

## Chapter 180: ZONING

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as Ch. 20 of the Code of the Town of Agawam. Amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. 82.

Fees — See Ch. 103.

Fire prevention — See Ch. 106.

Subdivision of land — See Ch. 159.

Water and sewers — See Ch. 175.

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## ARTICLE I General Provisions

### § 180-1. Purpose.

For the purpose of promoting the health, safety, convenience, morals and welfare of its inhabitants, the town, under the authority granted by MGL c. 40A, § 1 to 22 inclusive, does hereby enact this chapter, to be hereafter known and designated as the "Zoning Ordinance" of the town. Further purposes of this chapter are to lessen congestion in the streets, to secure safety from fire, panic and other danger, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements and to increase the amenities of the town.

### § 180-2. Definitions and word usage.

- A. The singular number shall include the plural and the plural the singular; the word "lot" includes "plot," the word "building" includes "structure," the word "occupied" includes "designed, arranged or intended to be occupied" and the word "used" includes "designed, arranged or intended to be used."
- B. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

ACCESSORY BUILDING — A subordinate building, including a garage, the use of which is incidental to the main or principal use permitted in the district.

ALTERATION — A change in or addition to a structure.

AMUSEMENT PARK — A commercially operated park with a predominance of outdoor games and activities for entertainment, including shows or riding devices, games of skill or chance, or any combination of shows, riding devices, water slides, miniature golf, batting cages or any combination of several enterprises, such as revolving wheels, merry-go-rounds, giant swings, panoramas, musical and theatrical entertainments, or riding devices, whether carried on, engaged in or conducted as one enterprise or by several concessionaires, and whether an admission fee is charged for admission to all such shows for entertainments, or a separate fee for admission is charged for each amusement. **[Added 2-20-2001 by TOR-2001-1]**

APARTMENT HOUSE — A building of fire-resisting construction as defined in this section arranged and having accommodations for five or more families with separate or joint entrances, services or facilities; "apartment house" shall include garden-type apartments and all similar residences.

ATTACHED — Connected to or united with.

**ATTIC** — The space between the ceiling of the top story of a building and its roof which is not used for living, sleeping or eating quarters.

**BUILDING** — A combination of any materials, whether portable or fixed, having a roof to form a structure for the shelter of persons, animals or property. The word "building" shall be construed, where the context requires, as though followed by the words "or part or parts thereof." A porch or an attached garage, greenhouse or similar structure is to be considered as part of a building when considering the requirements of setbacks and side or rear yards.

**BUOYANT MATERIAL** — A material which displaces an amount of water equal to its weight; capable of floating.

**BUSINESS** — The transacting or carrying on of a trade or commercial enterprise with a view to profit or for livelihood.

**CEMETERY** — A place or area of land set apart for the burial of the dead, operated, managed and controlled under the provisions of MGL, Tercentenary Edition, C. 114, or a burial place under the care and supervision of the Town or other public authority.

**CORNER LOT** — A lot bounded on two sides by intersecting streets.

**CREMATORY** — A building containing a furnace designed and intended to be used for cremating the dead and owned and controlled by a cemetery corporation or crematory corporation duly organized under the laws of the state.

**DETACHED** — Separate from.

**DWELLING** — A building used exclusively as a residence for one or more families.

**FAMILY** — A person or a group of persons of immediate kindred who live together as a single housekeeping unit under one head.

**FIRE-RESISTING CONSTRUCTION** — A building having exterior walls of solid masonry or incombustible material and a roof covering of fire-resisting materials.

**FLOOD or FLOODING** — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

**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 more than one foot.

**FLOODWAY FRINGE** — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in a given year that is located outside of the floodway.

**GARAGE** — Any building wherein is kept or stored one or more motor vehicles, including among others a public or private garage, motor vehicle repair shop or paint shop, service station, lubritorium or any building used for similar purposes.

**GLAZED ENCLOSURE** — The enclosure of a porch for protection from the weather by a framework built in conformity with the rest of the house in which not less than 1/2 of the wall area is glass.

**HALF STORY** — The space between the ceiling of the top story of a building and the roof where the area and height are sufficient for sleeping and living quarters.

**HEIGHT** — In reference to a building, the vertical distance between the highest point of the roof and the average grade of land immediately surrounding the building.

**HOSPITAL** — An institution where only sick and disabled persons are given medical, surgical

or convalescent care.

**HOTEL and MOTEL** — A building operated by a duly licensed innholder where lodging is furnished or food is served to transient or permanent guests which has a public dining room and a general kitchen.

**JUNK** — Articles such as old iron, brass, copper, tin, lead or other base metals, cordage, old bags and rags, wastepaper, paper clippings, scraps, clips, rubber, glass, empty bottles, empty cans and all other articles discarded and no longer used as a manufactured article composed of any one or more of the materials mentioned but which may be converted into some other product by means of some manufacturing process.

**LODGING HOUSE** — A residence where lodgings are let to five or more persons not within the second degree of kindred to the person conducting the house and which does not contain a public dining room or cooking facilities in any rented sleeping room.

**LOT** — An area of land in one ownership, with definite boundaries, used or available for use as the site of a principal building and its accessory buildings.

**OFF-STREET PARKING SPACE** — A space of 144 square feet or more within a structure or in the open for the parking of a motor vehicle on any land owned, rented or leased for such purposes.

**ORDINARY HIGH-WATER MARK** — The highest point on the bank of a floodway or floodplain at which the water level has been for a sufficient period of time to leave a definite mark.

**PRINCIPAL BUILDING** — The main or most important building on a lot. Attached structures such as garages, greenhouses and similar units are to be considered as part of the "principal building."

**PROFESSIONAL ENGINEER** — A person employed in a practice of engineering as defined in MGL, Tercentenary Edition, C. 112, § 81D.

**REAR LOT LINE** — The lot line opposite the street line, except that, in the case of a corner lot, the rear lot line shall be the line opposite the street line on which the building is numbered or would be numbered.

**REAR YARD** — The required unoccupied space or area within the rear lot line and the part of the principal building nearest such rear lot line.

**RESTAURANT, DRIVE-IN AND DRIVE-THROUGH** — A restaurant which provides convenient vehicular access and may provide service to customers while in their vehicles. **[Added 3-21-1994 by TOR-94-1]**

**REST HOME, NURSING HOME or CONVALESCENT HOME** — An establishment for the recuperation or treatment of invalid or convalescent persons.

**RETAIL SHOPPING CENTER** — A group of commercial establishments planned, constructed, and managed as a unified entity under common ownership and management with customer and employee parking provided on-site, provision for goods delivery separated from customer access, and aesthetic considerations. Commercial establishments allowed in retail shopping centers shall not include, as a principal or accessory use, motor vehicle services, such as new or used motor vehicle sales, "freestanding tire, brake and muffler shops, automobile repair shops, gasoline stations or any accessory uses or accessory buildings. Retail shopping centers as defined herein which comprise five acres or more shall be granted only by special permit. The special permit granting authority shall be the Agawam City Council. **[Added 2-6-2006 by TOR-2005-12]**

**SANITARIUM** — An institution for the recuperation or treatment of persons suffering from physical or mental disorders.

**SCHOOL** — A building devoted to instruction or education in primary, elementary or high

school grades on a nonprofit basis.

**SECONDHAND MATERIAL** — Material articles or machinery which have been used or owned by some person other than the dealer offering the same for sale and which may again be used without alteration.

**SEMIDETACHED DWELLING** — A single-family residential unit that is joined on one side to another single-family residential unit having a party wall between the units.

**SERVICE** — The performance of any act for the benefit of another with a view to profit or for a livelihood.

**SETBACK** — The minimum required unoccupied space or area between the street line of which the building is numbered or would be numbered and the part of the building nearest such street line, such unoccupied space or area extending the entire width or distance across the lot.

**SIDE LOT LINE** — The line dividing one lot from another.

**SIDE YARD** — The required unoccupied space or area within the lot between the side lot line and parts of the building nearest such side lot line. In the case of a corner lot, one of the side yards shall be the unoccupied space or area between the street line of the side street and the parts of the building nearest to such street line.

**STORAGE CAPACITY OF A FLOODPLAIN** — The volume of space above an area of floodplain that can be occupied by floodwater of a given stage at a given time, regardless of whether the water is moving.

**STORY** — The horizontal portion through a building between floor and ceiling. The word "story" shall not include the portion of the basement or cellar of a building above grade or an attic as defined in this section.

**STREET** — A way, whether public or private, set aside for the passage of persons, animals or vehicles and including streets, avenues, boulevards, parkways, roads, alleys, lanes and viaducts.

**STREET LINE** — The dividing line between a street and a lot and, in the case of a public way, the street line established by the public authority laying out such way upon which the lot abuts.

**STRUCTURE** — A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework or retaining wall. The word "structure" shall be construed, where the context allows, as though followed by the words "or part or parts thereof."

**SUBDIVISION** — The division of a lot, tract or parcel of land into two or more lots, sites or divisions of land in such a manner as to require provision for a street for the purpose, whether immediate or future, of sale or building development. The word "subdivision" shall include "resubdivision" in relating to the processes of subdividing or to land already subdivided, when appropriate to the context.

**SUBSTANTIAL IMPROVEMENT IN THE FLOODPLAIN** — Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the assessed value of the structure either before the improvement is started or, if the structure has been damaged and is being restored, before the damage occurred. Substantial improvement is started when the first alteration of any structural part of the building commences. **[Amended 5-20-2002 by TOR-2002-15]**

**TRAILER** — Any so-called automobile trailer, mobile home or trailer coach, including any portable structure, means of conveyance or vehicle so designed or constructed, altered or converted in any manner as to permit occupancy thereof for dwelling or sleeping purposes.

**VEHICLE** — Anything in or on which a person or thing is or may be carried, or any moving

support or container for the conveyance of bulky objects. Editor's Note: The former definition of "wireless communication facilities," added 10-20-1997 by TOR-97-10, was repealed 3-2-1998 by TOR-97-13. For current provisions, see Article XIV, Personal Wireless Service Facilities and Towers.

### **§ 180-3. Districts enumerated; Building Zone Map.**

- A. For the purpose of this chapter, the Town shall be divided into 10 classes of districts as follows:

- Residence A-1 Districts
- Residence A-2 Districts
- Residence A-3 Districts
- Residence A-4 Districts
- Residence B Districts
- Agriculture Districts
- Business A Districts
- Business B Districts
- Industrial District A
- Industrial District B

- B. The boundaries of each district area hereby established as shown on the building zone map entitled "Building Zone Map, Town of Agawam, Massachusetts," Agawam Planning Board, scale one inch equals 400 feet, which is hereby declared to be a part of this chapter. Such shall be hereinafter referred to as the Building Zone Map. Editor's Note: The Building Zone Map is on file in the office of the Building Department.

### **§ 180-4. Filing of plans.**

Unless otherwise ordered by the Inspector of Buildings, all applications for building permits under the provisions of the Building Code Editor's Note: See Ch. 82, Building Construction. of the Town shall be accompanied by plans in duplicate. Such plans shall be drawn to scale, shall show the actual dimensions, radii and angles of the lot to be built upon, the exact size and location on the lot of the main building and accessory buildings to be erected and such other information as may be amended. One copy of the plans filed by the applicant shall be returned to him when approved by the Inspector of Buildings.

### **§ 180-5. Validity of existing building permits.**

Any building permit issued prior to a notice of a hearing on the question of the enactment of this chapter shall be valid, provided that the construction work thereunder is commenced within six months after its issuance.

### **§ 180-6. Certificate of occupancy.**

- A. Hereafter no land shall be occupied or used and no building or structure which is erected or altered or in which the type of use is changed shall be occupied or used, in whole or in part, for any purpose until a certificate of occupancy is issued by the Inspector of Buildings stating that the building, structure or use complies with the provisions of this chapter. No such certificate shall be issued unless the building or structure and its uses, as well as the uses of all the premises, are in conformity with the provisions of this chapter.

- B. A certificate of occupancy shall be required for any of the following:
  - (1) Any occupancy and use of a building hereinafter erected or altered.
  - (2) Any change in use of an existing building or structure or premises to a different use.
  - (3) Any change in use of a nonconforming use.
- C. Upon completion or alteration of any building or structure and prior to the use of any such building, structure or premises, a certificate of occupancy shall be applied for on a form furnished by the Inspector of Buildings. Such application shall be acted upon within two days after the filing thereof.

**§ 180-7. Nonconforming uses.**

- A. A nonconforming use is the use of a building, structure or land lawfully occupied at the time of the enactment of this chapter or of a prior ordinance applicable thereto, but which does not conform to the requirements after the adoption of this chapter or to this chapter as amended in the district in which it is located.
- B. A building, structure or land which at the time of the enactment of this chapter is being put to a nonconforming use may be:
  - (1) Continued in that use except as provided in Subsection D of this section.
  - (2) Altered or enlarged in that use, but only after the granting of a permit thereof by the Board of Appeals.
  - (3) Changed to a more restricted use, provided that, when so changed, it shall not be returned to the less restricted use.
  - (4) Rebuilt or restored and again used as previously, in case of a building destroyed or damaged by fire, explosion or other casualty, provided that not more than 75% of the building or structure exclusive of foundations has been so damaged or destroyed, except that the Board of Appeals may order a permit issued in any case of such loss. Rebuilding or restoration, when permitted, shall be commenced within six months after such catastrophe or disaster and continuously carried to completion.
- C. When a nonconforming use is discontinued as evidenced by lack of use or vacancy for a continuous period of 12 months or by the substitution of a more restricted use or of a conforming use, such nonconforming use shall not thereafter be reestablished, and all future uses shall be in conformity with the provisions of this chapter.
- D. This section shall apply to any change of use and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration or for its use for the same purpose to a substantially greater extent.

**§ 180-8. Supplementary regulations.**

- A. Cornices. Cornices may extend not more than three feet over into any required front, side or rear yards.
- B. Fences or walls. Fence heights shall not exceed four feet on the setback portion of any lot perimeter and shall not exceed 6 1/2 feet in height on the remainder of the lot perimeter. On a lot which is adjacent to a higher zone classification, the fence heights shall conform to the higher classification.
- C. Unsafe buildings. This chapter shall not be considered as preventing the strengthening or the

restoration to a safe condition of any building or wall declared unsafe by the Inspector of Buildings.

- D. Minimum open spaces. No lot shall be reduced in size or area so that any required yard, court or open space will be smaller than is prescribed by this chapter for the district in which it is located.
- E. Location of automobile services. Public garages, automobile repair shops, greasing stations, storage battery service stations, gasoline filling stations or any of their appurtenances or accessory uses shall hereafter be erected or placed at least 25 feet from any residence or agricultural district, unless the spaces so used are entirely enclosed in masonry or concrete walls having fixed steel sash wire glass and having roofs without openings, except skylights with metal frames glazed with wire glass. Driveways and parking areas shall not have entrances or exits for motor vehicles within 100 feet, measured along the street line, of property on which there is a school, library, church, playground or institution for the sick, blind or feeble or for children under 16 years of age.
- F. Vision clearance. On any corner lot vision clearance shall be provided in the following manner:
  - (1) On a corner lot in any Business A and Business B District the side line shall be a minimum of 10 feet from the side street and the parking of vehicles in this side area is prohibited.
  - (2) A triangular area free from obstruction shall be provided in which nothing shall be erected or maintained between a point 2 1/2 feet above the street grade and a point eight feet above the street grade and measuring at least 10 feet back from the point of intersection on each of such streets.
- G. Removal of topsoil, sand and gravel.
  - (1) Unless otherwise provided in this section, there shall be no removal from the premises in any district of any sod, loam, clay, sand, gravel or quarried stone except as surplus material resulting from the construction of a building on the premises or the installation of a structure on the premises for which a permit has been issued.
  - (2) The Board of Appeals may grant a permit in any district for the removal of sod or loam from any area, provided that no less than four inches of topsoil or loam remains, and provided further that the entire area disturbed is seeded with a suitable cover crop or is put to cultivation.
  - (3) The Board of Appeals, after public hearing, may permit the removal of sand, gravel or clay in any district under the following conditions:
    - (a) The applicant shall submit a plan showing existing grades in the area from which the above material is to be removed, together with finished grades at the conclusion of the operation.
    - (b) The plan shall provide for proper drainage of the area of the operation during and after completion, and no bank shall exceed a slope of one foot of vertical rise in 1 1/2 feet of horizontal distance except in ledge rock. No removal shall take place within 20 feet of a property line, except that, where the grade from a property line rises towards the lot where removal is to take place, material lying above the grade at the property line may be removed.
    - (c) At the conclusion of the operation or of any substantial portion thereof, the whole area where removal takes place shall be covered with not less than four inches of topsoil and seeded with a suitable cover crop, except where ledge rock is exposed.
    - (d) Before a permit is granted under this section, the applicant, if required by the Board of Appeals, shall post a bond with the Town Treasurer in an amount

approved by the Board of Appeals as sufficient to guarantee conformity with the provisions of the permit issued hereunder.

