5.0 NON-CONFORMING USES AND STRUCTURES

5.1 Discontinuance

5.1.1 Non-conforming uses and structures may be continued as provided in M.G.L., Ch. 40A, § 6. However, if a non-conforming use is abandoned, it shall not be reestablished, and any future use shall be in conformance with this Bylaw. A non-conforming use shall be deemed to have been abandoned, regardless of whether the owner/operator intended to abandon such use, if the use is discontinued or not used for a period of two (2) years or more.

5.2 Expansion or Change

5.2.1 Except as provided by section 5.2.2, the Board of Appeals may issue a special permit authorizing an expansion of a non-conforming use, or a change of a non-conforming use to another non-conforming use, but only if the Board determines that such expansion or change will not be substantially more detrimental to the neighborhood than the existing non-conforming use. Changes that constitute an expansion of a non-conforming use include, but are not limited to, an increase in building lot coverage or floor area, parking or loading capacity, or the hours of operation of such use.

5.2.2 The authority under section 5.2.1 to approve an expansion or a change of a non-conforming use is subject to the following limitations:

(a) the expanded or changed non-conforming use must be located entirely on the same lot that was occupied by the original non-conforming use on the date such use became non-conforming (for the purpose of this limitation, any changes made to the lot lines of a lot that have the effect of expanding the area of the lot shall be deemed to result in the creation of a new and different lot);

(b) a non-conforming use may not be changed under section 5.2.1 to the following uses: filling stations; establishments for the sale, rental, storage, service, or repair of motor vehicles or motor boats; and the uses described in section 4.9 (“Uses Excluded in All Districts”);

(c) regardless of whether an expansion or a change of a non-conforming use is proposed, the total floor area of all buildings associated with the non-conforming use, and the parking or loading capacity of such use, may not be increased by more than twenty-five percent (25%), as measured from the date on which the original non-conforming use became non-conforming (where multiple non-conforming uses are located on a lot, the calculations required by this paragraph shall be made in the aggregate);

(d) if a non-conforming use has been changed to a more restrictive non-conforming use (in terms of such factors as intensity of use, parking or loading capacity, or hours of operation), it may not thereafter be changed to a less restrictive non-conforming use ; and

(e) if a non-conforming use has been changed to a conforming use, it may not thereafter be changed to a non-conforming use.

5.3 Effect of Zoning Change

5.3.1 Any increase in area, frontage, width, yard, or depth requirements of this Bylaw shall not apply to a lot for single or two-family residential use, which at the time of recording or endorsement, whichever occurred sooner, was not held in common ownership with any adjoining land, conformed to then existing requirements and has less than current requirements, but at least five thousand (5000) square feet of area and fifty (50) feet of frontage, as provided in M.G.L., Ch. 40A, § 6.

5.3.2 Any increase in area, frontage, width, yard, or depth requirements of this Bylaw shall not apply for a period of five (5) years from its effective date to a lot for single or two-family residential use, provided the plan for such lot was recorded or endorsed and such lot was held in common ownership with any adjoining land and conformed to the existing zoning requirements as of January 1, 1976, and had less area, frontage, width, yard or depth requirements than the newly effective zoning requirements, but contained at least seven thousand five hundred (7500) square feet of area and seventy-five (75) feet of frontage, and provided further that the provisions of this section 5.3.2 shall not apply to more than three of such adjoining lots held in common ownership.

5.3.3 Construction or operations under a building or special permit shall conform to any subsequent amendment of the Bylaw, unless the use or construction is commenced within six (6) months after the issuance of the permit and, in cases involving construction, such construction is continued through to completion as continuously and expeditiously as is reasonable.

5.4 Changes to Non-Conforming Single-Family Residential Structures

5.4.1 The Board of Appeals, or a Zoning Administrator appointed by the Board pursuant to M.G.L. 40A, § 13, may approve, without the necessity of a public hearing, the changes to nonconforming single family residential structures described in this section 5.4.1. Specifically, the Board or a Zoning Administrator may approve (1) the alteration, reconstruction, or extension of a nonconforming single-family residential structure, or (2) the alteration, reconstruction, or extension of any existing (or the construction of any new) attached or detached structure that is accessory to such nonconforming single-family residential structure, but only if (a) no part of the proposed alteration, construction, reconstruction, or extension will be located within the minimum set-back area established by section 6.1.3.1 of these by-laws, and (b) the proposed alteration,

construction, reconstruction, or extension will not result in, or increase, the structure's nonconformance with the lot-coverage or building-height limitations established, respectively, by sections 6.1.5.2 and 6.5.1 of these by-laws.

