



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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RECEIVED
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October 2, 2007

Joyce A. Bradshaw, Town Clerk
120 Main Street
North Andover, MA 01845

RE: North Andover Annual Town Meeting of May 14, 2007 — Case # 4430
Warrant Articles # 38, 39, 47, 48, and 49 (General)
Warrant Articles # 27, 28, 30, 36, and 37 (Zoning)

Dear Ms. Bradshaw:

Articles 28, 30, 36, 37, 38, 39, 47, 48, and 49 - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the North Andover annual town meeting that convened on May 14, 2007, and the maps pertaining to Articles 28 and 30.

Article 27 - I return with the approval of this Office the amendments adopted under this Article, except as provided below.

The amendments adopted under Article 27 add to the town's zoning by-laws a new Section 17, "Osgood Smart Growth Overlay District" (OSGOD). The proposed by-law was adopted pursuant to General Laws Chapter 40R and the regulations adopted thereunder. General Laws Chapter 40R allows municipalities to encourage housing production that is aligned with the principles of "smart growth" and in doing so towns may obtain financial and other incentives accorded exclusively to Smart Growth Zoning Districts. General Laws Chapter 40R prescribes the methods for a town to establish a Smart Growth Zoning District and requires approval by this Office and by the Department of Housing and Community Development (DHCD).

We point out that the town must still comply with the provisions of G.L. c. 40R, § 4 (b), by obtaining final approval from DHCD of the "Smart Growth Overlay District." Our approval of the amendments adopted under Article 27 is conditioned upon approval by DHCD. Thus, the amendments adopted under Article 27 do not take effect unless and until it receives both such approvals and the town clerk posts and publishes the by-law provisions in accordance with G.L. c. 40, § 32. We also

ATTEST:
A True Copy
Joyce A. Bradshaw
Town Clerk

caution the town that it may not be eligible for financial and other incentives until it receives final approval from DHCD. We suggest that the town discuss this issue in more detail with town counsel and directly with DHCD.

Section 17.4 pertains to the administration, enforcement, and appeal of the 40R by-law and would have provided in pertinent part as follows:

The Building Inspector shall not issue a building permit for a development until he is reasonably satisfied that a Plan Approval has issued for the development. Any building permit issued by the Building Inspector shall become invalid unless the work authorized by it shall have been commenced within the meaning of the Enabling Laws within six (6) months after its issuance, which shall be automatically extended for the duration of any appeal or challenge to such building permit and which may be further extended, as allowed in writing by the Building Inspector pursuant to the State Building Code.

(Emphasis added.)

We disapprove and delete the above underlined text from Section 17.4 as inconsistent with the State Building Code. **[Disapproval # 1 of 1]** Beginning with Chapter 802 of the Acts of 1972, as amended by Chapter 541 of the Acts of 1974, the Legislature eliminated local building codes, the purpose of which was to create a state-wide "comprehensive" state building code, which it intended should be applied uniformly throughout all the communities of the Commonwealth. Today, any town seeking to enforce regulations more restrictive than those currently imposed under the State Building Code must request that the State Board of Regulations and Standards adopt such regulation. G.L. c. 143, § 98. The Board will grant such a request only upon a finding, after conducting a public hearing, "that more restrictive standards are reasonably necessary because of special conditions prevailing within such city or town and that such standards conform with accepted national and local engineering and fire prevention practices, with public safety and with the general purposes of a statewide building code" *Id.*

The issuance and duration of a "building permit" is preemptively governed by the State Building Code. See State Building Code, 6th Edition, 780 C.M.R. §§ 111.2 and 111.8. The State Building Code not only authorizes but requires the Building Inspector (as Code Enforcement Officer under the State Building Code) to issue a building permit where the applicant has demonstrated compliance with the Code and the town's zoning by-laws. G.L. c. 40A, § 7, and 780 C.M.R. § 111.2. The above quoted text would determine when the building permit is issued and would limit the lifespan of the building permit. Therefore, we disapprove and delete the above underlined text in Section 17.4.

We specifically call the town's attention to Section 17.6.1, which pertains to the Residential Mixed-use Zone of the OSGOD. Section 17.6.1.3 pertains to uses allowed by special permit in the Residential Mixed-use Zone of the OSGOD and provides in pertinent part as follows:

The following uses shall be permitted in the Residential Mixed Use Zone by Plan Approval Special Permit issued by the Plan Approval Authority pursuant to the provisions of Section 17.6.5:

- * * *
3. Nursing and Convalescent Homes;
 4. Commuter Rail System; and . . .

Section 17.6.1.3 (3) requires a special permit for nursing and convalescent homes in the new Residential Mixed-Use Zone of the OSGOD. In approving this text, we caution the town on the protections accorded to certain uses under G.L. c. 40A, § 3, which provides in pertinent part as follows:

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of Cambridge.

General Laws Chapter 40A, Section 3, prohibits discrimination against disabled persons. We caution the town that it would be inconsistent with G.L. c. 40A, § 3, for the town to apply or enforce its by-laws in a way that treats buildings and uses for the disabled with any less deference given to other similar types of buildings and uses projects. Such difference in treatment would violate the provisions of G.L. c. 40A, § 3.

We also point out that Section 17.6.1.3 (4) requires a special permit for commuter rail systems. We also call the town's attention to Section 17.6.3, which pertains to the Business Opportunity Zone in the OSGOD. Section 17.6.3.3 (1) pertains to uses allowed in the Business Opportunity Zone and requires a special permit for commuter rail systems. It is not clear whether a commuter rail system would be built or owned by the federal, state, or local government or a private party or some type of combination of these entities. In approving Sections 17.6.1.3 (4) and 17.6.3.3 (1), we point out that the state and federal government are exempt from local regulation unless the state or federal government has chosen to submit to local regulation.

“The doctrine of federal supremacy protects the legitimate activities of the United States government from regulation by state and local authorities.” May v. United States, 319 U.S. 441, 445-48 (1943) (a state could not impose an inspection fee on fertilizer owned by the United States. “It is necessary for uniformity that the laws of the United States be dominant over those of any state.”); United States Constitution, art. VI, clause 2 (the “supremacy clause”); Township of Middletown v.

United States Postal Service, 601 F. Supp. 125, 127-28 (D. N.J. 1985) (local zoning regulations inapplicable to the Postal Service's construction plans).

The "State and State instrumentalities are immune from municipal zoning regulations, unless a statute otherwise expressly provides to the contrary." Inspector of Buildings of Salem v. Salem State College, 28 Mass. App. Ct. 92, 95 (1989) (The Commonwealth's immunity from zoning regulation is broader than the exemption for as of right uses created in G.L. c. 40A, § 3); County Commissioners of Bristol v. Conservation Commissioners of Dartmouth, 380 Mass. 706, 708-711 (1980) (neither Home Rule Amendment or the Zoning Enabling Act changed presumption of state and county immunity from municipal zoning). Thus, we caution the town to apply its requirement for site plan review for governmental uses in a manner consistent with state and federal law.

We next call the town's attention to Section 17.6.2, which pertains to the Mixed-Use Development Zone of the OSGOD. Section 17.6.2.3 (11) pertains to uses allowed by special permit in the Mixed-Use Development Zone of the OSGOD and provides that non-profit schools are allowed by special permit. We also call the town's attention to Section 17.6.3.3 (5), which allows non-profit schools by special permit in the Business Opportunity Zone. In approving these portions of Sections 17.6.2.3 (11) and 17.6.3.3 (5), we call the town's attention to the protections accorded to such uses under G.L. c. 40A, § 3. General Laws Chapter 40A, Section 3, provides in pertinent part:

No zoning . . . by-law shall prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements

(Emphasis added.)

Section 3 provides exemptions from local zoning for the use of land or structures for certain educational uses, but authorizes the reasonable regulation of such uses in eight areas. Such uses may be subject to reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements. As stated in more detail above, G.L. c. 40A, § 3, provides exemptions for the use of land or structures for certain educational uses. Thus, if an educational use enjoys protections under G.L. c. 40A, § 3, it would be inconsistent with state law to prohibit, regulate, or restrict, including requiring a special permit for such use. Therefore, the town must apply Sections 17.6.2.3 and 17.6.3.3 in a manner consistent with G.L. c. 40A, § 3.

We next call the town's attention to Section 17.6.4, which pertains to prohibited uses and provides that all uses not expressly allowed are prohibited. In approving Section 17.6.4, we remind the town of the protections accorded to certain uses and structures under G.L. c. 40A, § 3. General Laws

Chapter 40A, Section 3, provides exemptions from local zoning for uses and structures including agricultural uses, religious uses, educational purposes, and certain day care centers. Thus, the town cannot prohibit, require a special permit, or unreasonably regulate those uses that are accorded protections under G.L. c. 40A, § 3. We caution the town to apply the proposed by-law, including Section 17.6.4, in a manner consistent with G.L. c. 40A, § 3.

We next call the town's attention to Section 17.6.5, which pertains in pertinent part to criteria for special permits and provides in as follows:

17.6.5.2 The Plan Approval Authority may grant a Special Permit or other approval within the framework of this Section 17 only after holding a public hearing which must be held within sixty-five (65) days after the applicant files for such Special Permit or other approval. . . . The Applicant is responsible for transmitting a copy of the application for a Special Permit or other approval within twenty-four (24) hours of the filing of the application with the Town Clerk and [sic] to the Planning Board.

(Emphasis added)

Section 17.6.5.2 requires an applicant for a special permit or other approval to transmit a copy of the application to the Planning Board within 24 hours of filing the application with the Town Clerk. In approving Section 17.6.5.2, we remind the town of the requirements of G.L. c. 40A, § 9, and c. 40R, § 11. General Laws Chapter 40, Section 9, pertains to special permits and provides in pertinent part as follows:

Each application for a special permit shall be filed by the petitioner with the city or town clerk and a copy of said application, including the date and time of filing certified by the city or town clerk, shall be filed forthwith by the petitioner with the special permit granting authority.

(Emphasis added.)

General Laws Chapter 40R, Section 11, pertains to applications for approval of smart growth projects and provides in pertinent part as follows:

c) An application for approval under this section shall be filed by the applicant with the . . . town clerk and a copy of the application including the date of filing certified by the town clerk shall be filed forthwith with the approving authority.

General Laws Chapter 40A, Section 9, requires that an applicant file "forthwith" copy of the applicant with the special permit granting authority and c. 40R, § 11, requires that an applicant file "forthwith" a copy of the application for project approval with the approval authority. We are unable to find any cases defining "forthwith." According to Mark Bobrowski, there is no case law construing this requirement; however, the Appeals Court has said in the context of the Subdivision Control Law,

G.L. c. 41, §81K through § 81GG, that a similar fining was to be accomplished “simultaneously or promptly after the first submission.” Mark Bobrowski, Handbook of Massachusetts Land Use and Planning Law, § 10.03 [G] n. 35 (2003) citing Korkuch v. Planning Bd. of Eastham, 26 Mass. App. Ct. 307, 309 (1998). The town may wish to discuss this issue in more detail with town counsel.

We next call the town’s attention to Section 17.10, which pertains to parking requirements. Section 17.10 provides specific parking requirements for day care centers and other places of assembly. In approving this portion of Section 17.10, we remind the town of the protections accorded to such uses under G.L. c. 40A, § 3. General Laws Chapter 40A, Section 3, provides in pertinent part:

No zoning . . . by-law shall prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements

(Emphasis added.)

Section 3 provides exemptions from local zoning for the use of land or structures for certain religious and educational uses, but authorizes the reasonable regulation of such uses in eight areas. Such uses may be subject to reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements. We caution the town that, as applied, the parking requirements in Section 17.10 must be reassessed for reasonableness before they are applied to any specific use that enjoys the protections accorded under G.L. c. 40A, § 3.

We also call the town’s attention to Section 17.11, which pertains to general design standards. Section 17.11.12 pertains to signage and provides in pertinent part as follows:

The residential component shall be limited to three types of sign: name of site, orientation and direction, and to identify common building spaces. . . .

In approving Section 17.11.12, we remind the town that some signs, including political signs, enjoy protection under the First Amendment of the U.S. Constitution and Article 16 of the Declaration of Rights of the Constitution of the Commonwealth. Section 17.11.12 cannot be construed and applied to prohibit signs that enjoy constitutional protections. We presume that the town will honor those protections even where not expressly set forth within the by-law itself.

We next call the town’s attention to Table 1, “Summary of Use Regulations,” which provides in

pertinent part as follows:

Permitted Use	Underlying Industrial 2 Zone	Residential Mixed-use 40R Subdistrict	Mixed-use 40R Subdistrict	Business Opportunity 40R Subdistrict
Non-profit School	Y	Y	SP	SP
Nursing & Convalescent Home*	N	N	Y	N
Veterinary Hospital & Kennel	N	N	N	N

* = See detailed District Use Regulations for uses allowed in the Industrial 2 (I-2) Zoning District as defined in Section 4 of the Zoning Bylaw.

In the Table, "Y" stands for an allowed use; "SP" stands for a use allowed by special permit; and "N" stands for a prohibited use.

In the Table, non-profit schools are allowed by special permit in the Mixed-use 40R Subdistrict and the Business Opportunity 40R Subdistrict. As stated in more detail above, Section 3 provides exemptions from local zoning for the use of land or structures for certain religious and educational uses, but authorizes the reasonable regulation of such uses in eight areas. Such uses may be subject to reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements. Thus, if an educational use enjoys protections under G.L. c. 40A, § 3, it would be inconsistent to require a special permit for such use. Therefore, the town must apply Sections 17.6.2.3 and 17.6.3.3 in a manner consistent with G.L. c. 40A, § 3.