- H. Animal hospitals, kennels and runs. Kennel runs or accessory buildings and the raising of fur-bearing animals on land zoned as agricultural is allowed only after a hearing by the Board of Appeals. This land parcel must be five acres or more in area, with the following additional requirements:
  - (1) The setback shall be 500 feet from the street line.
  - (2) The side lot line shall be 200 feet.
  - (3) The rear yard setback shall be 200 feet.
- I. Measurement of setbacks. To make provision for future fifty-foot roads, in the case of lots fronting on streets less than 50 feet in width, the required front yard setback shall be measured from a point 25 feet from the existing center of the roadway.
- J. Swimming pools in residential districts. No swimming pool shall be constructed within any required front yard, nor within 10 feet from any side or rear lot line. Below-ground swimming pools having a depth of two feet shall be surrounded by a protective fence not less than four feet high. Any opening in such fence shall be protected by a gate equipped with a secure locking device.
- K. Keeping of horses and ponies. Notwithstanding the permitted uses contained in the individual zoning district and sections of this chapter, the keeping of horses and ponies shall be permitted only in Agricultural, Residence A-2, Industrial A and B and Business A and B Districts, subject to the following requirements and regulations:
  - (1) Acreage. Three-fourths acre (32,670 square feet) shall be required for one horse or pony; 1/2 acre (21,780 square feet) shall be required for each additional equine. Foals under six months shall not be counted.
  - (2) Fences must be adequate to contain the animal within the property boundary.
  - (3) Barn location and setback requirements shall be as specified in the present Building Code *Editor's Note: See Ch. 82, Building Construction.* for outbuildings. *Editor's Note: TOR-97-10, adopted 10-20-1997, added provisions for a moratorium on commercial wireless communications facilities to immediately follow this subsection. Said provisions were subsequently repealed 3-2-1998 by TOR-97-13. For current provisions on wireless communications facilities, see Article XIV, Personal Wireless Service Facilities and Towers.*

#### **§ 180-9. Repetitive petitions before Board of Appeals.**

No appeal or petition under MGL c. 40A, § 15(3), as amended, for a variance from the terms of this chapter with respect to a particular plot of land and no application under MGL c. 40A, § 20 for a special exception to the terms of this chapter which has been unfavorably acted upon by the Board of Appeals shall be considered on its merits by such Board within two years after the date of such unfavorable action except with the consent of all the members of the Planning Board.

#### **§ 180-10. Repetitive petitions before Town Council.**

No proposed ordinance or amendment making a change in this chapter which has been unfavorably acted upon by the Town Council shall be considered on its merits by the Town Council within two years after the date of such unfavorable action unless adoption of such proposed ordinance or amendment is recommended in the final report of the Planning Board as required by MGL c. 40A, § 6, as amended.

**§ 180-11. Special use permit exceptions and special permits. [Amended 12-5-1988 by TOR-88-19; 1-19-1993 by TOR-92-17]**

- A. Authority and rules. The Board of Appeals by virtue of the authority vested in it by statute may, after public notice and hearing, in appropriate cases and subject to appropriate conditions and safeguards grant a special use permit exception to the terms of the Zoning Ordinance in harmony with the general purpose and intent of this chapter. The special permit granting authority may adopt and from time to time amend rules and regulations relative to the issuance of such permits and shall file a copy of said rules and regulations in the office of the Town Clerk.
- B. Hearing, notice and decision.
- (1) The special permit granting authority shall hold a public hearing within 65 days after the filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the Town Clerk by the applicant.
  - (2) The special permit granting authority shall require notice be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the hearing, and by posting such notice in a conspicuous place in the Town Hall. Notice shall be sent by mail, postage prepaid, to the petitioner, abutters and owners of land within 300 feet of the property line as they appear on the most recent applicable tax list, including those in another city or Town and the Planning Boards of all abutting cities and towns. Such notice shall be prepared, published, posted and mailed by the Board of Appeals.
  - (3) The special permit granting authority shall act within 90 days following the public hearing. Failure to take final action upon an application for a special permit within said 90 days shall be deemed a grant of the permit applied for.
  - (4) Upon granting of a special permit, a copy shall be issued to the owner and the applicant, if other than the owner of the property, certified by the special permit granting authority. No special permit shall take effect until a copy of the decision certified by the Town Clerk that 20 days have elapsed and no appeal has been filed, or if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds wherein the land is located.
- C. Duration. A special permit granted by the special permit granting authority shall lapse if a substantial use thereof has not commenced within two years, or in the case of construction, if construction has not begun within said two years. Exception may be made for good cause by the special permit granting authority.
- D. Special consideration. Special permits shall be issued by the special permit granting authority for uses, whether or not on the same parcel as activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production where the special permit granting authority finds that the proposed accessory use does not substantially derogate from the public good.
- E. Planning Board report. The Planning Board shall transmit a report to the special permit granting authority on each special permit application. The Planning Board shall be notified at least 14 days prior to the public hearing on such a special permit. However, the special permit granting authority may act in the absence of a report from the Planning Board after this fourteen-day period.
- F. Zoning Officer report. The Zoning Officer shall transmit a report to the special permit granting authority on each special permit application. The Zoning Officer shall be notified at least 14 days prior to the public hearing on such a special permit. However, the special permit granting authority may act in the absence of a report from the Zoning Officer after this fourteen-day period.

G. Standards for reviewing.

- (1) The Board of Appeals shall not approve any such application for a special use permit unless it finds in its judgment all of the following conditions are met:
  - (a) The specific site is an appropriate location for such a use, building, structure or services.
  - (b) The use as developed will not adversely affect the health, safety or property value of the neighborhood.
  - (c) There will be no nuisance or potential hazard to vehicle or pedestrian safety.
  - (d) Adequate and appropriate facilities and controls will be provided for the proper and safe operation of the proposed use or service.
- (2) The special use exception may be granted for a specific use that is not considered so objectionable or obnoxious that the proposed use would be against the public interest or detrimental or injurious to the character of the neighborhood.

H. Conditions attached to special permit approvals. In approving a special permit, the special permit granting authority may attach such conditions and safeguards as are deemed necessary to protect the neighborhood, such as, but not limited to, the following:

- (1) Requirement of front, side or rear yards greater than the minimum required by this chapter.
- (2) Requirement of screening of parking areas or other parts of the premises from adjoining premises or from the street by walls, fences, planting or other devices.
- (3) Modification of the exterior features or appearance of the structure.
- (4) Limitation of the size, number of occupants, method or time of operation or extent of facilities.
- (5) Regulation of number, design and location of access drives or other traffic features.

I. Effect of denial. If the special permit granting authority after said hearing denies the use applied for, no further application for the same use will be entertained by the Board of Appeals for a period of two years from the date of said denial.

**§ 180-12. Special permit for animal hospital.**

A special permit may be granted for an animal hospital, but only in Business A and Business B Districts and with the additional requirements that animal hospitals shall be separate buildings in themselves and that no animals shall be kept out of the building in cages, runs, kennels or yards. A special permit may be granted subject to any other conditions and safeguards as are prescribed by the Board of Appeals.

**§ 180-13. Site plans. [Added 5-7-1990 by TOR-90-26]**

- A. Site plans prepared and approved in accordance with this section shall be required to assist the Inspector of Buildings in the review of certain applications for building permits and to assure compliance with all applicable requirements of this chapter.
- B. A site plan shall be required and shall be submitted in each of the following situations:
  - (1) Any proposed residential, business, industrial, institutional or other use of a new or renovated structure or of a parcel of land, or any change in any such use, structure or parcel, except for one-family detached dwellings and duplexes on separate lots.
  - (2) Any nonresidential use of a one-family dwelling.

- (3) Any use requiring a special permit from the Board of Appeals. For this section, residences which are to be used solely for residential purposes are exempt. **[Amended 1-21-2003 by TOR-2002-8]**
- (4) Any major change in any condition or feature which is not in conformance with any feature of a previously approved site plan. Changes to parking and/or curb cuts will always necessitate site plan review.

C. Procedure.

- (1) An applicant for site plan review under this section shall file with the Building Department 10 copies each of an application and a site plan. The site plan shall be prepared by an engineer, architect or landscape architect unless otherwise specified by the Planning Board.
- (2) The Inspector of Buildings shall, within five days of receipt, transmit to the Planning Board 10 copies of the application and site plan.
- (3) All site plans shall be prepared to scale on standard sheets of 24 inches by 36 inches to show with reasonable accuracy the following information, in addition to that required in § 180-4:
  - (a) A title block, containing the street address, applicant's name and address, date, scale and the name of the preparer of the plan.
  - (b) A site layout at a scale of no smaller than one inch equals 50 feet.
  - (c) Topography of the site and adjacent lands.
  - (d) Provision for the handling of vehicular traffic flow. All curb cuts must be clearly defined with widths and radii noted on the plan. Radii shall meet Town standards. Parking lot and site traffic flow must be clearly noted with signs or other methods if it is to be maintained as one-way.
  - (e) Parking areas and loading areas.
  - (f) Drainage. The plan must be submitted to the Department of Public Works for input prior to Planning Board review.
  - (g) All public utilities (sewer, water, gas, electric).
  - (h) Landscaping. All landscaped areas are to be designated on the plan. These areas are to specify species type and size.
  - (i) Sign location only.
  - (j) Exterior lighting.
  - (k) Rendering or elevations, including all mechanical facility support items originating from or terminating on the building exterior, or both.
  - (l) The location and characteristics of any proposed screening, fencing or other buffers.
  - (m) The location of any wetlands, streams, drainage swales and areas subject to flooding.
- (4) Within 21 days of receipt, the Planning Board shall hold a public meeting. The Planning Board shall within 35 days of receipt approve the site plan, approve it with modifications or return it for changes or additional information. When changes have been made or additional information provided, the above-specified time limits will apply. The Planning Board can in certain cases extend the review period if done so in writing and for good reason; however, the review period shall not exceed 90 days. A report containing the findings of the Board shall be submitted to the Inspector of Buildings for consideration in

issuing a building permit.

- (5) Any application for a building permit requiring site plan approval shall not be deemed complete until such site plan is submitted.
- (6) Any decision pursuant to a site plan review shall be subject to the right of appeal to the Board of Appeals.

#### **§ 180-14. Changes in Building Zone Map.**

No zone as indicated on the Building Zone Map which is a part of this chapter shall be changed until after the Planning Board has held a public hearing thereon after due notice given and has submitted a final report with the recommendations to the town.

#### **§ 180-15. Enforcement.**

The Inspector of Buildings shall enforce the provision of this chapter or any amendment thereof. He shall refuse to grant a permit for the construction, addition, alteration or change of use of any building, structure or premises if such proposed construction, addition, alteration or change of use would be in violation of any of the provisions of this chapter, as amended. State and Town officers shall refuse any permit or license for a new use of a building, structure or land which would be in violation of this chapter or amendment thereof.

#### **§ 180-16. Violations and penalties. [Amended 5-25-1989 by TOR-89-2]**

Any person, partnership, trust, association or corporation violating any provision of this chapter, any condition under which any permit is issued or any decision rendered by the Board of Appeals shall be fined not more than \$100 nor less than \$25 for each offense. Each day that such violation exists shall constitute a separate offense under this section.

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## **ARTICLE II Residence A-1 Districts**

#### **§ 180-17. Permitted uses.**

In a Residence A-1 District as indicated by the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one or more of the following:

- A. A one-family dwelling for one housekeeping unit only.
- B. The office of a physician, surgeon, dentist or lawyer residing on the premises. No display, sign or other advertising device shall be permitted except an interior illuminated, reflective or nonilluminated professional nameplate having an area of not more than 144 square inches.
- C. Town buildings, county, state and federal buildings, playgrounds and parks and such accessory buildings as may be ordered by the Board of Public Officers or Town officials having charge of the land upon which such accessory buildings are or will be erected.
- D. Real estate signs having an area of not more than six square feet advertising the sale, rental or lease of the premises on which they are maintained.
- E. Cemeteries adjacent to or in extension of existing cemeteries and crematories, provided that such crematories are situated within cemeteries.

- F. Accessory uses customarily incident to any use or building permitted by this section, provided that such use of buildings shall not be offensive or dangerous to life by reason of health or fire, and provided further that such accessory use shall not include any activity conducted for gain. No advertising device, whether illuminated or otherwise, shall be permitted in connection with such accessory uses or building.
- G. The keeping and raising of poultry, livestock and pigeons, whether raised for the table or other purposes, or other like objectionable uses are prohibited.
- H. Private garages, provided that no business, service or industry is conducted therefrom or therein. Not more than one motor vehicle for each 5,000 square feet of lot area or fraction thereof up to a limit of five vehicles per lot shall be permitted. Space for motor vehicles shall not be used, leased or rented for commercial vehicles. No commercial vehicles shall be parked on a lot in the open. These space regulations shall apply to vehicles regularly left on the lot, whether housed or in the open. The presence of more than one unregistered vehicle is prohibited. *Editor's Note: See Ch. 172, Vehicles, Unregistered.*

**§ 180-18. Height regulations.**

A residence building shall not exceed 2 1/2 stories or more than 35 feet in height. Town buildings shall not exceed 50 feet in height. The height provisions shall not apply to chimneys or flag or radio poles. An accessory building shall not exceed 1 1/2 stories or 25 feet in height.

**§ 180-19. Setback requirements.**

- A. No part of any building shall be placed within 35 feet of any street line, and on a corner lot, except as otherwise provided in this section, no part of any building shall be created or altered so as to be less than 35 feet from any street line.
- B. No part of any garage or other accessory building situated within 65 feet of any street line shall extend within 15 feet of any lot line intersecting such street which serves as a side lot line located in any residence district or within 15 feet of any street line. An accessory building shall be placed at least five feet from any side lot line.
- C. On a corner lot, no part of any building shall be erected or altered so as to be less than 30 feet from any street line.
- D. When a dwelling or its attached garage is to be erected on a lot in a Residence A-1 District adjoining a business or industrial district, the setback from the street line on which it faces need not exceed 30 feet.
- E. Existing open porches which are 30 feet or more from the street line may be enclosed on one or more sides with glazed enclosures.

**§ 180-20. Yards.**

- A. Side yards. There shall be a side yard between a principal building and each side lot line which shall be 15 feet wide in its least dimension. Detached garages or accessory buildings shall be placed at least five feet from a side lot line if located more than 65 feet from a street line.
- B. Rear yards.
  - (1) There shall be a rear yard on every lot between the principal building and the rear lot line. It shall be not less than 25 feet deep in its least dimension.
  - (2) A one-story accessory building shall be placed at least five feet from the rear lot line. A

one-and-one-half-story accessory building shall be placed at least 10 feet from the rear lot line.

**§ 180-21. Lot size.**

No lot shall have a frontage of less than 125 feet on a street or an area of less than 17,000 square feet.

**§ 180-22. Lot coverage.**

No principal building shall be erected or altered so as to cover more than 30% of the area of the lot on which it is located.

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**ARTICLE III Residence A-2 Districts**

**§ 180-23. Permitted uses.**

In any Residence A-2 District as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one or more of the following:

- A. Any use permitted in a Residence A-1 District.
- B. A one-family detached dwelling for one housekeeping unit only; provided, however, that the Board of Appeals, upon an appeal from an order or decision made by the Inspector of Buildings and if it deems such action wise and if it shall appear to the Board that such action will tend to preserve the standard and character of the neighborhood, may authorize a variation in the use of a one-family dwelling existing at the time of the adoption of this Article so that such dwelling may be altered and improved and facilities added for a second housekeeping unit. In all such cases the petitioner, as a condition precedent to the privilege herein granted, shall present adequate plans setting forth the changes and improvements to be made and shall have secured the written consent and approval of at least three of the following property owners:
  - (1) The owner of the lot on either side of the petitioner's property.
  - (2) The owner of the lot adjacent in the rear of the petitioner's property.
  - (3) The owner of the lot directly across the street therefrom. Where the petitioner is the owner of a lot on either side, in the rear or across from the property for which a variation is requested, such lot shall be omitted, in which case written consent and approval shall be secured from the owner of the property next to that owned by the petitioner. In case there are two or more lots adjacent in the rear or sides of the petitioner's property, the owner of the lot which abuts the greater length on the petitioner's property shall be deemed the owner of the lot adjacent to the petitioner's property, as used in this section.

In the case of an appeal for a variation involving a dwelling situation on a corner lot or so located that the obtaining of the exact numerical assents of the owner above enumerated is unreasonable or impossible, the Board of Appeals may grant the variation, provided that the consents of the property owners are obtained substantially in accordance with the principals herein set forth as may be determined by the Board of Appeals. The power to authorize such variation of the use of existing dwellings shall be within the sound discretion of the Board of Appeals, and no variation in use shall be granted unless it shall be clear that the relief requested will

not be detrimental to the best interests of the vicinity and will be in harmony with the general purpose and intent of this chapter. Each case shall be considered on its own merits, and no case shall raise a presumption in favor of any other case. No decision of the Board of Appeals shall be considered as changing or affecting the zoning of any Residence A-2 District.