5.4.2 Changes to nonconforming single-family residential structures which are not authorized by section 5.4.1 of these by-laws may be approved only by the Board of Appeals pursuant to a public hearing. In deciding whether to approve such changes, the Board will first determine whether the proposed alteration, construction, reconstruction, or extension of a nonconforming single-family residential structure or accessory structure will increase the nonconforming nature of such structure. If the Board determines that there will be no increase in the nonconforming nature of the structure, it will approve the proposed change. If the Board determines that there will be an increase in the nonconforming nature of the structure, it will disapprove the proposed alteration, construction, reconstruction, or extension, unless the Board finds that the proposed change will not be substantially more detrimental than the existing nonconformity to the neighborhood.

6.0 INTENSITY OF LAND USE

6.1 Single Family and Non-Residential Uses

6.1.1 Lot Area and Frontage

6.1.1.1 Except as provided by section 6.1.1.2, each principal building or structure for non-residential use and each single family dwelling shall be located on a lot in conformance with the following requirements:

(a) In the Central District, at least thirty thousand (30,000) square feet of area and one hundred and twenty-five (125) feet of frontage are required.

(b) In the Residential District, the Outlying District, and the Coastal Conservation District, at least sixty thousand (60,000) square feet of area and one hundred and fifty (150) feet of frontage are required.

(c) In the case of a corner lot, the required frontage need be provided only on one street, and shall be measured from the side lot line to the point of tangency of the required corner radius.

6.1.1.2 The requirements of section 6.1.1.1 are subject to the following exceptions:

(a) A single family dwelling may be located on a reduced frontage lot, if the Planning Board determines (by a majority vote, and in conjunction with its review

of an “Approval Not Required” or Definitive Subdivision Plan) that the lot meets the following requirements: (i) the lot is located in the Central District, the Residential District, the Outlying District, or the Coastal Conservation District; (ii) the lot has at least fifty (50) feet of frontage; (iii) the lot width at all points between the street line that provides the lot with frontage and the proposed building site equals or exceeds fifty (50) feet; (iv) the area of the lot is at least one hundred and eighty thousand (180,000) square feet, for lots located in the Residential District, the Outlying District, and the Coastal Conservation District, and ninety thousand (90,000) square feet, for lots located in the Central District; (v) the lot does not have contiguous street frontage with another reduced frontage lot that was held in common ownership with such lot on or after January 16, 2003; and (vi) if a driveway is to be constructed across the frontage of the lot, the Planning Board shall verify that the grade of the driveway will not exceed ten percent (10%), that cut and fill on such portion will not exceed five (5) vertical feet, that the sight distances on the street are at least one hundred and fifty (150) feet in each direction (as measured from a point on the driveway at least six (6) feet back from the street pavement), and that the driveway will not adversely affect the existing drainage pattern (where topographical or other site conditions warrant, the Board may require the submission of a drainage analysis).

(b) Notwithstanding the provisions of paragraph (a)(vi), the Planning Board may issue a special permit authorizing the construction of a single family dwelling on a reduced frontage lot that has contiguous street frontage with one or two other reduced frontage lots that were held in common ownership with such lot on or after January 16, 2003, if the Board determines (1) that all such reduced frontage lots will be accessed by a common driveway approved under section 8.8.3, (2) that each lot meets the requirements of paragraph (a)(i)-(v), and (3) that the approval of the reduced frontage lots with a common driveway is superior to alternate methods of development.

(c) The requirements of section 6.1.1.1 shall not apply to personal wireless service facilities approved under section 8.7.

6.1.2 Lot Width

6.1.2.1 In all districts, the minimum lot width at the setback line shall be one hundred (100) feet, except that this requirement shall not apply to a reduced frontage lot that qualifies under section 6.1.1.2(a) or (b) for an exception to the applicable frontage requirement established by section 6.1.1.1.

6.1.3 Yard Area

6.1.3.1 In all districts, except the Retail District or the Business/Light Industry District, nothing other than fences, walks, public and private utilities and utility lines, septic systems, water supplies, and driveways shall be built on any lot nearer than fifty (50) feet to street lines and fifteen (15) feet to other lot lines,

except with permission of the Board of Appeals which will take into consideration the alignment of existing adjacent structures.

6.1.3.2 Minimum Setback Areas in the Retail District or the Business/Light Industry District.

6.1.3.2.1 Except as permitted by Section 6.1.3.2.4, nothing shall be built or installed on any lot in the Retail District or the Business/Light Industry District within the minimum setback area (MSA) measured from street lines and other non-street, lot lines.

6.1.3.2.2 The MSA measured from street lines shall be calculated as follows: (a) for buildings which do not exceed one hundred and fifty (150) feet in length on the side facing the street, the MSA shall be fifty (50) feet from the street line; (b) for buildings which exceed one hundred and fifty (150) feet in length on the side facing the street, the MSA shall be equal to the length of the building on the side facing the street divided by three (3); and (c), for buildings that are stepped back from the street one or more times, separate MSAs shall be calculated, using the criteria stated above, for the length of the building closest to the street, and for each length of the building stepped back from the street.