In the Table, nursing and convalescent are prohibited in the town's underlying Industrial 2 Zone, the Residential Mixed-use 40R Subdistrict, and the Business Opportunity 40 Subdistrict. As stated in more detail above, G.L. c. 40A, § 3, prohibits discrimination against disabled persons. We caution the town that it would be inconsistent with G.L. c. 40A, § 3, for the town to apply or enforce its by-laws in a way that treats buildings and uses for the disabled with any less deference given to other similar types of buildings and uses projects. Such difference in treatment would violate the provisions of G.L. c. 40A, § 3.

Lastly, the Table prohibits kennels in underlying Industrial 2 Zone, Residential Mixed-use 40R Subdistrict, Mixed-use 40R Subdistrict, and Business Opportunity 40R Subdistrict. In approving this text, we remind the town of the protections accorded to agriculture under G.L. c. 40A, § 3. Section 3 provides in pertinent part as follows:

No zoning . . . by-law shall . . . prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of every year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located, and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land, other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or bylaw shall exempt land or structures from flood plain or wetlands regulations established pursuant to general law. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.

General Laws Chapter 40A, Section 3, states that all agricultural uses must be allowed as of right on land zoned for agriculture and on land that is greater than five acres in size; therefore, a municipality cannot restrict agricultural uses in those areas. A municipality is allowed to restrict agricultural uses on land less than five acres that is not zoned for agriculture. The town cannot prohibit, unreasonable regulate, or require a special permit for agricultural activities on land less than five acres zoned for agriculture.

General Laws Chapter 128, Section 1A, defines agricultures and provides in pertinent part as follows:

"Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing

animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

We remind the town that dog kennels may be considered an agricultural use and thus enjoy the protections accorded under G.L. c. 40A, § 3. See Sturbridge v. McDowell, 35 Mass. App. Ct. 924, 926 (1993). We caution the town that it cannot take away any rights accorded to an agricultural entity that enjoys the protections accorded under state law. Thus, we caution the town to apply the provision of the Table that prohibits kennels in a manner consistent with the protections given to agriculture under G.L. c. 40A, § 3.

Caution: Since the amendments voted under the foregoing Article were adopted under the provisions of G.L. c. 40R, any future amendment thereof may only be adopted in accordance with the requirements of that statute.

Article 28 - The amendments adopted under Article 28 amend the town's zoning map to include the boundaries of the new "Osgood Smart Growth Overlay District." As stated in more detail above in Article 27, we point out that the town must still comply with the provisions of G.L. c. 40R, § 4 (b), by obtaining final approval from the DHCD of "Osgood Growth Overlay District." Our approval of the amendments adopted under Article 28 is conditioned upon approval by DHCD. Thus, the amendments adopted under Article 28 do not take effect unless and until it both receives such approval and the town clerk posts and publishes the by-law provisions in accordance with G.L. c. 40, § 32. We also caution the town that it may not be eligible for financial and other incentives until it receives final approval from DHCD. We suggest that the town discuss this issue in more detail with town counsel.

Caution: Since the amendments voted under this Article were adopted under the provisions of G.L. c. 40R, any future amendment thereof may only be adopted in accordance with the requirements of that statute.

Article 38 - The amendments adopted under Article 38 add to the town's general by-laws a new Chapter 82, "Demolition Delay." Section 82-3 of the proposed by-law pertains to the procedures for obtaining a demolition permit and provides in pertinent part as follows:

No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have been found to comply with all laws pertaining to the issuance of a building permit or if for a parking lot, a certificate of occupancy for that site.

In approving the above-quoted text in Section 82-3, we remind the town that an applicant has a

clear entitlement to a demolition permit once the applicant has a "plan" that satisfies all permit requirements and applicable laws. Illustratively, if an applicant intends to leave the property as mere open space, for which no local permits are required, the applicant would be entitled to the demolition permit. The above-quoted text in Section 82-3 cannot be construed as limiting projects or the development of the land after the applicant once satisfies the provisions of Section 82-3. The conditions in Section 82-3 do not carry forward to limit what an applicant can do after the applicant submits a "plan" and get a demolition permit. Otherwise stated, a plan filed as required by this section does not have the effect of limiting the future uses of the property that are otherwise lawful nor does it compel the owner to pursue the uses reflected in the plan filed. It is based on this interpretation of Section 82-3 that we approve its text. We suggest that the town discuss the application of this section with town counsel.

We next call the town's attention to Section 82-4, which pertains to the administration of the Demolition Delay by-law and includes a paragraph pertaining to emergency demolitions. In approving Section 82-4, we remind the town of the requirements of G.L. c. 143, §§ 6-10. General Laws Chapter 143, Sections 6 through 10, pertain to the demolition of dangerous or abandoned buildings. We remind the town to apply Section 82-4 in a manner consistent with state law, including G.L. c. 143, §§ 6-10.

Lastly, we call the town's attention to Section 83-5, which pertains to the enforcement of the proposed by-law and provides in pertinent part as follows:

If a building subject to this bylaw is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful restoration referred to above or unless otherwise agreed to by the Commission.

In approving this text in similar by-laws submitted from other towns, we point out that the rational relationship between the penalty of withholding building permits for adjoining parcels of land for demolishing a structure without a demolition permit is based on the assumption that there is a common development scheme for the subject parcel and adjoining land under common ownership. However, Section 83-5 does not foreclose rebuttal of such presumption. Denial of a building permit on adjoining parcels where the development is not tied to a common development scheme with adjoining parcels would be no more defensible than if the building permit denial was for a parcel of land several miles away. We suggest that the town apply Section 83-5 in a manner consistent with state law.

Article 48 - The amendments adopted under Article 48 delete from the town's general by-law Chapter 69, Article I, "Fire Detection and Alarm System," and replace it with new text. The new text governs how one must interface fire alarm systems and equipment with the town's Fire Department's alarm receiving system. The new Article I provides in pertinent part as follows:

§ 69-2 Alarm Installation and Permit Requirements

A. As of the effective date of this by-law, no alarm system or equipment designed to summon the Fire Department shall be installed without a permit signed by the Fire Chief or his designee. The issuance of permits shall be in compliance with Massachusetts General Law Chapter 148 Section 10 A.

* * *

C. Actual connection to the Fire Department's alarm receiving system will be made only by an installer approved by the Fire Chief for this service through the issuance of a permit as per Massachusetts General Law Chapter 148 Section 10A.

D. As of July 1, 2007 connection to the Fire Department's alarm receiving system will be performed only through approved radio master fire alarm boxes.

E. As of July 1, 2007 all buildings and structures connected to the Fire Department's alarm receiving system will be advised that as of July 1, 2012 master fire alarm boxes connected through hard wired municipal circuit system must be replaced with a radio master box compatible with the Fire Department's alarm receiving equipment. The master boxes on the buildings remain the property of the property owner but must be removed from their location to avoid perceptions that they are connected to the Fire Department. These wireless devices shall be installed and maintained in accordance with the appropriate sections of the then current editions of the following NFPA Standards: NFPA 72 National Fire Alarm Code- NFPA 1221 Standard for the Installation, Maintenance and Use of Emergency Services Communication Systems- NFPA 70 National Electrical Code and all reference documents contained within these codes and the related rules and regulations of the North Andover Fire Department.

(Emphasis added.)

Sections 69-2 (A) and (C) provide that alarm system permits and connection installations shall be issued in compliance with G.L. c. 148, § 10A. In approving these sections, we remind the town that the fees imposed for those permits must in accordance with G.L. c. 148, § 10A. Section 10A allows limited discretion for town to set permit fees and sets the maximum amount that may be imposed for such permits. For example, Section 10A allows for a single fee for joint smoke detector and carbon monoxide alarm inspections and limits the fee for either a carbon monoxide alarm inspection or a smoke detector inspection, conducted separately, to \$50 for a single-family dwelling or a single dwelling unit; \$100 for a 2-family dwelling; \$150 for any building or structure with 6 or fewer residential units; and \$500 for any building or structure with more than 6 units. Therefore any fee imposed for permits issued in under G.L. c. 148, § 10A, cannot be greater than those allowed under Section 10A.

We next call the town's attention to Sections 69-2 (D) and (E). Section 69-2 (D) provides that as of July 1, 2007, all connections to the Fire Department alarm receiving system shall be through an approved radio master fire alarm box. Section 69-2 (E) provides that as of July 1, 2007, owners of

building and structures connected to the town's Fire Department alarm receiving system, will be advised that their system must be replaced with a radio master box compatible with the Fire Department's alarm receiving equipment. In approving these Sections, we point out that the proposed by-law adopted under Article 48 has not and will not take effect until the requirements of G.L. c 40, § 32, have been satisfied. We suggest that the town discuss with town counsel, whether it can impose the obligations and duties required under Sections 69-2 (D) and (E), as of July 1, 2007, a date well before the by-law takes effect.

We next call the town's attention to Section 69-5, "Alarm System Regulations and Maintenance," and provides in pertinent part as follows:

B. Written instructions for re-setting the alarm system shall be clearly visible on, or adjacent to, the system control panel. Once activated, the system shall not be reset prior to the arrival of the Fire Department. Any attempt to reset a system connected directly to the Fire Department shall be considered a violation of Massachusetts General Law Chapter 268 Section 32 (tampering with a fire alarm signal).

(Emphasis added.)

Section 69-5 (B) provides that the resetting of an alarm system connected directly to the Fire Department after the system has been activated shall be considered a violation of G.L. c. 268, § 32. In approving the above underlined text in Section 69-5 (B), we remind the town that it cannot by by-law establish what constitutes a violation of G.L. c. 268, § 32. Whether the action contemplated in Section 69-5 (B) is a violation of G.L. c. 268, § 32, is governed by state law. Thus, we generously construe the above underlined text in Section 69-5 (B), as a recitation of state and common law pertaining to what constitutes a violation of G.L. c. 268, § 32.

We next call the town's attention to Section 69-7, "False Alarm Assessment." Section 69-7 provides a schedule of penalties for false alarms. In approving Section 69-7, we remind the town that G.L. c. 269, § 13, has criminalized false alarms for fire. Section 13 provides as follows:

Whoever, without reasonable cause, by outcry or the ringing of bells, or otherwise, makes or circulates or causes to be made or circulated a false alarm of fire shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in a jail or house of correction for not more than one year.

General Laws Chapter 269, Section 13, provides for a fine or imprisonment for false alarms. We suggest that, before the town enforces its by-law provisions, the town discuss with the Essex County District Attorney's Office and town counsel the application of the by-law and the principles of double jeopardy established under federal and state law. Great care must be given in implementing and enforcing this by-law because enforcement of a by-law violation, a lesser offense, might foreclose prosecution of a G.L. c. 269, § 13, violation, a more serious offense, brought by the District Attorney

against a person deemed to be an imminent threat to society.

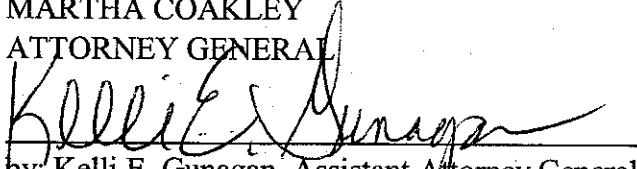
Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL

