

## **Cape Cod Commission Model Bylaws and Regulations**

# **Village-Style Development Bylaw/Ordinance for Towns in Barnstable County, Massachusetts**

### **Background**

The Cape Cod Commission has created a model bylaw/ordinance for use by towns in Barnstable County to create new and/or strengthen existing village centers. The model was drafted by the environmental services firm of Horsley & Witten, Inc., in Barnstable, and the Boston law firm of Robinson & Cole. The regulation is presented to help Cape towns fulfill many of the recommendations presented in the 1994 publication, "Designing the Future to Honor the Past: Design Guidelines for Cape Cod." The design manual is available from the Cape Cod Commission in Barnstable.

The Cape's fifteen towns have in common many natural, social and economic traits. However, the historic development patterns and resulting architecture of the towns' village centers are quite different. Wellfleet and Falmouth, for example, have historic village centers, yet the centers have very different histories -- differences reflected in architecture, building size and overall development patterns. So too with the other thirteen towns: similar development of a central village, but with different designs, bulk of structures and layout of road and pedestrian ways.

Cape villages developed at different time periods and around different resources (i.e. agriculture, maritime industry, tourism). Their architecture and form generally reflect their periods of greatest growth. Understanding the historical development patterns is helpful in developing regulations that encourage compatible future growth.

Over the past several decades, however, many towns have seen a trend toward development in a style that is inconsistent with the Cape's historic village center, and some towns have felt a direct impact to the economic vitality of their "downtowns." This is the result of many independent factors. One likely factor has been the application of inflexible and, some argue, "suburban" zoning regulations that have prevented many village centers from developing and redeveloping in the form and format of the original settlement patterns.

At issue for all Cape towns is the preservation and, in many cases, the resurrection of the functional and successful development of a central village center(s). This bylaw/ordinance is designed to assist the Cape towns in revitalizing and strengthening their village centers through the use of flexible dimensional and use standards.

This model bylaw offers two possible approaches for encouraging village-style development. One approach allows towns to significantly relax dimensional standards within the area(s) designated as village centers. An alternative approach is for towns to prescribe specific dimensional standards (perhaps with some flexibility) following an analysis of the dimensional standards of those structures that are deemed desirable in terms of form and function. This option requires towns to actually measure the setbacks, height and bulk of those structures that residents believe reflect the desired development pattern. Following these

measurements, towns could adjust this regulation to more accurately mirror conditions as they exist today and those that they desire be replicated for the future. Please note that a sample of actual measurements from selected Cape Cod villages accompanies this regulation.

The annotations and commentary which follow use the numbering and headings of the model bylaw/ordinance. The annotations and commentary will not be part of your bylaw/ordinance, but will serve as a "legislative history" of the intent of the drafters and the interpretation to be given to terms and provisions.

Despite the drafters' best intentions, there is no true "model" bylaw/ordinance, particularly in an area as diverse as Cape Cod. Towns are encouraged to revise the text and annotations within this bylaw/ordinance as they determine appropriate.

**01.0 Purpose and Intent:** This bylaw/ordinance enables the development and re-development of Cape Cod towns' village centers in keeping with their historic development patterns, including the size and spacing of structures and open spaces. This bylaw/ordinance is intended to be used in conjunction with other regulations adopted by the town, including historic district regulations, site plan review and other local bylaws/ordinances designed to encourage appropriate and consistent patterns of village development on Cape Cod.

*Commentary:* This bylaw/ordinance does not regulate, per se, the physical appearance of new or reconstructed structures--that is best accomplished by historic district legislation and, to a lesser extent, site plan review regulations. Rather, this bylaw/ordinance is designed to allow individual towns to relax and revise underlying regulatory controls on new and rehabilitated structures. Note again, this bylaw/ordinance cannot be used to regulate and control the physical appearance of new or rehabilitated structures beyond their bulk, height or situation on a lot. However, proper use of this bylaw/ordinance can assist towns to recreate historic village development patterns and provide for much needed "in-fill" within several of the Cape's village centers. "In-fill" is loosely defined as developing or expanding development within a village center to provide continuity and consistency with existing land uses and structures.

## **02.0 Definitions**

**02.1 Village Development (Overlay) District.** A(n) (overlay) district established by the Town Meeting/Town Council upon recommendation by the planning board as an area in which Cape Cod village style development should be encouraged.

