall mean more than fifteen percent (15%) of the establishment's inventory of stock, or more than fifteen percent (15%) of the establishment's gross floor area.

Adult Cabaret: A night club, bar, restaurant, tavern, dance hall, or similar commercial establishment which features: persons who appear in a state of nudity; or live performances which are characterized by sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31; or films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

Adult Motion Picture Theater: An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

Adult Paraphernalia Store: An establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31. For the purposes hereof, the words "substantial or significant" shall mean more than fifteen percent (15%) of the establishment's inventory of stock or more than fifteen percent (15%) of the establishment's gross floor area.

Adult Video Store: An establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or

characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31. For the purposes hereof, the words "substantial or significant" shall mean more than fifteen percent (15%) of the establishment's inventory of stock, or more than fifteen percent (15%) of the establishment's gross floor area.

Adult Social Day Care: An accessory use that focuses on social activities, therapeutic recreation, meals, and some health-related services such as medication monitoring and blood pressure checks. May also provide assistance with daily activities such as toileting and walking. but not an adult day health facility or site as regulated by 404 CMR 402.

Boarder: An individual other than a family member occupying a dwelling unit who, for consideration, is furnished sleeping accommodations, meals, and may be provided personal care or other services, but excluding guests at a bed and breakfast.

Building: A structure having a roof or cover and forming a shelter for persons, animals or property.

Building Height: Except as otherwise provided herein, building height shall be measured as the vertical distance from the average elevation of the finished lot grade at the front of the building to the highest point of the top story in the case of a flat roof, and to the mean height between the plate and the ridge in the case of a pitched roof.

Business or Professional Office: A business establishment, which does not offer a product or merchandise for sale to the public but offers a professional service to the public. However, general or personal service establishments are not to be included in the definition of business offices.

Child Care Center: A child care center as that term is defined in G.L. c. 15D, s. 1A.

Commercial Overlay District: The following definition shall apply in the Commercial Overlay District:

Building Height: The height of a Building shall be the vertical distance measured from the mean finished grade of the ground adjoining the front of the building, as determined by the Building Commissioner, to the top of the structure of the highest occupied floor in the case of a flat roof, to the deck line of a mansard roof, and to the top of the plate of a gable, hip or gambrel roof.

Commercial Recreation, Outdoors: Golf, tennis, swimming, riding, polo, skiing, skating, and all other athletic and recreational activities.

Drive-In or Drive-Through Establishment: A business establishment that includes service that is provided from a drive-up or drive-through window or other similar arrangement that allows the service of a patron while the patron remains in a vehicle, whether parked or live

parked. The term shall include eating establishments and service establishments such as banks, dry cleaners, pharmacies, photo shops and the like.

Driveway: Any improved access for regular use by vehicle from the roadway of a street to a dwelling or other main building on a lot, or for use for which site plan approval or a special permit is required. A track or path used primarily by animals, or primarily for access of farm equipment to a field or orchard, or primarily for wood cutting, or for maintenance of a utility line is not a driveway. A driveway includes all of its branches.

Dwelling: A building or part thereof designed, erected and used for continuous and permanent habitation for one family or individual, but not including trailers, however mounted, or commercial accommodations offered for periodic occupancy.

Dwelling Unit: One or more rooms designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

Dwelling, Single family Detached: A dwelling that is not attached to any other dwelling by any means and is surrounded by open space or yards on all sides, and that is occupied by not more than one household.

Dwelling, Semi-attached: A building containing two dwelling units that are attached to each other by a common vertical wall, each dwelling unit having open space or yards on three sides and each dwelling unit having direct access to the ground, and each dwelling unit is occupied by not more than one household.

Dwelling, Two-family: A building containing two dwelling units, either side by side or one above the other under a single roof, and each dwelling unit is occupied by not more than one household.

Dwelling, Townhouse: A building containing three or more dwelling units in a row, in which each dwelling unit has its own front and rear access to the ground, no dwelling unit is located over another dwelling unit, each dwelling unit is separated from any other dwelling unit by one or more party walls, and each dwelling unit is occupied by not more than one household.

Dwelling, Three-family: A building containing three dwelling units, each of which has direct access to the outside or to a common hall that leads to the outside.

Dwelling, Four-family: A building containing four dwelling units, each of which has direct access to the outside or to a common hall that leads to the outside.

Dwelling, Multifamily: A building containing five or more dwelling units, except as otherwise defined in this By-law.

Elderly: For the purposes of this By-law, persons who are 55 years of age or older, except as otherwise defined.

Electric Charging Station, Level Two: A facility equipped with a compatible cable such as J-1772, for the recharging of the batteries of motor vehicles.

Essential Services: Services provided by public utility or governmental agencies through erection, construction, alteration, or maintenance of underground or overhead gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems, excluding power plants or transfer stations. Facilities necessary for the provisions of essential services include poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith. Specifically excluded from this definition are buildings necessary for the furnishing of adequate service by such public utility or governmental agencies for the public health, safety and general welfare.

Estate Overlay District: For the purposes of Section 9.4, the following definitions shall apply:

Combined or Aggregated: Parcels combined prior to July 1, 2010 to increase acreage to qualify for the Estate Overlay District By-law.

Commercial Use: A use that is primarily for profit and a nonresidential use, unless used in a hotel, inn or bed and breakfast, or nursing, assisted living or long term care facility that provides residential units for commercial or profitable use. The renting of apartments will not constitute a commercial use.

Common Ownership: Adjacent lots are considered to be in common ownership or within the landowner's legal control or power if one or more is held in an entity such as a limited partnership, trust benefitting the owners or landowner's use of adjoining land, even if the most recent instrument of record prior to July 1, 2010, reveals that the lot was separately owned and a previously recorded plan may reveal that the lot was at one time part of land held in common ownership.

Estate House: A building constructed prior to December 31, 1950, originally used as a single family residential dwelling, containing more than 5,000 square feet of residential floor area. Additions to the original dwelling that were constructed after 1950 will count toward the 5,000 square foot threshold if they were permitted by the Building Department prior to July 1, 2010.

Historically, Culturally or Architecturally Significant: A determination made by the Hamilton Historic District Commission that defines the property as one worth preserving to the level of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

New Floor Area: The addition of building area calculated in square footage that can be added to the original estate house either as an attached or detached building located on

the same property. Bonus square footage can be accumulated through (i) a yield plan, (ii) rehabilitation of the estate house to historic standards, or (iii) renovation of the estate house. Bonus Square Footage space can only be used for commercial purposes.

Nursing Home or Assisted Living for Seniors or the Infirm: A commercial use for the residential care of those who are infirm or elderly.

Rehabilitation: The process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings: The Standards for Rehabilitation (codified in 36 CFR 67 for use in the Federal Historic Preservation Tax Incentives program), which address the most prevalent treatment.

