

Article 6 – Growth Management By-Law

Section 6100 Purpose

The purpose of this Article is to maintain the rate of development in the Town at a level which will allow the Town to provide in a planned and rational manner adequate public services and facilities to meet the needs of its current and future population without overburdening the Town's natural resources or the capacities of existing and planned public facilities, particularly with respect to provision of potable water, wastewater disposal, and solid waste disposal. The regulations provided in this Article are designed to effectuate the purposes of zoning in :

- facilitating adequate provision of water, drainage, sewerage, and other public health safety and welfare requirements;
- protecting and enhancing the character of the community and its historical and natural resources; and
- ensuring that the rate of development does not overly burden the capacity of the Town to absorb the costs of meeting water, sewerage and waste disposal service demands in light of both fiscal constraints and limited availability of natural resources;

while at the same time, encouraging affordable housing development and year-round economic development, and minimizing hardship to persons of limited incomes who live, or may choose to live, in the town.

Section 6200 Applicability

1. Except as provided below this Growth Management By-law shall apply to all new construction, including new structures and enlargement, alteration or renovation of existing structures, to all new uses, and to all expansions, changes, or alterations of existing uses, which will result in an increase, no change, or a decrease in Title 5 Design Flow (pursuant to 310 C.M.R. 15.203 (2) through (6)) as determined by the Health Agent.

2. No building permit shall be issued for a new structure or for the enlargement, reduction, renovation or alteration of an existing structure and no occupancy permit shall be issued for any new use or any reduction, expansion, change or alteration of an existing use for which no building permit is required; until and unless:

(a) The Health Agent determines the amount, if any, by which Title 5 Design Flow will increase or decrease as a result of the proposed structure or use. In making determinations of Title 5 Design Flow, the Health Agent shall apply the definitions of Fixed Standing and Seats as defined in Article 1, where applicable; and

(b) In the event the Health Agent determines the amount of Title 5 Design Flow will increase, the property owner obtains a Growth Management Allocation Permit sufficient to allow the increase.

3. If the Health Agent determines under Section 6200-2a that a decreased Title 5 Design Flow will result, then during a two-year period following the issuance of the building permit or occupancy permit, whichever is earlier, for such structure or use, no Growth Management Allocation Permit will be required for any subsequent change in such structure or use that increases its Title 5 Design Flow up to and including the Title 5 Design Flow amount so determined by the Health Agent prior to the decrease in Title 5 Design Flow, unless the owner has abandoned the prior use or intensity of use. Such abandonment shall occur by wholly changing such use to a different principal use, or by issuing a written statement or covenant to the Town expressly abandoning the prior use or intensity of use.

4. This Growth Management Zoning By-law shall not apply to Municipal Uses or approved laundromats.

5. Notwithstanding any other provisions of this By-law to the contrary, any building permit issued for construction authorized by a special permit granted prior to December 31, 2000 shall continue to be governed by the applicable provisions of the Growth Management By-law in effect on the date the special permit was granted, provided that:

(1.) the building permit application for such construction was submitted to the Department within six months of the date of the grant of the authorizing special permit, and

(2.) any delay in issuance of the building permit beyond the six month period following the grant of the special permit was due solely to the annual building permit limitations contained in the Growth Management By-law in effect on the date the special permit was granted.

6. This Growth Management Zoning By-law shall not apply to:

a. the demolition, reconstruction and/or remodeling of dilapidated and/or condemned structures deemed by the Inspector of Buildings on or before March 1, 2000 to be a public safety hazard subject, however, to all other provisions of these By-laws governing maintenance, extension, alteration or change to pre-existing structures and/or uses.

b. construction of a single-family dwelling, one per lot, upon a vacant lot by the record of owner(s) thereof appearing at the Barnstable County Registry of Deeds as of March 1, 2000 which is intended to be occupied and is subsequently occupied for a continuous period of at least two (2) years by said owner(s) as his/her/their permanent principal residence. An Affidavit of Intention setting forth the owner(s) certification of intended commitment to compliance with the requirements of this subsection and signed and notarized under the pains and penalties of perjury by said record owner(s) shall be filed with the Inspector of Buildings with any building permit application filed pursuant to this exception. No property utilizing this exception shall be eligible to receive an additional Growth Management Allocation Permit for a period of five (5) years from the date of issuance of the original Growth Management Allocation Permit nor may a qualifying person or persons under this exception ever re-qualify for a further exception under this subparagraph b.

c. single family dwellings where the owners are the resident and have a private well suitable for drinking. Said lot shall not be permitted to connect to the Town's water system.