*Commentary:* This bylaw/ordinance is drafted to be adopted as either a new, traditional zoning district or as an overlay district. The purpose and effectiveness of the regulation will not change regardless of the method chosen.

An overlay district is a type of district that lies on top of another, like a bedspread over a blanket. The blanket is the underlying zoning district, such as a commercial zone with minimum and maximum lot and structure sizes. In an overlay district, towns will superimpose a new level of requirements and opportunities over the underlying district. The overlay district in this regulation is established by the town, upon recommendation by the planning board, and should generally include pre-existing village centers, adjacent land areas that the community wants to include as a developed village center, as well as other areas in the community that the town wants to see developed as a village center.

Note that the use of an overlay district may help "call attention" to the goals of this regulation that would not otherwise be highlighted by means of a traditional zoning designation (e.g. a new or revised "business" zoning district). The purpose and intent of this regulation would not be diminished, however, if towns opted for a traditional zoning designation in lieu of the overlay district recommended here.

### **02.2 Special Permits (See Section 08.0).**

Option 1:

Special permits shall be required for all uses and structures required to obtain a special permit by the (existing) (underlying) zoning district.

Option 2:

An increase of floor area by greater than \_\_\_\_\_ square feet through either the placement or construction of a new principal structure, a new accessory structure, or an addition to a principal or accessory structure shall be allowed only upon receipt of a special permit in accordance with this bylaw/ordinance and the zoning bylaw/ordinance of the town.

(AUTHOR'S NOTE: Determination of the increase of floor area that triggers a special permit requires completion of a general survey of the floor areas of existing developments within the village. This recommendation applies to both Option 1 as well as Option 2.)

*Commentary:* Two options are presented with regard to the issuance of special permits. Option 1 repeats existing requirements for a special permit, either based on use or size of structure.

Option 2 establishes a special permit requirement based solely on size of structure. The threshold for when a special permit is required has been left blank; however, the suggested threshold is 5,000 square feet. Towns should consider carefully the level of development considered relevant for a special permit review, including whether it wants to include both principal and accessory structures as noted above, or only principal structures greater than a specified size (e.g. greater than 5,000 square feet).

02.3 Special Permit Granting Authority (SPGA). The special permit granting authority (SPGA) for this bylaw/ordinance shall be the planning board.

### **03.0 Pre-Application Conference Requirement:**

03.1 Timing. Prior to the submission of an application for a special permit under this regulation, the applicant shall meet with the SPGA at a public meeting to discuss the proposed development in general terms and establish the plan filing requirements. The SPGA shall meet with an applicant under this regulation within twenty-one (21) days following a written request submitted to the SPGA and the Town Clerk. If the SPGA fails to meet with an applicant who has requested such a meeting within twenty-one (21) days of said request and said meeting has not been postponed due to mutual agreement, the applicant may proceed with a special permit application under this regulation without need for a pre-application conference.

03.2 Filing Requirements. The purpose of the conference is to inform the SPGA as to the preliminary nature of the proposed project. As such, no formal filings are required for the pre-application conference. However, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the SPGA of the scale and overall design of the proposed project.

*Commentary:* The purpose of a pre-application conference is to give the SPGA advance notice of an application for development within the overlay district and remove, to the extent possible, some of the "pressure" that Boards experience once a formal special permit has been applied for. The conference is further designed to educate both the SPGA and the applicant as to the project and the likely concerns raised by the project. Note that there are no formal filing requirements proposed in this model regulation. Towns

are free to articulate specific filing requirements although it is recommended that these requirements be kept to a minimum for this pre-filing phase.

Finally, towns with site plan review regulations that require pre-application meetings may wish to substitute the above-noted process with their existing site plan review regulations.

#### **04.0 Site Planning Standards and Filing Requirements:**

04.1 Access. New curb cuts on existing public ways shall be minimized. To the extent feasible, access to businesses shall be provided through one of the following methods: (a) through a common driveway serving adjacent lots or premises; (b) through an existing side or rear street thus avoiding the principal thoroughfare or (c) through a cul-de-sac or loop road shared by adjacent lots or premises.