- C. The office or studio of a dentist, artist, architect, professional engineer or teacher of scholastic subjects residing on the premises or a beauty parlor wherein one of the residents is the sole operator. The space occupied by such office, studio or parlor shall not exceed 20% of the total floor area of the dwelling, exclusive of the basement. No display, sign or other advertising device shall be permitted except an interior illuminated, reflective or nonilluminated professional nameplate having an area of not more than 144 square inches. The studios or offices of dancing or music teachers, photographers, masseurs, veterinarians, riding schools and other similar businesslike pursuits are prohibited.
- D. The renting of rooms and the furnishing of table board to not more than four resident persons in a dwelling occupied as a private residence. No display, sign or other advertising device, illuminated or otherwise, shall be visible from the street except a nonilluminated announcement sign having an area of not more than 144 square inches.
- E. Schools for academic purposes only and community center buildings, except dancing or bowling and like activities, provided that there is no display or advertising visible from the street, other than as permitted in Subsection C of this section.
- F. Colleges, public libraries or museums, churches or other places of worship, parish houses and Sunday school buildings.
- G. Private kindergartens and day nurseries conducted in otherwise permitted buildings in this district, provided that not more than 25% of the floor area of the building, exclusive of the basement, is used primarily for this purpose.
- H. Bus passenger stations or shelters, not including repair service or garaging.
- I. Telephone exchange buildings.
- J. Accessory buildings and uses customarily incident to any use permitted in this section, provided that such use shall not be offensive or dangerous to life by reason of health or fire, and provided further that such accessory use shall not include any activity conducted for gain. No advertising device, whether illuminated or otherwise, shall be permitted, except that an interior illuminated, reflective or nonilluminated announcement sign having an area of not more than 144 square inches may be displayed.
- K. The keeping and raising of poultry, livestock and pigeons, whether for the table or other purposes, or other like objectionable uses are prohibited.
- L. Private garages, provided that no business, service or industry is conducted therefrom or therein. Not more than one motor vehicle for each 5,000 square feet of lot area or fraction thereof, nor more than five motor vehicles, not more than one of which may be unregistered, shall in any case be kept on the premises. Only one such vehicle may be a commercial vehicle and of not more than 3/4 ton's weight of capacity. Space for motor vehicles shall not be leased or rented for commercial vehicles. No commercial vehicles shall be parked on a lot in the open. These space regulations shall apply to vehicles regularly left on the lot, whether housed or in the open.
- M. Not more than one house trailer may be kept on the premises. The trailer shall not be used for living quarters while so located. Space shall not be leased or rented for trailers.
- N. Uses outlined in § 180-37B and C, when the line separating a Residence A-2 District from an Agricultural District runs through a property not being used for agricultural purposes so that the future use of the whole property for agricultural purposes would be prohibited.

**§ 180-24. Height regulations.**

- A. A residence building shall not exceed 2 1/2 stories or more than 35 feet in height. Other buildings such as schools, telephone exchanges and community center buildings and other uses permitted in § 180-23E shall not exceed 50 feet in height. Chimneys, steeples and flag or radio poles are exempt from the height provision of this section.
- B. Accessory buildings or structures, including private garages, shall not exceed 17 feet in height for a one-story building. A one-and-one-half-story accessory building shall not exceed 25 feet in height.

**§ 180-25. Setback requirements.**

- A. No part of any building shall be placed within 30 feet of any street line.
- B. No part of any garage or other accessory building situated within 65 feet of any street line shall extend within 15 feet of any lot line intersecting such street which serves as a side lot line located in any residence district or within 15 feet of any street line.
- C. On a corner lot, no part of any building shall be erected or altered so as to be less than 25 feet from any street line.
- D. Open porches which are 20 feet or more from the street line may be enclosed on one or more sides with glass enclosures.

**§ 180-26. Yards.**

- A. Side yards.
  - (1) There shall be a side yard between a principal building and any side lot line which shall be 15 feet wide in its least dimension.
  - (2) Detached garages or accessory buildings shall be placed at least five feet from the side lot line if located more than 65 feet from a street line.
- B. Rear yards.
  - (1) There shall be a rear yard on every lot between the principal building and the rear lot line. It shall be 20 feet deep in its least dimension.
  - (2) One-story accessory buildings shall be placed at least five feet from the rear lot line, and one-and-one-half-story accessory buildings shall be placed at least 10 feet from the rear lot line.

**§ 180-27. Lot size.**

No lot shall have a frontage of less than 110 feet nor an area of less than 15,000 square feet.

**§ 180-28. Lot coverage.**

No principal building shall be erected or altered so as to cover more than 40% of the area of the lot on which it is located.

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**ARTICLE IV Residence A-3 Districts**

**§ 180-29. Use restrictions.**

In a Residence A-3 District as indicated by the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except for apartment houses or garden-type apartments and accessory uses incident thereto and subject to the following restrictions:

- A. Subdivision control will not apply except insofar as it applies to road construction, surface drainage and utilities.
- B. The project shall be located on a lot containing not less than two acres and contain not more than eight family dwelling units per acre of lot area. The building coverage shall not exceed 40% of the lot area. The minimum lot frontage on a street shall be 150 feet.
- C. No building shall be located nearer than 40 feet to a street line or other property line.
- D. There shall be a landscaped strip of not less than 15 feet in width appropriately planted with lawn, trees and shrubs adjacent and parallel to all property lines of the site.
- E. There shall be a landscaped foundation strip of not less than 10 feet in width between each building and any roadway, drive or street. Such strip shall contain a six-foot-wide grassed and planted area and four-foot-wide sidewalk adjacent to any roadway, drive or street within the project.
- F. No building shall be more than two stories in height, exclusive of the basement. The basement shall not contain any living quarters.
- G. The minimum distance between any two buildings on the same lot shall in no case be less than 40 feet.
- H. Floor area.
  - (1) No building shall contain more than eight family dwelling units, and no dwelling unit shall contain less than the following minimum floor areas:
    - (a) One-bedroom units: 400 square feet.
    - (b) Two-bedroom units: 600 square feet.
    - (c) Each additional room: 120 square feet.
  - (2) In computing floor area, only the space within the dwelling unit used exclusively for living purposes shall be considered. Halls, closets, stairways, bathrooms and lavatories are expressly excluded from this computation.
- I. All stairways are to be contained within the building structure proper.
- J. Each dwelling unit shall have access to not fewer than two egresses remote from each other and so arranged that to reach one egress it will not be necessary to pass through a common corridor or hallway which serves the other egress. The term "egress" is as defined in § 101.0 of the Department of Public Safety, Board of Standards, Building Code.
- K. Parking space shall be provided at the rate of two spaces for each family dwelling unit. Each space shall contain a minimum of 200 square feet and shall be located at least 25 feet from any principal building, except that if garage parking is to be located within the building, it must comply with the rules and regulations governing construction of garages contained in Form FPR-4 of the Massachusetts Department of Public Safety, Board of Fire Prevention Regulations.
- L. There shall be no provision for parking on roadways, drives or streets.
- M. The balance of the lot not used for buildings, roadways, streets or parking areas shall be suitably planted and landscaped and maintained.

- N. Space contained in apartment units or garden-type apartment units shall not be used, rented or leased for any commercial or business uses.
- O. The plans for any such apartment or garden-type apartment shall be submitted to the Planning Board for its approval as to site layout, provisions for handling vehicular traffic flow, parking area and landscaping before a building permit is issued.

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## **ARTICLE V Residence A-4 Districts**

### **§ 180-30. Use restrictions.**

In a Residence A-4 District as indicated by the Building Zone Map, no building or other structure shall be erected, altered or used, and no land shall be used or occupied for any purpose except for an elderly housing development, constructed by and under the jurisdiction of the Agawam Housing Authority, and the accessory uses incident thereto, including an administration and recreational building, and subject to the following restrictions:

- A. The development shall be located on a lot containing not less than seven acres and containing not more than 16 family dwelling units per acre of lot area. Not more than 12 dwelling units may be constructed in each building.
- B. Subdivision control will not apply except insofar as it applies to road construction, surface drainage and utilities.
- C. No building shall be located nearer than 40 feet to the property line. There shall be a landscaped strip of not less than 15 feet in width appropriately planted with lawn, trees and shrubs adjacent and parallel to all property lines of the site.
- D. No building shall be more than two stories in height, exclusive of the basement. The basement shall not contain any living quarters.
- E. All stairways are to be contained within the building structure proper.
- F. Each dwelling unit shall have access to not fewer than two egresses remote from each other and so arranged that to reach one egress it will not be necessary to pass through a common corridor or hallway which serves other egresses. The term "egress" is as defined in § 101.0 of the Department of Public Safety, Board of Standards, Building Code.
- G. Parking space shall be provided at the rate of one space for each family dwelling unit. Each space shall contain a minimum of 200 square feet. If garage parking is to be located within the building, it must comply with the rules and regulations concerning construction of garages contained in Form FPR-4 of the Massachusetts Department of Public Safety, Board of Fire Prevention Regulations.
- H. The balance of the lot not used for buildings, roadways, drives, streets or parking area shall be suitably planted and landscaped and maintained.
- I. The plans for any such development shall be submitted to the Planning Board for its approval as to site layout, provisions for handling vehicular traffic flow, parking area and landscaping before a building permit is issued.

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## **ARTICLE VI Residence B Districts**

### **§ 180-31. Permitted uses.**

In any Residence B District as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any other purpose except one or more of the following:

- A. Any use permitted in a Residence A-1 or A-2 District.
- B. A two-family dwelling for two housekeeping units. A semidetached dwelling for two families, provided that there shall not be more than one family in each half of such dwelling.
- C. Notwithstanding any other provision in the above paragraph, no building or other structure shall be erected, altered or used for residential purposes which shall accommodate or house more than four families. All four-family buildings or structures used for residential purposes shall be erected on a parcel of land containing not less than one acre in area and having not less than 150 feet of frontage on a street.
- D. Lodging houses, provided that there is no display, sign or other advertising device visible from the street, whether illuminated or otherwise, other than a sign having an area of not more than 144 square inches. A public restaurant or dining room shall be permitted as an accessory use in any part of such building, provided that the dining room and kitchen facilities do not occupy more than 75% of the first-floor area of such building.
- E. Clubs, lodges and social center buildings, except those whose chief activity is a gainful service or activity usually conducted as a business, including in such excepted uses dancing or bowling and like activities, provided that there is no display or advertising visible from the street other than that permitted in Subsection D of this section.
- F. Hospitals, sanitariums or charitable institutions, except those for contagious diseases, for the care of epileptics or drug or liquor patients, for correctional purposes or for the care of the insane or feebleminded.
- G. Private garages, provided that no business, service or industry is conducted therefrom or therein. Not more than one motor vehicle shall be kept for each 2,500 square feet of lot area, except that three vehicles may be kept, in any case, not more than one of which may be unregistered. Only one such vehicle may be a commercial vehicle of not more than 1 1/2 tons' weight of capacity. Space shall not be leased or rented for a commercial vehicle. No commercial vehicle shall be parked on a lot in the open. These space regulations shall apply to vehicles regularly left on the lot, whether housed or in the open.
- H. Not more than one house trailer for each resident family may be kept on the premises. The trailer shall not be used for living quarters while so located. Space shall not be rented or leased for trailers.

**§ 180-32. Height regulations.**

- A. A dwelling or lodging house shall not exceed 2 1/2 stories or 35 feet. Churches, schools, colleges, libraries, Town buildings, clubs, lodges, social center buildings, hospitals and such institutional buildings shall not exceed 50 feet in height. Chimneys, steeples and flag or radio poles are exempt from the height provisions.
- B. Accessory buildings or structures, including private garages, shall not exceed 17 feet in height for a one- or one-and-one-half-story building. A two-story accessory building shall not exceed 25 feet in height.

**§ 180-33. Setback requirements.**

- A. No part of any building or other structure shall be erected or altered so as to be nearer to the street line of any street on which it faces than the nearest building on either side thereof facing on the same street and within the same block and zoning district, but in no case need the required setback be greater than 30 feet.
- B. Where the alignment of a building is not controlled by the preceding subsection, no part of any building shall be placed within 20 feet of the street line.

- C. No part of any garage, stable or other accessory building situated within 65 feet of any street line shall extend within 15 feet of any lot line intersecting such street which serves as a side lot line located in any residence district or within 15 feet of any street line.
- D. On a corner lot, except as otherwise provided in this section, no part of any building shall be erected or altered so as to be less than 20 feet from any street line.
- E. Existing open porches which are 15 feet or more from the street line may be enclosed on one or more sides with glazed enclosures.

**§ 180-34. Yards.**

- A. Side yards. There shall be a side yard between a building and each side lot line. For a building of four stories or over 45 feet in height, it shall be not less than 25 feet in width in its least dimension; for a building of three stories or over 35 feet in height, it shall be not less than 20 feet wide in its least dimension; for one-, one-and-one-half-, two- or two-and-one-half-story buildings, the side yard shall be not less than 15 feet wide in its least dimension.
- B. Rear yards. There shall be a rear yard on every lot between the principal building and the rear lot line. It shall be 20 feet deep in its least dimension. One-story accessory buildings shall be placed at least five feet from the rear lot line, and one-and-one-half- or two-story accessory buildings shall be placed not less than 10 feet from the rear lot line.

**§ 180-35. Lot size.**

No lot shall have a frontage of less than 100 feet on a street or an area less than 12,000 square feet.

**§ 180-36. Lot coverage.**

No principal building shall be erected or altered so as to cover more than 40% of the area of the lot on which it is located.

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**ARTICLE VII Agricultural Districts**

**§ 180-37. Permitted uses.**

In any Agricultural District as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for a purpose except one or more of the following:

- A. Any use permitted in a Residence A-1 or A-2 District.
- B. Farms, dairies, nurseries, truck gardens, greenhouses and natural ice-harvesting activities and buildings or structures accessory thereto.
- C. Buildings or shelters for the sale of farm products, provided that a major portion of the products offered for sale at all times are raised on the premises and no advertising of products other than those raised on the premises shall be displayed.
- D. The processing of forests and wood lots by portable woodworking mills and machinery for processing wood cut on the premises, if approved by the Board of Appeals.
- E. Airports and landing strips and buildings or structures necessary thereto, if located west of

Suffield Street.

- F. Off-street parking for 24 hours or less for motor vehicles when the use is an accessory to an existing conforming amusement park containing at least three acres of land adjacent to agriculturally zoned land and by special permit. **[Added 2-20-2001 by TOR-2001-1]**

**§ 180-38. Height regulations.**

Buildings or structures permitted in this zone under § 180-37A shall not exceed the heights permitted in § 180-24 of this chapter. For other buildings permitted by this Article, the height limitation shall be 50 feet.

**§ 180-39. Setback requirements.**

- A. Buildings and shelters for the sale of farm products shall be at least 35 feet from the street line.
- B. Dwellings with or without attached garages shall be at least 35 feet from the street line. All other buildings of whatever description shall be at least 100 feet from the street line.

**§ 180-40. Yards.**

- A. Side yards. There shall be a side yard between any building and any side lot line. It shall comply with the side yard requirements of the nearest residence district measured in a direct or air line.
- B. Rear yards. For a residence, accessory building or other structure, the rear yard shall comply with the rear yard requirement of the nearest residence district measured in a direct or air line.

**§ 180-41. Lot size.**

No lot shall be used for residence purposes with a frontage of less than 120 feet on a street or an area of less than 20,000 square feet.

**§ 180-42. Lot coverage.**

There shall be no lot coverage regulations in this district.

**§ 180-43. Special use requirements.**

- A. Landscaped administrative offices, laboratories devoted to research, design or experimentation and processing and fabrication incidental thereto and appurtenant buildings consistent with and designed to promote and benefit the value and use of property in residential districts or in areas which are predominantly residential although partly lying in less restricted districts, provided that no materials or finished products shall be manufactured, processed or fabricated on such premises for sale except such as are incidental to such laboratory research, design or experimentation conducted on such premises.
- B. The special use established must be on plots having a minimum of 20 acres, must have a two-hundred-foot front yard and 100 yards along all other lot lines and must provide off-street parking for employees and visitors. Pointed masonry block and cinder block walls with struck joints will be permitted for rear and side walls of buildings. Brick masonry exterior walls, curtain walls of decorated colored aluminum, enameled colored steel, stainless steel walls

and glass walls are permitted for exterior uses. If the front yard is on an interior lot line, 200 feet of setback shall apply to this lot line. The only sign permitted must be in front of the building and subject to Planning Board approval. Traffic directional and parking signs must be not more than four feet high from the ground level. Not over 25% of the land shall be used for building purposes.

- C. Landscaped rest homes or convalescent homes, except those for contagious diseases, for the care of drug or liquor patients, for correctional purposes or for the care of the insane or feebleminded. Rest homes or convalescent homes must be on plots having a minimum of 10 acres, must have a one-hundred-foot front yard and fifty-foot yards along all other lot lines and must provide off-street parking for employees and visitors. Not over 25% of the land shall be used for building purposes.
- D. Nonprofit golf courses shall be permitted. Golf courses operated for profit shall be permitted with that portion of land covered by a clubhouse to be zoned Business A. All golf courses must be on plots having a minimum of 75 acres.
- E. To assure that special use structures shall be reasonably attractive in appearance, the builder or his representative shall submit to the Planning Board, in addition to other requirements, an architect's rendering or comparable illustration of the planned construction, including landscaping, prior to applying for a building permit. Unless such a drawing approved by the Planning Board is submitted to the Inspector of Buildings, no permit for a building shall be issued, nor shall an occupancy permit be granted, unless and until the finished structure conforms to the drawing submitted.
- F. Not more than one motor vehicle per 5,000 square feet of lot up to a limit of five motor vehicles shall be kept in accordance with Chapter 91 of the General Laws, only one of which can be an unregistered vehicle, exclusive of farm equipment.