6.1.3.2.3 The MSA measured from non-street, lot lines shall be fifteen (15) feet.

6.1.3.2.4 The provisions of Section 6.1.3.2.1 are subject to the following exceptions: (a) fences, walks, utilities, utility lines, septic systems, water supplies, and signs may be built or installed in an MSA; (b) parking spaces may be located within an MSA measured from a street line, provided that in no event will parking spaces be allowed within fifty (50) feet of the street line, or within a distance from the street line of one-half (1/2) of the MSA calculated for that street line, whichever distance is greater; and (c) a site access road may be built across an MSA measured from a street line, except that, within the distance described by Section 6.1.3.2.4 (b) above, the site access road shall run perpendicular, or nearly perpendicular, to the setback line; a site access road may not, within this distance, serve as a portion of a perimeter road running adjacent or parallel to the structure.

6.1.4 Floor Area

6.1.4.1 For each unit for rent in a hotel, inn, motel, tourist home or lodging house there shall be a minimum of one hundred and sixty (160) square feet for single occupancy plus sixty (60) square feet for each additional person occupying the unit.

6.1.4.2 The restrictions of this section shall not apply to any dwelling in existence in the Town at the time of the adoption of this Bylaw.

6.1.5 Lot Coverage

6.1.5.1 In the Retail District or the Business/Light Industry District, no more than fifty (50) percent of any lot or area shown on the site plan shall be covered by structures or impervious surfaces.

6.1.5.2 In all districts, the maximum building lot coverage for all new construction, alteration, enlargement, or reconstruction for all structures on any lot shall not exceed twenty-five (25) percent of the total lot area.

6.2 Multi-Family Dwellings

6.2.1 Applicability

6.2.1.1 Multi-family dwellings are authorized by this section in the Central District or the Residential District as follows:

(a) a development creating fewer than five (5) multi-family dwelling units is authorized, subject to the requirements of this section, and provided a site plan is approved by the Planning Board; and

(b) a development containing five or more multi-family dwelling units is authorized, subject to the requirements of this section, and provided a special permit is issued by the Planning Board.

6.2.1.2 Notwithstanding section 6.2.1.1, the requirements of this section do not apply to townhouse dwellings approved as part of an Open Space Residential Development under section 6.4, or to multi-family dwellings approved as part of a New England Village Development under section 6.7, except as provided by section 6.7.3.2.

6.2.1.3 Any development under this section that involves a Subdivision of Land shall be subject to the approval of the Planning Board under the Subdivision Rules.

6.2.2 Density

6.2.2.1 The development shall be located on a site consisting of at least five (5) acres in the Residential District and two (2) acres in the Central District.

6.2.2.2 Twenty thousand (20,000) square feet of area for the first dwelling unit, plus ten thousand (10,000) square feet of area for each additional unit, is required, except that, for developments under section 6.2.1.1(b), the Planning Board may increase the number of units allowed, up to a maximum density of

twenty thousand (20,000) square feet of area for the first unit, plus five thousand (5,000) square feet of area for each additional unit, if the Applicant proposes additional affordable housing than that required by section 6.2.4, or on-site or off-site public improvements or amenities that result in substantial benefit to the Town and which are beyond those necessary to mitigate the impacts of the proposed development. The square footage of any primary conservation areas shall not be considered in determining the number of dwelling units allowed under this section.

6.2.2.3 At least one hundred and fifty (150) feet of frontage is required in the Residential District, and at least one hundred and twenty-five (125) feet of frontage is required in the Central District.

6.2.2.4 No building or structure may be located within fifty (50) feet of any street line, or within fifty (50) feet or twenty-five (25) feet, respectively, of any non-street, lot line in the Residential District or the Central District, except that these setback requirements shall not apply to structures referenced in section 6.1.3.2.4(a), and provided further that, for developments under section 6.2.1.1(b), the Planning Board may reduce these required setbacks, if the Board determines that the reduction will result in a superior design and will not have an adverse impact on the neighborhood.

6.2.2.5 Building coverage may not exceed twenty-five percent (25%) of the area of a lot in the Residential District, and thirty-five percent (35%) of the area of a lot in the Central District.

6.2.2.6 No more than fifty percent (50%) of any lot in the Residential District, or seventy percent (70%) of any lot in the Central District, may be covered by impervious surfaces.

6.2.3 Design and Development Standards

6.2.3.1 In addition to any design and development standards adopted under section 7.8.3.2, the development shall comply with the provisions of section 6.4.11.2(a), (b), (c), (d), and (f), and the following additional requirements:

(a) individual buildings shall contain no more than eight (8) dwelling units;

(b) the development shall provide for varied roofline articulation that stresses New England village-style architecture, and the use of building materials and colors that are compatible with other quality buildings of similar scale in the vicinity;

(c) each dwelling unit shall have two (2) sides with full exposures; and

(d) each dwelling unit shall have a minimum of three hundred and fifty (350) square feet of floor area, plus one hundred (100) square feet of floor area for the second and each additional bedroom.