04.2 Parking lot design. In addition to the provisions of Section 04.1, the following guidelines are included to ensure that new and renovated off-street parking areas are constructed in accordance with the village's character and the provisions of this bylaw/ordinance.

(a). Parking areas shall be located to the side and rear of the structure. No parking area shall be designed such that parking is within the required or authorized front yard setback.

(b). To the extent possible, parking areas shall be shared with adjacent businesses.

(c). Parking areas shall include provisions for the "parking" of bicycles in locations that are safely segregated from automobile traffic and parking.

(d). Parking areas shall include adequate provisions for on-site retention and treatment of stormwater.

(e). Parking areas serving all structures other than those solely for residential use shall be paved, unless an alternative surface is approved by the SPGA.

04.3 Pedestrian Access. Provision for safe and convenient pedestrian access shall be incorporated into plans for new construction of buildings and parking areas and should be designed in concert with landscaping plans noted below. New construction should improve pedestrian access to building, sidewalks and parking areas and should be completed with considerations of pedestrian safety, handicapped access and visual quality.

04.4 Landscaping and appearance. A key provision of this bylaw/ordinance is ensuring that appropriate landscaping and design is incorporated into new and expanded development within the overlay district. Landscape design plans should ordinarily be prepared by a landscape architect, although the SPGA may accept a plan prepared by one other than a landscape architect if it believes the plan meets the design guidelines noted below and is in concert with the intent of this regulation.

(a). A landscaped buffer strip may be required adjacent to adjoining uses. This buffer strip shall be planted with a combination of grass, appropriate height shrubs and shade trees.

(b). Large parking areas (e.g. greater than 20 parking spaces) shall be separated by landscaped islands of eight (8) to ten (10) feet in width. In addition, a minimum of one (1) shade tree shall be planted for every three (3) parking spaces required or built, within appropriate locations on the lot(s). Note that the exact location of the tree plantings is not specified. Rather, the most appropriate location of plantings shall be considered, including use of plantings to buffer neighboring properties, along the street frontage and pedestrian ways. Trees planted within parking areas shall be planted in protected pervious plots of at least 60 square feet of area.

(c). Exposed storage areas, machinery, garbage "dumpsters," service areas, truckloading areas, utility buildings and structures shall be screened from the view of abutting properties and streets using plantings, fences and other methods compatible with the goals of this regulation.

(d). To ensure that landscaped areas are maintained, the SPGA shall include as a provision of any special permit granted that a condition of said special permit is the maintenance of the landscaping as approved by the SPGA. The beneficiary of any special permit under this regulation shall replace any tree or shrub that dies within one (1) growing season. Replacement trees or shrubs shall be of similar type and size to the one(s) approved as part of the original approval.

**04.5 Plan Filing Requirements.** Unless determined by the SPGA at the pre-application conference that some of the following requirements are not necessary to reach a decision on the merits of the application, the following plans/items shall be submitted. Plans shall be prepared by a registered architect, landscape architect and/or professional engineer licensed in the Commonwealth of Massachusetts.

(a) A locus inset within the plans noted below identifying the site of the proposed development at a scale of 1" = 1,000';

(b) The plan view location and dimensions of all existing and proposed buildings on the lot(s) subject to this application on a plan not to exceed 1" = 40', clearly showing the relationship between proposed development and existing structures within a radius of eight (800) hundred feet;

(c) The profile/elevation view showing location and dimensions of all existing and proposed buildings as viewed from front, side and rear yards following completion of the proposed project on a plan not to exceed 1" = 40';

(d) The location and dimension of all existing and proposed buildings, parking areas, bicycle racks, roads, sidewalks, open spaces and utilities, including underground utility lines, water, sewer, electric power, telephone, gas, outdoor illumination and cable television within a

radius of eight (800) hundred feet of the locus on a plan not to exceed 1"= 100';

(e) The location, species and dimensions of trees and other landscaped features, both existing and proposed, within a radius of eight (800) hundred feet of the locus on a plan not to exceed 1"=100';

(f) In concert with the requirements of Section 04.4, the location, species and dimensions of trees and other landscaped features proposed on the lot(s) on a plan not to exceed 1" = 20'.