7. This Growth Management By-law shall not apply to health care related uses in the Health Care Overlay District.

Section 6300 Procedure

1. Application for a Growth Management Allocation Permit may be made in writing to the Permit Coordinator only after having first applied for all other permits, (except building and occupancy permits), licenses, special permits, variances, determinations and/or orders of conditions for the proposed construction and/or use as deemed necessary by the Permit Coordinator including, if applicable, Affordable Housing and/or Community Housing Permits awarded by the PLHP or Economic Development Permits awarded by the Board of Selectmen. For purposes of such application, statutory appeal periods relative to said permits, variances, special permits, determinations and/or orders of conditions, need not have expired without appeals having been taken in order for the Permit Coordinator to determine that an application for a Growth Management Allocation Permit is completed.

2. In order to be considered complete, a Growth Management Allocation Permit application must be accompanied by the application for any building permit required for the proposed construction or, if no building permit is required, the application for an occupancy permit.

3. Growth Management Allocation Permits shall be issued based upon the allowed Growth Limitation Goal allocation for each category at the beginning of each calendar year in the order that Completed Applications have been received in the Department of Regulatory Management and

after the Department of Regulatory Management has had 30 days to review the Completed Application.

4. Affordable and/or community housing permits will be authorized on a priority basis as established by the PLHP, using criteria including but not limited to housing quality standards, quality of design, degree of affordability in terms of cost, and financial feasibility of the proposal. No affordable and/or community housing permit shall be issued without prior authorization of the PLHP.

5. The Health Agent shall, two years after a determination of decreased Title 5 Design Flow and provided that such Title 5 Design Flow has not increased during the two year period, assign the difference in gallonage between the prior, higher Title 5 Design Flow and the current Title 5 Design Flow to a "Surplus Gallonage Pool." In the event a property owner abandons the prior use or intensity of use pursuant to Section 6200-3, the Health Agent shall immediately assign the difference in gallonage between the prior, higher Title 5 Design Flow and the new Title 5 Design Flow to a "Surplus Gallonage Pool."

Section 6400 Priorities

Growth Management Allocation Permits shall be issued on the basis of the order of use priorities listed within each General Use Category in the following Table, and within each use priority in order of the date of the completed applications. The first listed use within each General Use Category shall be the highest use priority within that General Use Category.

Section 6500 Table of Use Categories and Priorities

GENERAL USE CATEGORY 1

1a. Affordable Housing Units

1b. Medium Income Community Housing Units

1c. Middle Income Community Housing Units

GENERAL USE CATEGORY 2

The non-affordable housing components of project consisting of:

2a1 Multi-family dwellings projects that consist of 50%–99% affordable housing

2a2 Two-family dwellings projects that consist of 50%–99% affordable housing

2a3 Single-family dwelling projects that consist of 50%–99% affordable housing

2b1 Multi-family dwelling projects that consist of 33%–49.9% affordable housing

2b2 Two-family dwelling projects that consist of 33%–49.9% affordable housing

2b3 Single-family dwelling projects that consist of 33%–49.9% affordable housing

GENERAL USE CATEGORY 3

3a. Expansions or alterations to existing residential structures or uses that result in increased Title 5 flow, not to exceed the Title 5 Design Flow pursuant to 310 CMR 15.203(2) for one bedroom per year per applicant not to exceed a total of 330 gallons per year.”

3b. Single family dwelling, one per lot; two family dwelling, one per lot.

3c. All other market rate residential projects without affordable housing components that result in increased Title 5 flow.

GENERAL USE CATEGORY 4

4a Office, Artists’ Studio, For profit Nursing home, For profit Outpatient Rehabilitation Facility

4b Boarding, Lodging or Tourist Homes

- 4c Hotel, Motel, Inn, Camp, Cabin
- 4d Restaurant and Bar

4e All other uses, expansions or alterations to existing structures or uses and any change in use or increase in posted occupant load that results in increased Title 5 Design Flow.