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## **ARTICLE VIII Business A Districts**

### **§ 180-44. Permitted uses.**

In any Business A District as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one or more of the following:

- A. Any use permitted in a residence district or an Agricultural District.
- B. The major use of a building or structure in this district shall be to store and display goods for sale at retail on the premises or to furnish a service intended for residents of the immediate vicinity. Banks, hotels, dining establishments, halls and office buildings shall be considered as complying with such requirements.
- C. No building, structure or land shall be used in whole or in part for any fabricating, manufacturing, converting, altering, finishing or assembling.
- D. One-story public garages for storage or repair of not more than 50 cars. Body and fender work and the painting or selling of cars in or out of doors is prohibited. The storage of dismantled vehicles or vehicle parts out of doors is prohibited. The storage of complete units such as truck bodies, tailgates, road sanders, farm machinery, school buses and ambulances is permitted. An underground tank of not more than 1,000 gallons' capacity for drain oil is permitted. **[Amended 11-15-2004 by TOR-2004-17]**
- E. A gasoline filling station, which shall include self-service gasoline filling or service stations, provided that not more than 30,000 gallons of gasoline shall be stored on the premises. An enclosed lubritorium for not more than three motor vehicles shall be permitted. Only minor repairing of motor vehicles is permitted. **[Amended 12-2-2002 by TR-2002-53]**

- (1) For the public purpose to promote and protect the health, safety, and welfare of the residents of the Town of Agawam, to prevent and control fires, and to control traffic, it is deemed to be in the best interests of the Town of Agawam to regulate the number of gasoline filling stations within the Town of Agawam.
  - (2) For the purpose of licensing gasoline service stations under the provisions of Massachusetts General Laws Chapter 148 § 13, there shall be no more than 20 issued at any one time, and no license shall be issued for a gasoline filling station located within 200 feet of a residence, school or church.
- F. Open-air transient parking, after a public hearing by the Board of Appeals.
  - G. Cabins, if licensed under MGL C. 140, § 32A to 32E, inclusive.
  - H. Drive-in restaurants and drive-through restaurants, after a special permit by the Board of Appeals in conformance with § 180-11. At no time shall less than 50 parking spaces be provided on site. **[Added 3-21-1994 by TOR-94-1; amended 3-8-2000 by TOR-2000-1]**
    - (1) The parking or loading requirements set forth in this subsection may be reduced as part of the special permit by the Board of Appeals if the Board of Appeals finds that the reduction is not inconsistent with the requirements of the Zoning Bylaws of the Town of Agawam.
    - (2) If a reduction is allowed, a reserve area, to be maintained indefinitely as landscaped open space, must be required sufficient to adequately accommodate the difference between the parking spaces required (i.e., the sum of the parking spaces required for the separate used individually) and the parking spaces provided. The parking/site plan shall show (in dotted outline) the reserve area laid out in full compliance with any parking or loading requirements as set forth in said **Chapter 180**, including the required number of spaces. In no event shall the Board of Appeals reduce the parking or loading requirement below 30 spaces.
  - I. Drive-through service windows utilized by any business shall require a special permit from the Board of Appeals in conformance with § 180-11. **[Added 9-20-1997 by TOR-97-8]**
  - J. No more than four automatic amusement devices duly licensed in accordance with § 75-1 of the Code of the Town of Agawam. **[Added 9-7-2004 by TOR-2004-5]**

**§ 180-45. Height regulations.**

- A. A business building shall not exceed three stories or 45 feet in height. These provisions shall not apply to chimneys, flag or radio poles, water tanks or hose towers or required bulkheads or elevator penthouses. A residence building shall comply with the height requirements for Residence B Districts.
- B. Heights of other buildings and structures permitted in this zone under § 180-44A shall not exceed the height permitted in Residence B Districts.

**§ 180-46. Setbacks; yards; loading areas.**

- A. Setbacks shall be at least 35 feet.
- B. Side yards are not required for business buildings.
- C. Rear yards shall have a minimum of 25 feet.
- D. Space shall be provided for vehicle parking and for the loading and unloading of all materials, equipment and merchandise on the premises and entirely off the traveled way, with such additional space as may be necessary to provide free and easy access to that portion of the

buildings so as not to interfere with traffic on the public way. Loading and unloading platforms and doorways especially designed for loading and unloading goods are prohibited on the front of any building.

- E. A building devoted in whole or in part to residence or other purposes permitted in § 180-44A shall comply with the requirements prescribed for Residence B Districts. **[Amended 4-7-1986 by TOR-86-6]**

#### **§ 180-47. Lot coverage.**

- A. No business building shall be erected or altered so as to cover more than 50% of the area of the lot upon which it is located. **[Amended 4-7-1986 by TOR-86-6]**
- B. Notwithstanding any other provision of this section, no building or other structure shall be erected, altered or used for residential purposes which shall accommodate or house more than four families. All four-family buildings or structures used for residential purposes shall be erected on a parcel of land containing not less than one acre in area and having not less than 150 feet of frontage on a street.
- C. Not more than one unregistered motor vehicle shall be allowed on any parcel of land used as a gasoline filling station; provided, however, that any such gasoline filling station having an automobile dealer's permit shall be governed by the provisions of such permit.

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### **ARTICLE IX Business B Districts**

#### **§ 180-48. Permitted uses.**

In any Business B District as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one or more of the following:

- A. Except as otherwise provided in this Article, any use permitted in a Residence, Agricultural or Business A District.
- B. Residential buildings and appurtenant buildings such as garages, sheds, barns, etc., presently existing in Business B Districts may be added thereto, altered or rebuilt.
- C. In any Business B Districts as indicated on the Building Zone Map, no new building or other structure shall be erected for residential purposes unless the land so located in the Business B District is part of a subdivision plan duly recorded prior to the enactment of this section or unless individual building lots have been similarly recorded.
- D. Body and fender work and the painting of cars out of doors is prohibited. The storage of dismantled vehicles or vehicle parts out of doors is prohibited. The storage of complete units such as truck bodies, tailgates, road sanders, farm machinery, school buses and ambulances is permitted. The selling of motor vehicles in or out of doors is prohibited. **[Amended 11-15-2004 by TOR-2004-17]**
- E. Amusement parks, bowling alleys and roller skating rinks, or arcades containing six or more pinball or electronic games and/or automatic amusement devices with a special permit issued by the Board of Appeals. No more than five automatic amusement devices duly licensed in accordance with § 75-1 of the Code of the Town of Agawam. **[Amended 12-7-1981; 9-7-2004 by TOR-2004-7]**
- F. Wholesale sales and warehousing.
- G. Converting, fabricating, manufacturing, altering, finishing or assembling, provided that in no

case is a total of more than 20,000 square feet of floor space devoted to such use.

- H. Trucking terminals may be allowed only after a public hearing by the Board of Appeals.
- I. Retail shopping centers comprised of only one building, planned as a total entity with on-site common parking areas for customer and employee parking provided so as to comprise an efficient and architecturally integrated shopping area. **[Added 2-6-2006 by TOR-2005-12]**
  - (1) Allowed uses.
    - (a) Retail shopping centers may include department stores, variety stores, supermarkets, furniture stores, household appliance stores, home improvement stores, lawn equipment stores, gift shops, restaurants, including drive-in and drive-through restaurants, drugstores, barbershops, beauty shops, office supply stores, food stores, optical stores, clothing stores, financial institutions and banks (with or without drive-through windows), health clubs, movie theaters, doctors' offices, dentist offices and other professional offices open to the public, children's day-care and activity centers. Only one principal building per lot is allowed.
    - (b) These uses will not include, as a principal or accessory use, motor vehicle services, such as new or used motor vehicle sales, freestanding tire, brake and muffler shops, automobile repair shops, and gasoline stations. No accessory use or building is permitted under this zoning.
    - (c) Unless by special permit of the Agawam Town Council, temporary outside uses upon the parcel are prohibited, including but not limited to, circuses, festivals, tent sales, sidewalk sales, retail displays, vehicle displays.
  - (2) Retail shopping center requirements.
    - (a) Application procedures.
      - [1] Site plan. Site plans for any such retail shopping center shall be submitted to the Planning Board for its approval as to site layout, provisions for handling traffic flow, parking area, landscaping, traffic, and architectural characteristics before a building permit is issued. To assure that retail shopping centers shall be reasonably attractive in appearance, the developer or its representative shall submit to the Planning Board, in addition to the requirements set forth in § 180-13, an architect's rendering or comparable illustration of the planned construction, including landscaping, prior to applying for a building permit. The architectural concept will be required to fit the character of the community and be at the approval of the Planning Board prior to issuing a building permit. Unless such a drawing approved by the Planning Board is submitted to the Inspector of Buildings, no building permit shall be issued, nor shall an occupancy permit be granted unless and until the finished construction reasonably conforms to the drawing submitted.
      - [2] Special permit.
        - [a] No building permit shall be issued for, and no person shall undertake, any use or improvement for a retail shopping center unless an application for a special permit has been prepared for the proposed development in accordance with the requirements and § 180-11. For the purpose of this section, the special permit granting authority shall be the Agawam Town Council.

[b] No building permit shall be granted by the Inspector of Buildings until the Agawam Town Council has given its final approval that the development or any phase thereof and any associated off-site improvements conform to the approved application for a special permit under this section, including any conditions imposed by the Agawam Town Council. No temporary occupancy permits shall be granted.

(b) Parking. No space within the required front setback area may be used for parking unless approved by the Planning Board. An overall shared parking scheme is preferred and developed in such a way that conforms to parking space requirements for retail shopping centers as specified herein. In the overall shared parking scheme, the applicant shall specify how shared parking areas are to be owned, constructed, operated and maintained and provide the Planning Board with the proposed deeds, deed restrictions, association bylaws or other legal documents or mechanisms for ensuring the same. All parking lots shall be designed according to the following standards:

- [1] Minimum 4.5/1,000 overall parking ratio inclusive of all buildings (no unheated garden shop or seasonal retail or wholesale sales);
- [2] Minimum size for parking spaces shall be nine feet by 18 feet unless when using angled parking as specified in the Institute of Transportation Engineers, Traffic Engineering Handbook, Parking Class A.
- [3] Minimum width for drive aisles shall be:
  - [a] Twenty-four feet for two-way lanes with ninety-degree angle parking.
  - [b] Eighteen feet for one-way lanes with sixty-degree angle parking.
  - [c] Eighteen feet for one-way lanes with forty-five-degree angle parking.
- [4] With the exception of parking for the disabled, all other parking spaces shall be located at least 50 feet or greater from any building.
- [5] Pavement markings, signage and any other required traffic control devices within the site shall be specified according to the latest edition of the Manual on Uniform Traffic Control Devices (M.U.T.C.D.) standards. All roadway, stop line and traffic markings shall be of thermoplastic.
- [6] Pedestrian and handicapped access from the parking areas to the site sidewalks and entrances to all buildings shall be specified to provide safe access and internal circulation within the site.
- [7] No overnight parking of vehicles not related to the ongoing operation of the shopping center.

(c) Traffic impact report. A traffic impact report, indicating projected traffic flows to and from the project at its build-out, projected traffic flows and levels of service on nearby roadways in five years and at build-out of the development, current traffic flows, levels of service and accident records for said roadways, projected capacity, service level and safety problems anticipated in five years and at project build-out, proposed mitigation measures and other relevant information shall be submitted as part of the site plan application and presented to the Planning Board at a public meeting by a professional traffic engineer or transportation planner. The area to be included in the traffic impact study shall be determined by the Planning Board. The Planning Board may require traffic signals, traffic or turn lanes, sidewalks, bikeways or any other mitigation measures that it believes necessary to protect public safety and maintain proper traffic flow on roadways within or impacted by

the development.

- (d) Streets and drives. Streets and drives within the development shall be constructed in accordance with the Planning Board's subdivision regulations, except that the Planning Board may require additional sidewalks, traffic lanes, turn lanes, traffic signals, additional lane width based on truck traffic, additional pavement depth based on truck traffic or other items or increases in existing standards as needed or required. A minimum of two means of egress from a public way must be provided.
- (e) Buffers and greenspace. Retail shopping centers shall contain a minimum of 25% greenspace not including parking and/or interior roadways. A space of not less than 100 feet shall be maintained as an open space buffer with natural vegetation or landscaping along and adjacent to agriculturally and residentially zoned property lines. The buffer shall not be built on, have no structures to include barrier fencing, be paved or used for parking, dumpsters and/or storage, but may be utilized for stormwater management and greenspace only. All buffer areas shall be maintained and kept free of litter. Additional area, plantings, decorative fencing or other items may also be required by the Planning Board to protect adjacent property owners from adverse impacts or to protect the character of the neighborhood, including landscaped berms and/or fences along and adjacent to residentially zoned property lines.
- (f) Parking lot interior landscaping. Fifteen percent of the interior space of all parking lots shall be landscaped areas. All parking lot islands, connecting walkways through parking lots and driveways through or to parking lots shall be landscaped according to the following standards:
  - [1] Visibility. To avoid landscape material blocking driver sight distance at driveway-street intersections, no plant material greater than 24 inches in height shall be located within 15 feet of a curb cut.
  - [2] Landscape islands. In addition to any pedestrian refuge areas, each landscaped island shall include two, minimum two-and-five-tenths-inch caliper canopy deciduous trees, be of length greater than eight feet in its smallest dimension, include at least 80 square feet of ground area per tree to allow for root aeration, and have raised concrete curbs.
  - [3] Walkways and driveways. Connecting walkways through parking lots shall have two, minimum two-and-five-tenths-inch caliper canopy deciduous trees per 60 linear feet of such walkway planted in landscape areas within five feet of such walkway. Driveways through or to parking lots shall have two minimum two-and-five-tenths-inch caliper canopy deciduous trees per 60 linear feet of and along each side of such driveway, in landscape areas within five feet of such driveway.
  - [4] Parking bays shall extend no more than 20 parking spaces without an intervening tree, landscape island or landscape peninsula where landscaped end islands are provided. Where landscaped end islands for parking bays are not provided, an equivalent landscaped area must be provided internally within the parking lot.
  - [5] Adhere to all existing engineering regulations and requirements.
- (g) Lighting. Parking lot lighting shall be as unobtrusive as possible to provide safe circulation and protect people and property. Light sources shall be concealed and fully shielded and shall feature sharp cutoff capability so as to minimize up-light, spill-light, glare and unnecessary diffusion on adjacent property. Unique areas or neighborhoods within the Town may have additional design guidelines for lighting

as required by the Planning Board. Maximum on-site lighting levels shall not exceed 10 footcandles, except for loading and unloading platforms where the maximum lighting level shall be 20 footcandles. Lighting levels measured 20 feet beyond the property line of the development site (adjacent to residential uses or public rights-of-way) shall not exceed 0.1 footcandle as a direct result of the on-site lighting. Parking lots shall remain fully lit for one hour following the closing of the store or establishment for which the parking lot serves, and shall be lit by security lighting thereafter. All lighting level measurements shall be determined by mean footcandles over the designated lighted area. Maximum height on lot poles shall be 20 feet and the fixture shall be shielded to prevent excess spillage of light onto adjoining properties.

(h) Outdoor storage areas/mechanical equipment.

- [1] No areas for outdoor storage, trash collection or compaction, loading or other such uses shall be located within 100 feet of any public street, public sidewalk or internal pedestrian way, and in no event shall be visible from roadways (such areas will be screened from view, including the use of live plantings such as arborvitae). These enclosed areas for only the above purposes must be shielded by an opaque fence, or site-obscuring landscaping, either of which shall be not less than six feet.
- [2] Loading docks, truck parking, outdoor storage, utility meters, HVAC and other mechanical equipment, trash collection, trash compaction and other service functions shall be incorporated into the overall design theme of the building and the landscape so that the architectural design is continuous and uninterrupted by ladders, towers and equipment.
- [3] All rooftop mechanical equipment shall be screened.
- [4] No outside sales areas/yards are permitted at any time, which include any type of stationary or mobile vendor carts (i.e., food stands).
- [5] No temporary or fabric structures shall be used for outdoor storage.

(i) Building facade. All exterior building elevations that face public streets and/or customer parking areas shall be designed so that there are no large expanses of blank walls. This requirement can be met by employing the use of architectural features, including but not limited to the following, doors, windows, pilasters, columns, horizontal and vertical offsets, material and color variations, decorative cornices, awnings, dormers, pediments and canopies. At least 75% of the building facades shall have decorative block, glass, brick, or other decorative facing, or a combination thereof. Buildings are to have reasonably consistent architectural elements to provide continuity, while allowing individuality in architectural features to distinguish individual businesses. In order to assure conformance with this requirement, exterior building elevations must be reviewed and approved as a part of the overall final site plan process by the Planning Board.

(j) Noise. No outside loudspeaker or audio sound systems shall be installed or used other than for drive-through uses.

(k) Maintenance. All properties developed for commercial purposes, whether they are occupied or not, shall be regularly maintained by the owner of the property to the reasonable satisfaction of the Zoning Enforcement Officer, so that they are not allowed to fall into a state of disrepair or neglect; and they shall consistently present a neat and orderly appearance to the general public as well as adjacent and nearby tenants and property owners. Regular maintenance shall include at a minimum, mowing of lawns, general maintenance of landscaping beds, landscaping irrigation, trash and litter removal, removal of signs,

painting/maintenance of facades and signs, and proper snow removal.

(l) Other requirements.

- [1] Minimum size: five acres.
- [2] Maximum facility 100,000 square feet, overall single building size. The square footage of a mezzanine shall be included in the calculation of the total square footage.
- [3] Minimum frontage: 100 feet.
- [4] Front yard setback: 100 feet.
- [5] Rear yard setback: 100 feet.
- [6] Side yard setback: 100 feet.
- [7] Highway setback: 100 feet.
- [8] Maximum building coverage shall not exceed 35% of the lot area.
- [9] No building within the retail shopping center shall be greater than one story in height. Notwithstanding the foregoing, internal mezzanines (i.e., a low-ceilinged intermediate floor above the ground floor) shall be allowed.
- [10] Signage for individual businesses within retail shopping centers shall be allowed as provided by § 180-80. In addition to the signs permitted for the individual businesses, retail shopping centers are allowed one multifaced ground sign at each major street providing access to the property identifying the retail shopping center and any specific uses or occupancies within the shopping center. The maximum signage area for each individual business depicted on the retail shopping center ground sign shall not exceed 100 square feet per face for each individual business. The total maximum signage area for each face of the retail shopping center ground sign shall be limited as follows: a) If the sum of the building area for all individual businesses within the retail shopping center is less than 100,000 square feet, each face of the retail shopping center ground signage shall not exceed 200 square feet plus 20 square feet per each individual business listed; b) If the sum of the building area for all individual businesses within the retail shopping center exceeds 100,000 square feet, each face of the retail shopping center ground signage shall not exceed 350 square feet plus 35 square feet per each individual business listed. Ground signs shall not exceed 20 feet in height as measured from the top of the sign. Signage design shall fit the character of the community and be in communion with the architecture of the proposed retail complex as well the surrounding environment. Signage for this type of development requires the approval of the Planning Board. No scrolling, tethered or temporary signs are permitted. Signage per individual establishment shall not exceed 15% of the establishment's facade.