*Commentary:* This regulation is designed to ensure that new or expanded development within the overlay district complies with the vision of community residents. It is recognized, however, that this regulation, if not properly applied, could result in structures and uses that threaten the very character it is designed to safeguard. Therefore, the regulation requires an applicant for a special permit to submit comprehensive plans and, where appropriate, landscape renderings, to satisfy the SPGA's concerns regarding the potential impacts resulting from the proposed project.

This bylaw/ordinance incorporates the belief that prescribing minimum landscaping requirements has not resulted in desirable parking lots on, as well as off, Cape Cod. As a result, the landscaping and appearance standards noted above grant flexibility to the applicant and the SPGA to design and develop off-street parking areas that are attractive and in keeping with the goals of this regulation and the character of the village. Thus the standards noted above should be considered as minimum standards. For example, please note that the ratio of 1 tree per 3 spaces is considered a minimum requirement; a far greater number of trees should ordinarily be provided.

Landscaping design suggestions, as well as grasses, shrubs and shade trees for use on Cape Cod are recommended in the 1994 publication "Designing the Future to Honor the Past," as may be amended from time to time and the 1995 publication, "Route 6A Vegetation Management Plan," as may be amended from time to time. Use of these publications, available from the Cape Cod Commission, is strongly suggested.

Note that the model regulation as written does not include requirements for architectural drawings. Rather, towns are encouraged to use their existing, or adopt new, historic district regulations to control and regulate building facades and design.

Finally, and as noted in Section 03.0, towns with site plan review regulations may wish to substitute or amend the filing requirements noted above with requirements currently adopted and successfully used for site plan review.

### **Introduction to Sections 05.0 through 07.0.**

As noted in the background discussion, this regulation rejects the "one size fits all" approach to village development on Cape Cod. No two villages are the same; no two villages would benefit identically from the same regulation. As a result, this model bylaw/ordinance requires each town adopting its contents to establish appropriate standards for height, bulk, setback and parking requirements. While suggestions are provided below, the actual requirements are presented as "blanks." Towns, under the leadership of the planning board, Chamber of Commerce or a combination of entities are encouraged to establish appropriate requirements for their villages. These requirements should, ideally, reflect past development patterns and future planning goals. They should include provisions for structures and uses that the town would like to see repeated, and delete provisions for structures and uses that the town would not want to see constructed in the future.

To establish appropriate numbers for use in this regulation, it is recommended that pre-existing structures be measured in terms of height, bulk, setback, exterior square footage and if possible, interior square

footage (useable interior space) and parking. Measurements can be either physical (measurements with tape), determined from building or assessor department records, or a combination of both. Remember that the goal of these measurements is to establish what makes the village attractive as well as functional; what makes the village "work." Conversely, this process will help establish guidelines for avoiding whatever mistakes have occurred in the past. While everyone in the community may agree on the fact that a structure does not "fit" within the village, few may agree on why. This process should help identify why a building or a series of buildings do not belong and establish guidelines through this regulation to avoid repetition in the future.

Thus, one of the principal objectives of this regulation is the development and re-development of village centers in concert with historic and accepted development practices and styles. Note that exact symmetry with existing structures is not required, nor necessarily encouraged. Rather, consistency with the development style and bulk that is supported by the community is the primary goal.

Finally, applicants for a special permit under this regulation, as well as the SPGA, are reminded that the 1994 publication "Designing the Future to Honor the Past" provides an excellent overview of development and re-development strategies for the Cape's villages. These strategies may be incorporated directly into a Town's regulation or used as guidelines in reviewing the appropriateness of individual permit requests. For example, one of the recommendations, the placement of overhead wires underground, could be made a requirement of this regulation. To receive a special permit, an applicant would be required to place specified utilities underground, even though abutting properties used utilities from overhead wiring.

In the alternative, the SPGA could rely on the recommendation for underground utilities made in the report in a more general fashion. Applicants would be encouraged to submit plans that followed the guidelines contained in the publication, but would only be required to comply with those specifically presented in the bylaw/ordinance.

Regardless of the approach taken, the report, either in its current form or as amended by Towns via their local comprehensive plans, should be used to provide guidance to applicants and Board members regarding design, development and re-development within designated village centers.