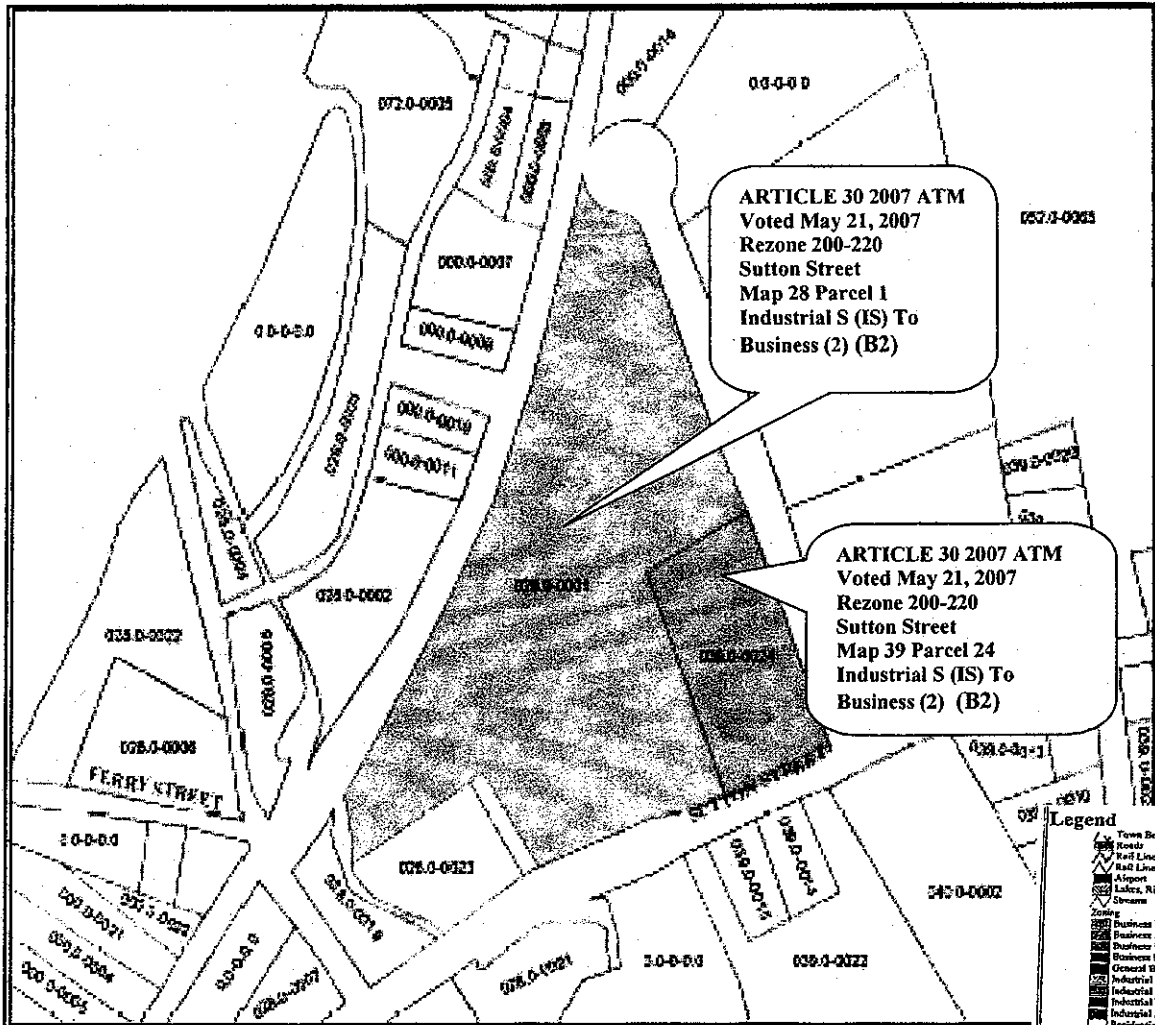

by: Kelli E. Gunagan, Assistant Attorney General
By-law Coordinator, Municipal Law Unit
1350 Main Street, 4th Floor
Springfield, MA 01103-1629
(413) 784-1240, x 117

enc.

cc: Town Counsel

**TOWN OF NORTH ANDOVER ANNUAL TOWN MEETING
ARTICLE 30 -VOTED MAY 21, 2007**

**REZONE 200-220 SUTTON STREET MAP 39 LOT 24 AND MAP 28
LOT 1 - INDUSTRIAL S (IS) TO BUSINESS 2 (B2)**



APPROVED

ATTEST:
A True Copy
Joyce A. Sussman
Town Clerk

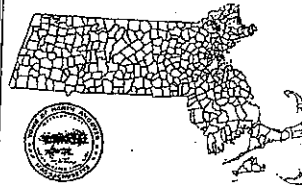
Attorney General's Office
By: *Kelli E. Dunlop*
Date: *10-02-07*
Art. *30* Town Meeting Date *5-14-07*

Legend

- Town Boundary
- Roads
- Active Line (Active)
- Abandoned Line (Abandoned)
- Airport
- Rivers, Streams, Ponds, Sounds and Reservoirs
- Swamps
- Zoning**
- Business District 1
- Business District 2
- Business District 3
- Business District 4
- General Business District
- Industrial District 1
- Industrial District 2
- Industrial District 3
- Industrial S District
- Residential District 1
- Residential District 2
- Residential District 3
- Residential District 4
- Residential District 5
- Village Commercial District
- Village Residential District
- Overlay District
- Historic District
- Watershed Protection District
- Adult Entertainment District

* Overlaying districts zoned as underlying color

Scale: 1" = 330' or 1:40,000



Map Source: Data for this map was provided by the Executive Office of Environmental Affairs (EOEA), Massachusetts Department of Transportation (MDOT), Massachusetts Highway Department (MHD), Hydrography data provided by USGS. Road data derived from MDOT Road Inventory File. Boundaries derived from GIS data provided by GIS (Global Positioning System). Additional street centerlines provided by the Town of North Andover. The information depicted on this map is for planning purposes only. It may not be adequate for legal boundary definition or other purposes.

TOWN OF NORTH ANDOVER
 2007 ANNUAL TOWN MEETING
 ARTICLE 28 - VOTED JUNE 4, 2007

ZONING LEGEND

- - - - - DISTRICT BOUNDARY (TYP)
- RESIDENTIAL ZONE (51.65 Ac.)
- ▨ MIXED USE ZONE (10.15 Ac.)
- OPPORTUNITY ZONE (25.44 Ac.)

APPROVED

Attorney General's Office

By: *Kelli E. Gonyea*
 Date: 10-02-07
 Art. 28 Town Meeting Date: 11-14-07

MERRIMACK RIVER

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100	10020507E	8.50'

ASSESSOR'S MAP
 34 PARCELS 15+17

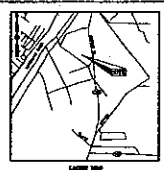
PARCEL ZONED
 I-2 (INDUSTRIAL
 2)

ATTEST:
 A True Copy
Jane A. Goodnow
 Town Clerk

1600 Osgood Street
 Smart Growth Overlay District
 Zoning Map

H
 Huntress Associates, Inc.
 Landscape Architecture & Land Planning
 37 Townsbury Street, Andover MA 01810
 978-476-6862 478-3846 fax

Prepared by the North Andover Department of Community Development
 Date: March, 2007 (Revised 6/5/07)



Metes & Bounds Description
Residential Zone – 1600 Osgood Street
North Andover, Massachusetts
April 6, 2007
Page 1 of 2

Beginning at a point along the westerly sideline of Osgood Street (Route 125) at the land now or formerly of J. Tropeano, Inc., said point being the northeasterly corner of the within described premises;

Thence along said westerly sideline of Osgood Street the following four (4) courses:

Along a curve to the right having a central angle of $12^{\circ}20'40''$, a radius of one thousand one hundred and seventy (1170.00) feet and an arc length of two hundred fifty-two and eight hundredths (252.08) feet to a point;

Thence $S22^{\circ}55'07''W$ four hundred twenty-six and six hundredths (426.06) feet to a point;

Thence along a curve to the left having a central angle of $26^{\circ}06'25''$, an radius of one thousand two hundred and thirty-two (1232.00) feet and an arc length of five hundred sixty-one and thirty-six hundredths (561.36) feet to a point;

Thence $S03^{\circ}11'18''E$ seventy and thirty-six hundredths (70.36) feet to a point;

Thence through the land now or formerly of 1600 Osgood Street LLC $S76^{\circ}14'53''W$ one thousand three hundred ninety and forty-six hundredths (1390.46) feet to a point;

Thence continuing through the land of said 1600 Osgood Street LLC $N13^{\circ}45'07''W$ one hundred forty-seven and ninety-five hundredths (147.95) feet to a point at the land now or formerly of Massachusetts Bay Transportation Authority;

Thence by the land of said Massachusetts Bay Transportation Authority the following five (5) courses:

$N38^{\circ}18'43''E$ one thousand sixty-five and forty-six hundredths (1065.46) feet to a point;

Thence $S58^{\circ}01'59''E$ six and fifty hundredths (6.50) feet to a point;

Thence $N38^{\circ}49'09''E$ three hundred two and eighty-seven hundredths (302.87) feet to a point;

Thence $N30^{\circ}47'22''E$ two hundred eighty-six and ninety-eight hundredths (286.98) feet to a point;

ATTEST:

A True Copy

Joyce A. Boudreau

Town Clerk

Metes & Bounds Description
Residential Zone – 1600 Osgood Street
North Andover, Massachusetts
April 6, 2007
Page 2 of 2

Thence $N20^{\circ}20'59''E$ three hundred fifty-eight and eighty-eight hundredths (358.88) feet to a point at the land of said J. Tropeano, Inc.;

Thence by the land of said J. Tropeano, Inc. $S70^{\circ}06'04''E$ six hundred twenty-five and thirty-four hundredths (625.34) feet to the point of beginning.

Said tract or parcel of land contains 1,381,104 square feet or 31.706 acres, more or less.

Metes & Bounds Description
Business Opportunity Zone – 1600 Osgood Street
North Andover, Massachusetts
April 6, 2007
Page 1 of 3

Beginning at a point along the westerly sideline of Osgood Street (Route 125) and along the land now or formerly of 1600 Osgood Street LLC, said point being the northeasterly corner of the within described premises;

Thence along said westerly sideline of Osgood Street the following eight (8) courses:

Along a curve to the left having a central angle of $08^{\circ}22'14''$, a radius of three thousand one hundred twelve and fifty-seven hundredths (3112.57) feet and an arc length of four hundred fifty-four and seventy-two hundredths (454.72) feet to a point;

Thence $S13^{\circ}25'32''E$ six hundred seventy-four and twenty-two hundredths (674.22) feet to a point;

Thence $S13^{\circ}37'13''E$ two hundred sixteen and twenty-one hundredths (216.21) feet to a point;

Thence along a curve to the right have a central angle of $16^{\circ}26'03''$, a radius of one thousand five hundred (1500.00) feet and an arc length of three hundred eighty-eight and twelve hundredths (388.12) feet to a point;

Thence $S01^{\circ}12'17''W$ four hundred seventy-eight and ninety-nine hundredths (478.99) feet to a point;

Thence $N88^{\circ}47'43''W$ thirty-six (36.00) feet to a point;

Thence $S07^{\circ}24'13''W$ two hundred fifty-five and fifty-two hundredths (255.52) feet to a point;

Thence along a curve to the right having a central angle of $65^{\circ}19'30''$, a radius of one hundred (100.00) feet and an arc length of one hundred fourteen and one hundredth (114.01) feet to a point on the northerly sideline of Holt Road;

Thence along the northerly sideline of said Holt Road the following five (5) courses:

$S72^{\circ}43'43''W$ three hundred thirty-eight and seventy-one hundredths (338.71) feet to a point;

Thence $S72^{\circ}21'52''W$ three hundred fourteen and eighty-seven hundredths (314.87) feet to a point;

ATTEST:
A True Copy

Joyce A. Seashaw
Town Clerk

Metes & Bounds Description
Business Opportunity Zone – 1600 Osgood Street
North Andover, Massachusetts
April 6, 2007
Page 2 of 3

Thence $S70^{\circ}31'07''W$ two hundred eleven and fifty-nine hundredths (211.59) feet to a point;

Thence $S62^{\circ}27'21''W$ ninety-five and seventeen hundredths (95.17) feet to a point;

Thence $S60^{\circ}11'36''W$ two hundred forty-nine (249.00) feet to a point at the land now or formerly of Commonwealth of Massachusetts Department of Environmental Protection;

Thence partly by said land of Commonwealth of Massachusetts Department of Environmental Protection, partly by other land now or formerly of Commonwealth of Environmental Protection and partly by land now or formerly of North Andover 2004, LLC the following six (6) courses:

$N17^{\circ}35'23''W$ three hundred seventy-eight and ninety-nine hundredths (378.99) feet to a point;

Thence $N62^{\circ}12'23''W$ seven hundred fifty-eight and ninety-eight (758.98) feet to a point;

Thence $N43^{\circ}50'26''W$ one hundred seventy and five hundredths (170.05) feet to a point;

Thence $N01^{\circ}29'29''E$ two hundred seventy-three and seventy-nine hundredths (273.79) feet to a point;

Thence $N10^{\circ}39'45''W$ sixty-nine and ninety-eight hundredths (69.98) feet to a point;

Thence $N23^{\circ}51'01''W$ one thousand three and eighty hundredths (1003.80) feet to a point at the land now or formerly of Massachusetts Bay Transportation Authority;

Thence by said land of Massachusetts Bat transportation Authority the following five (5) courses:

$N38^{\circ}18'43''E$ seven hundred forty and ninety hundredths (740.90) feet to a point;

Thence $N43^{\circ}10'14''E$ one hundred and thirty-six hundredths (100.36) feet to a point;

Thence $N37^{\circ}09'59''E$ one hundred and two hundredths (100.02) feet to a point;

Metes & Bounds Description
Business Opportunity Zone – 1600 Osgood Street
North Andover, Massachusetts
April 6, 2007
Page 3 of 3

Thence N34°35'35"E one hundred and twenty-one hundredths (100.21) feet to a point;

Thence N38°18'43"E three hundred thirty-seven and sixteen hundredths (337.16) feet to a point;

Thence through said land of 1600 Osgood Street LLC the following five (5) courses:

S13°45'07"E one hundred forty-seven and ninety-five hundredths (147.95) feet to a point;

Thence N76°14'53"E three hundred seventy and ten hundredths (370.10) feet to a point;

Thence S13°45'07"E one hundred seventy-two and fifteen hundredths (172.15) feet to a point;

Thence S76°14'53"W one hundred sixty-six and eighty-seven hundredths (166.87) feet to a point;

Thence S13°45'07"E two hundred forty and seventy-four hundredths (240.74) feet to a point;

Thence N76°14'53"E one thousand one hundred eleven and ninety hundredths (1111.90) feet to the point of beginning.

Said tract or parcel of land contains 5,493,039 square feet or 126.103 acres more or less.