**§ 180-49. Height regulations. [Amended 6-6-2005 by TOR-2005-8]**

A business building shall not be erected or altered to a height in excess of three stories or more than 45 feet except as expressly provided herein. These provisions shall not apply to chimneys, flag or radio poles, water tanks, hose towers or required bulkheads or elevator penthouses. A residence building shall comply with the height provisions for Residence B Districts. Heights of other buildings or structures permitted in § 180-48A shall not exceed the heights permitted in Residence B Districts. Notwithstanding the foregoing, business structures may be erected or

altered by special permit to a height in excess of three stories or more than 45 feet when the business structure constitutes part of an amusement park.

**§ 180-50. Setbacks; yards; loading areas.**

- A. Setbacks and rear yards shall be at least 35 feet in their least dimension.
- B. Side yards requirements shall be a minimum of 10 feet, except adjacent to residential or agricultural zones, at which time it would be 15 feet. **[Amended 4-7-1986 by TOR-86-6]**
- C. Space shall be provided for vehicle parking and for the loading and unloading of all materials, equipment and merchandise on the premises and entirely off the traveled way, with such additional space as may be necessary to provide free and easy access to that portion of the building so as not to interfere with traffic on the public way. Loading and unloading are prohibited on the front of any building.
- D. A building devoted in whole or in part to residence uses shall comply with the requirements for setbacks, side yards and rear yards of the Resident B District.

**§ 180-51. Lot coverage. [Amended 4-7-1986 by TOR-86-6]**

No business building shall be erected or altered so as to cover more than 50% of the area of the lot on which it is located. A building devoted in whole or in part to residence or other permitted purposes in § 180-48A shall comply with the requirements of lot coverage in Residence B Districts.

**§ 180-52. Lot frontage. [Amended 4-7-1986 by TOR-86-6]**

No lot shall have a frontage of less than 100 feet on a street or an area less than 10,000 square feet.

**§ 180-53. Landscaping.**

To assure that structures in Business B Districts shall be reasonably attractive in appearances, the builder or his representative shall submit to the Planning Board, in addition to other requirements, an architect's rendering or comparable illustration of the planned construction, including landscaping, prior to applying for a building permit. Unless such a drawing approved by the Planning Board is submitted to the Inspector of Buildings, no permit for a business building shall be issued, nor shall an occupancy permit be granted, unless and until the finished structure conforms in appearance to the drawing submitted.

**§ 180-54. Lumberyards; residences; gasoline stations.**

- A. Secondhand lumberyards and secondhand buildings material yards are prohibited.
- B. No building or other structure shall be erected, altered or used for residential purposes which shall accommodate or house more than four families. All four-family buildings or structures used for residential purposes shall be erected on a parcel of land containing not less than one acre in area and having not less than 150 feet of frontage on a street.
- C. Not more than one unregistered motor vehicle shall be allowed on any parcel of land used as a gasoline filling station; provided, however, that any such gasoline filling station having an automobile dealer's permit shall be governed by the provisions of such permit.

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**ARTICLE X Industrial District A**

**§ 180-55. Permitted uses. [Amended 11-9-1994 by TOR-94-7 Editor's Note: This ordinance provided for the repeal of former Subsection A and the renumbering of former Subsections B and C to A and B, respectively. ]**

In any Industrial District A as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one of the following:

- A. Any business or agricultural use permitted in an Agricultural, Business A or Business B District.
- B. Any industrial purpose, except those contained in the following list, which may be allowed only after a public hearing before the Board of Appeals:
  - (1) Acetylene gas, cyanide compound or oxygen manufacture.
  - (2) Asphalt manufacture or refining.
  - (3) Chlorine or bleaching powder manufacture.
  - (4) Creosote manufacture.
  - (5) Distillation of coal or wood.
  - (6) Drop forge shop.
  - (7) Explosives, fireworks or ammunition manufacture.
  - (8) Fertilizer manufacture.
  - (9) Fumigation plants.
  - (10) Glue or size manufacture from fish or animal offal.
  - (11) Gypsum, cement, plaster or plaster of paris manufacture.
  - (12) Incineration or reduction of or dumping of offal, garbage or refuse on a commercial basis, except where controlled by the town.
  - (13) Junkyards, storage, scrapping of autos and parts and the salvage thereof.
  - (14) Linoleum manufacture.
  - (15) Match manufacture.
  - (16) Paint and lacquer manufacture.
  - (17) Petroleum refining and the bulk storage of petroleum products.
  - (18) Plastic manufacture.
  - (19) Rest homes.
  - (20) Rubber, natural or synthetic or gutta-percha manufactured from crude or scrap material.
  - (21) Secondhand lumberyards and secondhand material yards.
  - (22) Sewage disposal plant, except where controlled by the town.
  - (23) Soap, tallow, grease or lard manufacture.
  - (24) Slaughterhouse.
  - (25) Sulfurous, sulfuric, nitric or hydrochloric acid manufacture.
  - (26) Tannery.
  - (27) Tar or asphalt roofing manufacture.

- (28) Tar products manufacture.
- (29) Tire recapping or retreading.
- (30) Trucking terminals.
- (31) All other enterprises or uses commonly regarded as hazardous or offensive.

**§ 180-56. Height regulations.**

Industrial buildings shall not exceed two stories or 40 feet in height, except with approval of the Board of Appeals after a public hearing. These provisions shall not apply to required equipment appurtenant to industrial buildings, except that smokestacks, water tanks, grain elevators and the like are not permissible except after approval of the Board of Appeals after a public hearing.

**§ 180-57. Setbacks; yards. [Amended 4-7-1986 by TOR-86-6]**

- A. Setbacks shall be at least 40 feet wide in their least dimension.
- B. Side yard and rear yard requirement shall be a minimum of 25 feet. However, there shall be a side yard and a rear yard between a street and the parts of a building nearest to such street to be no less than 40 feet, but facilities shall be provided for loading and unloading all materials, equipment and merchandise on the premises and entirely off the traveled way.

**§ 180-58. Lot coverage. [Amended 4-7-1986 by TOR-86-6]**

No business or industrial building shall be erected or altered so as to cover more than 50% of the area of the lot on which it is located.

**§ 180-59. Lot size. [Added 4-7-1986 by TOR-86-6]**

No lot shall have a frontage of less than 100 feet on a street or an area of less than 40,000 square feet.

**§ 180-60. Landscaping; residences; gasoline stations.**

- A. To assure that structures in industrial districts shall be reasonably attractive in appearance, the builder or his representative shall submit to the Planning Board, in addition to other requirements, an architect's rendering or comparable illustration of the planned constructions, including landscaping, prior to applying for a building permit. Unless such a drawing approved by the Planning Board is submitted to the Inspector of Buildings, no permit for an industrial building shall be issued, nor shall an occupancy permit be granted unless and until the finished structure conforms in appearance to the drawing submitted.
- B. All residential development is prohibited, except that alteration, reconstruction, extension or structural change to any existing residential structure is permitted. **[Amended 11-9-1994 by TOR-94-7]**
- C. Not more than one unregistered motor vehicle shall be allowed on any parcel of land used as a gasoline filling station; provided, however, that any such gasoline filling station having an automobile dealer's permit shall be governed by the provisions of such permit.

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**ARTICLE XI Industrial District B**

**§ 180-61. Boundaries.**

Industrial B Districts shall be that area bounded by Suffield Street, Silver Street and Shoemaker Lane zoned Industrial at the Town Meeting of December 10, 1957, and those areas zoned Industrial B on or after the Town Meeting of December 10, 1957.

**§ 180-62. Permitted uses.**

Permitted uses shall be all uses permitted in Industrial District A.

**§ 180-63. Height regulations.**

Industrial buildings shall not exceed two stories, 40 feet in height, except with approval of the Board of Appeals after a public hearing. These provisions shall not apply to required equipment appurtenant to industrial buildings, except that smokestacks, water tanks, grain elevators and the like are not permissible except after approval of the Board of Appeals after a public hearing.

**§ 180-64. Yards; setbacks; loading areas.**

- A. Back and side yards shall be a minimum of 25 feet.
- B. Front setback shall be a minimum of 75 feet.
- C. Loading platforms and employee parking areas shall be at the rear and side of all buildings.

**§ 180-65. Lot size; lot coverage.**

- A. No lot shall have an area less than 43,560 square feet, one acre, on which a building may be constructed for industrial use, except with approval of the Board of Appeals relative only to previously filed lots whose area is less than one acre; provided that the file lot does not abut an additional parcel owned by the same owner which if combined would meet with the one-acre requirement of this section.
- B. Except for office, professional or administrative buildings, no building shall be less than 5,000 square feet in area.
- C. No lot shall have frontage of less than 100 feet on a street line; however, this frontage requirement shall not apply to lots established by a deed or plan recorded in the Hampden County Registry of Deeds prior to the first notice of the public hearing on this subsection amendment (March 3, 1994) if, and only if, said parcel of land was not held in common ownership with sufficient adjoining parcels of land on the date of the first notice of public hearing on this subsection amendment (March 3, 1994) to satisfy, in combination, the required 100 feet of frontage on a street line. **[Added 5-2-1994 by TOR-94-5]**

**§ 180-66. Landscaping; residences; gasoline stations.**

- A. To assure that structures in industrial districts shall be reasonably attractive in appearance, the builder or his representative shall submit to the Planning Board, in addition to other requirements, an architect's rendering or comparable illustration of the planned construction, including landscaping, prior to applying for a building permit. Unless such a drawing approved by the Planning Board is submitted to the Inspector of Buildings, no permit for an industrial building shall be issued, nor shall an occupancy permit be granted unless and until the finished structure conforms in appearance to the drawing submitted.

- B. The front of the building must be faced with either brick masonry exterior walls, curtain walls of decorated colored aluminum, enameled colored steel, stainless steel walls or glass wall construction and have an attractive appearance.
- C. All buildings in an industrial zone shall be appropriately landscaped with lawns, shrubs and trees.
- D. All residential development is prohibited, except that alteration, reconstruction, extension or structural change to any existing residential structure is permitted. **[Amended 11-9-1994 by TOR-94-7]**
- E. Not more than one unregistered motor vehicle shall be allowed on any parcel of land used as a gasoline filling station; provided, however, that any such gasoline filling station having an automobile dealer's permit shall be governed by the provisions of such permit.

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## **ARTICLE XII Floodplain Zone [Added 1-30-1978]**

### **§ 180-67. Purpose.**

The Floodplain Zone and the regulations herein have been established for the following purposes: to protect and preserve the watercourses and their adjoining floodplain; to reduce the hazards of floods upon the public health, safety and general welfare; to protect floodplain occupants from a flood that is or may be caused by their own land use and that is or may be undertaken without full realization of the dangers therein; to protect the public from the burden of extraordinary financial expenditures for flood control and relief; and to protect the capacity of the floodplain to absorb, transmit and store runoff to assure retention of sufficient floodway area to convey flows which can reasonably be expected to occur.

### **§ 180-68. Maps; use of other base flood elevation data.**

- A. All land delineated on the map consisting of two pages entitled "Flood Insurance Rate Map, Town of Agawam, Massachusetts, Hampden County, Effective February 1, 1978," as Zone A-11, Zone A-16, Zone A, Zone A-2 and Zone B shall be included in the Floodplain Zone. This map is part of the Flood Insurance Study made for the Town of Agawam by the United States Department of Housing and Urban Development, Federal Insurance Administration. These Flood Insurance and Flood Boundary and Floodway Maps and any revision thereto are hereby adopted by reference and declared to be a part of this chapter. *Editor's Note: The Flood Insurance and Flood Boundary and Floodway Maps are on file in the office of the Building Department.* In general terms the Floodplain Zone is that land adjacent to the Westfield River, Connecticut River and its tributaries and Still Brook which lie at or below the elevation of the base flood (one-hundred-year flood) as determined in the Flood Insurance Study. The Floodplain Zone shall be considered to be superimposed over other zones shown on the Zoning Map, as a recognition of the special hazards which exist in such areas.
- B. In Zone A areas where base flood elevation data is not provided by the Flood Insurance Study, other available data from federal, state or other sources shall be utilized as a basis of determining the base flood level for purposes of enforcing the provisions of this Article.

### **§ 180-69. Permitted uses.**

In those portions of the Town so designated in § 180-68, the following uses of land shall be permitted, provided that all necessary state or federal permits are obtained:

- A. Conservation of water, plants and wildlife.

- B. Legally permitted outdoor recreation not requiring development or landscape alteration in conflict with the purpose of this zone.
- C. Grazing, forestry and other farms or agriculture consistent with the purposes of the zone.
- D. Dwellings lawfully existing prior to the adoption of these provisions; however, no building permits for substantial improvements or extensions shall be granted unless a special permit is granted by the Board of Appeals.
- E. Proper operation and maintenance of dams and other water control devices.
- F. Construction and maintenance of highways, streets, sidewalks, sewers, water mains, storm drains, utilities and related facilities by governmental agencies, provided that the water and sewer systems and utilities be designed and constructed to minimize flood damage and to minimize or eliminate infiltration of floodwater into the systems and discharges from the systems into floodwaters.
- G. The following uses by special permit as provided by § 180-71, if determined to be consistent with the purpose of this zone, said determination to be made by the Board of Appeals following application for a special permit by the landowner or owner:
  - (1) Developed recreation facilities, except buildings.
  - (2) Utility lines and facilities.
  - (3) Dams and other water control facilities, if in an authorized plan by a public agency or if built to create ponds for recreational or agricultural use.
  - (4) Minor buildings incidental to permitted flood control, recreation, agricultural, etc. uses, and not exceeding 200 square feet in ground coverage, if constructed so as to not obstruct natural hydrological features, and provided that the requirements of Subsection G(5) relative to the elevation of the base flood are met.
  - (5) In the floodway fringe, the numbered A zones, Zone A, and Zone B, that portion of the Floodplain Zone outside the floodway, the development of structures for residential use only if the lowest floor (including the basement) is elevated to or above the level of the base flood (one-hundred-year flood) and the development of structures for nonresidential use only if the lowest floor (including the basement) is elevated to be above the level of the base flood (one-hundred-year flood) or, together with the attending utility and sanitary facilities, is floodproofed to or above the level of the base flood (one-hundred-year flood), provided that a special permit is issued by the Board of Appeals. The term "floodproofed" shall mean watertight with walls substantially impermeable to the passage of water and with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

**§ 180-70. Prohibited uses.**

- A. In those portions of the Town so specified in § 180-68 as "floodplain," the following uses of land shall be prohibited:
  - (1) The bulk storage of buoyant, flammable, explosive or toxic materials.
  - (2) The addition, removal or transfer of such quantities of material, including trees, shrubs, and ground cover, that would reduce the water storage capacity of the floodplain, obstruct the flow of floodwaters in a floodway or otherwise adversely affect the natural hydrology of the area to the extent that the base flood elevation would be raised cumulatively more than one foot.
  - (3) The digging or drilling of a well intended as a source of domestic water.
  - (4) The installation of septic tank or leaching fields or on-site waste disposal systems.

- (5) The placement or location of a mobile home or the creation of mobile home parks or subdivisions.
- B. In land within the floodway the following uses of land shall be prohibited, in addition to those listed above:
- (1) Any development within the portions of the Town so specified as "floodway" on the Flood Boundary and Floodway Map.
  - (2) Erection, construction or other creation or installation of any building, dam or other structure.
  - (3) Any use or structure which would result in any increase in flood levels during the base flood discharge.