## **05.0 Height, Bulk and Setback within the Village Development Overlay District:**

### **05.1 Height**

#### Option 1:

The maximum height of any new or expanded existing structure shall be \_\_\_\_\_ feet or \_\_\_\_\_ stories, whichever is less.

#### Option 2:

To accomplish the purposes of this bylaw/ordinance, the special permit granting authority (SPGA) is authorized to allow an increase in height of structures either in existence, as re-constructed, or as new construction, up to \_\_\_\_\_ % above that provided for in the underlying zoning district. This increase may be granted in conjunction with a reduction in required on-site parking spaces as provided for in Section 06.0, below. The SPGA shall allow this increase only upon a finding that the additional height is consistent with the scale of adjacent structures and is necessary to maintain the area's character. The SPGA must further find that the relaxation of height limitations will not interfere or negatively impact abutting properties, particularly property used or zoned for residential purposes.

(AUTHOR'S NOTE: Determination of the allowable range of building height requires completion of a general survey of the heights of existing developments within the village. This recommendation applies to both Option 1 as well as Option 2.)

*Commentary:* Option 1 provides a strict and traditional method of regulating the height of structures within a zoning district.

The purpose of Option 2 is to allow the applicant and the SPGA flexibility as to the height of new or rehabilitated structures within the Overlay District. For example, if the height limitation in the underlying district is 35 feet, the provisions of this Section could allow the SPGA to increase the maximum height of structures up to a certain percentage. This increase does not automatically trigger a significant increase in required parking spaces; see Section 6.0 and accompanying commentary. Note that the SPGA, and therefore the applicant seeking an increase in allowable height, is required to demonstrate that the height increase is necessary to maintain neighborhood scale and character. The suggested range of maximum allowable heights within the Overlay District is between 35 feet and 50 feet. However, it is strongly recommended that the range be based on actual measurements from within the Town's current village(s).

## **05.2 Bulk**

Option 1:

The maximum (floor area ratio) (square footage) of any new or expanded existing structure shall be \_\_\_\_\_ .

Option 2:

To accomplish the purposes of this bylaw/ordinance, the SPGA is authorized to allow an increase in (floor area ratio) or (square footage) of structures either in existence or as re-constructed up to \_\_\_\_% above that provided for in the underlying zoning district. This increase may be granted in conjunction with a reduction in required on-site parking spaces as provided for in Section 05.0, below. The SPGA shall allow the (floor area ratio) or (square footage) increase only upon a finding that the additional useable square footage is necessary to reflect the scale of adjacent structures, to maintain the area's character and/or to rehabilitate or develop a structure or parcel within the Overlay District that would otherwise unlikely be rehabilitated or developed. The SPGA must further find that the relaxation of said bulk standards will not interfere or negatively impact abutting properties, particularly property used or zoned for residential purposes.

(AUTHOR'S NOTE: Determination of the allowable range of building size (bulk) requires completion of a general survey of the bulk of existing developments within the village. This recommendation applies to both Option 1 as well as Option 2.)

*Commentary:* Option 1 provides a strict and traditional method of regulating the bulk of structures within a zoning district.

The purpose of Option 2 is to allow the applicant and the SPGA flexibility as to the bulk--size--of new or expanded structures. This Section allows the SPGA to grant a percentage increase in the bulk of a structure over the underlying zoning's restriction on size. This expansion would, in many cases, require a relaxation of setback requirements, more fully discussed in Section 05.3, below.

Note that constraints on bulk expansion, unlike limitations on height expansion, is a function of available land area and abutting structure design and layout. In other words, in many cases, a structure simply will not be able to expand in bulk due to existing structures on either side, in the front or rear of the building.



Where such expansion is possible, however, the SPGA and the applicant must demonstrate that the physical expansion/extension is in keeping with the neighborhood's or area's overall character and scale.

The SPGA may also include as a factor for granting a special permit for bulk expansion issues relating to the structure's or parcel's economic viability without such an expansion. For example, after consideration of the factors noted above, the SPGA may grant a special permit for bulk expansion if it believes, based on information submitted to it by the applicant, that the parcel or structure is unlikely to be used or developed without a relaxation of bulk standards.

Finally, please note that this model does not provide suggested maximum bulk limitations for individual towns or villages. Bulk, unlike height and setback standards, is extremely site specific--building specific--and precise standards, even ranges, are difficult to develop Cape-wide. As recommended throughout this regulation, however, towns should physically measure the bulks of structures within their village districts to establish general ranges. Those ranges, if based on actual measurements, could then be included within the regulation.