Yield Analysis Plan: The Yield Analysis plan is a schematic representation of a conventional subdivision. It shall show the maximum number of lots (or dwelling units) that could be placed upon the site under current zoning for a conventional subdivision plan. That maximum number of lots shall constitute the Base Maximum Density. The Yield Analysis shall determine Base Maximum Density for the proposed development, given the presence of natural building constraints on the site such as wetlands, floodplains, steep slopes, and zoning requirements. The proponent shall have the burden of proof with regard to the Basic Maximum Density.

Family: Any number of persons living together as a single economic unit and ordinarily using a single cooking facility.

Family Child Care Home, Large: An accessory use as defined in G.L. c. 15D, s. 1A.

Family Child Care Home, Small: An accessory use as defined in G.L. c. 15D, s. 1A.

Finding: For the purposes of Section 5.0, a "finding" shall mean the affirmative vote of three (3) members of the Zoning Board of Appeals.

ARTICLE 4 4-8

Flood Plain Overlay District: For the purposes of Section 9.2, the following definitions shall apply:

Area of Special Flood Hazard: The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, AI- 30, AE, A99, VI-30, VE, or V.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Coastal High Hazard Area: An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V, V 1-30, or VE.

Development: Any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

District: The Floodplain Protection Overlay District.

Federal Emergency Management Agency (FEMA): The agency that administers the national Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

Flood Insurance Rate Map (FIRM): An official map of a community on which FEMA has delineated both areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study: An examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

Historic Structure: Any structure that is:

- (a.) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b.) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a

district preliminarily determined by the Secretary to qualify as a registered historic district;

(c.) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d.) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs. [US Code of Federal Regulations, Title 44, Part 59]

Lowest Floor: The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Manufactured Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New Construction: Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14]

One Hundred Year Flood: See Base Flood.

Recreational Vehicle: A vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. [US Code of Federal Regulations, Title 44, Part 59]

Regulatory Floodway: See Floodway.

Special Flood Hazard Area: An area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1 -30, AE, A99, AH, V, V 1-30, VE.

4-8

Start of Construction: The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

Structure: For floodplain management purposes, a walled and roofed building including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Structure: For insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

Substantial Repair of a Foundation: When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

Variance: A grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59].

Violation: The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3 is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

Zone A: The 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

Zone AI-30 and Zone AE (for new and revised maps): The 100-year floodplain where the base flood elevation has been determined.

Zone AH and Zone AO: The 100-year floodplain with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Zone A99: Areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

Zones B, C and X: Areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

Zone V: A special flood hazard area along a coast subject to inundation by the 100-year flood with the additional hazards associated with storm waves. Base flood elevations have not been determined.

Zone VI-30 and Zone VE (for new and revised maps): A special flood hazard area along a coast subject to inundation by the 100-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.

For Profit Educational Facility: A facility offering education in fields such as music, dance, martial arts massage therapy, computer technology, the trades, and the like, but not otherwise regulated by G.L. c. 40A, s. 3.

Funeral Home: Facility for the conducting of funerals and related activities such as embalming.

Garage, Private: Covered space for the housing of motor vehicles, no more than two of which belong to others than the occupants of the lot on which such space is located.

General Service Establishment: Shop for lawn mower or small appliance repair, upholstery or furniture repair, bicycle repair person, printer, blacksmith, builder, carpenter, caterer, electrician, lawn mower service person, mason, painter, or plumber.

G.L.: Reference to the General Laws of Massachusetts.

ARTICLE 4 4-3

Gross Floor Area, Business: The floor area within the perimeter of the outside walls of the building under consideration, without deduction for **corridors, stairways, ramps, closets, thickness of interior walls, columns, or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts.**

Gross Floor Area, Residential: **Except for the definition of gross floor area applicable to Accessory Dwelling Units, the sum of the areas of all floors of the building, including basements, cellars, mezzanine and intermediate floored tiers and penthouses of headroom height, measured from the exterior faces of exterior walls from the centerline of walls separating buildings, but excluding:**

1. **Covered walkways, open roofed-over areas, porches and similar spaces.**
2. **Pipe trenches, exterior terraces or steps, chimneys, roof overhangs and similar features.**

Groundwater Protection Overlay District: For the purposes of Section 9.1, the following definitions shall apply:

Toxic or Hazardous Material: Any substance or mixture of physical, chemical or infectious characteristics posing a significant, actual or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town. Toxic or hazardous material include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids or alkalis, and all substances defined as Toxic or Hazardous under G.L. c. 21C and c. 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.

3.1.2 TABLE OF USE REGULATIONS

ARTICLES 4

4-4

~~4-5~~

E. ACCESSORY	R-1a	R-1b	RA	B
1. Up to three boarders in a Single Family Dwelling	Y	Y	Y	N
2. Accessory Dwelling Unit (see Section 3.6 and definition)	Y	Y	Y	Y
3. Large Accessory Dwelling Unit (see Section 11.0)	PB	PB	PB	PB
4. Customary home occupation conducted in a Dwelling or Building accessory thereto by a person residing on the premises (see Section 3.3)	Y	Y	Y	Y
5. Accessory Uses or Building on the same Lot with and customarily incidental to a permitted main use on the same premises	Y	Y	Y	Y
6. Uses, whether or not on the same parcel as activities permitted as a matter of right, which are both: (a) accessory to activities permitted as a matter of right, and (b) necessary in connection with scientific research or scientific development or related production (see Section 3.2.1.2)	ZBA	ZBA	ZBA	ZBA
7. Parking area or garage for use of employees, customers or visitors	N	N	N	Y
8. Level Two Electric Charging Station	Y	Y	Y	Y
9. Large Family Child Care Home	ZBA	ZBA	ZBA	ZBA
10. Small Family Child Care Home	Y	Y	Y	Y
11. Adult Social Day Care	ZBA	ZBA	ZBA	ZBA
12. Marijuana Establishment	N	N	N	N

No Decision

ARTICLE 4 4-5

ARTICLE 4 4-4

3.1.4 Uses Subject to Other Regulations. Uses permitted by right or by special permit shall be subject, in addition to use regulations, to all other provisions of this By-law.

3.2 ACCESSORY USES.

3.2.1 Accessory Uses in All Districts. The following Accessory Uses are specifically permitted in all districts as of right or by special permit:

1. *Temporary Construction Trailers and Signs.* The Building Commissioner may grant a temporary occupancy permit for temporary buildings, Signs and trailers during building construction where reasonably required for such construction. Such permit may be issued for an initial period of not more than one year. Permits may be renewed by the Building Commissioner for successive periods of not more than one (1) year each.

2. *Accessory Scientific Uses.* The accessory scientific uses set forth in Section E.7 of the Table of Use Regulation may be permitted upon the issuance of a special permit by the

Zoning Board of Appeals, provided that the Zoning Board of Appeals finds that the proposed use does not substantially derogate from the public good.