**§ 180-71. Special permit.**

- A. If any land in the floodplain as defined in § 180-68 is found by the Board of Appeals not in fact to be at or below the level of the base flood (one-hundred-year flood), not to be unsuitable because of drainage conditions, or if the proposed action is not inconsistent with the purpose of this Article, the Board of Appeals may grant, after a public hearing with due notice, a special permit for the use or development of such land and for the construction and erection of a building or structure for any purpose permitted in the underlying district, subject to the reasonable conditions and safeguards. Any action by the Board of Appeals shall not be construed to affect insurance determination or rates.
- B. The application for a special permit shall include a plan prepared and certified by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts. This plan will show all proposed and existing buildings, structures, roads, ways, drainage facilities and landscape features, including wetlands, trees and the like, and other engineering and hydrological data the Board finds necessary. The plan will show all existing and proposed finished ground contours at one-foot intervals.
- C. The application for a special permit shall also include an environmental impact statement prepared by an environmentally qualified registered professional engineer. This statement will describe the impact upon the physical environment of the proposed use.
- D. The Board of Appeals may waive the requirements of Subsection C if it determines that the probable impact upon the physical environment of the proposed use is to be minimal and that an environmental impact statement is not necessary to its consideration of the application.
- E. The applicant shall provide the Board with an original and seven copies of the request and of any plan and/or environmental impact statement required under Subsections B and C above. The Board of Appeals shall within seven days forward one copy of each to the Inspector of Buildings, Planning Board, Board of Health and Conservation Commission. These agencies may file written recommendations with the Board of Appeals within 30 days of receipt of notification. The Board of Appeals shall not grant approval of an application for a special permit until these recommendations have been received or until expiration of said thirty-day period.
- F. In passing upon such request, the Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Article and:
- (1) The danger that materials may be swept onto other lands to the injury of others.
  - (2) The danger to life and property due to flooding or erosion damage.
  - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

- (4) The importance of the services provided by the proposed facilities to the community.
  - (5) The necessity to the facility of a waterfront location, where applicable.
  - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
  - (7) The compatibility of the proposed use with existing and anticipated development.
  - (8) The relationship of the proposed use to the Comprehensive Plan and Floodplain Management Program for that area.
  - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - (10) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
  - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.
- G. The Board of Appeals may issue a permit under this section if it finds that the proposed use of the premises will not endanger the health and safety of the occupants of land within the floodplain or the public, or it may issue a permit with such conditions as it deems necessary to protect the health and safety of the occupants and the public or provide proper flood control or protection, or it may deny the application. The burden of showing that the proposed development will not endanger health and safety and that it will be an appropriate use of the land shall rest upon the developer, who shall provide such additional engineering and hydrological data as the Board of Appeals deems necessary. The Board shall, as a condition of approval, require that effective notice be given to prospective purchasers or existing landowners by signs, notation on plans and permits or otherwise, of past flooding of said premises, and the steps undertaken by the petitioner or his successor in title to alleviate the effects of the same.
- H. Without limiting the generality of the foregoing, the Board shall ensure that:
- (1) New construction or substantial improvements of residential structures within the Floodplain Zone will have the lowest floor (including the basement) elevated to or above the level of the one-hundred-year flood.
  - (2) New construction or substantial improvements of nonresidential structures intended for human occupancy or employment, excluding open-walled shelters for temporary use by outdoor recreationalists, within the Floodplain Zone will have the lowest floor (including the basement) elevated to or above the level of the one-hundred-year flood or, together with attendant utility and sanitary facilities, be floodproofed, as defined in § 180-69, up to the level of the one-hundred-year flood. Where floodproofing is utilized for a particular structure, the Board shall require certification from a registered engineer or architect of the floodproofing and of the elevation to which the structure is floodproofed.
  - (3) No use or structure shall be located in the designated floodway which would result in any increase in flood levels during the base flood discharge.
  - (4) No fill or encroachment within the designated floodway shall be permitted that would impair its ability to carry and discharge the waters resulting from the one-hundred-year flood, except where the effect on flood heights is fully offset by stream improvements.
  - (5) All other necessary permits for the proposed development, as defined in § 180-2, have been received from those federal, state or local governmental agencies from which price approval is required.
  - (6) Adjacent communities and the Massachusetts Department of Environmental Quality

Engineering, Division of Water Resources, are notified prior to any alteration or relocation of a watercourse, and that evidence of such notification is submitted to the Federal Insurance Administration, and that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

- (7) New construction (including prefabricated buildings) and substantial improvements be anchored to prevent flotation and lateral movement, and be constructed with flood-resistant materials and methods.
- (8) New or replacement water supply systems and/or sanitary sewerage systems to be located in the Floodplain Zone shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

#### **§ 180-72. General stipulations.**

- A. A subdivision filed with the Planning Board under Chapter 41 of the General Laws of Massachusetts shall meet the rules and regulations of the Planning Board as they apply to floodplain management. *Editor's Note: See Article VII, Floodplains, of Ch. 159, Subdivision of Land.* The subdivision as approved by the Planning Board may be considered a single application when submitted to the Board of Appeals under this Article. The action of the Planning Board shall in no way limit the Board of Appeals in its decision and setting of conditions.
- B. Nothing contained in this Article shall limit the authority of the Board of Health with respect to premises in the Floodplain Zone or affect the applicability of the Building Code *Editor's Note: See Ch. 82, Building Construction.* to any building in the Floodplain Zone.
- C. A building permit issued by the Inspector of Buildings before the effective date of this Article shall be deemed to be a permit hereunder.
- D. Any plans or applications submitted to any board, agent or authority of the Town which concerns land within the floodplain shall be noted: "This proposal is for land which lies in the floodplain and meets the requirements of the Floodplain Ordinance."
- E. Any existing nonconforming uses or structures in the designated floodway shall not be substantially improved but may be modified, altered, repaired or reconstructed, subject to regulations pertaining to nonconforming uses, to incorporate floodproofing measures, provided that such measures or such modification, alteration, repair or reconstruction do not raise the level of the one-hundred-year flood at any point.
- F. No new construction, alteration or extension of a structure for human occupancy as permitted under § 180-71 shall be allowed beyond the foundation stage until the elevation of the lowest floor (including the basement) has been checked and certified, in writing, to the Inspector of Buildings or as being the elevation as stated on the approved plans or higher. All final grades or any change in topography shall be checked and certified, in writing, as being according to the approved plans. Inspection and certification shall be made by a registered professional engineer or land surveyor. All costs incurred under this section shall be borne by the applicant. Records of these elevations and certifications shall be maintained in the office of the Inspector of Buildings and shall be open to public inspection.
- G. Records of the certification of the floodproofing on nonresidential structures as required in § 180-71H(2) shall be maintained in the office of the Inspector of Buildings and shall be open to public inspection.
- H. Where interpretation is needed as to the exact location of the boundaries the Floodplain Zone (for example, where there appears to be conflict between a mapped boundary and actual field conditions), the Town Engineer shall make the necessary interpretation.

#### **§ 180-73. Securities or bond required.**

The completion of all earth work not bonded or covenanted under Chapter 41 of the General Laws of Massachusetts shall be guaranteed with the Town of Agawam by securities or bond as required by the Town prior to commencement by any earth work.

**§ 180-74. Severability.**

The invalidity of any section or provision of this Article for regulation of the floodplain shall not invalidate any other section or provision hereof.

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**ARTICLE XIII Signs [Added 9-12-1977]**

**§ 180-75. Purpose and definitions.**

The purpose of this section is to provide for the reasonable regulation and control of the erection and maintenance of signs and advertising devices within the Town to the end that the appearance and amenities of the Town may be preserved and enhanced, without unduly restricting the conduct of lawful enterprise. For this purpose, the following terms shall have the meanings hereinafter ascribed to them:

**ACCESSORY SIGN** — Any sign that advertises or indicates the person occupying the premises on which the sign is erected or maintained or the business transacted thereon or the products sold thereon.

**AREA**

- A. Area of the face. The area of the face of a sign shall be considered to include all lettering, working and accompanying designs and symbols, together with the background on which they are displayed and any cutouts or extensions.
- B. The area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall or window shall be considered to be that of the smallest quadrangle or triangle which encompasses all the letters and symbols.
- C. The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross section of that object.
- D. In computing the area of the signs, both sides of v-shaped signs, but only one side of back-to-back signs, shall be counted.

**BILLBOARD** — Any nonaccessory sign greater in face area than 40 square feet.

**COLOR** — The color concept of the sign shall be such that it does not violate the purpose of this Article.

**INSTRUCTIONAL SIGNS** — Signs indicating "entrance," "exit" or the like, erected on premises for the direction of persons or vehicles.

**OUTDOOR ADVERTISING BOARD** — The Outdoor Advertising Board of the Commonwealth or any board or official which may hereafter succeed to its powers or functions.

**OVERHANGING SIGN** — A sign or other advertising device which hangs or extends over a sidewalk or a way in which the public has a right of access. Wall signs and standing signs shall not be included in this definition.

**PERSONS** — Includes an individual, corporation, society, association, partnership, trust or other entity, public or private.

REAL ESTATE SIGNS — A sign advertising the sale, rental or lease of the premises on which it is maintained.

SIGN — Any device, surface or framework on which words, symbols or other designs are inscribed or displayed and designed to call attention thereto, including flags, banners and the like.

STANDING SIGN — A sign standing or hanging free on its own support; such support may be attached to a building or fixed in or to the ground. "Standing signs" may have two faces or sides showing in opposite directions.

STRUCTURE — The supports, uprights, bracing and framework of a sign. Any color applied to the "structure" shall meet the purposes of this Article.

TEMPORARY SIGN — Any sign, including its supporting structure, intended to be maintained for a period less than 180 days for agricultural purposes and 60 days for any other purposes.

WALL SIGN — A sign fastened or affixed parallel to and within 12 inches of the wall of a building.

WINDOW SIGN — A sign painted or placed on the inside or outside of a window.

#### **§ 180-76. Administration and enforcement; violations and penalties.**

- A. Enforcement. The Inspector of Buildings is hereby designated as the Sign Officer and is hereby authorized to enforce this Article. The Sign Officer shall keep a current list of permitted signs as a public record. Annually, prior to April 15, the Sign Officer shall submit to the Outdoor Advertising Board a list of any billboards which do not meet the specifications of this authority, together with a notation as to wherein each sign does not comply. The Sign Officer is authorized to order the repair or removal of any sign and its supporting structure which in his judgment is dangerous or in disrepair or which is erected or maintained contrary to this Article. Whenever a Sign Officer is designated, he shall send his name and address to the Outdoor Advertising Board.
- B. Permits and fees.
  - (1) Except as provided in §§ 180-79, 180-83 and 180-85B, no sign shall be erected, altered or affixed to any building or place on any premises until a permit has been issued by the Sign Officer. Such permit shall be issued only if the sign complies or will comply with all applicable provisions of this Article. An application for a sign permit under this section shall include an accurate sketch or a photograph showing the true dimensions of the face and frame of the sign, the lettering, wording, designs and symbols on the face and as attached to any part of the frame and such plans, drawings and specifications as the Sign Officer may require for the structure.
  - (2) A schedule of fees for such permits shall be determined from time to time by the Town Council.
- C. Whoever violates any provisions of this Article or any lawful order of the Sign Officer shall be subject to a fine of \$50 per offense. Each day that such violation continues shall constitute a separate offense.

#### **§ 180-77. General specifications.**

- A. Energy shortages. In the event of any energy shortage, the Council is authorized in its discretion to order that all signs in the Town consuming electric, gas, oil or other forms of energy cease such consumption in whole or in part during such hours and for such period as the Council designates. Nonconformance with Council request would be sufficient evidence

for the Sign Officer to revoke the permit. Forty-eight hours' notice shall be given to the owner of such sign prior to any action taken by the Sign Officer.

- B. Illumination. Except as otherwise prohibited herein, signs may be illuminated by any fixed light source, of such nature and in such manner that the brightness of the sign face does not exceed 100 lumens per square foot. Except for neon-type signs, where permitted, such illumination shall be so arranged that its source is not directly visible from any way or occupied building, and no illumination shall be of any color that might be confusing to traffic. Christmas lights shall not be deemed as coming within the provisions of this subsection, but this subsection shall apply to window signs.
- C. Placement of signs. Signs allowed by permit of the Sign Officer shall contain reasonable stipulations concerning placement based upon the speed of travel and sight distance of the adjacent ways, the number and location of signs already existing in the area and the concept of the sign in relation to the purpose of this Article.

#### **§ 180-78. Accessory signs.**

Accessory signs shall be permitted which meet the following additional requirements:

- A. Instructional sign. Such signs shall not contain any commercial advertisement of any merchandise or exceed six square feet.

#### **§ 180-79. Residence Districts.**

In any area zoned as a residence district, the following are authorized by right without a permit:

- A. One sign displaying the street number and/or name of the occupant of the premises, not exceeding two square feet in area. Such signs may include identification of any accessory professional office or other accessory use permitted in a residence district. Of the signs allowed under Subsections A, D, E and H, the total number of signs per lot shall not exceed two.
- B. Signs pertaining to the lease, sale or use of a lot or building, provided that such signs do not exceed a total area of six square feet. Such signs shall be removed forthwith upon sale or rental of the premises advertised.
- C. One bulletin or announcement board, identification sign or entrance marker for each public entrance to the premises upon which a church, synagogue or educational institution or a governmental authority is located. Such signs shall not exceed 20 feet in area, provided that there shall be no more than three signs for each church, synagogue or institutional building complex.
- D. Attached signs. A sign otherwise permitted in this section may be attached to a building if it complies with all requirements of § 180-77 and this section.
- E. Signs offering accommodations for guests, not to exceed two square feet in area.
- F. Signs prohibiting trespass, hunting and the like, not to exceed two square feet.
- G. Street name signs and signs erected by the town, county or state for the direction and control of traffic.
- H. Window signs. For residential zones and their accessory use, window signs as defined, provided that the aggregate area of such signs shall not exceed two square feet. All such signs shall not exceed two square feet for each occupancy or establishment.
- I. A sign on or adjacent to the entry of a multiple-occupancy building listing the names and/or

occupations of the occupants or establishments therein, provided that the size of such sign shall not exceed two square feet for each occupancy or establishment.

- J. Signs designating historical places or points of interest, erected by a governmental authority or by a duly chartered historical association or the like, not to exceed six square feet in area.

#### **§ 180-80. Business and industrial districts.**

In an area zoned as a business or industrial district, signs are authorized by right without permit as listed in § 180-79 above. In addition, each place of business may be issued a permit for a sign or signs as follows:

- A. Wall signs not to exceed 25% of the area of the front and rear walls and 10% of each secondary side of a building are permitted.
- B. Standing signs are permitted subject to the following conditions:
  - (1) Standing signs are not to exceed 25% of the front wall of the principal structure fronting on a street.
  - (2) Standing signs and V-shaped signs on roofs, marquees, cornices, awnings and projections are permitted. Signs mounted upon or part of ventilating equipment, shafts or towers projecting above the roofline of the building are prohibited.
  - (3) Signs located within the setback area shall not be located within 10 feet of grade, not to include instructional signs.
  - (4) Window signs for permitted retail establishments in all districts. Window signs shall not exceed 50% of the area of the window glass, provided that the aggregate area of such signs shall not be included in the total area allowed under § 180-79H.

#### **§ 180-81. Agricultural Districts.**

In Agricultural Districts, a permit for two signs not to exceed 32 square feet per sign in area may be granted to identify an accessory use permitted. When the agricultural zone does not abut a street, the sign allowed under this section may be located on street front property contiguous to the agriculturally zoned land, provided that the land is under the same ownership. The sign shall conform to § 180-77 of this Article. V-shaped signs or back signs are allowed. Freestanding signs shall be a minimum of 100 feet apart.

#### **§ 180-82. Existing signs.**

Any signs, except billboards, in existence at the time of adoption of this Article shall not be subject to the provisions hereof except as to any provisions dealing with the structural integrity of the sign and § 180-86.

#### **§ 180-83. Nonaccessory signs.**

- A. The erection or continued maintenance of private nonaccessory signs is not permitted, provided that such signs lawfully erected prior to the date of adoption of this Article may be maintained until October 1979.
- B. The Town Council may authorize the erection of nonaccessory signs, kiosks or directories on public property by the Town for direction purposes. Following a public hearing, the Council shall stipulate specifications, conditions, locations and fees for the erection, use and maintenance of each nonaccessory sign, kiosk or directory. The Council may set the number

of signs, kiosks or directories and the location thereof, but in no event shall the number of signs, kiosks or directories exceed six in number for any one entity, business, corporation or address. **[Amended 4-1-1991 by TOR-91-1]**

C. Indemnification and liability. **[Added 4-1-1991 by TOR-91-1]**

- (1) The applicant-owner authorized by the Town Council to erect and/or retain a nonaccessory sign, kiosk or directory on public property of the Town of Agawam as authorized under Subsections A and B of this section shall agree to save and hold harmless and indemnify the Town of Agawam, its officers, directors, employees, board members, elected and appointed officials and agents from and against all liability, claims, demands, damages, costs, expenses, attorney's fees, judgments, losses and all causes of action on account of personal injuries, property damage or loss, nuisance or damage of any kind and nature whatsoever, which arise out of or are in any manner connected with by reason of, pertaining to or relative to the authorization, erection, placement, construction, design, location, color, maintenance, repair, removal, destruction, vandalism, theft and accuracy of the signs, kiosks or directories under this section. The applicant-owner shall further agree to save and hold harmless and indemnify the Town of Agawam as aforesaid for any and all causes of action claimed to arise out of or which are in any manner connected with said signs, kiosks or directories, regardless of whether said injury, loss, damage, claim, costs, expenses, attorney's fees, judgments or losses shall have been caused by, or claimed to have been caused by, the negligence or fault of the Town of Agawam as aforesaid or the applicant-owner or by agents or employees of the foregoing or by accident or otherwise.
- (2) In the event any action is brought against the Town of Agawam as aforesaid, the applicant-owner authorized under this section shall assume full responsibility and liability for the defense thereof, the costs, expenses, attorney's fees, settlements and judgments therefrom, and, upon the failure to do so on notice from the Town of Agawam, the Town of Agawam reserves the right to defend such action or actions and to charge all costs, expenses, attorney's fees, settlements and judgments thereto to the applicant-owner, and the applicant-owner shall immediately pay and reimburse the town. The applicant-owner shall take all precautions necessary to protect the public against injury and damage.
- (3) The applicant-owner shall be required to lawfully execute a hold-harmless indemnification agreement in compliance with this section prior to final authorization by the Town Council.

**§ 180-84. Prohibitions.**

- A. Overhanging signs. No overhanging signs shall be permitted unless part of a cantilever of a principal building; however, this provision shall not apply to street name signs or to signs or devices erected by the town, county or commonwealth for the direction and control of traffic.
- B. Billboards as defined herein are prohibited.
- C. Private signs on Town property are prohibited unless a permit for such a sign is authorized by the Town Council. No such authorization shall be given until after a duly advertised public hearing; any such signs shall conform in all respects to all other provisions of this Article. Permits for such signs may be revoked at any time by the Town Council.
- D. No signs shall contain, in the opinion of the Sign Officer, a color or movement which is a violation of the purpose of this Article.