### **05.3 Setback**

#### **Option 1:**

The front yard setback of any new or expanded existing structure shall be no more than \_\_\_\_\_ and no less than \_\_\_\_\_. The rear and side yard setbacks of any new or expanded existing structure shall be .

#### **Option 2:**

To accomplish the purposes of this bylaw/ordinance, the SPGA is authorized to allow a complete or partial reduction of front, side and rear setback standards for new or pre-existing structures. The SPGA shall allow the reduction of setback requirements only upon a finding that the setbacks as imposed by the underlying district would result, or have resulted, in construction of structures that are not in keeping with the area's scale and character. The SPGA must further find that the relaxation of said standards will not interfere or negatively impact abutting properties, particularly property used or zoned for residential purposes.

(AUTHOR'S NOTE: Determination of the allowable range of setbacks requires completion of a general survey of the location and setbacks of existing developments within the village. This recommendation applies to both Option 1 as well as Option 2.)

*Commentary:* Option 1 provides a method of regulating the setback of structures within a zoning district, but it provides for a range of minimum and maximum setbacks based on the characteristic setbacks in the neighborhood.

Option 2 is intended to provide maximum flexibility to the applicant and the SPGA regarding the imposition of front, side and/or rear setback requirements so as to encourage consistency with the area's overall scale and character. As with Sections 05.1 and 05.2, above, the SPGA is required to ensure that the use of these flexible provisions will not negatively impact abutting properties. For example, while the relaxation of rear yard setback requirements from 10 feet to 5 feet may be in keeping with the development pattern of the area, the SPGA should not grant the 5-foot reduction if the abutting property is used for residential purposes and would be negatively affected by the setback reduction.

The range of suggested front yard setbacks range is 0 to 25 feet. The range of suggested side yard setbacks is 0 (for common wall construction) to 25 feet and 0 to 25 feet for rear yard setbacks. However, it is

strongly recommended that the range be based on actual measurements from within the Town's current village(s).

#### **06.0 Parking Requirements within the Village Development Overlay District**

Recognizing that parking requirements in the underlying zoning district may hamper development of village-style land use and development, the SPGA is authorized to reduce the parking requirements specified for the use/structure proposed up to %. In determining the appropriate reduction, if any, the SPGA may give consideration to the hours of usage of the proposed use/structure, hours of usage of other uses/structures within the Village Development Overlay District, amount of "shared" parking with other uses, the opinions of merchants, residents and municipal officials as to the adequacy or inadequacy of parking spaces within the specific area of the proposed use/structure, as well as other relevant information to assist the SPGA in determining the need for additional parking for motor vehicles.

(AUTHOR'S NOTE: Determination of the allowable range of parking space reduction requires completion of a general survey of the number of parking spaces within, or within reasonable walking distance, of the village.)

*Commentary:* This section allows the SPGA to reduce the parking requirements in the underlying zoning district up to a certain percentage. The suggested reduction range is between 10 and 50 percent.

This section is considered critical to allowing pre-existing and new structures to expand and be built within the Overlay District without being constrained by strict off-street parking requirements.

A note of caution, however. Relaxation of underlying standards, regardless of the standard, entails some risk that the SPGA will be held to arguments that it has established a "precedent" when it relaxes the parking requirements for a particular structure. Note, however, that each application is to be reviewed as a new and unique application. Precedent is only relevant if the SPGA acts arbitrarily in subsequent decisions. For example, the SPGA may grant a parking reduction of 40 percent to applicant "A" and then, based on legitimate and substantive reasons, deny a parking reduction to applicant "B." Note the importance of the legitimate and substantive reasons for the denial to applicant "B." Based on this scenario, the SPGA is not and should not be considered bound in future decisions by its past decision with applicant "A."