Metes & Bounds Description
Mixed Use Zone – 1600 Osgood Street
North Andover, Massachusetts
April 6, 2007
Page 1 of 1

Beginning at a point along the westerly sideline of Osgood Street (Route 125) and along the land now or formerly of 1600 Osgood Street LLC, said point being the northeasterly corner of the within described premises;

Thence along said westerly sideline of Osgood Street $S03^{\circ}11'18''E$ three hundred eighteen and thirty hundredths (318.30) feet to a point;

Thence continuing along said westerly sideline of Osgood Street along a curve to the left having a central angle of $01^{\circ}52'01''$, a radius of three thousand one hundred twelve and fifty-seven hundredths (3112.57) feet and an arc length of one hundred one and forty-two hundredths (101.42) feet to a point;

Thence through said land of 1600 Osgood Street LLC the following five (5) courses:

$S76^{\circ}14'53''W$ one thousand one hundred eleven and ninety hundredths (1111.90) feet to a point;

Thence $N13^{\circ}45'07''W$ two hundred forty and seventy-four hundredths (240.74) feet to a point;

Thence $N76^{\circ}14'53''E$ one hundred one hundred sixty-six and eighty-seven hundredths (166.87) feet to a point;

Thence $N13^{\circ}45'07''W$ one hundred seventy-two and fifteen hundredths (172.15) feet to a point;

Thence $N76^{\circ}14'53''E$ one thousand twenty and thirty-two hundredths (1020.32) feet to the point of beginning.

Said tract or parcel of land contains 445,626 square feet or 10.230 acres more or less.

ATTEST:
A True Copy
Joyce A. Lusk
Town Clerk



**TOWN OF NORTH ANDOVER
OFFICE OF THE TOWN CLERK
120 MAIN STREET
NORTH ANDOVER, MASSACHUSETTS 01845**

Joyce A. Bradshaw, CMMC
Town Clerk

Telephone (978) 688-9501
Fax (978) 688-9557

E-mail jbradshaw@townofnorthandover.com

This is to certify that the following vote on Article 27 was taken at the Dissolved Annual Town Meeting for the Town of North Andover held May 14, 2007, May 15, 2007, May 21, 2007 and June 4, 2007 as amended by Attorney General Decision Case #4430 dated October 2, 2007 amending Section 17.4:

Article 27. Amend Zoning Bylaw – Add New Section – Section 17 - OSGOOD SMART GROWTH OVERLAY DISTRICT. VOTED BY TWO-THIRDS (2/3) VOTE DECLARED BY THE MODERATOR to amend the Zoning Bylaw for the Town of North Andover by adding a new Section-Section 17 – Osgood Smart Growth Overlay District to read as follows:

**SECTION 17.0 OSGOOD SMART GROWTH OVERLAY DISTRICT
(OSGOD)**

17.1 Purpose

It is the purpose of this Section to establish an Osgood Smart Growth Overlay District and to encourage smart growth in accordance with the purposes of G. L. Chapter 40R, and to foster a range of housing opportunities along with a mixed-use development component, to be proposed in a distinctive and attractive site development program that promotes compact design, preservation of open space, and a variety of transportation options, including enhanced pedestrian access to employment and nearby rail access. Other objectives of this Section are to:

1. Promote the public health, safety, and welfare by encouraging diversity of housing opportunities;
2. Provide for a full range of housing choices for households of all incomes, ages, and sizes in order to meet the goal of preserving municipal character and diversity;

ATTEST:
A True Copy

Joyce A. Bradshaw

Town Clerk

3. Increase the production of a range of housing units to meet existing and anticipated housing needs;
4. Provide a mechanism by which residential development can contribute directly to increasing the supply and diversity of housing;
5. Establish requirements, standards, and guidelines, and ensure predictable, fair and cost-effective development review and permitting;
6. Establish development standards to allow context-sensitive design and creative site planning;
7. Enable the Town to receive Smart Growth Educational Aid payments for school children which may reside in residential developments within the OSGOD pursuant to G.L. Chapter 40S, and which are available only for new developments in 40R Smart Growth Zoning Overlay Districts; and
8. Enable the Town to receive Zoning Incentive Payments and/or Density Bonus Payments in accordance with G. L. Chapter 40R and 760 CMR 59.06 arising from the development of housing in the Osgood Smart Growth Overlay District.

17.2 Definitions

For purposes of this Section 17.0, the following definitions shall apply. All capitalized terms shall be defined in accordance with the definitions established under the Enabling Laws or this Section 17.2, or as set forth in the rules and regulations of the Permit Approval Authority ("Regulations"). To the extent that there is any conflict between the definitions set forth in this Section 17.2 or the Regulations and the Enabling Laws, the terms of the Enabling Laws shall govern.

1. ***Accessory Building*** – A detached building, the use of which is customarily subordinate and incidental to that of the principal building or buildings, whether or not located on the same lot.
2. ***Accessory Use*** – A use of a parcel customarily subordinate and incidental to the principal use of the lot, or a neighboring lot in the case of a use pursuant to an easement, or to a structure on the lot, or on a neighboring lot in the case of a structure erected and maintained pursuant to an easement.
3. ***Administering Agency*** – The local housing authority or other qualified housing entity designated by the PAA, pursuant to Section 17.8.6, to review and implement the Affordability requirements affecting Affordable Housing in Projects under Section 17.8.
4. ***Affordable Homeownership Unit*** - An Affordable Housing Dwelling Unit required to be sold to an Eligible Household.

5. **Affordable Housing** - housing that is affordable to and occupied by Eligible Households.
6. **Affordable Housing Restriction** - A deed restriction of Affordable Housing meeting statutory requirements in G.L. c. 184, Section 31 and the requirements of Section 17.8 of this Bylaw.
7. **Affordable Rental Unit** - an Affordable Housing Dwelling Unit required to be rented to an Eligible Household.
8. **Applicant** - A person that files an application for Plan Approval and/or special permit and/or other approval pursuant to this Section 17. If the Applicant is not the owner of the real property on which the development is proposed, then the Applicant, as part of the application or notice shall obtain the owner's written authorization to file such application or notice. Such written authorization may take the form of pre-existing agreements or instruments including, without limitation, signed purchase and sale agreement(s) and signed easement(s) (whether or not yet recorded), or a written letter of authorization from the owner of the real property.
9. **As-of-Right Project** - Means a development of residential or non-residential under zoning without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A proposed development that requires a special permit pursuant to this Section 17.0 shall not be considered an As-Of-Right Project.
10. **Building** - A combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals, processes or property. For the purpose of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature. The word "building" shall be construed, where the context requires, as though followed by the words "or part of parts thereof."
11. **Building Area** - The aggregate of the maximum horizontal cross-sectional area of all buildings on a lot exclusive of cornices, eaves, gutters, chimneys, unenclosed porches, bay windows, balconied and terraces.
12. **Building Height** - Measured from the average ground height adjoining at the exterior walls of a building to highest point on the roof of the building, exclusive of decorative cupolas, weather vanes, chimneys and vent structures, antennas, satellite dishes, mechanical penthouses and other structures or enclosures not intended for human habitation.
13. **Design Standards** - Means provisions of Section 17.11 made applicable to developments within the OSGOD that are subject to the Plan Approval process.
14. **Development** - Any type of construction not defined as a "Project".

- 15. DHCD** – Department of Housing and Community Development of the Commonwealth of Massachusetts, and any successor agency.
- 16. Driveway or Drive Lane** – A portion of a lot designed for vehicular access to off-street parking or loading space or to a garage, whether or not located on the same development real property. For purposes of this Section 17, a Driveway or Drive Lane is distinguished from a “Roadway” as defined below.
- 17. Dwelling Unit** – One (1) or more living, kitchen and sleeping room(s) providing complete living facilities for the use of one (1) or more individuals constituting a single housekeeping unit, with permanent provisions for living, sleeping, eating, cooking and sanitation, but not including mobile homes or trailers, however mounted, or commercial accommodations offered for transient occupancy of less than one month’s duration.
- 18. Eligible Household** - An individual or household whose annual income is less than 80 percent of the area-wide median income for the Lawrence MA-NH HMFA (HUD Metro FMR Area) as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.
- 19. Enabling Laws** - G.L. Chapter 40R and 760 CMR 59.00.
- 20. Fast Food Establishment** – An establishment whose primary business is the sale of food upon a very short waiting time, served primarily through a drive-through facility, and which, because of the nature of the operation, causes or is a major contributor to a large volume or frequent turnover of vehicular traffic.
- 21. Floor Area, Gross** – Gross floor area shall be the floor area within the perimeter of the outside walls of the building without deduction for hallways, stairs, closets, thickness of walls, columns or other features.
- 22. Floor Area Ratio** – The ratio of the floor area to the development site area defined in the Application, as determined by dividing the Gross Floor Area by the land area of the site which is the subject of the development defined in the Application.
- 23. Landscaped Buffer** – A planted area intended to provide, when mature, a visual screen between uses. Landscaped buffers may include existing vegetation, new plantings and/or lawn areas. Fencing may form a part of the landscaped buffer or screening where appropriate or dictated by topography or other consideration.

- 24. Landscaping** – Improvements to land to enhance its attractiveness and facilitate its use and enjoyment. Landscaping may include walks, terraces and the like, fencing, stone walls or other decorative walls, site furnishings, grading and reshaping of earth contours, planting, and lawn areas. Landscaping may also include existing natural areas indicated to remain and/or be renovated.
- 25. Lot Coverage** - The gross floor area for principal and accessory structures permitted on a site.
- 26. Mixed-Use Development Project** – A development containing a mix of residential uses and non-residential uses, as allowed in Section 17.6, and subject to all applicable provisions of this Section 17.
- 27. Multi-family Residential Use** – Apartment or condominium Dwelling Units in one or more buildings, each of which buildings contains or will contain more than three (3) such Dwelling Units.
- 28. Open Space** - The portion of a site within the OSGOD not occupied by buildings, parking, garages, roadways, driveways and drive lanes, but which shall include, among other areas, all landscaped areas, all un-built areas, all sidewalks and walkways, and all swimming pools, tennis courts and other recreational facilities primarily open to the sky, whether or not landscaped.
- 29. OSGOD** – The Osgood Smart Growth Overlay District established in accordance with this Section 17.
- 30. PAA Regulations** – The rules and regulations of the PAA adopted pursuant to Section 17. Such rules and regulations shall not take effect until approved by DHCD and filed with the Town Clerk.
- 31. Plan Approval** – A determination made in the form of a written decision by the PAA that the proposed site plan for the development complies with the standards and criteria which a site located within the OSGOD must meet under the procedures established herein and in the Enabling Laws and/or G.L. c. 40A as more particularly provided herein.
- 32. Plan Approval Authority (PAA)** - For purposes of reviewing development applications and issuing decisions on development Projects and Commercial Projects within the OSGOD, the Planning Board (the “PAA”), consistent with G.L. Chapter 40R and 760 CMR 59.00, shall be the Plan Approval Authority, and consistent with G.L. c. 40A, shall be the special permit granting authority or other approval authority as provided herein, and the PAA is authorized to approve a site plan to implement a development.

33. **Principal Building** – A building in which is conducted main or principal use of the site on which said building is situated. A development is permitted to have more than one Principal Building.
34. **Principal Structure** – The structure on a development site, which contains the primary use of the site. A principal use shall not be contained within an accessory structure as defined in the above. A development is permitted to have more than one Principal Structure.
35. **Project** - a Residential Project and/or Mixed Use Development Project, undertaken within the OSGOD in accordance with the requirements of this Section 17.
36. **Project, Commercial** – a development which is proposed and which either requires a special permit as provided herein, or is otherwise not a “Project” as defined above.
37. **Residential Project** - a Project that consists solely of residential, parking, and accessory uses.
38. **Recreational Uses** - Active recreational uses, including but not limited to ball fields; and passive recreational uses, including but not limited to walking and bicycle paths. Amusements or motorized uses shall not be considered eligible recreational uses.
39. **Roadway** – a main access corridor as defined under Section 17.11.14. A Roadway is not a “Driveway” or “Drive Lane” as defined above.
40. **Structure** – A combination of materials for occupancy or use, such as a building, bridge, trestle, tower, framework, tank, tunnel, tent, stadium, reviewing stand, platform, shelters, piers, bin, sign, swimming pool or the like; the term structure shall be construed as if followed by the words “or part thereof”.
41. **Subdistrict** – A specific and defined area of land within the OSGOD that is subject to specific requirements for allowable uses and/or dimensional requirements that may differ from the requirements for allowable uses and/or dimensional requirements in other specific and defined areas within the OSGOD. The boundaries and the names of the Subdistricts are referred to in Section 17.3.3 herein.
42. **Underlying Zoning** – The zoning otherwise established by the Zoning Bylaw without regard to this Article.
43. **Use** – The purpose for which a structure or land is used or intended to be used.
44. **Use, Substantially Different** – A use which by reason of its normal operation would cause readily observable, material differences in

patronage, service, appearance, noise, employment or similar characteristics from the use to which it is being compared.

45. Zoning Bylaw - the Zoning Bylaw of the Town of North Andover, as amended.

17.3 Overlay District

17.3.1 Establishment

The Osgood Smart Growth Overlay District, hereafter referred to as the OSGOD, is an overlay district having a land area of approximately one hundred sixty-nine (169) acres in size that is superimposed over all underlying zoning districts, including without limitation all other overlay districts, established by the Zoning Bylaw now or hereafter applicable to the properties known as 1600 Osgood Street, and is shown on the Zoning Map as set forth on the map entitled "1600 Osgood Street Smart Growth Overlay District", dated March, 2007, prepared by the North Andover Division of Community Development. This map is hereby made a part of the Zoning Bylaw and is on file in the Office of the Town Clerk (the "OSGOD Zoning Map"). The OSGOD contains all of the real property described in a deed from Lucent Technologies, Inc. to 1600 Osgood Street, LLC dated August 21, 2003, recorded with the Essex North District Registry of Deeds in Book 8213, Page 272 as more particularly shown on the OSGOD Zoning Map.