3.2.2 Accessory Uses and Structures in the Residence Districts. The following provisions shall apply to Accessory Uses and Structures in the Residence Districts:

1. Accessory Uses on the same Lot with and customarily incidental to a permitted main use on the same premises are allowed, including but not limited to: agricultural activities, private swimming pools, tennis courts, and Private Garages.
2. Activities associated with agriculture, horticulture and floriculture, such as barns, private stables, and shelters, and other farm buildings are allowed as Accessory Uses and/or Structures on Lots not less than eighty thousand (80,000) square feet in area, and including Buildings for keeping animals and poultry, duly licensed by the Board of Health, for occupant's use only, provided that no such barns, private stables, and shelters, and other farm buildings shall be nearer than fifty (50) feet to any Lot line.
3. Tool sheds, garden sheds, storage sheds, or other like Buildings are allowed as Accessory Uses subject to the dimensional requirements in Section 4.0.
4. The following uses are prohibited as Accessory Uses: Kennels; contractor's yard for the storage of building materials or equipment; the storage or keeping of commercial landscaping equipment, materials, supplies, or piles; and commercial auto repair or service.

3.2.3 Accessory Uses in the Business District. In the Business District, any use permitted as a principal use is also permitted as an Accessory Use provided such use is customarily incidental to the main or principal Building or use of the land. Any use authorized as a principal use by special permit may also be authorized as an Accessory Use by special permit provided such use is customarily incidental to the main or principal Building or use of the land.

3.3 HOME OCCUPATIONS.

3.3.1 General. A customary home occupation may be conducted in a Dwelling or Building accessory thereto by a person residing on the premises.

3.3.2 Conditions.

1. Such use must be clearly incidental and secondary to the use of the premises for residential purposes;
2. Not more than two (2) persons other than residents of the premises shall be regularly employed thereon in connection with such use;
3. No offensive noise, vibration, smoke, dust, fumes, odors, heat, glare or unsightliness shall be produced;

4. There shall be no public display of goods or wares and there shall be no signs except as permitted in Section 6.3; and

5. There shall be no exterior storage of material or equipment (including the parking of more than two commercial vehicles) and no other exterior indication of such use or variation from the residential character of the premises.

3.4 RESERVED (ATM April 5, 2025).

ARTICLE 4 4-4
DELETION OF SECTION 3.4

3.5 CONVERSION TO TWO-FAMILY DWELLING. NO CHANGE

3.5.1 Purpose. The purpose of this Section is to provide a way to preserve large older homes in the Town by allowing the conversion of a Single Family Dwelling existing at the time of the first adoption of this By-law (1954) into a Two Family Dwelling, subject to the following.

3.5.2 Procedures. Conversion of such a Single Family Dwelling into a Two Family Dwelling under this Section shall be authorized only by special permit issued by the Board of Appeals under Section 10.5 of this By-law. The Board of Appeals may grant such a special permit provided the following conditions are met:

1. The Board of Health approves all arrangements for sanitary waste, water supply, and drainage.
2. The applicant has submitted to the Board of Appeals a plot plan and scaled architectural drawings which comply with Section 3.5.3 below

3.5.3 Design and Dimensional Standards. A plot plan and scaled architectural drawings of the existing Dwelling Unit and alterations shall be submitted, showing location of the Building on the Lot, proposed alterations, location of septic system and parking, and compliance with the following items:

1. The Lot on which the proposed conversion is to be located shall contain at least twenty thousand (20,000) square feet, and the existing Dwelling Unit shall contain at least four thousand (4,000) square feet;
2. The external appearance of the Building in which the Dwelling Units are located shall not be significantly altered from its previous single family character;
3. Adequate provision has been made for egress to the outside from the additional Dwelling Unit. Any external stairways shall be screened from view, buffered, or located out of sight from any Street; and

4. One off street parking space shall be provided for the new Dwelling Unit, in addition to the required parking for the principal Dwelling Unit. Every effort shall be made to minimize the visibility of the additional parking space by location and screening.

3.5.4 Other Approvals. The applicant shall, in addition to obtaining a special permit, also obtain a building permit, and any necessary Conservation Commission approvals, and an occupancy permit prior to occupancy of the proposed Dwelling Unit.

3.6 ACCESSORY DWELLING UNITS. (Revised ATM April 5, 2025)

ARTICLE 4
4-5
No DECISION

3.6.1 Purpose. The intent of this Section is to permit an Accessory Dwelling Units (see Section 11.0, Definitions) on a Lot that contains a principal dwelling unit (hereinafter referred to as the Principal Dwelling unit) for the following purposes:

1. Add moderately priced rental units to the housing stock to meet the needs of small households, both young and old;
2. Make housing units available to moderate-income households who might otherwise have difficulty finding housing in the Hamilton;
3. Provide homeowners with a means of obtaining rental income, companionship, security, and services, and thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave; and
4. Provide more diverse housing options in the community in a manner that does not conflict with the residential character of single-family neighborhoods.

3.6.2 Permit Granting Authority. The Building Commissioner shall be the permit-granting authority for Accessory Dwelling Units provided that the application meets the minimum requirements of this Section. In considering applications, all definitions contained in this Bylaw shall apply, unless those definitions conflict with the definitions in the Regulations governing Protected Use Accessory Dwelling Units in which case the definitions in the Regulations shall control (see 760 CMR 71.01 et seq.).

3.6.3 Where Permitted. An Accessory Dwelling Unit shall be permitted by right in all Single-Family Residential Zoning Districts, provided that the Accessory Dwelling Unit meets the minimum requirements of this Section. Accessory Dwelling Units may be attached to the Principal Dwelling unit (hereinafter referred to as an Attached Accessory Dwelling Unit) or located in a separate accessory structure (hereinafter referred to as a Detached Accessory Dwelling Unit).

3.6.4 Required Application Materials for Accessory Dwelling Units. An Application for a building permit to construct an Accessory Dwelling Unit must include the following minimum materials:

1. A Building Permit application showing compliance with the requirements of this Section of the Bylaw, the Building Code, and all other applicable requirements, including, but not limited to, those governing the Hamilton Historic District.

2. A Certified Plot Plan demonstrating compliance the Zoning Bylaw and all other applicable codes and regulations.
3. Elevations depicting all building facades of the Accessory Dwelling Unit. The elevations shall include all exterior building materials.
4. Written verification from the Board of Health that the sewage disposal system(s) shall have sufficient capacity to accommodate the Accessory Dwelling Unit in accordance with Title 5 of the State Environmental Code and the Rules and Regulations of the Board of Health.