Finally, it is recognized that in some instances, new construction may trigger parking requirements that the applicant can not meet due to lack of available off-street land. In these situations, and where the town has determined that there is a general shortage of off-street parking within the Village, an option exists for towns to require payment to an "off-street parking fund." The fund would be established by Town Meeting/Town Council as a separate and distinct fund for the development of public, off-street parking within the Town and/or designated village. To establish this requirement, town planners should determine the land and construction costs of an individual parking space within designated villages. Once determined, an "off-street parking fund" bylaw/ordinance could be drafted linked to the Village-Style Development Bylaw/Ordinance. This linkage would require the provision of off-street parking, or if not possible due to land constraints, the set-aside of equivalent funds in a special fund intended to create public, off-street parking. Town Meeting/Town Council should then be petitioned to adopt the parking fund regulation.

**07.0 Allowable Uses:** Recognizing that village-style development entails a mixture of uses, the SPGA is authorized to allow a mix of residential and non-residential land uses within the Village Development Overlay District.

**07.1 Residential uses.** The SPGA may grant approval for (single family, two-family, multi-family) residential uses at a density of one dwelling unit per \_\_\_\_\_ square feet within the Overlay District or a maximum of \_\_\_\_ units on the same lot. If residential uses

are currently allowed in the underlying zoning district(s), the provisions of this Section shall apply to said residential uses only if this Section is less restrictive than the underlying district.

*Commentary:* This Section allows the development of a variety of residential housing units within the Overlay District at a density and type to be established by the town. Residential development within the District encourages an important link between commercial activities and appropriate scale and design of structures. More importantly, residential development within the District mirrors historic development patterns: residential structures interspersed with commercial uses and vice-versa: commercial structures with residential units typically secondary to the primary commercial use.

**07.2 Non-residential uses.** The SPGA may grant approval for non-residential uses within the Overlay District consistent with the provisions of the underlying zoning district(s) and with the following additional uses:

- a) retail sales;
- b) business or professional offices
- c) banks and other financial institutions
- d) restaurants or other places serving food, but not including fast food restaurants

(AUTHOR'S NOTE: The above noted list are examples and for illustration only).

*Commentary:* This Section allows towns to expand the list of non-residential uses allowed by special permit within the Overlay District. It is recommended that these uses include commercial, as opposed to industrial, uses that will assist the town to strengthen its village centers either by attracting new commercial activities or encouraging the expansion of existing activities that have been successful in restoring or otherwise aiding the development of the village center. It is recommended that the list of non-residential activities allowed by special permit be developed with recognition that Section 07.1, above, encourages the establishment of residential uses within the Overlay District. In other words, the list of non-residential uses should be compatible with the goal of encouraging residential uses within the Overlay District and generally compatible with the form of buildings that are encouraged in the District.

**08.0 Special Permit Standards and Criteria:** In addition to the specific criteria regarding the grant of a special permit contained within this regulation, the SPGA shall issue a special permit only after consideration of the following:

- (a) adequacy of the site in terms of the size for the proposed use(s);
- (b) suitability of the site for the proposed use(s);
- (c) impact on traffic and pedestrian flow and safety;
- (d) impact on the neighborhood visual character, including views and vistas;
- (e) adequacy of utilities, including sewage disposal, water supply and stormwater drainage;

(f) degree to which the proposed project complies with the goals of the Town Comprehensive Plan and the provisions of this bylaw/ordinance.

*Commentary:* This Section presents several criteria for the SPGA to consider in the grant or denial of a special permit. These criteria are in addition to those set forth throughout the regulation. As noted previously, towns with strong special permit language may wish to substitute their current language for that noted above, or simply reference their current language in place of Section 08.0, above.

**09.0 Review by Special Permit Granting Authority (SPGA):** The Planning Board shall be designated as the SPGA under this bylaw/ordinance. In reviewing a proposed development under this bylaw, the SPGA shall apply the criteria for special permits noted throughout this regulation, in addition to other relevant special permit criteria provided for in the zoning bylaw/ordinance.

*Commentary:* This Section establishes the planning board as the special permit granting authority under this regulation and connects the criteria for issuance of a special permit in this regulation with existing criteria within the zoning bylaw/ordinance.

**10.0 Severability:**

0.10.1 If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the [town]'s zoning bylaw.

*Commentary:* This Section is a generic severability clause. Severability clauses are intended to allow a court to strike or delete portions of a regulation that it determines to violate state or federal law. In addition, the severability clause provides limited insurance that a court will not strike down the entire bylaw should it find one or two offending sections.