17.3.2 Underlying Zoning

The OSGOD is an overlay district superimposed on all underlying zoning districts. As required by the Enabling Laws, the regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s) shall remain in full force, except for those sites undergoing development pursuant to this Section 17. Within the boundaries of the OSGOD, a developer may elect to either develop a site in accordance with the requirements of this Section 17, or to develop a site in accordance with the requirements of the regulations for use, dimension and all other provisions of the Zoning Bylaw governing the underlying zoning district(s).

17.3.3 Subdistricts

The OSGOD contains three (3) Subdistricts, all hereby established and all in the locations shown on the OSGOD Zoning Map, including: (a) the Residential Mixed Use Zone, containing approximately 31.65 acres; (b) the Mixed-Use Development Zone, containing approximately 10.15 acres; and (c) the Business Opportunity Zone, containing approximately 125.94 acres. For purposes of the application of this Section 17, and for a proposed development which is located within a Subdistrict identified as the Mixed Use Zone and/or the Business Opportunity Zone, the uses permitted and the dimensional and other controls applicable in a Subdistrict may be extended into the adjacent Subdistrict described above to the extent of one-hundred fifty (150) feet as long as the limit of said extension is reflected on the site plan for a proposed development for which Plan Approval is required under this Section 17. Moreover, a residential use may be accessed

via a commercially zoned and/or mixed use Subdistrict, and in turn, a non-residential use may be accessed via a residentially-zoned and/or mixed use Subdistrict.

17.4 Administration, Enforcement, and Appeals

The provisions of this Section 17 shall be administered by the Planning Board, except as otherwise provided herein. Any appeal arising out of a Plan Approval decision by the PAA with respect to a Project shall be governed by the applicable provisions of G. L. Chapter 40R, except with respect to a Commercial Project or other development requiring a special permit or other approval under G.L. c.40A, in which case, the provisions of M.G.L. c.40A shall govern only the portion of the development for which a such special permit or other approval is required.

This Section shall be enforced by the Building Inspector, who may require the submission of plans, specifications and other information, which he deems to be necessary to determine compliance with its provisions. No building shall be constructed, reconstructed, enlarged, altered, moved, removed or demolished as part of a development governed by this Section without obtaining a building permit. The Building Inspector shall withhold such building permit if such building or such activity included in such a development governed by this Section, would be in violation of this Section. No actual use and occupancy (as opposed to construction and/or break-in period testing) of a building, a lot, or a portion of either of them shall be commenced or changed without the issuance by the Building Inspector of a certificate of compliance. The Building Inspector shall withhold such certificate of compliance unless the Building Inspector is satisfied that all work has been completed in accordance with the provisions of the applicable approved permits and of the applicable provisions of this Section, and that the proposed use will be in conformity with the applicable provisions of this Section.

17.5 Applicability of OSGOD

In accordance with the provisions of G.L. Chapter 40R and 760 CMR 59.00, an Applicant for a development located within the OSGOD may seek Plan Approval in accordance with the requirements of this Section 17. In such case, then notwithstanding anything to the contrary in this Zoning Bylaw, such application shall not be subject to any other provisions of this Zoning Bylaw, including limitations upon the issuance of building permits for residential uses related to a rate of development or phased growth limitation or to a local moratorium on the issuance of such permits, or to building permit or dwelling unit limitations, including but not limited to limitations provided in Section 4.2 ("Phased Development Bylaw") of the Zoning Bylaw. The total number of residential Dwelling Units which can be developed within the OSGOD shall not exceed 530, and such Dwelling Units may only be developed within the Residential Mixed Use Zone and/or the Mixed Use Development Zone defined below and in accordance with the provisions of this Section 17.0.

17.6 Permitted Uses

The following uses are permitted, as more specifically described below:

17.6.1 Residential Mixed-Use Zone

17.6.1.1 Purpose

The purpose of the Residential Mixed-Use Zone is to increase the efficiency of land use, promote a diversity of housing types, emphasize and encourage pedestrian and bicycle circulation, and to encourage the integration of smaller commercial and retail activities to complement the primary residential uses.

17.6.1.2 As-Of-Right Uses

The following uses shall be permitted in the Residential Mixed Use Zone As-of-Right upon Plan Approval pursuant to the provisions of Section 17.12:

1. Two-family, three-family, townhouse, and/or Multi-family Residential Use(s), provided that the minimum allowable as-of-right density requirements for residential use specified in Section 17.9 shall apply to the residential portion of a mixed-use development;
2. Assisted living units and facilities;
3. Continuing Care Retirement Center;
4. Independent Elderly Housing;
5. Day care center;
6. Eating and drinking establishment not to exceed 2,000 square feet in gross floor area per user and shall not contain a drive-through facility;
7. Municipal recreation area;
8. Non-profit School;
9. Outdoor recreation area;
10. Personal Services, banking and retail establishments not to exceed 3,000 square feet in gross floor area per user;
11. Places of worship;
12. Private School;
13. Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages), as well as parking accessory to the uses described in Subsection 17.6.1.3 below; and,
14. Other accessory uses customarily incidental to any of the above permitted uses as determined by the Building Inspector.

17.6.1.3 Uses Allowed By Special Permit

The following uses shall be permitted in the Residential Mixed Use Zone by Plan Approval Special Permit issued by the Plan Approval Authority pursuant to the provisions of Section 17.6.5:

1. Eating and drinking establishment in excess of 2,000 square feet of gross floor area per user, but less than 15,000 square feet of gross floor area per user, provided that such establishment shall not contain a Fast Food Establishment;
2. Personal Services, banking and retail establishments in excess of 3,000 square feet of gross floor area per user but less than 15,000 square feet of gross floor area per user;
3. Nursing and Convalescent Homes;
4. Commuter Rail System; and,
5. Other accessory uses customarily incidental to any of the above permitted uses as determined by the Inspector of Buildings.

17.6.1.4 The total Gross Floor Area devoted to non-residential uses and non-residential accessory uses located within the Residential Mixed Use Zone shall not exceed 75,000 square feet.

17.6.2 Mixed-Use Development Zone

17.6.2.1 Purpose

The intent of the Mixed-Use Development Zone is to provide a transition between primarily residential development and compact, higher density commercial and mixed-use development, to increase the efficiency of land use on land which is Substantially Developed Area, to allow Commercial Projects which may include a mixture of complimentary land uses such as housing, retail, offices, commercial services, and civic uses, to create economic and social vitality and to encourage the linking of trips.

17.6.2.2 As-Of-Right Uses

The following uses shall be permitted in the Mixed Use Development Zone As-of-Right upon Plan Approval pursuant to the provisions of this Section 17.6.5 and other applicable provisions of this Section 17:

1. Agricultural Use;
2. Art Gallery;
3. Businesses, Professional and Other Offices;
4. Day Care Center;
5. Eating and drinking establishment not to exceed 2,000 square feet in gross floor area per user and which shall not be a Fast Food Establishment;
6. Funeral Parlor;
7. Guest house;
8. Medical Center and/or Medical Offices;
9. Motel/Hotel;
10. Outdoor recreation area, including but not limited to, tennis court, basketball court, athletic fields, tot lots, and passive recreation;
11. Personal Services Establishments;
12. Places of Worship;
13. Public Building or use;

14. Retail, banking, and service establishments not to exceed 20,000 square feet in gross floor area per user;
15. Parking accessory to any of the above permitted uses as well as uses described in Section 17.6.2.3, including surface, garage-under, and structured parking (e.g., parking garages), as well as parking accessory to the uses described in Subsection 17.6.2.3 below; and,
16. Accessory uses customarily incidental to any of the above permitted uses as determined by the Inspector of Buildings.

17.6.2.3 Uses Allowed By Special Permit

The following uses shall be permitted in the Mixed Use Development Zone by Plan Approval Special Permit issued by the Plan Approval Authority, as Special Permit Granting Authority (SPGA), pursuant to the provisions of this Section 17.6.5:

1. Two-family, three-family, townhouse, and/or Multi-family Residential Use(s), provided that the minimum allowable as-of-right density requirements for residential use specified in Section 17.9 shall apply to the residential portion of a mixed-use development;
2. Assisted living units and facilities;
3. Continuing Care Retirement Center;
4. Independent Elderly Housing;
5. Nursing and Convalescent Homes;
6. Retail and Service Establishments in excess of 20,000 square feet of gross floor area per user but less than 65,000 square of gross floor area per user;
7. Eating and Drinking Establishment provided that such establishment shall not be a Fast-Food Establishment; and shall not exceed 15,000 square feet of gross floor area per user;
8. Incubator or Business Park;
9. Indoor Place of Amusement or Assembly, including but not limited to, arenas, theatres, and athletic or recreational facilities;
10. Indoor Ice Skating Facility;
11. Non-profit school;
12. Private School for profit;
13. Research and Development Facilities; and,
14. Retail Plaza not to exceed 150,000 square feet of gross floor area, where any single user cannot exceed 65,000 square feet of gross floor area.
15. Accessory uses customarily incidental to any of the above permitted uses as determined by the Inspector of Buildings.

17.6.3 Business Opportunity Zone

17.6.3.1 Purpose

The intent of the Business Opportunity Zone is to encourage efficient land use by facilitating compact, high-density retail, commercial, industrial development and other Commercial Projects, and to facilitate development (land use, density and design) that supports public transit if applicable.

17.6.3.2 As-Of-Right Uses

The following uses shall be permitted in the Business Opportunity Zone As-of-Right upon Plan Approval pursuant to the provisions of this Section 17.6.5 and other applicable provisions of this Section 17:

1. Agricultural Use;
2. Art Gallery;
3. Business, Professional and Other Offices;
4. Day Care Center;
5. Funeral Parlor;
6. Medical Center and/or Medical Offices;
7. Motel/Hotel;
8. Places of Worship;
9. Public Building or use;
10. Eating and Drinking Establishment;
11. Personal Services Establishment;
12. Municipal Recreation Area;
13. Manufacturing;
14. Printing and Reproduction;
15. Research and Development Facilities;
16. Retail, banking, and service establishments not to exceed 20,000 square feet in gross floor area per user;
17. Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages), as well as parking accessory to the uses described in Subsection 17.6.3.3 below; and,
18. Accessory uses customarily incidental to any of the above permitted uses as determined by the Inspector of Buildings.

17.6.3.3 Uses Allowed By Special Permit

The following uses shall be permitted in the Business Opportunity Zone by Plan Approval Special Permit issued by the Plan Approval Authority, as Special Permit Granting Authority (SPGA), pursuant to the provisions of this Section 17.6.5:

1. Commuter Rail System;
2. Incubator or Business Park;
3. Indoor Place of Amusement or Assembly, including but not limited to, such uses shall include arenas, theatres, and athletic or recreational facilities;
4. Indoor Ice Skating or other athletic facility;
5. Non-profit school;

6. Outdoor recreation area, including but not limited to, tennis court, basketball court, athletic fields, and passive recreation;
7. Private School for profit; and,
8. Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages);
9. Retail and Service Establishments in excess of 20,000 square feet of gross floor area per user;
10. Retail Plaza;
11. Public Service Corporation;
12. Windmills up to one hundred-fifty (150) feet to the top of the hub at the center of the rotor; and,
13. Accessory uses customarily incidental to any of the above permitted uses as determined by the Inspector of Buildings.

17.6.4 Prohibited Uses. All uses not expressly allowed are prohibited.

17.6.5 Criteria for Special Permit and Other Applicable Approval by Plan Approval Authority.

17.6.5.1 Any development component for which a special permit is required to be issued by the Plan Approval Authority, as Special Permit Granting Authority pursuant to Section 9 of M.G.L. c.40A, or for a Commercial Project approved under G.L. c. 40A, shall only be issued in accordance with the requirements of this Subsection 17.6.5.

17.6.5.2 The Plan Approval Authority may grant a Special Permit or other approval within the framework of this Section 17 only after holding a public hearing which must be held within sixty-five (65) days after the applicant files for such Special Permit or other approval. The sixty-five (65) days period shall be deemed to have begun with the filing of the application with the Town Clerk. The Applicant is responsible for transmitting a copy of the application for a Special Permit or other approval within twenty-four (24) hours of the filing of the application with the Town Clerk and to the Planning Board.

17.6.5.3 The Plan Approval Authority shall not approve any such application for a Special Permit or other approval unless it finds that in its judgment all the following conditions are met:

1. The specific site is an appropriate location for such a use, structure or condition;
2. The use as developed will not adversely affect the neighborhood;
3. There will be no nuisance or serious hazard to vehicles or pedestrians;
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use;

5. With regard to a Special permit, the Plan Approval Authority shall not grant any Special Permit unless it makes a specific finding that the use is in harmony with the general purpose and intent of this Zoning Bylaw; and,
6. The use for which the special permit or other approval is sought complies with the dimensional and other criteria described in Sections 17.9 through 17.15 unless otherwise waived as provided therein.