GENERAL USE CATEGORY 5

5a Economic Development pursuant to an Economic Development Permit.

Section 6600 Growth Limitation Goal Allocations

1. Initially, 13,200 gpd shall be allotted for assignment for Use Category 1a. Thereafter, unassigned gallonage allotment shall be as follows in the order listed. 1. All unassigned gallonage remaining at the end of each calendar year for General Use Category 1a shall be allotted for assignment in the next calendar year for Use Category 1a. 2. Unassigned gallonage remaining at the end of each calendar year for General Use Categories 1b and 1c shall be allotted for assignment in the next calendar year for those same categories, respectively (1b to 1b and 1c to 1c). 3. One quarter of the unassigned gallonage remaining at the end of each calendar year for General Use Categories 3 and 4 shall be allotted for assignment in the next calendar year for Use Category 1a; two quarters of said remaining unassigned gallonage shall be so allotted for Use Category 1b; and one quarter of said remaining unassigned gallonage shall be so allotted for Use Category 1c. 4. One half of the unassigned gallonage remaining at the end of each calendar year for General Use Category 2 shall be allotted for assignment in the next calendar year for Use Category 2 and one half of said remaining unassigned gallonage shall be so allotted for Use Category 3. On the effective date of this zoning by-law amendment and on the anniversary thereof in 2005, 2006, 2007 and 2008, 550 gallons per day shall be added to the allotment for Use Category 1a, provided that prior to each such anniversary, the Board of Selectmen shall have made a finding that the Town is in compliance with the water withdrawal permit issued by the Department of Environmental Protection ("DEP") pursuant to 310 CMR 36.00 and all applicable rules and regulations promulgated by DEP with respect thereto.

1a. On the effective date of this zoning by-law amendment and on the anniversary thereof in 2005, 2006, 2007 and 2008, 1,100 gallons per day shall annually be added to the allotment for Use Category 1b, provided that prior to each such anniversary, the Board of Selectmen shall have made a finding that the Town is in compliance with the water withdrawal permit issued by the Department of Environmental Protection (“DEP”) pursuant to 310 CMR 36.00 and all applicable rules and regulations promulgated by DEP with respect thereto.

1b. On the effective date of this zoning by-law amendment and on the anniversary thereof in 2005, 2006, 2007 and 2008, 550 gallons per day shall annually be added to the allotment for Use Category 1c, provided that prior to each such anniversary, the Board of Selectmen shall have made a finding that the Town is in compliance with the water withdrawal permit issued by the Department of Environmental protection (“DEP”) pursuant to 310 CMR 36.00 and all applicable rules and regulations promulgated by DEP with respect thereto.

1c. On the effective date of this zoning by-law amendment and on the anniversary thereof in 2007 and 2008, 990 gallons shall be allocated for assignment to Use Category 3a for projects where Completed Applications were filed prior to March 31, 2005.

2. The Growth Limitation Goal shall be allocated for categories 2, 3 and 4 each year as follows:

(a.) 1,870 gpd shall be allocated for assignment under General Use Category 2.

(b.) 1,100 gpd shall be allocated for assignment under General use Category 3.

(c.) 700 gpd shall be allocated for assignment under General Use Category 4.

3. Initially, 5,000 gpd shall be allotted for assignment for General Use Category 5. Gallonage in the Surplus Gallonage Pool shall be allocated to General Use Category 5 as such gallonage accrues.

4. Annually, by November 15, the DPW Director, Water Superintendent, Permit coordinator, Planning Board, Board of Health, Water & Sewer Board, Local Housing Partnership and the Local Comprehensive Plan Implementation Committee shall evaluate the effects of growth on our resources including but not limited to potable water supply, solid waste disposal and wastewater disposal and issue a report to the Board of Selectmen on those impacts and their recommendations therefore. The Board of Selectmen shall hold a Public Hearing on the report in December of each year.

Section 6700 Scope and Validity of the By-law

Nothing in this Growth Management Zoning By-law shall nullify or exempt any property or use from any other provisions of these By-laws or other Town regulations.

The invalidity of any section or provision of this By-law shall not invalidate any other section or provision hereof, nor shall it invalidate any building permit, occupancy permit or special permit issued in reliance on said section or provision prior the determination of its invalidity.