3.6.5 Requirements for Accessory Dwelling Units. All Accessory Dwelling Units are subject to the following requirements:

1. Only one Accessory Dwelling Unit shall be permitted on each Lot containing a Principal Dwelling Unit.
2. An Accessory Dwelling Unit shall not exceed 50 percent of the Gross Floor Area of the Principal Dwelling Unit or 900 square feet of Gross Floor Area, whichever is smaller.
3. An Accessory Dwelling Unit shall meet the applicable dimensional requirements set forth in Section 4.1.2, Table of Dimensional Regulations, including Regulations for Maximum Building Height, Maximum Number of Stories, Maximum Building Coverage, and Minimum Front, Side and Rear yards, except as stipulated in this Section.
4. An Accessory Dwelling Unit must have a permanent foundation; no trailers or recreational vehicles shall be permitted to serve as such a use.
5. An Attached Accessory Dwelling Unit shall maintain the appearance and essential character of the Principal Dwelling unit, specifically with respect to height, compatible roof pitch, and choice of building materials.
6. A Detached Accessory Dwelling Unit shall not be permitted in the Front Yard (as defined under Section 11.0, Definitions) of the Lot, absent a special permit.
7. The location of any new outside entrance to serve an Attached Accessory Dwelling Unit shall be located on the side or in the rear of the Principal Dwelling unit.
8. Appurtenant uses exclusively serving an Accessory Dwelling Unit that do not count toward the maximum Gross Floor Area, including porches, decks, and similar structures, shall be limited to a combined total size of no more than one hundred and fifty (150) square-feet.
9. The Accessory Dwelling Unit shall not be held in, or transferred into separate ownership from, the Principal Dwelling unit under a condominium, cooperative or any other similar form of collective ownership.
10. A Detached Accessory Dwelling Unit shall have its own house number visible from the exterior of the unit.
11. At least one (1) off-street, on-site parking space shall be provided for exclusive use by occupants(s) of the Accessory Dwelling Unit or their invitees, unless the Accessory Dwelling Unit is within 0.5 miles of a commuter rail station or Bus Station
12. No additional curb cut shall be authorized for access to serve an Accessory Dwelling Unit.

~~13. There shall be no more than one swimming pool and one detached garage on any Lot with an Accessory Dwelling Unit.~~

~~14. Short term rentals as defined in G.L. c. 64G, §1 are prohibited in Accessory Dwelling Units.~~

~~15. An Accessory Dwelling Unit proposed in the Hamilton Historic District, which requires exterior alterations, shall meet all the applicable requirements of the Historic District Bylaw (Chapter XXXI) including review and approval by the Historic District Commission if necessary.~~

3.7 ACCESSORY APARTMENTS ON LARGE LOTS (Deleted STM Oct 13, 2018).

3.8 TEMPORARY MORATORIUM ON SALE AND DISTRIBUTION OF RECREATIONAL MARIJUANA (Added ATM April 1, 2017) *NO CHANGE*

3.8.1 PURPOSE. By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law, Chapter 334 of the Acts of 2016, regulation the cultivation, distribution, possession, and use of marijuana for recreational purposes. By act of the Legislature, Chapter 351 of the Acts of 2016 delays by six months the time within which the Cannabis Control Commission must issue marijuana establishment licenses to applicants.

Pursuant to G.L. c.94G § 3, a town may adopt by-laws that impose reasonable safeguards on the operation of marijuana establishments. Chapter 334 of the Acts of 2016 established a Cannabis Advisory Board to, *inter alia*, advise on the preparation of regulations. It is expected that the Cannabis Advisory Board's guidance will inform the Town in the regulation of recreational marijuana establishment and marijuana retailers.

Currently under the Zoning By-law, recreational marijuana establishments and marijuana retailers are not express permitted uses in Hamilton. The regulations on such establishments and retailers raise novel and complex legal, planning, and public safety issues. This temporary moratorium will provide Hamilton with time to study and promulgate a by-law and regulations to address such issues as well as to assess and incorporate state guidance and regulations consistent with sound local land use planning and zoning goals.

3.8.2 DEFINITIONS. For purposes of this moratorium, the definitions set forth in G.L. c. 94G § 1 shall apply.

3.8.3 TEMPORARY MORATORIUM. For the reasons set forth above and notwithstanding any other provision of the Zoning By-law, the Town hereby imposes a temporary moratorium on the development or use of land or structures for recreational marijuana establishments and marijuana retailers. The moratorium shall be in effect through June 30, 2018. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in Hamilton, consider the Cannabis Advisory Board regulations regarding recreational marijuana establishments and marijuana retailers and related uses, determine whether the Town shall restrict any or all licenses for recreational marijuana

8.3 INCLUSIONARY HOUSING. (Revised ATM April 5, 2025)

8.3.1 Purpose. The purpose of the Inclusionary Housing By-law is to:

1. Produce high-quality Affordable Housing Units **for Low- or Moderate-Income Households;**
2. Encourage more housing choices in Hamilton;
3. Promote geographic distribution of Affordable Housing Units throughout the Town and avoid over-concentration; and
4. Assist the Town in creating units **eligible, through means other than a Comprehensive Permit,** for the Chapter 40B Subsidized Housing Inventory **managed by the Executive Office of Housing and Livable Communities (EOHLC) or its successor.**

8.3.2 Applicability. This Section applies to all developments involving the creation of ten (10) or more Dwelling Units or ten (10) or more Lots for residential use.

8.3.3 Segmentation Prohibited. Developments may not be segmented to avoid compliance with this Section. Divisions of land that would cumulatively result in an increase by ten (10) or more residential **Lots or Dwelling units** above the number existing on any parcel or any contiguous parcels in common ownership in the **thirty-six (36)** months prior to any application for development under this Bylaw or the Subdivision Control Law are subject to this Section. For purposes of this Section, a division of land shall mean any division of land subject to G.L. c. 41, §§ 81K-81GG.

8.3.4 Mandatory Provision of Affordable Housing Units. In any development subject to this Section, the tenth dwelling unit and every seventh unit thereafter shall be an Affordable Housing Unit. Nothing in this Section shall preclude a developer from providing more Affordable Housing Units than are required hereunder.

For example, in the case of a proposed 50-unit development project subject to this Section, the project is required to provide six (6) Affordable Housing Units, namely one each for the 10th, 17th, 24th, 31st 38th and 45th units, for a total of six (6) Affordable Housing Units included in the total of 50 units in the development project.

8.3.5 Methods of Providing Affordable Housing Units. **In addition to providing on-site Affordable Housing Units,** the Planning Board may approve one (1) or more of the following methods, or any combination thereof, for the provision of Affordable Housing Units:

1. The Affordable Housing Units may be constructed or rehabilitated on a locus different from that of the development. The Planning Board may allow a developer of non-rental dwelling units to develop, construct or otherwise provide Affordable Housing Units reasonably equivalent to those required by this Section in an off-site location in the Town of Hamilton. All requirements that apply to on-site provision of Affordable Housing Units shall apply to provision of off-site Affordable Housing Units. In addition, the

location of the off-site Affordable Housing Units shall be approved by the Planning Board as an integral element of the development review and approval process.