6.2.3.2 The Applicant shall submit a separate landscaping plan, prepared by a registered landscape architect, that provides for intensive high-quality landscaping of all open areas, including areas adjacent to paths, driveways and parking lots, and, where appropriate for screening purposes, dense buffers of trees and shrubs.

6.2.4 Affordability Requirements

6.2.4.1 At least one (1) of the units in a development approved under section 6.2.1.1(a) shall qualify as an affordable dwelling unit.

6.2.4.2 At least ten percent (10%) of the units in a development approved under section 6.2.1.1(b) shall qualify as affordable dwelling units. For the purposes of this calculation, a fraction of one half (_) or greater shall be rounded to the next higher whole number, and a fraction of less than one half (_) shall be rounded to the next lower whole number, but not less than the number one (1).

6.2.4.3 Affordable dwelling units shall be indistinguishable from market rate dwelling units, except for matters of interior finish, fixtures, and appliances. Where more than one affordable dwelling unit is required, such units shall be dispersed throughout the site. Affordable units shall be constructed concurrently with market rate units.

6.2.4.4 The Applicant shall submit to the Planning Board and the Board of Selectmen the deed covenants and other documentation necessary to insure that the requisite number of units will qualify as affordable dwelling units. If the documentation appears complete and adequate, the Board of Selectmen shall file an application with the DHCD for approval of the units as Local Initiative Units. Pursuant to the provisions of 780 C.M.R. § 120.1, an occupancy permit may not be issued for any of the dwelling units created by the development until the DHCD notifies the Town in writing that the requisite number of units qualify as Local Initiative Units under 760 C.M.R. § 45.03.

6.3 Conversion of Existing Buildings

6.3.1 A building in existence on May 1, 1981, may be converted into one (1) or more dwelling units than it originally contained, subject to the criteria and conditions specified in this section. The provisions of this section do not apply to building conversions approved under sections 6.2 or 6.7.

6.3.1.1 Minimum Lot Area.

6.3.1.1.1 In addition to the lot area required in Section 6.1.1. there shall be five thousand (5000) square feet for the second dwelling unit contained in a structure. For each additional unit the requirements of 6.2.1.1 shall be met.

6.3.1.2 No existing building shall be divided to contain more than two (2) dwelling units unless the Applicant complies with the requirements of sections 6.2. or 6.7.

6.3.1.3 The Board of Appeals may grant a permit for less that the required lot area for an existing building being converted to more than one (1) dwelling unit or for a multi-family dwelling provided that:

6.3.1.3.1 The Board of Health has approved the sewage disposal system in writing;

6.3.1.3.2 No more than twenty-five percent (25%) of the lot area is covered by structures;

6.3.1.3.3 There is at least one (1) off-street parking space for each bedroom and efficiency apartment contained in the structure;

6.3.1.3.4 There is a provision for screening by fencing or landscaping of outside storage areas;

6.3.1.3.5 The building is served by municipal water.

6.3.1.4 Minimum Floor Area

6.3.1.4.1 The structure to be converted shall contain at least eleven hundred (1100) square feet and no unit shall have a floor area of less than three hundred fifty (350) square feet plus one hundred (100) square feet for each bedroom over one (1).

6.4 Open Space Residential Development

6.4.1 Purposes

6.4.1.1 This section is intended to promote integrated, creatively-designed residential development that results in the preservation of open space and natural resources, the reduction of infrastructure and site development costs, and the promotion of attractive standards of appearance consistent with Town character.

6.4.2 Special Permit Authority

6.4.2.1 The Planning Board may grant a special permit for an Open Space Residential Development ("OSRD") authorizing the construction of single family or townhouse dwellings in the Central District, the Residential District, the Outlying District, or the Coastal Conservation District, pursuant to the provisions of this section.

6.4.3 Eligibility

6.4.3.1 Any proposed development that would create two (2) or more single family dwellings or townhouse dwelling units on a parcel of land or set of contiguous parcels of land containing at least five (5) acres is eligible for consideration as an OSRD. Parcels separated by roadways shall be considered contiguous.

6.4.3.2 Any person that submits a conventional subdivision plan (preliminary or definitive) under the Subdivision Rules that would create five (5) or more single family dwelling lots on a parcel of land or set of contiguous parcels of land containing five (5) or more acres shall be required, simultaneously with the submission of such conventional subdivision plan, to submit an application for an OSRD special permit, together with an OSRD concept plan that meets the requirements of section 6.4.4.2, except that, at any time after the opening of the public hearing under section 6.4.5.2, the OSRD application and concept plan may be withdrawn.

6.4.3.3 Any application submitted under this section that involves a Subdivision of Land shall be subject to the approval of the Planning Board under the Subdivision Rules.