17.6.5.4 In approving a Special Permit, the Plan Approval Authority may attach such conditions and safeguards only to the portion of the development requiring a special permit as are deemed necessary to protect the neighborhood such as, but not limited to, the following:

1. Requirements of front, side, or rear yards greater than the minimum required by this Bylaw.
2. Requirements of screening parking areas or other parts of the premises from adjoining premises or from the street, by walls, fences, planting, or other devices as specified by the Plan Approval Authority.
2. Modification of the exterior features or appearances of the structure;
4. Limitation of size, number of occupants, method or time of operation, or extent of facilities; and,
5. Regulation of number, design and location of access drives or other traffic features.

17.6.5.5 Special Permits or other approvals granted under the provisions contained herein shall be deemed to have lapsed after a two (2) year period from the date on which the Special Permit or other approval was granted unless substantial use or construction has commenced. If the Applicant can show good cause why substantial use or construction has not commenced within the two (2) year period, the Plan Approval Authority, as its discretion, may extend the Special Permit or other approval for an additional one (1) year period. Included within the two (2) year period stated above, is the time required to pursue or wait the determination of an appeal from the provisions of the Bylaw.

17.6.5.6 The Plan Approval Authority shall also apply the same dimensional, design and other criteria described in Sections 17.9 through 17.15 as applied to As-of-Right uses unless otherwise waived as provided therein.

17.6.5.7 Within (90) days following the date of the public hearing, the Plan Approval Authority shall take final action in the matter in order to issue a Special Permit or other approval provided for in this Section. There shall be at least four (4) of the five (5)

members of the Plan Approval Authority voting in favor of issuing the Special Permit or other approval.

17.6.5.8 A Special Permit or other approval granted under the provisions of this Bylaw shall not take effect until: the Town Clerk certifies on a copy of the decision that twenty (20) days have elapsed without filing of an appeal or that any appeal filed has been dismissed or denied, and the certified decision has been recorded at the owner's expense in the Essex County Registry of Deeds indexed in the grantor index under the name of the record owner, and noted on the owner's Certificate of Title;

If the Special Permit or other approval involves registered property, the decision, at the owner's expense shall also be filed with the Recorder of the Land Court.

17.6.5.9 At the discretion of the PAA, an Applicant seeking approval of a development including both As-Of-Right uses as well as uses requiring a Special Permit or other approval may combine such applications into a single application, and the PAA may combine both hearings and issue a single decision on such a combined development, provided that all requirements for the As-Of-Right development are complied with in accordance with the Enabling Laws and this Section 17.0, and with respect to uses allowed by Special Permit or other approval, are complied with in accordance with M.G.L. c. 40A.

17.7 Project Phasing

The PAA, as a condition of any Plan Approval, may require a Project to be phased to mitigate any extraordinary adverse Project impacts on nearby properties. For Projects that are approved and developed in phases, the proportion of Affordable units and the proportion of market rate units shall be consistent across all phases.

17.8 Housing and Housing Affordability

17.8.1 Marketing Plan

As part of any application for Plan Approval for housing within the OSGOD, an Applicant for such approval must submit a narrative document and marketing plan that establishes that the proposed development of housing is appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly. These documents in combination, to be submitted with a Plan Approval application pursuant to Section 17.12 below, shall include details about construction related to the provision, within the development, of units that are accessible to the disabled.

17.8.2 Number of Affordable Housing Units

For all Projects, not less than twenty percent (20%) of the housing units constructed shall be Affordable Housing, as required by the Enabling Laws. For purposes of calculating

the number of units of Affordable Housing required, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit.

17.8.3 Requirements

Affordable Housing shall comply with the following requirements:

1. For an Affordable Rental Unit, the monthly rent payment, including utilities and parking, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming 1.5 persons per bedroom, unless other affordable program rent limits approved by the DHCD shall apply;
2. For an Affordable Homeownership Unit the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming 1.5 persons per bedroom; and,
3. Affordable Housing required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.

17.8.4 Design and Construction

Units of Affordable Housing shall be finished, but not furnished housing units. Units of Affordable Housing shall be dispersed throughout the development of which they are part and be compatible in initial construction quality and exterior design to other housing units in the development. The total number of bedrooms in the Affordable Housing shall be, insofar as practicable, proportionate to the total number of bedrooms in all the units in the development of which the Affordable Housing is part.

17.8.5 Affordable Housing Restriction

Each unit of Affordable Housing shall be subject to an Affordable Housing Restriction approved by the PAA which is recorded with the appropriate registry of deeds or district registry of the Land Court and which contains at least the following:

1. Specification of the term of the affordable housing restriction which shall be no less than thirty years, and in the discretion of the PAA, the Restriction may be in perpetuity;
2. The name and address of an administering agency with a designation of its power to monitor and enforce the affordable housing restriction;
3. A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity and number of bedrooms and number of bedroom types of Affordable Rental Units in a Project

or portion of a Project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project or the rental portion of a Project without specific unit identification;

4. Reference to a housing marketing and resident selection plan, to which the Affordable Housing is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. The housing marketing and selection plan may provide for preferences in resident selection to the extent consistent with applicable law for the Affordable Housing Units; the plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that the preference for such Unit shall be given to a household of the appropriate size;
5. A requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan;
6. Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership will be set;
7. Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions.
8. A requirement that only an Eligible Household may reside in Affordable Housing and that notice of any lease or sublease of any unit of Affordable Housing shall be given to the administering agency;
9. Provision for effective monitoring and enforcement of the terms and provisions of the affordable housing restriction by the administering agency;
10. Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the administering agency and the Town and/or a nonprofit organization, in a form approved by municipal counsel, and PAA, and shall limit initial sale and resale to and occupancy by an Eligible Household;
11. Provision that the restriction on Affordable Rental Units in a rental Project or rental portion of a Project shall run with the rental Project or rental portion of a Project and shall run in favor of the Administering Agency and the Town and/or a non-profit organization, in a form approved by municipal counsel, and the PAA, and shall limit rental and occupancy to an Eligible Household;
12. Provision that the owner(s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the administering agency, in a form specified by that agency certifying compliance with the Affordability provisions of this Bylaw and

containing such other information as may be reasonably requested in order to ensure affordability; and,

13. A requirement that residents in Affordable Housing provide such information as the administering agency may reasonably request in order to ensure affordability.

17.8.6 Administering Agency

An administering agency which may be the Local Housing Authority, or other qualified housing entity (the "Administering Agency") shall be designated by the PAA as the Administering Agency for all Projects in the OSGOD. In a case where the Administering Agency cannot adequately carry out its administrative duties, upon certification of this fact by the PAA or by DHCD, such duties shall devolve to and thereafter be administered by a qualified housing entity designated by the PAA or, in the absence of such timely designation, by an entity designated by the DHCD. The Applicant and its successor in title and interest shall pay for the services of the Administering Agency or other such entity providing the services required herein, with such payment not to exceed a reasonable amount for such services to be agreed upon by the PAA and the Applicant. In any event, such Administering Agency shall ensure the following, both prior to issuance of a Building Permit for a Project within the OSGOD, and on a continuing basis thereafter, as the case may be:

1. Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed;
2. Income eligibility of households applying for Affordable Housing is properly and reliably determined;
3. The housing marketing and resident selection plan conform to all requirements and is properly administered;
4. Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given;
5. Affordable Housing Restrictions meeting the requirements of this section are recorded with the proper registry of deeds; and,
6. Enforce, by litigation or otherwise, the Affordable Housing Restrictions and the foregoing requirements.

17.8.7 Housing Marketing and Selection Plan

The housing marketing and selection plan may make provision for payment by the Project applicant of reasonable costs to the administering agency to develop, advertise,

and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements.

17.8.8 Age Restrictions

The District shall not include the imposition of restrictions on age upon the entire District, but the development of specific Projects within the District may be exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Project shall be in compliance with all applicable fair housing laws and not less than twenty-five percent (25%) of the housing units in such a restricted Project shall be restricted as Affordable units. Any Project, which includes age-restricted residential units, shall comply with applicable federal, state and local fair housing laws and regulations.

17.8.9 Twenty Percent Requirement

For all Projects where the Affordable Units proposed are Homeownership Units, not less than twenty percent (20%) of the total housing units constructed in a Project shall be Affordable Housing. For all Projects where the Affordable Units proposed are Rental Units not less than twenty five percent (25%) of total housing units in any building containing rental units shall be Affordable Housing; provided, however, that 20% of such units may be affordable where the Affordable Units are restricted to households earning less than 50% of area median income. For purposes of calculating the number of units of Affordable Housing required within a Project, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit.

17.8.10 Phasing

For housing that is approved and developed in phases, the proportion of Affordable Housing Units (and the proportion of Existing Zoned Units to Bonus Units as described in 760 CMR 59.04 1(h)) shall be consistent across all phases.

17.8.11 Computation

Prior to the granting of any Building Permit for the housing component of a Project, the Applicant must demonstrate, to the satisfaction of the PAA, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to the Town of North Andover.

17.8.12 No Waiver

Notwithstanding anything to the contrary herein, the Affordability provisions in this Section 17.8 shall not be waived.

17.9 Dimensional and Density Requirement

Notwithstanding anything to the contrary in this Zoning Bylaw, the dimensional requirements applicable in the OSGOD are as follows:

Dimensional Requirements	OSGOD Overlay Subdistricts		
	Mixed-Use Residential District	Mixed-Use Commercial District	Business Opportunity Zone
Minimum Lot Area	NA	NA	1 Acre - 15 Acres Maximum
Minimum Lot Frontage on a Public Way	N/A	N/A	N/A
Maximum Building Height	55 Feet	55 Feet	55 Feet
Minimum Front Setback ¹	10 Feet Minimum - 25 Feet Maximum	0 Feet Minimum - 15 Feet Maximum	0 Feet Minimum - 10 Feet Maximum
Minimum Rear Yard Setback	15 Feet - 25 Feet Maximum	No required setback	No required setback
Minimum Side Yard Setback	5 Feet if lot line is on a street. 3 feet minimum - 10 feet maximum if adjacent to another lot line.	No required setback	No required setback
Minimum Open Space	20%	15%	15%
Allowable Dwelling Units/Acre ²	20	20	Not Allowed
Minimum Setback between Principal Buildings	0 Feet Minimum - 20 Feet Maximum	0 Feet Minimum - 20 Feet Maximum	0 Feet Minimum - 20 Feet Maximum
Minimum Setback between either (a) Accessory Buildings, or (b) Principal Buildings and Accessory Buildings	0 Feet Minimum - 25 Feet Maximum	0 Feet Minimum - 5 Feet Maximum	0 Feet Minimum - 5 Feet Maximum
Multiple Buildings on One Lot	Allowed	Allowed	Allowed
Floor Area Ratio (FAR)	0.70:1	0.65:1	0.90:1
Lot Coverage	70%	90%	90%

Notes:

1. Refer to Section 17.9.1
2. Allowable Dwelling Units Per Acre shall mean the maximum number of Dwelling Units per acre averaged over the entire Residential Mixed Use Overlay District.

17.9.1 Interpretation of Table

1. A front yard setback of 50 feet for property within the OSGOD shall apply only to front yards abutting Route 125 (Osgood Street). There shall be no front yard setback requirement unless specified in the Subdistrict.
2. Open Space shall be "Useable Open Space" which is defined as the part or parts of land within the OSGOD, which are reserved for permanent open space or passive recreation use. This space shall exclude parking areas, but include required setbacks and walkways. The Usable Open Space shall be open and unobstructed to the sky. Trees, planting, arbors, flagpoles, sculptures, fountains, outdoor open-air, passive/active recreational facilities, such items as streetscape elements (lights, planters, benches, etc.), outdoor areas devoted to dining, cafe or similar uses, and decorative surface treatments for sidewalks and other hard surfaces (such as pavers, cobblestones or concrete surface treatments designed to resemble pavers or cobblestones), and similar objects shall not be considered obstructions. No more than 25% of the total amount of required Usable Open Space shall be "wetland" as defined by the requirements of M.G.L. Chapter 131, Section 40, and the Town's Wetland Bylaws.

17.10 Parking Requirements

Notwithstanding anything to the contrary in this Zoning Bylaw, the parking requirements applicable in the OSGOD are as follows:

Residential Uses		
1	Residential Use (Minimum)	1 space per dwelling unit.
2	Residential Use (Maximum)	2 spaces per dwelling unit.
3	All other places with including (but not limited to) rooming houses, hotels, motels, hospitals, nursing homes.	1 space per sleeping room for accommodations single or double occupancy, 1 per 2 for rooms exceeding Double beds for rooms exceeding double occupancy
Recreation Uses		
1	Passive Recreation (i.e. parks, picnic facilities)	5 spaces per acre.
2	Active Recreation (i.e. athletic fields)	1 space per 4 persons based on the design capacity of the facility.
Business or Commercial Uses		
1	Auditoriums, theaters, funeral parlors, day care centers, and other places of assembly	1 space per 4 persons based on the design capacity of the facility.
2	Restaurants - sit down restaurants.	1 per 2 seats or 15 per 1000 GFA. (Whichever greater applies)
3	Retail store and service establishment.	5 spaces per 1,000 square feet (6 space per 1,000 s.f. maximum)
4	Offices	1 space per 300 square feet of GFA.
5	Medical Offices and Research facilities	3 Spaces per 1000 square feet GFA plus one space per employee.
6	Warehousing, wholesaling, distributing	1 space per 500 square feet GFA.
Mixed Use Development Projects		Residential requirement plus non-residential requirement.
Industrial Uses		
1	Manufacturing, assembly, Fabrication, etc	1 space per 2 employees in the minimum working shift or 1 space per 1,000 GFA (Whichever greater applies).