**§ 180-85. Temporary signs; removal of political signs.**

- A. Temporary signs which do not comply with this Article shall be permitted. Before a temporary sign (other than a temporary sign defined as a window sign or political sign) shall be erected, there shall be deposited with the Sign Officer the sum of \$25 in cash for each sign. The deposit shall be refunded only upon the removal of the sign within the time specified in the permit. Temporary signs which do not comply with this Article may be authorized by the Sign Officer for public or nonprofit purposes without deposit. These signs shall not exceed 32 square feet in area.
- B. Political signs may be erected only on private property and with the landowner's permission. Political signs shall not exceed six square feet in area, may be erected 15 days prior to a primary election and maintained, in good condition, continuously until 48 hours after the close of the polls of the final election. Candidates eliminated in the primary election shall have their signs removed within 48 hours after the close of the polls of the primary election. All such signs shall be removed within the forty-eight-hour limit as a responsibility of the property owner. A challenge to the official count shall not negate this provision. A fine not to exceed \$50 may be levied on the property owner for failure to comply with this section.

#### **§ 180-86. Maintenance.**

All signs, whether erected prior to the effective date of this article or not, and whether a permit is required or not, shall be maintained in a safe and legible condition to the satisfaction of the Sign Officer. Failure to correct violation of this provision within 30 days after notice thereof shall constitute grounds for revocation of the permit, or for removal of the sign if it was erected prior to the time when such permit is required. It shall be a duty of the owner or lessee of any sign to maintain the immediate premises occupied by the sign in a clean, sanitary and healthful condition.

#### **§ 180-87. Special cases.**

Notwithstanding the foregoing provisions of this article, certain special types of activities or situations are recognized for which such provisions may be modified and permits issued as follows:

- A. Theaters. The marquee of a theater as defined in MGL C. 143 shall be considered as comprising part of the wall area in determining the total sign area to be permitted.
- B. Subdivisions. One permanent subdivision name sign, not to exceed 32 square feet, may be permitted for each entry to a subdivision from a public way. Such a sign may be erected only upon receiving approval of the definitive plan for the project.
- C. Contractors, developers. For each construction or development project there may be issued a temporary permit for one standing sign, not to exceed 32 square feet in area, setting forth facts and names pertinent to the project. Such signs shall be erected only upon receiving approval by the Town for the project. Such signs shall be removed forthwith when the project is completed. Any project which is funded in whole or in part by federal, state or municipal funds may have such signs as the funding authority may require, regardless of the provisions of this article.
- D. Gasoline stations. Standard pump head signs of gasoline filling stations shall not be included in the total area of signs permitted, and no permit shall be required therefor, but they shall conform to the provisions of § 180-77B of this article.
- E. Where a building (or buildings in a common group such as a shopping center) contains three or more separate businesses (or professional offices) and it is desired to identify the building or group of buildings as such, in addition to the signs permitted for the individual businesses, there shall be permitted one standing sign displaying the name of the building or group of

buildings and not to exceed 64 square feet plus six square feet for the listing of each occupant or business.

**§ 180-88. Special permits.**

The Board of Appeals is authorized to grant special permits for signs which would not otherwise comply with this article. In granting any such permit, the Board shall comply with all procedural requirements of law pertaining to the issuance of special permits in general.

**§ 180-89. Severability.**

The invalidity of any section or provision of this article for the regulation of signs shall not invalidate any other section or provision hereof.

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**ARTICLE XIV Personal Wireless Service Facilities and Towers [Added 3-2-1998 by TOR-97-13]**

**§ 180-90. Purposes.**

The purposes of this article are to:

- A. Preserve the character and appearance of the community while simultaneously allowing adequate personal wireless services to be developed;
- B. Protect the scenic, historic, environmental and natural or man-made resources of the community;
- C. Provide standards and requirements for the regulation, placement, construction, monitoring, design, modification and removal of personal wireless service facilities and towers;
- D. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify personal wireless service facilities and towers;
- E. Preserve property values;
- F. Locate towers so that they do not have negative impacts, such as, but not limited to, visual blight, attractive nuisance, noise and falling objects, on the general safety, welfare and quality of life of the community;
- G. Require owners of personal wireless service facilities and towers to configure them so as to minimize and mitigate the adverse visual impact of the facilities and towers; and
- H. require the clustering and camouflaging of personal wireless service facilities and towers.

**§ 180-91. Consistency with federal law.**

This article is intended to be consistent with the Telecommunications Act of 1996, in that:

- A. It does not prohibit or have the effect of prohibiting the provision of personal wireless services;
- B. It is not intended to be used to unreasonably discriminate among providers of functionally equivalent personal wireless services; and
- C. It does not regulate personal wireless services on the basis of the environmental effects of

radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning such emissions.

## **§ 180-92. Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**ACT** — The Telecommunications Act of 1996.

**ADEQUATE COVERAGE** — Coverage is considered to be adequate within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal for at least 75% of the covered area is greater than -95 dbm. It is acceptable for there to be holes within the area of adequate coverage where the signal is less than -95 dbm, as long as the signal regains its strength to greater than -95 dbm further away from the base station. For the limited purpose of determining whether the use of a repeater is necessary or desirable, there shall be deemed not to be adequate coverage within said holes. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain a strength of greater than -95 dbm.

**ADEQUATE CAPACITY** — Capacity is considered to be adequate if the grade of service is p.05 or better for a worst case day in a preceding month, based on the Erlang B Tables, prior to the date of application; or as measured using direct traffic measurement of the personal wireless service facility in question for existing facilities requesting major modification and where the call blocking is due to frequency contention at the antenna(s).

**ANTENNA** — A device which is attached to a tower or other structure for transmitting and receiving electromagnetic waves.

**BASE STATION** — The primary sending and receiving site in a wireless telecommunications network.

**CHANNEL** — The segment of the radiation spectrum from an antenna which carries one signal. An antenna may radiate on many channels simultaneously.

**COMMUNICATION EQUIPMENT SHELTER** — A structure located at a base station designed principally to enclose equipment used in connection with personal wireless service transmissions.

**DBM** — Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt.

**EMF** — Electromagnetic frequency radiation.

**FACILITY SITE** — The location within a Wireless Telecommunications Overlay District leased by one or more personal wireless service providers and upon which one or more personal wireless service facility(s) and required landscaping are located.

**FCC** — Federal Communications Commission. The government agency responsible for regulating telecommunications in the United States.

**FCC 96-326** — A report and order which sets new national standards for emissions of radio frequency emissions from FCC regulated transmitters.

**GHZ** — Gigahertz: one billion hertz.

**GRADE OF SERVICE** — A measure of the percentage of calls which are able to connect to the base station, during the busiest hour of the day. Grade of service is expressed as a number, such as p. 05, which means that 95% of callers will connect on their first try. A lower number (p. 04) indicates a better grade of service.

HERTZ — One hertz is the frequency of an electric or magnetic field which reverses polarity once each second or one cycle per second.

MAJOR MODIFICATION OF AN EXISTING FACILITY — Any change or proposed change in power input or output, number of antennas, change in antenna type or model, repositioning of antenna(s), change in number of channels per antenna above the maximum number approved under an existing special permit. Also any increase or proposed increase in dimensions of an existing and permitted tower or other structure designed to support personal wireless service transmissions, receiving and/or relaying antennas and/or equipment.

MHZ — Megahertz: one million hertz.

MILE — A "mile" (5,280 feet) is to be measured from a point on an imaginary line which is perpendicular to the vertical line at that point.

MONITORING — The measurement, by the use of instruments in the field, of the radiation from a site as a whole or from individual personal wireless service facilities, towers or antennas.

MONITORING PROTOCOL — The testing protocol, initially the Cobbs Protocol, which is to be used to monitor the emissions from existing and new personal wireless service facilities and towers upon adoption of this article. The SPGA may, as the technology changes, require, by written regulation, the use of other testing protocols. A copy of the monitoring protocol shall be on file with the Town Clerk.

MONOPOLE — A single self-supporting vertical pole with below-grade foundations.

MOUNT — The structure or surface upon which antennas are mounted, including the following four types of mounts:

- A. Roof-mounted: mounted on the roof of a building.
- B. Side-mounted: mounted on the side of a building.
- C. Ground-mounted: mounted on the ground.
- D. Structure-mounted: mounted on a structure other than a building.

PERSONAL WIRELESS SERVICES — Commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services. These services include: cellular services, personal communications services (PCS), specialized mobile radio services and paging services.

PERSONAL WIRELESS SERVICE FACILITY — All equipment (excluding any repeaters) with which a personal wireless service provider broadcasts and receives the radio frequency waves which carry their services and all locations of said equipment or any part thereof. This facility may be sited on one or more towers or structures(s) owned and permitted by another owner or entity.

PERSONAL WIRELESS SERVICE PROVIDER — An entity licensed by the FCC to provide personal wireless services to individuals or institutions.

RADIATION PROPAGATION STUDIES OR RADIAL PLOTS — Computer generated estimates of the radiation emanating from antennas or repeaters sited on a specific tower or structure. The height above mean sea level, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tool for determining whether a site will provide adequate coverage for the personal wireless service facility proposed for that site.

SPECIAL PERMIT GRANTING AUTHORITY (SPGA) — The Board of Appeals of the Town of Agawam shall be the SPGA for this article.

TOWER — A monopole that is designed to support personal wireless service transmission,

receiving and/or relaying antennas and/or equipment.

WIRELESS TELECOMMUNICATIONS OVERLAY DISTRICT (WTOD) — Specific area(s), determined by engineering analysis to contain sites where adequate service may be provided to the Town of Agawam, which, at the same time, have the potential of reducing or mitigating negative impacts in accordance with the Overlay District as defined in this article.

**§ 180-93. Exempted wireless telecommunications uses.**

- A. This article specifically exempts the following wireless telecommunications facilities:
  - (1) Police;
  - (2) Fire;
  - (3) Ambulance and other emergency dispatch;
  - (4) Citizens band radio; and
  - (5) Amateur radio equipment and towers used in accordance with the terms of any amateur radio service license issued by the FCC, provided that the tower is not used or licensed for any commercial purpose and the tower shall be removed upon loss or termination of said FCC license.
- B. No personal wireless service facility shall be considered exempt from this article for any reason whether or not said facility is proposed to share a tower or other structure with such exempt uses.

**§ 180-94. Wireless Telecommunications Overlay District (WTOD).**

- A. Purpose. The Wireless Telecommunications Overlay District (WTOD) is intended to protect the scenic, historic, natural and other resources of the Town of Agawam while allowing adequate personal wireless telecommunications to be developed. Towers shall be located only within Wireless Telecommunications Overlay District(s) within the Town of Agawam by special permit. Wireless telecommunications facilities mounted on top of an existing building (roof-mounted), mounted adjacent to the side or rear of an existing building (side-mounted) or mounted to the facade of an existing building (facade-mounted) may be located within these district(s), but are also allowed in the rest of the Town by special permit.
- B. Description. This district includes the properties listed below. These properties are included by reason of their potential to provide technically feasible and accessible locations for the siting of facilities which can provide adequate personal wireless telecommunications services to the Town of Agawam. The Overlay District is defined, delineated and mapped on the map entitled "Wireless Telecommunications Overlay District Map, Town of Agawam MA," which is incorporated herein by reference. *Editor's Note: A copy of said map is on file in the office of the Town Clerk and may be examined there during regular business hours.*

<b>Property Name</b>	<b>Assessor's Map, Block and Lot</b>
Bondi's Island	N15-1-1
	N14-1-1
Riverside Park	K3-3-1
Crestview Country Club	H3-1-21
	H3-1-24
	H3-1-19
	H3-1-22

	G2-1-1
Oak Ridge Country Club	E2-1-6
St. Anne Golf Course	F6-1-1
Agawam Municipal Golf Course	D10-1-6
Adams TV of Springfield	B14-1-4
	B14-1-3
	B14-1-5
Agawam Regional Industrial Park	G7-1-3
	G7-1-4
	G7-2-6
	G6-1-1
	F6-2-2
	G7-3-1
	G6-3-6
	G7-1-8
	H7-2-4
	G6-1-7
	H7-2-3
	G6-1-3
	G7-2-2
	G6-1-8
	G6-1-4
	G5-6-1
	H7-2-2
	F7-2-2
	G5-6-2
	G5-6-3
	G6-3-4
	H8-1-1
	G7-2-3
	G6-3-5
	H8-1-1
	G8-1-14
	G7-1-1
	G7-1-2
	G7-2-1
Western Massachusetts Electric	H5-1-5
	H5-1-6

H5-1-1

H6-1-1

H6-1-17

H6-1-18

I4-1-9

I5-1-11

I5-1-12

- C. Relation to other districts. The WTOD is an overlay district mapped over other districts. It modifies and, where there is inconsistency, supersedes the regulations of such other districts. Except as so modified or superseded, the regulations of the underlying districts remain in effect.
- D. Applicability. Any use of lands within the WTOD for purposes of placement, construction, modification or removal of personal wireless service facilities and/or towers shall be subject to the requirements of this article.

**§ 180-95. Provision of independent consultants.**

- A. Upon submission of an application for any special permit under this article, the applicant shall pay a review fee determined by the SPGA, consisting of reasonable costs to be incurred by the SPGA for the employment of independent consultants. These consultants shall each be qualified professionals with a record of service to municipalities in one or more of the following:
  - (1) Telecommunications engineering;
  - (2) Structural engineering;
  - (3) Monitoring of electromagnetic fields; and
  - (4) (If determined necessary by the SPGA) other relevant fields of experience as determined by the SPGA.
- B. The SPGA shall select the independent consultant(s) after consultation with the Board of Health and the Conservation Commission and the Department of Public Works, each of which shall propose a list of qualified candidates.

**§ 180-96. Application requirements.**

No personal wireless service facility or tower shall be erected, constructed or installed or undergo Major Modification without first obtaining a special permit from the SPGA in accordance with the requirements set forth herein.

- A. Adequate coverage, adequate capacity and justification of need for personal wireless service facility and/or tower.
  - (1) Sites in which applicant has legal or equitable interest.
    - (a) The applicant shall provide written documentation of any facility site(s) in Agawam and any sites in abutting towns located within eight miles of any boundary of the Town of Agawam in which it has any legal or equitable interest, whether by ownership, leasehold or otherwise. For each such facility site, it shall demonstrate with written documentation that this facility site is not already providing or does not

have the potential by adjusting the site to provide adequate coverage and/or adequate capacity to the Town of Agawam. The documentation shall include, for each facility site listed:

- [1] The exact tower location (in longitude and latitude, to degrees, minutes, seconds);
- [2] Ground elevation above mean sea level at the tower location;
- [3] Height of tower or structure;
- [4] Type, manufacturer and model number of antennas;
- [5] Antenna gain;
- [6] Height of antennas on tower or structure;
- [7] Output frequency;
- [8] Number of channels;
- [9] Power input; and
- [10] Maximum power output per channel.

(b) Potential adjustments to these existing facility sites, including changes in antenna type, orientation, gain, height or power output shall be specified. Radial plots from each of these facility sites, as they exist, and with adjustments as above, shall be provided as part of the application.

(2) Sites in which applicant has no legal or equitable interest.

(a) The applicant shall demonstrate with written documentation that it has examined all existing facility sites located in Agawam and any sites in abutting towns located within eight miles of any boundary of the Town of Agawam in which the applicant has no legal or equitable interest, whether by ownership, leasehold or otherwise, to determine whether the existing facility sites can be used to provide adequate coverage and/or adequate capacity to the Town of Agawam. The documentation shall include, for each existing facility site examined:

- [1] The exact tower location (in longitude and latitude, to degrees, minutes, seconds);
- [2] Ground elevation above mean sea level at the tower location;
- [3] Height of tower or structure;
- [4] Type, manufacturer and model number of proposed antennas;
- [5] Proposed antenna gain;
- [6] Height of proposed antennas on tower or structure;
- [7] Proposed output frequency;
- [8] Proposed number of channels;
- [9] Proposed power input; and
- [10] Proposed maximum power output per channel.

(b) Radial plots from each of these existing facility sites, configured as documented above, shall be provided as part of the application.

(3) The applicant shall demonstrate with written documentation that it has analyzed the feasibility of repeaters in conjunction with all existing facility sites listed in compliance

with the sections above to provide adequate coverage and/or adequate capacity to the Town of Agawam. Radial plots of all repeaters considered for use in conjunction with these facility sites shall be provided as part of the application.