6.4.4 Submittal Requirements

6.4.4.1 All Applicants for an OSRD special permit shall submit the following to the Planning Board:

(a) An application on the form prescribed by the Board, and any fees determined by the Board under section 7.8.3.2.

(b) A Yield Plan. The Yield Plan shall establish the maximum number of single family dwellings that could be built under a conventional subdivision plan given the existence on the site of any topographical constraints and primary conservation areas. The Yield Plan shall also provide evidence acceptable to the Planning Board that on-site wastewater treatment and disposal systems would be permitted and constructed to serve such dwellings. Unless waived by the Planning Board, this evidence shall include a demonstration of suitable soil and

groundwater conditions through representative sampling and testing of the buildable areas of the site by methods approved by the Board of Health, and shall at a minimum consist of one determination of soil permeability and one observation of maximum ground water elevation per two acres of buildable land, such tests being distributed with reasonable uniformity over the site.

6.4.4.2 For developments that involve a subdivision of land, the Applicant shall, in addition to the materials specified in section 6.4.4.1, submit an OSRD concept plan, except that, in lieu of an OSRD concept plan, the Applicant may submit an OSRD preliminary or definitive plan that meets the requirements of the Subdivision Rules. The OSRD concept plan shall address the general features of the land, and give approximate configurations of lots and roadways, and shall include all information required by the Planning Board under section 7.8.3.2.

6.4.4.3 For developments that do not involve a subdivision of land, the Applicant shall, in addition to the materials specified in section 6.4.4.1, submit an OSRD site plan. Such plan shall satisfy the requirements of section 7.6, and shall contain such additional information as may be required by the Planning Board under section 7.8.3.2.

6.4.4.4 The plans required by section 6.4.4 shall be prepared by a team including a registered civil engineer, land surveyor, and landscape architect.

6.4.5 Procedures for Approval

6.4.5.1 Any person that is interested in obtaining an OSRD special permit is encouraged to arrange for a pre-application meeting with the Planning Board to discuss the proposed OSRD.

6.4.5.2 The Board shall hold a public hearing on the special permit application, and a concurrent public hearing on the applicable OSRD plan filed under section 6.4.4. The Board may issue the special permit, with or without conditions, if it determines that: (a) the proposed OSRD satisfies the requirements of this section, all other sections of the Bylaw, and any rules issued under section 7.8.3.2; (b) the proposed OSRD is superior to a conventional subdivision; and (c) the proposed OSRD promotes the purposes of this section.

6.4.5.3 For developments involving a subdivision of land, if the Planning Board issues a special permit on the basis of an OSRD concept or preliminary plan, the Applicant shall thereafter file an OSRD definitive plan. The Planning Board shall reconsider the special permit, in accordance with section 6.4.13, if there is any variation between the OSRD concept or preliminary plan that was submitted with the special permit application and the approved definitive plan.

6.4.6 Development Density

6.4.6.1 Unless a density bonus is permitted under section 6.4.7, the total number of dwelling units permitted in an OSRD shall not exceed the lesser of: (a) the number of dwelling units determined under section 6.4.6.2; or (b) the number of single family dwellings that would be allowed under a conventional subdivision plan, as determined by the Planning Board based on its review of the Applicant's yield plan. The Applicant shall bear the burden of proof regarding the permitted density.

6.4.6.2 The number of dwelling units determined under this section 6.4.6.2 shall be calculated by the following formula;

$$\text{Total Number of Units} = \frac{TA - (0.5 \times PCA) - (0.1 \times TA)}{\text{District Minimum Lot Area}}$$

TA = Total Area of Parcel

PCA = Primary Conservation Areas

If a parcel lies in districts with different lot area requirements, a calculation should be made for each district.

6.4.7 Density Bonus

6.4.7.1 The Planning Board may authorize a density bonus in accordance with sections 6.4.7.2 and 6.4.7.3, except that the number of dwelling units awarded as a density bonus under such sections may not, in the aggregate, exceed thirty-five percent (35%) of the number of units permitted under section 6.4.6, and provided further that a density bonus may not be awarded under section 6.4.7.3 for an OSRD that would create three or more units in the Coastal Conservation District.

6.4.7.2 The Planning Board may authorize a density bonus of up to twenty percent (20%) if the Applicant proposes: (a) on or off-site public improvements or amenities that result in substantial benefit to the Town and which are beyond those necessary to mitigate the impacts of the proposed OSRD; or (b) townhouse dwellings constructed in a New England village style of architecture with a maximum of two bedrooms per unit.

6.4.7.3 For every one and one half (1.5) affordable dwelling units created by the OSRD, one (1) dwelling unit may be added as a density bonus, except that this density bonus may not exceed fifteen percent (15%) of the number of units permitted under section 6.4.6. The affordable dwelling units must qualify as Local Initiative Units under 760 C.M.R. § 45.03, and shall be constructed concurrently with the market rate units.