2. A donation of land may be made in lieu of providing Affordable Housing Units. An applicant may offer, and the Planning Board may accept, subject to approval of the Board of Selectmen, donations of land in fee simple, on-or off-site, that the Planning Board determines are suitable for the construction of an equivalent number of Affordable Housing Units. Land donated for this purpose shall be subject to a restriction assuring its use for affordable housing. Prior to accepting land as satisfaction of the requirements of this Section, the Planning Board may require the applicant to submit an appraisal or other data relevant to the determination of suitability for an equivalent number of Affordable Housing Units.

3. An equivalent fee in lieu of units may be made. A fee in lieu of payment for each required unit shall be 3 times the Area Median Income (AMI) as determined by HUD (the US Department of Housing and Urban Development (HUD) for the Boston-Cambridge-Quincy, MA-NH Metro FMR Area that includes Hamilton and for the most recent available data year. AMI shall be used and the equivalent fee in lieu calculated in accordance with this Section regardless of unit size or the number of persons likely to occupy each required unit.

8.3.6 General Provisions. The Planning Board shall be charged with administering this Section and may promulgate Inclusionary Housing Rules and Regulations, including but not limited to submission requirements and procedures, application and review fees, minimum requirements for a marketing plan, and documentation required by the Town to qualify the Affordable Housing Units for listing on the Chapter 40B Subsidized Housing Inventory.

1. Affordable Housing Units shall be dispersed throughout the Building(s) in a development and shall be comparable to market housing units in terms of location, quality and character, room size, bedroom distribution, and external appearance.

2. The selection of qualified purchasers or qualified renters shall be carried out under a marketing plan approved by the EOHLC or its successor and shall comply with Local Initiative Program guidelines. The marketing plan must describe how the applicant will accommodate local preference requirements, if any, established by the Board of Selectmen.

3. Developers may sell Affordable Housing Units to the Town of Hamilton, the Hamilton Housing Authority, or to any non-profit housing development organization that serves the Town of Hamilton, in order that such entity may carry out the steps needed to market the Affordable Housing Units and manage the choice of buyers.

4. Developers shall be responsible for preparing applications and other documentation required by the EOHLC or its successor to assure that the Affordable Housing Units are eligible for listing on the Chapter 40B Subsidized Housing Inventory.

8.3.7 Timing of Construction. Unless a different schedule is approved by the Planning Board, Affordable Housing Units shall be provided in proportion to the development of market-rate units, but in no event shall the construction of Affordable Housing Units, the payment of fees in lieu of constructing Affordable Housing Units, or the provision of off-site Affordable Housing Units be delayed beyond the schedule below. Fractions shall be rounded to the nearest whole number.

% Building Permits Issued for Market Rate Units	% Affordable Units (Building Permits, Fees, Off-Site Units, or Land, as Applicable)
Up to 29%	None required
30%	At least 10%
50%	At least 30%
70%	At least 50%
85%	At least 70%
90%	100%

8.3.8 Certificate of Occupancy. A Certificate of Occupancy for an Affordable Housing Unit shall not be issued until the applicant submits evidence to the Building Commissioner that an Affordable Housing Restriction or a regulatory agreement for the project has been approved by the Planning Board.

8.3.9 Preservation of Affordability; Restrictions on Resale. An Affordable Housing Unit created in accordance with this Section shall be subject to an Affordable Housing Restriction or regulatory agreement that contains limitations on use, resale and rents. The Affordable Housing Restriction or regulatory agreement shall meet the requirements of the Town and the Local Initiative Program, and shall be in force for the maximum period allowed by law.

1. The affordable housing restriction or regulatory agreement shall be enforceable under the applicable provisions of G.L. c. 184, as amended.
2. The Planning Board shall require that the applicant comply with the mandatory provision of Affordable Housing Units and accompanying restrictions on affordability, including the execution of the Affordable Housing Restriction or regulatory agreement.
3. All documents necessary to ensure compliance with this Section shall be subject to the review and approval of the Planning Board and, as applicable, Town Counsel. Such documents shall be executed prior to and as a condition of the issuance of any Certificate of Occupancy.

4. An Affordable Housing Unit approved under this bylaw shall be deed restricted as Affordable Housing Unit(s) in perpetuity or for so long as allowed by law.

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, property values in the same or adjoining districts, and employment taking into account any proposed mitigation.

10.5.3 Application. The SPGA may adopt additional rules relative to the issuance of special permits and shall file a copy with the Town Clerk. The rules shall prescribe a size, form, contents, style, and number of copies of plans and specifications and the procedure for submission and approval of such permits. The application shall be subject to any general or specific rules contained in this By-law and subject to any appropriate conditions, safeguards and limitations imposed by the SPGA. A special permit shall be issued only following public hearing held within sixty-five (65) days after filing of an application with the Town Clerk, who shall transmit a copy thereof to the SPGA forthwith.

10.5.4 Conditions. The SPGA may impose additional conditions and limitations as it may deem necessary.

10.5.5 Regulations. The SPGA may adopt rules and regulations for the administration of this Section.

10.5.6 Fees. The SPGA may adopt reasonable administrative fees and technical review fees for applications for special permits.

10.5.7 Lapse. Except as otherwise expressly provided in this By-law, special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within twenty-four (24) months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

10.6 SITE PLAN REVIEW (Revised ATM April 5, 2025).

10.6.1 Purpose. Site Plan Review is intended to allow the Town to review an application by a property owner, or the legal representative of the property owner, and impose reasonable conditions on development, allowed as of right or by Special Permit, which by its nature or location has the potential for significant impacts on traffic circulation, public safety, public utilities, the environment, and neighborhood character and appearance.

1. Pursuant to Section 10.4 of the Zoning Bylaw, the Planning Board shall hear and decide applications for Site Plan Approval and effectuate the purposes of this bylaw by providing for consistent submissions of thorough data for each proposal for Planning Board review; and for input by Town boards as specified below, in terms of specific criteria; and for issuance of a Site Plan Decision setting forth terms and conditions, if any, that are necessary to achieve the purpose of Site Plan Review, consistent with Town Bylaws and Regulations.
2. The purpose is to provide a mechanism and a process for fitting the proposed development to neighborhood character, scale, and infrastructure, and to reasonably protect the Town and abutting property owners from potential negative impacts.
3. The purpose is served by establishing an exemption for small modifications and improvements from some of the requirements of this Section, and to coordinate Site Plan Review with other required review of Special Permits.

10.6.2 Site Restrictions. A Site Plan Review application shall not be acted upon unless the applicant demonstrates compliance with the following Bylaws and Regulations, if applicable:

1. Article XVII of the General Bylaw, General Wetlands Protection/Conservation Bylaw, and associated Regulations;
2. Article XXIX of the General Bylaw, Stormwater Management, and associated Regulations;
3. The Groundwater Overlay Protection District;
4. The Flood Plain Overlay District; and
5. Board of Health approval for the use of an on-site sewage disposal system.