- B. Required documentation for personal wireless service facility and/or tower. The applicant shall include reports prepared by one or more professional engineers, which shall demonstrate that the personal wireless service facility and tower comply with all applicable standards of the federal and state governments, more specifically:
- (1) Copies of all submittals and showings pertaining to: FCC licensing, environmental impact statements, FAA notice of construction or alteration, aeronautical studies and all data, assumptions and calculations relating to service coverage and power levels regardless of whether categorical exemption from routine environmental evaluation under the FCC rules is claimed.
  - (2) Copies of all information submitted in compliance with requirements of Massachusetts Department of Public Health, 105 CMR 122 Fixed Facilities Which Generate Electromagnetic Fields in the Frequency Range of 300 khz to 100 ghz and Microwave Ovens, or any revisions thereof as the Department of Public Health may, by written notice, create.
  - (3) The exact legal name, address or principal place of business and phone number of the applicant. If any applicant is not a natural person, it shall also give the state under which it was created or organized.
  - (4) The name, title, address and phone number of the person to whom correspondence or communications in regard to the application are to be sent. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant.
  - (5) Name, address, phone number and written consent to apply for this permit of the owner of the property on which the proposed personal wireless service facility and/or tower shall be located or of the owner(s) of the tower or structure on which the proposed personal wireless service facility shall be located.
  - (6) Required plans and engineering plans, prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. (Note: Survey plans shall also be stamped and signed by a professional land surveyor registered in Massachusetts.) Plans shall be on sheets 24 inches x 36 inches, on as many sheets as necessary and at scales which are no smaller (i.e., no less precise) than listed below. Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision dates, scale(s) and original seal and signature of the professional engineer and other professionals who prepared the plan.
  - (7) The applicant shall, as part of its application, provide the SPGA with the following plans and maps:
    - (a) Proposed site plans.
      - [1] Proposed facility site layout, grading and utilities at a scale no smaller than one inch = 40 feet (1:480 or metric equivalent 1:500) showing the entire vicinity within a radius of 400 feet of the tower site, with topography drawn with minimum of contour intervals of two feet (0.6 meter).
      - [2] Proposed tower location and any appurtenances and accessory buildings (communication equipment shelter or other). Indicate property boundaries of the Overlay District and setback distances to the base(s) of the tower and to the nearest comers of each of the appurtenant structures to those boundaries and dimensions of all proposed improvements.
      - [3] Limits of areas where vegetation is to be cleared or altered and justification

for any such clearing or alteration.

- [4] Plans of proposed access driveway or roadway and parking area at the facility site. Include grading, drainage, traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.

(b) Proposed tower and appurtenances.

- [1] Plans, elevations, sections and details at appropriate scales but no smaller than one inch = 10 feet.
- [2] Two cross-sections through proposed tower drawn at right angles to each other and showing the ground profile to at least 100 feet beyond the limit of clearing. Indicate proposed spot elevations at the base of the proposed tower. Dimension the proposed height of the tower above average grade at tower base. Indicate the maximum allowable structural height of the tower after addition of any modular sections. Show all proposed antennas, including their location on the tower.
- [3] Details of typical tower foundation, including cross sections and details. Show all ground attachments, specifications for anchor bolts and other anchoring hardware.
- [4] Detail proposed exterior finish and camouflage of the tower.
- [5] Indicate relative height of the tower to the tops of surrounding trees as they presently exist.

(c) Proposed communications equipment shelters.

- [1] Floor plans, elevations and cross sections at a scale of no smaller than 1/4 inch = one foot (1:48) of any proposed appurtenant structure.
- [2] Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.

(d) Proposed equipment plan.

- [1] Plans, elevations, sections and details at appropriate scales, but no smaller than one inch = ten feet.
- [2] Number of antennas and repeaters (if any), as well as the exact locations of all repeaters (if any) located on a map, as well as by degrees, minutes and seconds of latitude and longitude.
- [3] Mounting locations on tower or structure, including height above ground.
- [4] Antenna type(s), manufacturer(s), model and number(s).
- [5] For each antenna, the antenna gain and antenna radiation pattern.
- [6] Number of channels per antenna, projected and maximum.
- [7] Power input to the antenna(s).
- [8] Power output, in normal use and at maximum output for each antenna and all antennas as an aggregate.
- [9] Output frequency of the transmitter(s).

C. Application requirements for roof-mounted, side-mounted and facade-mounted personal wireless service facilities. The use of repeaters to assure adequate coverage or to fill holes within areas of otherwise adequate coverage, while minimizing the number of required towers

is permitted and encouraged.

- (1) Applicants shall provide the following information:
  - (a) The exact location (in longitude and latitude, to degrees, minutes and seconds), as well as by street address or pole number (if applicable);
  - (b) Ground elevation;
  - (c) Proposed output frequency;
  - (d) Proposed number of channels;
  - (e) Proposed power input; and
  - (f) Proposed maximum power output per channel.
- (2) Name, address, phone number and written consent to apply for this permit of the owner of the property on which the proposed facility shall be located.
- (3) Proposed site layout, grading and utilities at a scale no smaller than one inch = 40 feet (1:480 or metric equivalent 1:500) showing the entire vicinity within a radius of 300 feet of the site with topography drawn with minimum contour intervals of two feet (0.6 meter).
  - (a) Proposed facility location and any appurtenances, if any, and any accessory building (communication equipment shelter or other). Indicate property boundaries of abutters within 300 feet of the facility, and dimensions of all proposed improvements;
  - (b) Limits of areas where vegetation is to be cleared or altered and justification for any such clearing or alteration; and
  - (c) Plans of any proposed access driveway or roadway and parking area at the site. Include grading, drainage, traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.

#### **§ 180-97. General requirements.**

- A. If feasible, personal wireless service facilities shall be located on existing structures, including, but not limited to, buildings, water towers, existing telecommunication facilities, utility poles and towers and related facilities, provided that such installation preserves the character and integrity of those structures.
- B. Only freestanding monopoles, with associated antenna and/or panels, shall be allowed as specified in this section. Lattice-style towers and facilities requiring guy wires and/or three or more legs for support are prohibited.
- C. If the applicant demonstrates that it is not feasible to locate on an existing structure, personal wireless services facility shall be designed so as to be camouflaged to the greatest extent possible, including, but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees. One week prior to and one week following the public hearing, a balloon shall be put in place at the height of the proposed tower. The balloon shall be of a size and color that can be seen from every direction for a distance of one mile.
- D. A special permit shall not be granted for a tower to be built on speculation. If the applicant is not simultaneously installing a personal wireless service facility on the tower, it shall provide a copy of its existing lease/contract with a personal wireless service provider. Said provider shall provide all necessary data to comply with the terms of this article, as part of the applicant's application for a personal wireless service facility and/or tower or the special permit shall not be granted.

- E. Tower(s) shall minimize, to the extent feasible, adverse visual impacts on the environment. The SPGA may impose reasonable conditions to ensure this result, including, but not limited to, requiring the use of camouflage, painting, lighting standards and screening.
- F. When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the buildings silhouette. Personal wireless service facilities which are side mounted shall blend with the existing building's architecture and, if over five square feet, shall be painted or shielded with material which is consistent with the design features and materials of the building.
- G. A vegetated buffer strip of undisturbed trees of an adequate depth to screen the facility and no less than 20 feet shall be retained as close to the tower as possible.
- H. The tower and communication equipment shelter(s) shall be completely fenced for security within a gated area no greater than 10,000 square feet, with fence height limited to six feet. Use of razor wire is not permitted. **[Amended 3-18-2002 by TOR-2001-7]**
- I. There shall be no signs, except the following: a sign no greater than two square feet indicating the name of the personal wireless service facility's owner(s), and a twenty-four-hour emergency telephone number shall be posted adjacent to the entry gate. In addition, No Trespassing or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of this chapter.
- J. New towers shall be the lesser of 190 feet; or the minimum height determined by the independent consultant(s) to provide the applicant adequate coverage from the personal wireless service facility(s) proposed for use on the tower. Side- and roof-mounted personal wireless service facilities shall not project more than 10 feet above the height of an existing building nor project more than 10 feet above the height limit of the zoning district within which the facility is located. Personal wireless service facilities may be located on a building that is legally nonconforming with respect to height, provided that the facilities do not project above the existing building height. New antennas located on any of the following structures existing on the effective date of this article shall be exempt from the height restrictions of this article, provided that there is no increase in height of the existing structure as a result of the installation of a personal wireless service facility: water towers, guyed towers, lattice towers, fire towers and monopoles. New antennas located on any of the following existing structures shall be exempt from the height restriction of the article, provided that there is no more than a twenty-foot increase in the height of the existing structure as a result of the installation of a personal wireless service facility: electric transmission and distribution towers, telephone poles and similar existing utility structures.
- K. In order to ensure public safety, the minimum distance from the base of a telecommunications tower to any property line and/or street, and all buildings on the subject property occupied on a regular basis, shall be a minimum of 260 feet; or 1 1/2 times the height of the facility/mount, including any antennas or appurtenances, whichever is greater. Such minimum distance to all publicly owned parks and playgrounds shall be at least 375 feet. As used herein, "publicly owned parks" shall not include any golf courses. **[Amended 3-18-2002 by TOR-2001-7]**
- L. To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of personal wireless service providers licensed to provide services to the Town of Agawam and surrounding areas.
- M. Unless required by the Federal Aviation Administration, no night lighting of towers, or the personal wireless service facility is permitted, except for manually operated emergency lights for use only when operating personnel are on site.
- N. No tower or personal wireless service facility, with the exception of roof-mounted, side-

mounted, facade-mounted or structure-mounted telecommunications facilities or repeaters, shall be located outside of the Wireless Telecommunications Overlay District(s). No tower or personal wireless service facility shall be located within any of the following prohibited areas:

- (1) Massachusetts or federally-regulated wetland.
- (2) Massachusetts certified vernal pool.

- O. A different existing structure or use on the same lot shall not preclude the construction and installation of a wireless telecommunications facility on such lot. If a tower and its equipment buildings are the sole use of the lot, the tower shall be deemed to be the principal use; otherwise, the use shall be considered accessory. **[Added 3-18-2002 by TOR-2001-7]**

**§ 180-98. Evaluation by independent consultants.**

- A. Upon submission of a complete application for any special permit(s) under this article, the SPGA shall provide its independent consultant(s) with the full application(s) for their analysis and review.
- B. Applicants for any special permit(s) under this article shall grant permission for the town's independent consultant(s) to conduct any necessary site visit(s).

**§ 180-99. Approval criteria.**

- A. In acting on any special permit application, the SPGA shall proceed in accordance with the procedures and timelines established for special permits in this chapter. The special permit granting authority may adopt and from time to time amend rules and regulations relative to the issuance of such permits and shall file a copy of said rules and regulations in the office of the Town Clerk.
- B. In addition to the findings required in this article, the SPGA shall, in consultation with the independent consultant(s), make all of the applicable findings before granting the special permit, as follows:
- (1) That the applicant is proposing to locate its personal wireless service facility or tower within a Wireless Telecommunications Overlay District or other districts as provided by this article;
  - (2) That the applicant is not able to use existing towers/facility sites in or around the Town of Agawam, either with or without the use of repeaters, to provide adequate coverage and/or adequate capacity to the Town of Agawam;
  - (3) That the proposed personal wireless service facility/tower will not have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources;
  - (4) That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the towers and facilities; and
  - (5) That the proposal shall comply with FCC 96-326 and any and all other applicable FCC regulations regarding emissions of electromagnetic radiation and that the required monitoring program is in place and shall be paid for by the applicant.
  - (6) Any decision by the SPGA to deny an application for a special permit under this article shall be in conformance with SEC. 332(47 U.S.C. § 332) J(7)(B)(ii), (iii) of the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

**§ 180-100. Removal requirements.**

- A. Any personal wireless service facility (ground-mounted or otherwise) which ceases to operate for a period of one year shall be removed. "Cease to operate" is defined as not performing the normal functions associated with the personal wireless service facility and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the facility site shall be remediated such that all personal wireless service facility improvements which have ceased to operate are removed. If all facilities on a tower have ceased to operate, the tower shall also be removed, and the facility or repeater site, including any access road(s) which lead to that facility site from the main access road, shall be revegetated. If all facility sites have ceased to operate, the owner of the last personal wireless service facility to leave the site shall revegetate the access road in its entirety. Existing trees shall only be removed with the written permission of the SPGA and only if the SPGA determines such removal of trees to be necessary to complete the required removal of personal wireless service facility(s).
- B. Removal performance guaranty. The applicant shall, as a condition of the special permit, post an initial cash bond in a reasonable amount determined and approved by the SPGA. This bond shall be in force to cover the costs of the remediation of any damage to the landscape which occurs during the clearing of the site and to cover the cost of the removal of the tower or facility from the site and remediation of the landscape, should the facility cease to operate.

**§ 180-101. Fees and insurance.**

Towers and personal wireless service facilities shall be insured by the owner(s) against damage to persons or property. The owner(s) shall provide a certificate of insurance to the Planning Board on an annual basis. For towers and facilities located on property owned by the Town of Agawam, the Town of Agawam shall be an additional named insured.

**§ 180-102. Noncompliance; violations; enforcement; attorney's fees.**

Upon determination that the applicant and/or owner has failed to comply with this article or is in violation of this article, and the Town of Agawam takes any action to enforce this article, bring the applicant and/or owner into compliance with this article, or to abate any violations under this article, the applicant and/or owner shall be liable and responsible to pay to the Town of Agawam all costs, expenses and reasonable attorney's fees for such action taken by the Town of Agawam. Failure to pay said costs, expenses and reasonable attorney's fees within 30 days of receipt of notice to pay the same shall be grounds for the revocation of any special permit issued in accordance with this article.

**§ 180-103. Severability.**

The invalidity of any section or provision of this article shall not invalidate any other section or provision hereof or to take any other action with respect thereto.

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**ARTICLE XV Adult Entertainment Businesses [Added 8-3-1998 by TOR-98-4]**

**§ 180-104. Statutory authority.**

This article is enacted pursuant to MGL c. 40A, and pursuant to the Town of Agawam's authority under the Home Rule Amendment to the Massachusetts Constitution to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of certain adult entertainment uses, as defined and designated herein, in response to studies demonstrating their deleterious effects.

### **§ 180-105. Purpose.**

It is the purpose of this adult entertainment article to address and mitigate the secondary effects of the adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town of Agawam, adverse impacts on the property values of residential and commercial properties and adverse impacts on the quality of life in the town. All of said secondary impacts are adverse to the health, safety and general welfare of the Town of Agawam and its inhabitants. The provisions of this article have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this article to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that are protected by the Constitutions of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this article to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

### **§ 180-106. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

ADULT ENTERTAINMENT USES — Include the following uses:

- A. Adult bookstores, as defined in MGL c. 40A, § 9A.
- B. Adult motion-picture theaters, as defined by MGL c. 40A, § 9A.
- C. Adult paraphernalia store, as defined by MGL c. 40A, § 9A.
- D. Adult video store, as defined by MGL c. 40A, § 9A.
- E. Establishment which displays live nudity for its patrons, as defined by MGL c. 40A, § 9A.

### **§ 180-107. Special permit required; criteria.**

Adult entertainment uses shall be prohibited in all zoning districts except as otherwise permitted in this article and may be permitted only upon the grant of a special permit by the Board of Appeals. An adult entertainment use special permit shall not be granted unless each of the following standards has been met.

- A. The application for a special permit for an adult entertainment use shall provide the name and address of the legal owner of the establishment, the legal owner of the property and the manager of the proposed establishment. The owners and managers shall be considered coapplicants.
- B. No adult use special permit shall be issued to any person convicted of violating the provisions of MGL c. 119, § 63, or MGL c. 272, § 28.
- C. Location.
  - (1) Adult entertainment uses shall not be located within:
    - (a) One thousand five hundred feet from any district designated by the Agawam Zoning Ordinance for residential use; or
    - (b) One thousand five hundred feet from the nearest church, school, park, playground, play field, youth center; or

- (c) One thousand five hundred feet from the nearest adult entertainment use as defined herein; or
  - (d) One thousand five hundred feet from the nearest establishment licensed under MGL c. 138, § 12.
- (2) The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult entertainment use is to be located to the nearest boundary line of a residential zoning district or to the nearest property line of any of the other designated uses set forth above.
- D. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public. In no way shall such screening prevent public safety personnel from entering the premises at any time without the use of special tools or equipment.
  - E. No adult entertainment use shall be allowed to display for advertisement or other purpose any signs, placards or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through glass or other like transparent material any sexually explicit figures or words as defined in MGL c. 272, § 31.
  - F. No adult entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises or enter into the premises.
  - G. Off-street parking shall be provided in compliance with Town regulations and shall be designated so as not to obstruct police patrol views of the premises.
  - H. No adult entertainment use shall have any flashing lights or neon or other fluorescent lights visible from outside the establishment.
  - I. No adult entertainment use shall have a freestanding accessory sign.
  - J. No adult entertainment use shall be established prior to submission and approval of a site plan by the Board of Appeals. The site plan shall depict all existing and proposed buildings, parking spaces, driveways, service areas and other open uses. The site plan shall show the distances between the proposed adult entertainment use and the boundary of the nearest residential zoning district and the property line of each use of the use set forth in Subsection C above.
  - K. The owners and managers of an establishment granted an adult entertainment use special permit shall not permit any obscene matter, material or conduct, as defined in MGL c. 272, § 31, on the premises.
  - L. Special permits issued by the special permit granting authority shall require the unanimous vote of the three members of the special permit granting authority. If the special permit granting authority has more than three members, the vote shall be as provided for in MGL c. 40A.

**§ 180-108. Conditions.**

The special permit granting authority may impose reasonable conditions, safeguards and limitations on time or use of any special permit granted and shall require that any such special permit granted shall be personal to the applicant, shall not run with land and shall expire upon expiration of the applicant's lease or upon sale or transfer of the subject property.

**§ 180-109. Suspension and revocation of special permit.**

The special permit granting authority may suspend or revoke a special permit granted hereunder for any violation of the special permit, for any violation of the Town of Agawam ordinances and/or for any violation of state or federal law.

**§ 180-110. Expiration of special permit.**

A special permit to conduct an adult entertainment use shall expire after a period of one calendar year from its date of issuance and shall automatically be renewable for a successive one-year period thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon the public safety factors applied at the time that the original special permit was granted.

**§ 180-111. Severability.**

The provisions of this article are several and, in the event that any provision of this article is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.