6.4.8 Open Space Requirements

6.4.8.1 Except as provided by section 6.4.8.5 and section 6.4.8.6, a minimum of fifty percent (50%) of the OSRD shall be dedicated as permanent open space. Such open space shall be devoid of structures and impervious surfaces, and shall either be left in its undisturbed natural condition or developed to assure its use as an area for passive recreation or a visual amenity.

6.4.8.2 The percentage of the open space that is wetlands shall not exceed the percentage of the entire tract that is wetlands, except that a greater percentage of wetlands may be included in the open space if the Planning Board determines that such inclusion promotes the purposes of this section.

6.4.8.3 Open space shall be contiguous, except that the Planning Board may waive this requirement if it determines that allowing non-contiguous open space will promote the purposes of this section and/or protect primary and secondary conservation areas.

6.4.8.4 Unless conveyed to the Town, the open space shall be subject to a recorded restriction enforceable by the Town. The restriction shall provide that the open space will remain in an open state, will be used solely for the purposes allowed by this section, and will be maintained in a manner that will ensure its suitability for its intended purpose.

6.4.8.5 For an OSRD that creates only single family dwellings, the minimum open space requirement shall be forty-five percent (45%), as opposed to fifty percent (50%), of the OSRD, but only if an additional area of the OSRD is reserved for active or passive recreational activities by the residents of the OSRD. The square footage of this common recreational space shall equal or exceed the square footage of fifty percent (50%) of the OSRD, minus the square footage of the area dedicated as open space under section 6.4.8.1 (which must equal or exceed forty-five percent (45%) of the OSRD). Accessory buildings and structures are allowed in this common recreational space. Dwelling units and other principal structures, and paved driveways and parking lots, are not allowed in this space.

6.4.8.6 Notwithstanding the provisions of section 6.4.8.1, the dedicated open space of an OSRD may be used for the purpose of operating a golf course, subject to the following conditions: (a) the dedicated open space of the OSRD must comprise at least seventy percent (70%) (not fifty percent (50%)) of the development; (b) all fairways, greens, and other playable areas of the golf course, and all buildings and structures accessory to the golf course, shall be located in already-disturbed areas of the OSRD (unless this requirement is waived by the Planning Board); and (c) the golf course shall comply with such conditions as the Planning Board may impose relating to water usage and to the application of fertilizers and pesticides.

6.4.9 Dimensional Requirements

6.4.9.1 Except as provided by sections 6.4.9.2 and 6.4.9.3, the Planning Board may waive the minimum requirements for frontage, lot area, lot width, setbacks, and lot coverage that would otherwise apply to the parcel or portions of the parcel.

6.4.9.2 The Planning Board may not waive the frontage or setback requirement on a street that was not created by the OSRD.

6.4.9.3 At least fifty percent (50%) of the required front setback shall be maintained by the OSRD, unless the Planning Board determines that a further reduction would promote the purposes of this section.

6.4.10 Design Process and Development Standards

6.4.10.1 An Applicant shall determine the layout of streets, open space, and lots or building areas in the proposed OSRD in compliance with the following five-step design process:

(a) Step One: Identify primary and secondary conservation areas.

(b) Step Two: Identify the potentially developable area of the site. To the maximum extent feasible, the potentially developable area should consist only of land outside of primary and secondary conservation areas.

(c) Step Three: Locate house sites within the potentially developable areas, and delineate private yards and shared amenities, so as to reflect an integrated community.

(d) Step Four: Delineate the streets that will provide access to the house sites, and any desirable trials or walkways.

(e) Step Five: Delineate lot lines, except where condominium or cooperative ownership is used.

6.4.10.2 In addition to any development and design standards adopted under section 7.8.3.2, the following is required:

(a) To the maximum extent feasible, all utilities shall be located underground.

(b) Signage shall be limited to one sign at each entrance to the OSRD, of a maximum signboard area of twelve (12) square feet, with content limited to the name and address of the development.

(c) Each lot or dwelling shall be served by Town water, and a sewage treatment facility approved by the Board of Health.

(d) A minimum of one and one half (1.5) off-street parking spaces per dwelling unit shall be provided.

(e) Where townhouse dwellings are proposed, individual buildings shall contain no more than eight (8) dwelling units.

(f) Unbroken building facades longer than sixty (60) feet, and regular spacings and building placements, shall be avoided.

(g) Intensive, high quality landscaping of all open areas (excluding areas that will remain in an existing natural state) shall be provided.

(h) Where townhouse dwellings are proposed, the development shall provide for varied roofline articulation that stresses New England village-style architecture, and the use of building materials and colors that are compatible with other quality buildings of similar scale in the vicinity.

6.4.11 Ownership of Open Space

6.4.11.1 The open space shall be conveyed to one of the following:

(a) To the Town for park or open space use.

(b) To a nonprofit organization dedicated to the conservation of open space.