Compliance may be addressed as a condition of approval.

10.6.3 Pre-Application Conference. A Pre-Application Conference is encouraged prior to the submission of a Site Plan Review application.

1. Types of Applications for which a Pre-Application Conference is encouraged:
 - a. Expansion projects of non-residential or multi-family buildings which increase the gross floor area by 1,000 square feet or more;
 - b. All new non-residential or multi-family structures larger than 350 square feet in size;
 - c. Exterior site improvements on non-residential or multi-family properties exceeding 2,000 square feet in area; or
 - d. Communication towers and telecommunication antenna facilities or small wireless facilities.
2. Purpose of the Pre-Application Conference: The purpose of this conference is to familiarize the Planning Board with the basic concept of the proposed plan and to provide a venue for both the applicant and the Planning Board to discuss the project in advance of a formal Site Plan Review application. The Pre-Application Conference is further

designed to acquaint the applicant with the Site Plan Review Application process and any particular information the Board may request to aid the Board in its review of the application.

3. Minimum Pre-Application Conference Materials: The applicant is encouraged to provide the following materials to the Planning Board in advance of the Pre-Application Conference:

- a. A Pre-Application Conference application form; and
- b. A site plan, which may be conceptual, that is sufficiently clear to illustrate the nature of the proposed improvements and the general existing conditions of the site, including the bounds of the property, topography, and existing structures. The applicant, where applicable, also should identify, delineate, and address through project design the protection of areas for conservation, including regulated areas such as wetlands, riverfront areas, and floodplains, and unprotected areas and features such as steep slopes, mature woodlands, farmland, meadows, wildlife habitats/ corridors, and existing historic, cultural, or recreation resources. The Planning Board may suggest methods for resolving potential challenges in the design and layout of the proposed development and identify the site's important natural, historic, and recreational features and connections as well as areas the Town would prefer to see preserved as open space. Applicants are encouraged to schedule a Pre-Application Conference before expending significant sums on site engineering and application preparation.

4. Limits of the Review: Neither the applicant nor the Planning Board shall be bound by the discussions at the Pre-Application Conference. However, the Planning Board shall be entitled to make recommendations with respect to the materials presented to assist the applicant in preparing a formal application that will meet the development standards of the Town of Hamilton as expressed in the Zoning Bylaw and the Site Plan Regulations.

5. Participation of other Boards or Departments: The Planning Board may, at its discretion, invite other boards, commissions, or officials to participate in the Pre-Application Conference. Such bodies or officials may include, but shall not be limited to, the Board of Health, Building Commissioner, Conservation Commission, Select Board, Town Manager, Department of Public Works Director, Fire Chief, Police Chief, Historic District Commission, and Environmental Impact Committee.

6. Separation from Site Plan Review Application Process: The Planning Board shall schedule the Pre-Application Conference within 21 days of application submission. The Pre-Application Conference is a separate process from Site Plan Review and shall not be counted toward the review "time clock" as stipulated under Section 10.6.11.

DISAPPROVED BY AGO

10.6.4 Projects Requiring Approval. No Building Permit shall be ~~applied for or~~ issued for any construction or alteration subject to this Section, as specified below, until a site plan has been approved by the Planning Board as set forth herein. Except as exempted in the Bylaw, Site Plan Review shall be required for the following construction, alterations, and uses:

1. Any new construction or changes to an existing structure for the purpose of altering, expanding, or converting to either a business, office, industrial, or a multi-family residential type use, in any district;

2. Parking lots over five (5) spaces serving any of the above-listed types of buildings, schools, hospitals, nursing homes, long term care facility, life care facilities, children's camps, campgrounds, churches, multi-family structures for more than two (2) families, government buildings and structures, farm stands, and buildings in commercial, and/or office use;
3. Any industrial and scientific research use under Section 3.2 of the Zoning Bylaw;
4. Stables providing boarding and/or services for more than six (6) horses other than those owned by the resident(s) of the Lot on which the stable is located;
5. Greenhouses for commercial production of plants or produce;
6. Alterations which increase the commercial, industrial, institutional, or multi-family floor area within an existing building, and/or which change the number of separately leasable or saleable spaces within an existing building; and
7. Wind Energy Facilities in the Commercial Overlay District.

10.6.5 Projects Eligible for Abbreviated Site Plan Review. Proposed additions or alterations to existing buildings subject to Site Plan Review which would either add new floor area totaling less than ten (10) percent of the current ground floor area of the existing building, or which are estimated to cost less than ten (10) percent of the current one hundred (100) percent assessed valuation of the building are eligible for Abbreviated Site Plan Review. Applicants should consult with the Planning Director to confirm that an application is eligible for Abbreviated Site Plan Review prior to application submittal.

10.6.6 Projects Exempt from Site Plan Review. The following activities shall not require Site Plan Review or Abbreviated Site Plan Review:

1. Alterations unless the alterations increase the floor area within the building devoted to any of the uses listed in Section 10.6.4 and/or change the number of separately leasable or saleable spaces within the Building. Examples of exempt interior alterations are paneling, shelving, partitions other than those creating new commercial units, counters, flooring, and general interior decoration;
2. Repairs, repainting, residing, reroofing and window replacement unless the activity also increases floor area;
3. Replacement of parts of a partially damaged building that would normally require Site Plan Review with generally identical portions. Total replacement of such a destroyed building shall require Site Plan Review;
4. Demolition of a building or structure;
5. Change of tenant of commercial building unless there is also new construction triggering Site Plan Review;
6. Customary home occupations;
7. Townhouse or Multifamily housing developed under Sections 8.1 (OSFPD) or 8.2 (Senior Housing);
8. Uses permitted by Special Permit within the Commercial Overlay District; and
9. Entries B.1, B.3, and B.7 in the Table of Use Regulations shall require Site Plan Review under Section 10.7.

10.6.7 Site Plan Review Application Contents. The Planning Board shall be empowered to adopt and enforce Site Plan Review Regulations documenting the minimum application submission contents required for Site Plan Review and Abbreviated Site Plan Review processes. These Regulations shall be binding upon applicants unless waived by the Planning Board.

10.6.8 Site Plan Review and Abbreviated Site Plan Review Procedures. At the time of submission, the applicant shall file all required application materials with the Hamilton Planning Department and one copy of all application materials shall also be filed with the Hamilton Town Clerk. The application will not be considered legally submitted, for purposes of starting the review “clock,” as stipulated under Section 10.6.11, until it is complete, and all copies are submitted.

1. The Planning Department shall thereafter transmit the electronic application materials to the Building Commissioner, Department of Public Works, Town Manager, Select Board Chair, Board of Health, Conservation Commission, Police Department, Fire Department, and Environmental Impact Committee for comments. Additional physical copies of the application materials shall be retained by the Planning Department for review if requested by a board, commission, or official.