17.10.1 Interpretation of Table.

1. Unless otherwise approved by the PAA, a minimum of 1 and a maximum of 2.0 off- street parking spaces shall be provided for each residential unit, inclusive of parking spaces within garages. The PAA may allow for additional visitor parking spaces beyond the 2.0 maximum spaces per unit if deemed appropriate given the design, layout and density of the proposed residential or other development. The PAA may allow for a decrease in the required parking as provided in Subsections 4.a through 4.f below. Notwithstanding anything to the contrary herein, an Applicant may satisfy the parking requirements herein even though parking may not be located within the same Subdistrict as the specific use, provided that suitable arrangements to the satisfaction of the PAA are in place to allow for the use of such parking to satisfy the parking requirement;
2. A parking space shall mean an area of not less than 9' x 18', accessible over unobstructed driveways not less that 24' wide.
3. Notwithstanding anything to the contrary herein, the use of shared parking to fulfill parking demands noted above that occur at different times of day is strongly encouraged. Minimum parking requirements above may be reduced by the PAA if the applicant can demonstrate that shared spaces will meet parking demands by using accepted methodologies (e.g. the Urban Land Institute Shared

Parking Report, ITE Shared Parking Guidelines, or other approved studies);

4. Notwithstanding anything to the contrary herein, any minimum required amount of parking may be reduced upon a demonstration to the reasonable satisfaction of the PAA that the lesser amount of parking will not cause excessive congestion, endanger public safety, or that lesser amount of parking will provide positive environmental or other benefits, taking into consideration:
 - a. The availability of surplus off street parking in the vicinity of the use being served and/or the proximity of a bus or an MBTA transit station;
 - b. The availability of public or commercial parking facilities in the vicinity of the use being served;
 - c. Shared use of off street parking spaces serving other uses having peak user demands at different times;
 - d. Age or other occupancy restrictions which are likely to result in a lower level of auto usage;
 - e. Impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and,
 - f. Such other factors as may be considered by the PAA.

17.11 General Design Standards

17.11.1 Intent

In order to ensure high-quality development within the OSGOD and to ensure design that respects the built and natural character of North Andover, the following design standards are established. These standards are intended to be flexible, and applied by the Plan Approval Authority as appropriate to the development as part of the site plan review process to enable the purpose of this District to be realized. While these guidelines apply to all site improvements and buildings and structures, it is not the intent of this section to prescribe or proscribe use of materials or methods of construction regulated by the state building code, but rather to enhance the appearance of the built environment within an OSGOD. In the case of inconsistency between applicable federal and state law, including without limitation state building code or life safety codes and these Design Standards, the applicable federal and state laws, rules and regulations shall govern.

17.11.2 Building and Structure Placement

The placement of buildings and structures in an OSGOD shall:

1. Provide for buffering of buildings and structures to adjoining properties either within the proposed OSGOD or to adjacent land uses. Such buffering includes, but is not limited to: landscaping, screening materials, natural barriers, fencing, and related measures;

2. Development should acknowledge Route 125 as its front entry. Rooftop equipment shall be appropriately screened to avoid visual impacts to residential uses;
3. Buildings adjacent to usable open space should generally be oriented to that space, with access to the building opening onto the open space;
4. Provide street trees with tree grates or in planter strips, using appropriate species to provide summer shade, and winter light. Species should be native, resistant to salt and drought, and be tolerant of urban conditions;
5. Orient structures to provide pedestrian entrances to the sidewalk;
6. Street design standards shall not be limited to defined rights of way but shall also apply to driveways and internal ways which function as streets;
7. Trash collection and dumpster locations shall be appropriately located and screened to avoid adverse impacts on neighbors and neighboring properties. Within a development, the containment of all solid waste storage and handling within the building(s) of the development is encouraged; and,
8. Any loading docks or areas associated with the mixed-use development component shall be located to minimize (visual and operational) impacts on the site and on neighboring properties.

17.11.3 Open Space

1. Create open space parks within the development;
2. Mature street trees have a high value to the development; minimize departures from development standards that would impair the health of a mature trees;
3. Use landscape materials that are native, sustainable, requiring minimal irrigation or fertilizer; and,
4. Encourage alternative and green paving materials to minimize stormwater run-off.

17.11.4 Building Massing/Articulation

The massing of buildings shall:

1. Avoid unbroken building facades longer than fifty feet (50'). Buildings shall not be longer than two hundred ten (210') feet in length, unless waived by the PAA. In approving building lengths that exceed 210', the PAA must find that pedestrian

circulation is enhanced by the provision of archways, passageways, or other similar throughways;

2. Mixed-use buildings should incorporate the use of dual facades to foster integration of uses where appropriate;
3. Provide a variety of building heights and varied roofline articulation; and,
4. Buildings on corner lots shall be oriented to the corner and public street fronts. Parking and automobile access shall be located away from the corners, where practical.

17.11.5 Building Appearance and Treatment

To the extent not inconsistent with or pre-empted by the state building code, the following shall be considered as applicable:

1. It is not intended that buildings be totally uniform in appearance or that designers and developers be restricted in their creativity. Rather, cohesion and identity can be demonstrated by:
 - a. Similar building scale or mass;
 - b. Consistent use of facade materials;
 - c. Similar ground level detailing, color or signage;
2. Preferred exterior building siding materials include brick, stone, wood, cement and composite materials and other types of exterior siding materials upon a determination by the PAA that the quality of such siding will not detract from the aesthetics of the proposed buildings.
3. **New Buildings.** The design of new buildings shall incorporate architectural features, such as:
 - a. Transom or clerestory windows above entrances, display windows and projected bay windows are encouraged within commercial, retail, and industrial developments.
 - b. Multiple paned windows that divide large areas of glass into smaller parts shall be used.
 - c. Incorporate building entry treatments that are arched or framed and protects people from the elements.
 - d. Non-reflective storefront windows and transoms; architectural detailing on the first floor; and detailing at the roofline.
4. **Ground Floor.** Transparent, open facades for commercial uses at street level;
5. **Middle Floors.** Architectural features may include change in materials and color and/ or texture that enhance specific elements of the building; and,

6. **Top Floors.** Clearly distinguish tops of buildings from the façade walls by including detail elements such as steep gables with overhangs, parapets and cornices.

17.11.6 Development Environment

Pedestrian Open Spaces and Entrances.

1. Entries for residential uses on the street (rather than from the rear of the property);
2. Overhead weather protection shall be designed to minimize gaps in coverage, except to accommodate street trees;
3. Sidewalks shall be surfaced with concrete, brick, or stone materials unless waived by the SPGA; minimum width shall be five feet unless waived by the SPGA; and,
4. Benches for seating shall be provided near retail entrances and at bus stops. At bus stops, such benches shall offer protection from the weather.

17.11.7 Landscaping

The landscape design shall strive to provide greenery so that streets and access drives are lined with shade trees, large paved areas are visually divided and screened and buffers are provided within and around the development. Said landscape design shall be prepared and stamped by a registered landscape architect. Landscaping criteria are as follows:

1. Native trees and shrubs shall be planted wherever possible such as lilac, viburnum, day lilies, ferns, red twig, dogwood, oak, maple, sycamore, linden, hawthorne, birch, shadbush, etc.).
2. Provide hedges or continuous shrubs to screen parking areas from streets, where practical;
3. All buildings shall have foundation landscaping, where practical;
4. All islands and landscape areas shall be of a minimum width and size to support healthy plant growth. The minimum width for plantbeds shall be five (5) feet and an eight (8) foot width for trees;
5. All open areas, exclusive of areas to remain in an existing natural state shall be landscaped, utilizing both natural and man-made materials such as indigenous grasses, trees, shrubs, and attractive paving materials and outdoor furniture;
6. Deciduous trees shall be placed along new and existing streets and ways. Street Trees shall be located every thirty feet (30') on center along both sides of the roadway within the District. The species of street trees selected shall be a

minimum of four different species from the list of recommended street trees below:

- a. *Plantanus acerifolia* (London Planetree);
- b. *Fraxinus pennsylvanica* (Green Ash);
- c. *Ginkgo biloba* (Ginkgo);
- d. *Gleditsia triacanthos inermis* (Honeylocust);
- e. Maple;
- f. Oak;
- g. *Tilia cordata* (Little leaf Linden);
- h. *Pyrus calleryana* (Chanticleer Callery Pear); and
- i. *Zelkova serrata* (Japanese Zelkova)

The existing roadways, Route 125 and the existing property driveway, shall have larger trees that typically grow to heights greater than fifty feet. The species of street trees selected shall be a minimum of four different species from the list of recommended street trees below:

- a. *Picea pungens* (Colorado Blue Spruce);
 - b. *Picea abies* (Norway Spruce);
 - c. *Fagus grandifolia* (American Beech);
 - d. *Fraxinus Americana* (White Ash);
 - e. *Betula alleghaniensis* (Yellow Birch);
 - f. *Acer saccharum* (Sugar Maple);
 - g. *Acer rubrum* (Red Maple);
 - h. *Quercus rubra* (Northern Red Oak);
 - i. *Quercus coccinea* (Scarlet Oak);
 - j. *Platanus acerifolia* (London Planetree); and
 - k. *Betula papyrifera* (Paper Birch)
7. Outdoor lighting shall be considered in the landscaping plan and requires the submission of a photometric lighting plan. Cutoff shields shall be used to minimize glare and light spillover onto abutting property. Ornamental streetlights, sixteen feet (16') maximum height on minor roads and twenty-four feet (24') maximum height on major roads;
 8. Preservation of existing vegetation or tree-lined areas shall be maintained; and,
 9. Landscaped, required open space and green areas, in addition to serving as visual amenities, shall be employed to reduce the rate and volume of stormwater runoff compared to pre-development conditions; for that reason, Department of Environmental (DEP) Stormwater Best Management Practices and other measures to minimize runoff and improve water quality shall be implemented. It is also generally intended that said space be designed and located to connect with existing off-site usable open space, and provide potential for connection with

future open space by extending to the perimeter of the development particularly when a plan exists for the location and networking of such future open space.

17.11.8 Lighting

1. All artificial lighting used to illuminate residential, commercial, and industrial parking lot, loading bay or driveway shall have underground wiring and shall be so arranged that all direct rays from such lighting falls entirely within the parking, loading or driveway area, and shall be shielded or recessed so as not to shine upon abutting properties or asses;
2. Lighting in display windows to illuminates the sidewalk is recommended;
3. Architectural lighting to complement the architecture of the structure including transparent windows allowing views into and out of the structure;
4. Fixtures that produce glare or that spill light to adjoining sites are prohibited; and,
5. Installation of pedestrian light fixtures as part of a development's sidewalk improvements is strongly encouraged.

17.11.9 Parking Lot Landscaping

Parking areas and lots shall use landscaping and terracing to break up large areas of pavement. The following minimum screening and landscaping requirements shall apply for all lots with more than 6 parking spaces:

1. A strip of land at least six (6) feet wide (may be part of required yard setbacks) with trees or shrubs densely planted, to create at least an impervious screen, at least four (4) feet high at the time of planting and which are of a type that may be commonly expected to form a year round impervious screen at least five (5) feet high within three years;
2. If a natural screen as described in item 1 above cannot be attained, a wall or fence of uniform appearance at least five (5) feet high above finished grade will be allowed. Such a wall and/or fence may be perforated, provided that not more than 25% of the face is open; and
3. All required screening, as described in items 1 and 2 above, shall be maintained in good condition at all times. Such screening may be interrupted by entrances or exits, and shall have no signs attached thereto other than those permitted in the district;

For all off-street parking areas of 18 or more spaces the following criteria shall also apply.

4. On at least three sides of the perimeter of an outdoor parking lot, there shall be planted at least one tree for every thirty (30) linear feet. In the interior part of an outdoor parking lot where two rows of parking spaces containing a total of 9 or more parking spaces face each other, a landscaped open space not less than 6 feet in width shall be provided. The landscaped strip may be provided either (1) between the rows of parking spaces parallel to the aisle, or (2) in two or more strips parallel to the spaces and extending from the aisle serving one row of spaces to the aisle serving the other row of spaces; and,
5. Trees required by this section shall be at least 2.5 inches in diameter at a height four feet above the ground at time of planting and shall be of a species characterized by suitability and hardiness for location in parking lot. To the extent practicable, existing trees shall be retained and used to satisfy this section. Native trees and shrubs shall be planted wherever possible including species such as lilac, viburnum, day lilies, ferns, red twig, dogwood, oak, maple, sycamore, linden, hawthorne, birch, shadbush, etc.

17.11.10 Pedestrian Amenities and Recreation

Development shall include the following components:

1. Provide long-term, covered, bicycle parking areas;
2. Provide well-lit, transit shelters where necessary;
3. Pedestrian-oriented features such as walkways, pergolas, outdoor sitting plazas, landscaped open space, drop-off areas, and recreational facilities shall be emphasized, and bike racks shall be provided in appropriate locations throughout the site; and,
4. Tree-lined or otherwise appropriately landscaped pedestrian paths and walkways shall link together areas designated as open space within the site, and wherever possible, to adjoining public areas.