(c) To a corporation or trust comprising a homeowners' association whose membership is limited to the owners of all lots or dwelling units within the OSRD. The developer shall include in the deed to such owners beneficial rights in the open space, and shall grant a perpetual open space restriction to the Town to insure that it will remain in an open state and not be used for residential purposes or accessory uses. Such restriction shall be in the form and substance prescribed by the Planning Board, and may contain such additional restrictions on the use of the open space as the Board deems appropriate.

(d) To a corporation, trust, or other entity separate from the homeowners' association, if the open space of the OSRD is used for the purpose of operating a golf course, in accordance with section 6.4.8.6, provided: (i) the homeowners' association and its members have the perpetual right to use the golf course on terms no less favorable than other users; (ii) the open space is subject to a perpetual restriction enforceable by the Town that limits the use of the parcel to passive recreation or the operation of a golf course for use by the public, which operation may include a golf driving range, clubhouse, or other accessory use or structure; and (iii) the perpetual restriction is approved by the Planning Board and contains such additional restrictions on the use of the open space as the Board deems appropriate.

6.4.12 Revisions to the Special Permit

6.4.12.1 The Planning Board may make minor lot line changes and other minor revisions to an OSRD plan without a public hearing.

6.4.12.2 If the Planning Board determines that a proposed or required revision to the OSRD special permit or plan is substantial, it shall hold a public hearing on the revision. A substantial revision shall include the following: any reduction in size or change in location of the preserved open space; any significant change in the layout of the ways or lots; an increase in the number of dwelling units or lots; or a significant change in the general development pattern.

6.5 General Requirements

6.5.1 Building Height

6.5.1.1 The height of any structure in all districts shall not exceed thirty-five (35) feet or two and one-half stories.

6.5.1.2 Building height shall be measured as the vertical distance from the average elevations of the existing lot grade at the front of the building to the highest point of the top story in the case of a flat roof, and to the mean height between the plate and the ridge in the case of a pitched roof.

6.5.1.3 Each story shall be deemed to be the portion of a building between the upper surface of any floor and the upper surface of any floor next above, having more than one-half of its height above the average elevation of the finished grade adjoining the building.

6.5.1.4 Limitations of height shall not apply to flagpoles, chimneys, radio and television antennae, windmills, silos, water tanks, public utility structures, and similar non-inhabitable structures.

6.5.2 In all districts, no lot shall have more than one (1) foot of perimeter for every thirty-nine and six-tenths (39.6) square feet of lot area and shall not be less than forty (40) feet in width at any location within the lot except within a portion of the lot where two (2) lot lines meet at a point.

6.6 Accessory In-Law Apartments in the Central, Outlying and Residential Districts

6.6.1 Purpose and Intent: It is the specific intent of this section to allow apartments, including kitchens, within single family properties in the Central, Outlying, and Residential Districts for the purpose of meeting the special housing

needs of parents, and children, and their respective spouses of families of owner-occupants of properties in the Town of Rowley. To achieve this goal and to promote the other objectives of this by-law, specific standards as set forth below for such accessory in-law apartment use.

6.6.2 Accessory In-Law Apartments may be created only by Special Permit issued by the Board of Appeals and only within single family dwellings and located on lots, both in existence prior to January 1, 1990. In addition, accessory in-law apartments shall only be located on lots meeting the minimum lot area in the District which it is located on the date of the filing of the application for the Special Permit.

6.6.3 Owner Occupancy Required. The owner(s) of the single family lot upon which the accessory in-law apartment is located shall occupy at least one (1) of the dwelling units on the premises. The Special Permit shall be issued to the owner of the property. Should there be a change in ownership or a change in the residence of the owner, the Special Permit and the Occupancy Permit for the Accessory In-Law Apartment shall become null and void, and the property shall revert to single family status. The owner applicant shall be required to file a declaration of covenants on the subject property prior to the issuance of a Special Permit for an Accessory In-Law Apartment. This declaration shall be in favor of the Town of Rowley and state that:

> **a.** The special Permit for the Accessory In-Law Apartment shall terminate upon transfer of title of said premises or upon the undersigned no longer occupying the premises as their principal residence.
>
> **b.** The new owner of the premises shall have to apply to the Board of Appeals for a Special Permit and prove compliance with Section 6.6.1 (Purpose and Intent) to continue the Accessory In-Law Apartment.

6.6.4 An accessory Apartment shall be located within the principal dwelling, within an addition to the principal dwelling, or within an accessory structure that is attached to the principal structure provided that such dwelling, addition, or attached accessory structure conforms to all other requirements of this bylaw unless an approval therefore shall have been granted by the Zoning Board of Appeals.

6.6.5 The minimum floor size for an accessory apartment shall be three hundred (300) square feet, but in no case shall it exceed twenty-five (25) percent of the habitable area of the principal dwelling, unless in the opinion of the Board of Appeals a greater or lesser amount of floor area is warranted by specific circumstances of the particular building.