2. The above-listed boards, officials, and departments shall transmit their comments in writing to the Planning Board within thirty (30) days from the date of application. Failure to submit comments shall be deemed determinative that the affected party does not have comments to share on the application.

10.6.9 Design Review. The Planning Board, at its discretion, may request the Select Board to form a Design Review Committee and adopt Design Review Guidelines to assist the Planning Board in reviewing larger scale Site Plan Review applications. The Design Review Guidelines, if adopted by the Planning Department, shall identify the scale of projects which require Design Review. The Design Review Committee, if formed, shall be empowered to provide recommendations to the Planning Board concerning the site design and architecture of the proposed development.

10.6.10 Site Plan Standards. The following standards shall be considered in the review and evaluation of a site plan or abbreviated site plan:

1. The plan shall show compliance with Zoning Bylaw requirements for parking, signage, loading, landscaping, performance standards, dimensional requirements, and all other applicable requirements of this Bylaw;
2. The proposed project should be guided by and integrated into existing natural features of the site and should be complementary with the architecture in scale and detail in the surrounding area;
3. The plan shall provide landscaping and open spaces that are integrated with the proposed development from within and without, which provide screening and buffers as necessary and which maximize amenity, enjoyment and safety for customers, neighbors, and the general public;
4. The proposed project shall provide for safe and convenient vehicular and pedestrian movement within the site in relation to adjacent ways, and provide for

compliance with handicapped access requirements, and provide for access and egress by emergency vehicles;

5. The proposed project shall provide for location and screening of exposed storage areas, machinery, service areas, dumpsters, utility buildings and structures and other unsightly uses to maximize amenity for neighborhood. The Planning Board may require landscaping and/or fencing to provide needed buffers;

6. The proposed plan shall be consistent with the capacity of local infrastructure, such as water supply, utilities, drainage, and Streets, or shall provide for such improvements as necessary; and

7. Consistent with Section 10.6.2, the proposed plan shall provide for compliance with Board of Health, Conservation Commission, and other Town and State Regulations.

Where applicable, the approval may be made conditional upon Board of Health, Conservation Commission, Department of Public Works or other approvals, which shall be specifically referenced in the decision.

10.6.11 Site Plan Review and Abbreviated Hearings and Decisions. The Planning Board shall open a Public Hearing within sixty-five (65) days of the date of an application. The Planning Board shall provide notice as set forth in G.L. c. 40A, §. 11. The Planning Board shall file its written decision with the Town Clerk within ninety (90) days of the closing of the Public Hearing, unless the applicant specifically grants an extension of the review period in writing. Failure to file the decision within ninety (90) days of the closing of the Public Hearing shall constitute approval of the site plan by the Planning Board unless the applicant has granted an extension of the review period.

1. When proposed new construction or alteration is subject to both Site Plan Review and a Special Permit, the Planning Board shall conduct both processes simultaneously, using the time limits of the Special Permit process to cover both reviews.

10.6.12 Final Action. With respect to both Site Plan Review and Abbreviated Site Plan Review, the Planning Board, conducting the Site Plan Review and acting by a majority vote, shall take one (1) of the following final actions as evidenced by a written decision filed with the Town Clerk:

1. A written approval of the plan, with a determination that the proposal meets the criteria set forth in this Bylaw; or
2. A written denial of the application stating the reasons for such denial; or
3. A written approval subject to any conditions, modifications, and restrictions as the Planning Board may deem necessary, including phasing of construction and a performance guarantee for any public improvements.
4. The decision shall be filed with the Town Clerk.

10.6.13 Implementation of Site Plans. Construction under an approved site plan or abbreviated site plan shall begin within two (2) years of the date of the filing of the decision with

the Town Clerk, unless extension is granted by the Planning Board. Otherwise, approval shall lapse.

10.6.14 Appeal. The decision of the Planning Board may be appealed to a court of competent jurisdiction as set forth in G.L. c. 40A, §. 17.

10.7 SITE PLAN REVIEW FOR RELIGIOUS AND EDUCATIONAL USES AND CERTAIN CHILD CARE CENTERS. *No CHANGE*

10.7.1 Purpose. The purpose of this Section is to provide for site plan review of religious and educational uses and child care centers otherwise subject to G.L. c. 40A, s. 3.

10.7.2 Site Plan Review Required. Prior to the issuance of any building permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of uses B.1, B.3, and B.7 as set forth in the Table of Use Regulations shall require site plan approval from the Planning Board pursuant to this Section.

10.7.3 Scope of Site Plan Review. Under this Section, site plan review shall be limited to two (2) inquiries:

1. Whether the use qualifies for protection under G.L. c. 40A, s. 3; and, if so,
2. What reasonable regulations concerning the bulk and height of Structures and determining Yard sizes, lot area, setbacks, open space, parking and building coverage requirements, if any, should be imposed on the use.

10.7.4 Required Information. All applications for site plan review shall be in writing and provide, at a minimum, the following information:

1. Name and address of applicant person or entity;
2. Name and address of property owner;
3. Description of the proposed use and any documents necessary to establish threshold compliance with G.L. c. 40A, s. 3;
4. Reason that relief is requested from otherwise applicable zoning requirements; and
5. If necessary to reach a decision on the application, the Planning Board may request further information from the applicant consistent with G.L. c. 40A, s. 3, specifying in detail the information required.

10.7.5 Site Plan; Contents. In addition, the applicant shall submit a site plan with the following information:

9.1.11 Procedures for Issuance of Special Permits. The SPGA under this By-law shall be the Zoning Board of Appeals. A special permit may be granted if the Zoning Board of Appeals determines, in conjunction with the Board of Health, the Conservation Commission, the Planning Board and the DPW Superintendent that the intent of this Section, as well as its specific criteria are met. The Zoning Board of Appeals shall not grant a special permit under this Section unless the petitioner's application materials include, in the Zoning Board of Appeals' opinion, sufficiently detailed, definite and credible information to support positive findings in relation to the standards given in this Section. The Zoning Board of Appeals shall document the basis for any departures from the recommendations of the other Town boards or agencies in its decision. Upon receipt of the special permit application, the Zoning Board of Appeals shall transmit one (1) copy to the Board of Health, Conservation Commission, Planning Board and DPW Superintendent for their recommendations. Failure to respond in writing within thirty five (35) days shall indicate approval or no desire to comment by said Board or official. The necessary copies of the application shall be furnished by the applicant.

9.1.12 Special Permit Criteria. The Zoning Board of Appeals may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 10.5 of this By-law, and any regulations or guidelines adopted by the Zoning Board of Appeals. The proposed use must:

1. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the GPOD; and
2. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.