6.6.6 There shall be no more that one (1) accessory in-law apartment for a total of two (2) dwelling units permitted per lot.

6.6.7 The Accessory In-Law Apartment must be determined to comply with current health, safety, and construction requirements before occupancy and at every change in occupancy.

6.6.8 Applicant shall receive written Board of Health approval, relative to sewage disposal, prior to submission of Application for Special Permit to the Board of Appeals. Applicant shall conform to all Board of Health Rules and Regulations, unless waived by said Board, to obtain Board of Health approval.

6.6.9 Applications for Special Permits shall be subject to approval by the Board of Appeals. Applications for Special Permit shall contain such information to determine compliance with the bylaw sections herein and with any regulations of the Board of Appeals. If the accessory in-law apartment is to be located within the Historic District, then the applicant must comply with the Rowley Historic District Bylaws of the Town of Rowley General Bylaws.

6.6.10 Prior to approval and receipt of a Building Permit, the applicant must submit to the Building Inspector a copy of the notification of Special Permit Approval as granted by the Board of Appeals and a copy of the declaration of covenants as stamped by the Registry of Deeds.

6.6.11 Occupancy Permit for Accessory In-Law Apartments shall be renewed annually by the Building Inspector. For the purposes of annual occupancy permit renewal, the Building Inspector shall have the right to inspect the premises to determine compliance per requirements of this bylaw and the Special Permit.

6.7 New England Village Development

6.7.1 Application

6.7.1.1 The Planning Board may issue a special permit for a New England Village Development (“NEVD”) on a parcel of land located in the Central District, subject to the criteria and conditions specified in this section.

6.7.1.2 An NEVD proposed under this section that involves a Subdivision of Land shall be subject to the approval of the Planning Board under the Subdivision Rules.

6.7.2 Permitted Uses and Density

6.7.2.1 Multi-family dwellings, and the non-residential uses described in section 4.2.3, may be developed as part of an NEVD. Such non-residential uses may be located on the same lot or in the same building as dwelling units, except that

non-residential uses may not occupy more that fifty percent (50%) of the floor area of any building that is also used for residential purposes.

6.7.2.2 The maximum number of dwelling units permitted in an NEVD will be determined in the following manner: twenty thousand (20,000) square feet of area for the first dwelling unit, plus ten thousand (10,000) square feet of area for each additional unit is required, except that the Board may increase the number of units allowed, if the Applicant proposes additional affordable housing than that required by section 6.7.3, the preservation or renovation of historic structures, or on-site or off-site public improvements or amenities that result in substantial benefit to the Town and which are beyond those necessary to mitigate the impacts of the proposed development. The square footage of any primary conservation areas shall not be considered in determining the number of dwelling units allowed under this section.

6.7.3 Affordability Requirements

6.7.3.1 A minimum of ten percent (10%) of the dwelling units in an NEVD shall qualify as affordable dwelling units.

6.7.3.2 The provisions of sections 6.2.4.2, 6.2.4.3, and 6.2.4.4 shall apply to an NEVD approved under this section.

6.7.4 Design and Development Standards

6.7.4.1 In addition to any design and development standards adopted under section 7.8.3.2, the proposed NEVD shall comply with the following requirements:

(a) All proposed buildings and structures shall be compatible with the existing buildings and structures in the neighborhood and with the historic development pattern of a New England town center. The compatibility of such buildings and structures shall be analyzed in terms of the following factors: size and bulk; orientation to the street; distance from the street; height and roof-line articulation; the pattern of window, door, and other building openings; architectural styles; and exterior building materials and colors.

(b) The Board shall determine the number and location of on-site parking spaces to adequately serve the NEVD; on-site parking spaces shall be located to the side and rear of, and not in the front of, the proposed principal buildings.

(c) Front yard areas shall be designed and landscaped to promote pedestrian comfort, access, and visual interest;

(d) Side and rear yard areas shall be landscaped to screen on-site parking and adjacent properties.

(e) Proposed principal buildings may not be located further than twenty-five (25) feet from the street line, except that this requirement may be waived or changed by the Planning Board, based on a consideration of the alignment of the existing buildings on the street.

6.7.4.2 The Planning Board may, with respect to an NEVD, waive the following requirements of the Bylaw: the minimum setback requirements established by section 6.1.3.1, the minimum lot size and frontage requirements established by section 6.1.1.1(a), and the maximum lot coverage requirement established by section 6.1.5.2.

6.7.5 Special Permit Criteria

6.7.5.1 The Planning Board may issue a special permit for an NEVD, if the Board determines that the development complies with all of the criteria of this section, as well as the special permit criteria stated in section 7.8.2, and that the development is designed in a manner that is compatible with the historic development pattern of a New England town center.

6.7.5.2 In deciding whether to issue a special permit under this section, the Board shall consider any written recommendations or comments submitted by the Rowley Historic District Commission.