9.1.13 Enforcement. Written notice of any violations of this Section shall be given by the Building Commissioner to the responsible person as soon as possible after detection of a violation or continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the nature of the violation and may also identify the actions necessary to remove or remedy the violation, measures required for avoiding future violations and schedule of compliance. A copy of such notice shall be submitted to the Zoning Board of Appeals, Board of Health, Conservation Commission, Planning Board and DPW Superintendent and Water Department. The cost of containment, clean-up or other action for compliance shall be borne by the owner and operator of the premises.

9.2 FLOOD PLAIN OVERLAY DISTRICT (FPOD) (Revised ATM April 5, 2025).

9.2.1 Purpose. The purpose of the Floodplain Overlay District (FPOD) is:

1. To ensure public safety through reducing the threats to life and personal injury;
2. To eliminate new hazards to emergency response officials;

3. To prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
4. To avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5. To eliminate costs associated with the response and cleanup of flooding conditions; and
6. To reduce damage to public and private property resulting from flooding waters.

9.2.2 FPOD Boundaries. The FPOD is herein established as an overlay district. The District includes all special flood hazard areas within Hamilton designated as Zone A and AE on the Essex County Flood Insurance Rate Map (FIRM) dated July 8, 2025 issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 8, 2025. The FIRM and FIS report are incorporated herein by reference and are on file with the Hamilton Town Clerk, Conservation Commission, and the Planning and Building Departments.

9.2.3 Base Flood Elevation and Floodway Data.

1. *Floodway Data.* In Zones A and AE of FIRM, along watercourses that have not had a Regulatory Floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the Base Flood discharge.
2. *Base Flood Elevation Data.* Base Flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

9.2.4 Use Regulations. All Development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with the Massachusetts Wetlands Act (G.L. c. 131, s. 40) and with the following:

1. The section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 120.G "Flood Resistant Construction and Construction in Coastal Dunes");
2. The Wetlands Protection Regulations promulgated by the Massachusetts Department of Environmental Protection (DEP) (currently 310 CMR 10.00);

3. The Inland Wetlands Restriction Regulations promulgated by DEP (currently 310 CMR 13.00);
4. The Minimum Requirements for the Subsurface Disposal of Sanitary Sewage promulgated by the DEP (currently 310 CMR 15, Title 5); and
5. The Hamilton Board of Health Regulations, Chapter 6. Satisfactory evidence shall consist of any permit issued by the Board of Health for the project and/or a written statement from the Board of Health or its agent that no such permit is necessary for the project.

9.2.5 Other Requirements.

1. The Town of Hamilton requires a permit, including a building permit and/or a Storm Water Management Permit (if applicable) for all proposed construction or other development in the Flood Plain Overlay District, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.
2. The applicant is required to obtain all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must demonstrate that all necessary permits have been acquired
3. Any variances from the provisions and requirements of the above referenced State regulations may only be granted in accordance with the required variance procedures of these State regulations.
4. Within Zones AH and AO of the FIRM, adequate drainage paths must be provided around Structures on slopes to guide floodwaters around and away from proposed Structures.
5. In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM or Flood Boundary & Floodway Map, encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
6. All subdivision proposals must be designed to assure that such proposals minimize flood damage; all public utilities and facilities are located and constructed to minimize or

eliminate flood damage; and adequate drainage is provided to reduce exposure to flood hazards.

7. Existing contour intervals of site and elevations of existing structures must be included on the development plan proposal.

8. There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Director of Public Works, and Building Commissioner for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

9. In A and AE Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone’s regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

10. In A Zones, in the absence of FEMA BFE data and floodway data, the Building Department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A and as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

9.2.6 Permitted Uses. The following uses of low flood damage potential and causing no obstructions to flood flows are permitted provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.;
2. Forestry and nursery uses;
3. Outdoor recreational uses, including fishing, boating, and play areas;
4. Conservation of water, plants, wildlife;
5. Wildlife management areas, foot, bicycle, and/or horse paths;
6. Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises; and
7. Buildings lawfully existing prior to the adoption of these provisions.

9.2.7 Designation of Community Flood Plain Administrator. The Town hereby designates the position of *Planning Director* to be the Community Flood Plain Administrator.

9.2.8 Notification of Watercourse Alteration. In a riverine situation, the **Community Flood Plain Administrator** shall notify the following of any alteration or relocation of a watercourse:

1. Adjacent Communities, especially upstream and downstream;
2. Bordering States, if affected;
3. NFIP State Coordinator, Massachusetts Department of Conservation and Recreation; and
4. NFIP Program Specialist Federal Emergency Management Agency, Region I.

9.2.9 Requirement to submit new technical data. If the Town acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

NFIP State Coordinator Massachusetts, Department of Conservation and Recreation; and
NFIP Program Specialist Federal Emergency Management Agency

9.2.10 Variances to building code floodplain standards. The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that: (i) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and (ii) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

9.2.11. Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP). A variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if:

- 1.) Good and sufficient cause and exceptional non-financial hardship exist;
- 2.) The variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
- 3) The variance is the minimum action necessary to afford relief.

9.2.12. Abrogation and greater restriction section. The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

9.2.13. Disclaimer of liability. The degree of flood protection required by this bylaw [ordinance] is considered reasonable but does not imply total flood protection.

9.2.14. Severability. If any section, provision or portion of this bylaw [ordinance] is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.

9.3 CONSERVANCY DISTRICT. (Deleted STM 2018)

9.4 ESTATE OVERLAY DISTRICT (EOD).

9.4.1 Purpose. The purpose of the Estate Overlay District (“EOD”) is:

1. To allow for the preservation of the buildings and land of large estate properties while allowing for appropriate development which has a positive net fiscal benefit to the Town and is an alternative to the subdivision of an estate property;
2. To allow for the efficient use of such land in harmony with the natural features of the district while preserving open space for conservation, agricultural, or recreational use, and providing appropriate public access to open space;
3. To protect natural features that are important to the character of the town, including public vistas of fields, lakes, and rivers from town roads as well as the existing non-vehicular connections through trails and pathways; and
4. To protect Hamilton’s rural and agricultural New England character and provide for its continued uses by permitting a mix of commercial and residential development in a manner which is in harmony with Hamilton’s historic development patterns.

9.4.2 Overview. The Estate Overlay District By-law is a special district overlaying the R-1a, R-1b and RA districts. The EOD has two (2) distinct subsections:

1. Part A - An Estate House Adaptive Reuse Permit, which allows for new commercial uses as well as currently allowed and expanded residential uses in existing Estate Houses; and
2. Part B - An Estate House Adaptive Reuse and New Floor Area Construction for Commercial Use Permit, which allows for new commercial and expanded residential uses in the existing Estate House and new construction to create space for commercial use in an addition or in an associated Building.

Both Part A and Part B are allowed by special permit. An applicant must apply for Part A first and choose to file a separate special permit application for Part B after an occupancy permit has been issued for Part A.