17.11.11 Utilities – Basic Requirements

1. Installation: All utility lines, and/or other subsurface facilities within the street rights-of-way shall be installed prior to the placement of the roadway sub-base materials. All electrical and communications lines shall be installed underground. Communications lines shall include, but not be limited to, telephone, Internet and cable;
2. Identification: The applicant shall provide and install utility identification tape for all underground utility installations. The tape shall be placed in the trench a minimum of twelve inches (12") above the pipe, conduit or cable and not less than twelve inches (12") below the finished grade;

Identification tape for utilities shall be traceable, durable, and either non-biodegradable plastic or metallic, and shall be approximately six inches (6") wide by four thousandths (.004) inches, or four mil, in thickness;

The following colors shall be used unless otherwise specified in the state building codes:

- a. Orange - Gas
 - b. Yellow - Electric
 - c. Green - Communications (telephone, cable, fire alarm)
 - d. Blue - Water
 - e. Red - Sanitary Sewer
3. Easements: Wherever necessary, the Board shall require perpetual, unobstructed easements for sewers, storm drains, power lines, water mains and other utilities. Such easements shall be a minimum width of twenty feet (20'), centered on the utility, and shall be indicated on the site plan approved pursuant to the Plan Approval decision by metes and bounds. The width of an easement may be changed if determined to be acceptable by the PAA or Department of Public Works:
- a. Easements for water, sewer, electric, telephone lines and drainage piping or channels shall be provided at locations determined by the Board and the Department of Public Works for the provision or extension of utilities within the development or to adjacent properties;
 - b. Where the development is traversed by any open watercourse, drainage way, channel or stream, an easement shall be provided which substantially conforms to the lines of such features for the purpose of protection against encroachment or alteration;
 - c. Where such easement or any part thereof crosses or appears on any developed lot in the development, the deed for said lot shall provide a restriction that shall run with the lot, which prohibits any encroachment or alteration within such easement;
 - d. Utility easements into or crossing any open space or protected area shall be prohibited unless approved by the Board upon the recommendation of the Department of Public Works;
 - e. Where easements have been approved entering into or crossing open spaces or protected areas they shall be restored to reflect as nearly as possible the conditions existing prior to the easement. Vegetative visual buffering required by the Planning Board in such easements shall be the responsibility of the developer and shall be reflected in the development performance guarantee;

- f. Easements for access to parks and conservation lands abutting a proposed development may be required by the Board. These easements shall be at a width determined by the Board to be sufficient for their purpose but will not normally exceed twenty (20') feet in width;
- g. The developer may be required to obtain off-site drainage easements when, in the Board's opinion, the development will cause an increase or change in the surface water volumes or velocities, either through open channels or through culverts into or onto any abutting properties; and,
- h. Where the easement is accessible from the street, the side slope shall be no greater than four feet (4') horizontal to one foot (1') vertical. The first twenty feet (20') of the easement from the back of sidewalk, or edge of roadway, shall have a twelve inch (12") deep base of gravel sub-base material beneath the topsoil to support maintenance equipment.

17.11.12 Signage Associated With The Residential Use Component

The residential component shall be limited to three types of sign: name of site, orientation and direction, and to identify common building spaces. At each principal entrance to the site, only one sign identifying the name and address of the development shall be permitted. The sign shall be limited to identifying the name and address of the development. Signs shall be made of natural materials, or have a natural appearance, and may not be interiorly illuminated. The PAA shall require the applicant to submit a signage master plan showing the overall design, location, size and material for all proposed signs within the development.

The following signs are prohibited in the OSGOD: roof signs, interior illuminated and ground signs (except those associated with the development entrance).

17.11.13 Signage Associated With the Non-Residential and Mixed-Use Component

The PAA shall approve signage within the non-residential and mixed-use components of the district(s) as part of the site plan review process. One sign will be permitted at the principal entrance(s) to the non-residential portion of the property. The sign shall be limited to identifying the name and address of the development.

1. One sign per non-residential use is permitted. The attached or hanging sign shall not exceed, in total area, more than ten percent (10%) of the dimensional elevation of the commercial building as determined by the building frontage multiplied by the floor to ceiling height of the individual business or as specified in applicable sections of the by-law;
2. For premises having multiple occupants, a single sign, identifying those occupants is permitted. The total area of attached signs including this one shall not exceed ten percent (10%) of wall area;

3. Temporary unlighted signs inside windows, occupying not more than twenty percent (20%) of the area of the window requires no sign permit;
4. No sign shall project more than three (3) feet over any public right-of-way. The sign shall be covered by appropriate liability insurance as determined by the Building Inspector and verified by a certificate of insurance filed with the Town Clerk;
5. Building directories shall be located inside of the building;
6. Traffic Control orientation and guidance signs located on private property, up to four (4) square feet in area, displayed for purposes of direction or convenience, including signs identifying parking, fire lanes, rest rooms, freight entrances and the like;
7. Design Standards for Signs:
 - i. These standards are not mandatory.
 - ii. Sign content normally should not occupy more than forty percent (40%) of the sign background, whether a signboard or a building element.
8. Environmental Relationship
 - i. Overhanging signs should be used only in such circumstances as on side streets where overhanging positioning is necessary for visibility from a major street;
 - ii. Sign brightness should not be excessive in relation to background lighting levels, e.g., averaging not in excess of one hundred foot-lamberts and not in excess of twenty foot-lamberts in unlighted outlying areas.
9. Building Relationship:
 - i. Signs should be sized and located so as to not interrupt, obscure or hide the continuity of columns, cornices, roof eaves, sill lines or other elements of building structure Clutter should be avoided by not using support brackets extending above the sign or guy wires and turnbuckles.
10. Sign Master Plans. Notwithstanding anything to the contrary to the language contained in Section 17.11.12 and 17.11.13, an Applicant may, in lieu of seeking compliance with the sign provisions described, propose a Master Plan for signs to be permitted on the premises by the PAA. Such sign master plan shall include a listing of each sign type, square footage, location, height, color, materials, and such other information as may be requested by the PAA to confirm that the Master Plan, once implemented, shall consist of a single coordinated and clear plan for signage within said premises which generally conform to the Guidelines described in Sections 17.11.12 and 17.11.13, as applicable.

17.11.14 Roadways

Private roadways shall be allowed in OSGOD.

1. While roadway surface widths may be narrower than widths associated with a traditional subdivision, the durability of private roadway surfaces and sub surfaces within an OSGOD and should be designed based on standard engineering principals. Waivers of the following standards may be granted when appropriate. The following criteria apply:

Roadway Criterion	Minimum	Maximum
Min. ROW Width	50 feet	60 feet
Min. Pavement Width	18 feet	26 feet
Min. Centerline Curve Radius	225 feet	250 feet
Min. Tangent length between reverse curves	150 feet	150 feet
Min. Intersection Corner Curb Radius	40 feet	40 feet
Min. Horizontal and Vertical Site distance	200 feet	250 feet
Centerline Profile Grade – Max.	8%	7%
Centerline Profile Grade – Min.	1%	1%
Vertical Curve – Min. Length	100 feet	100 feet
Vertical Curve: K Value – Crest	30	30
Vertical Curve: K Value – Sag 40	40	40
Pavement Cross Slope – Normal Crown	3%	3%
Maximum Super elevation	6%	6%

2. The PAA shall encourage narrow pavement widths for traveled ways when appropriate. Pavement widths for traveled ways (excluding on-street parking spaces) shall not be less than eighteen feet (18) or more than twenty six (26) feet for two-way traffic, or less than fourteen (14) feet for one-way traffic. The PAA will have discretion to waive these standards when considering public safety and circulation issues, but under no circumstance shall vehicular ways be less than 14 feet wide;
3. Parking and vehicle access:
 - a. Provide for continuous sidewalks that are minimally broken within a block by vehicular access.
 - b. Unstructured surface parking areas facing the main street frontages are discouraged.
 - c. Parking areas shall be setback from structures, property lines and internal ways by a minimum of 10 feet.
 - d. Multi-purpose parking areas paved with unit pavers are encouraged (i.e., areas that serve both parking and public open space needs).

4. All two-way traveled ways shall provide a pedestrian sidewalk of a minimum six-foot (6') width on both sides of the roadway. All sidewalks shall be of standard concrete or brick set in concrete and are encouraged where applicable. Minor ways may provide a pedestrian sidewalk on a minimum of one side of the roadway. On cul-de-sac turnarounds and at intersections, vertical granite curbing shall be required. Vertical granite curb inlets with curb transition sections shall be required at the back of catch basins, on grades over six (6) percent, and at the intersections with arterial streets;
5. Crosswalks with handicap accessible curb cuts shall be provided at all intersections. All crosswalks and curb cuts shall comply with the requirements of the Massachusetts Architectural Access Board (MAAB) and/or Americans with Disabilities Act (ADA) requirements; and,
6. Streetscape elements shall be encouraged, including:
 - a. Sidewalks and crosswalks as noted above;
 - b. Ornamental street lights, sixteen feet (16') maximum height on minor roads, twenty-four feet (24') maximum height on major roads;
 - c. Brick, concrete or other specialty pavements at building entrances;
 - d. Ornamental fences of less than thirty inches (30") in height, when appropriate;
 - e. Ornamental bollards to direct pedestrian traffic and define public space.

17.11.15 Storm Drainage

Storm water drainage systems shall be subject to the most recent Massachusetts laws, regulations, polices and guidelines including but not limited to the DEP Stormwater Management Policy, as amended, as well as local bylaws.

The design, construction and maintenance of stormwater systems shall be consistent with the following:

1. Detention / Retention Basin Side Slopes. Basin area side slopes shall be kept as close as possible to natural land contours, i.e. ten percent (10%) or less wherever possible. A maximum 3:1 side slope shall be constructed for the interior of the basin areas. For security purposes fencing may be required by the PAA. Drainage basins shall be designed to facilitate access for maintenance vehicles and personnel;
2. Drainage Easements. If it is necessary to carry drainage across lots within the development, storm drainage easements shall be provided, of such width and construction as will be adequate to accommodate the volume and velocity of the run-off. However, no such easement shall be less than thirty feet (30') in width;

If a proposed drainage system would carry water across land outside the development boundaries to an approved outfall, appropriate drainage rights shall

be secured by the applicant at the applicant's expense, and shall be referenced on the 40R Plan;

3. Discharging runoff directly into rivers, streams, watercourses, or enlarging the volume, rate or further degrading the quality of existing discharges/runoff is prohibited. Runoff shall be routed through vegetated swales, using native species and other structural and nonstructural systems designed to increase time of concentration, decrease velocity, increase infiltration, allow suspended solids to settle and remove pollutants. Such systems will utilize overland flow and re-infiltration as priority techniques for the treatment of run-off;
4. Retention and detention ponds, and methods of overland flow may be used to retain, detain and treat the increased and accelerated runoff which the development generates;
5. There shall be a minimum of two (2') feet of naturally occurring soils between the detention basin bottom and the maximum annual ground water table;
6. Water shall be released from detention ponds at a rate and in a manner approximating the natural conditions which would have occurred before development;
7. Intermittent water courses such as swales shall be vegetated;
8. The first one (1") inch of runoff from impervious surfaces, such as rooftops and paved surfaces, shall be treated in the site of the development;
9. Runoff from parking lots and streets shall be treated to remove oil and sediments. Catch basins shall be provided with hoods; in the alternative, drainage outfalls shall discharge to low velocity "vegetated treatment" swales;
10. The use of drainage facilities and vegetated buffer zones as open space and conservation areas shall be encouraged; and,
11. Neighboring properties shall not be affected by flooding from excessive runoff.

17.11.16 Water Facilities

1. Installation. The applicant shall be responsible for installing water facilities, including, but not limited to water supply, pipes, hydrants, hydrant markers, gates, valves, and all other related appurtenances, in accordance with the Regulations and Master Plan of the Water Department. Any extension of an existing pipe and construction of new pipes requires approval from the Water Department. Building service pipes and appurtenances from the system piping to the exterior line of the street right-of-way shall be constructed for each lot unless the Board of Health has approved individual wells. Said water facilities shall be shown on the 40R plan;

2. Fire Hydrants. Fire hydrants shall be required throughout the entire development. Fire hydrants, with hydrant markers, shall be located not more than five hundred feet (500') apart; shall be approved, in writing, as to location by the Fire Chief and the DPW; and shall be shown on the 40R Plan;
3. Extensions. Reasonable provisions shall be made for extension of the water system and pipes to adjoining property, including installation of water gates. Appropriate easements may be required;

17.11.17 Sewer

1. Installation. In the event that the Town sanitary sewer system is located within an existing public way within four hundred feet (400') measured along the existing public way or proposed roadway of the development, the applicant shall be responsible for connecting all lots to the sewerage system unless there are legal, design or operational considerations, in which case, alternative arrangements for sewage disposal such as through the existing on-site sewage treatment plant or other methods permitted by law may be utilized. If applicable, connection to the system shall require an approval from the DPW, and any other required approvals, including, but not limited to approvals issued by the Greater Lawrence Sanitary District, and a permit for extension/connection of the sewer system issued by the Massachusetts Department of Environmental Protection's Division of Water Pollution Control.

17.11.18 Electric and Communication Lines

1. Installation. All electrical and communications lines shall be installed underground. Communications lines shall include, but not be limited to, telephone and community antenna television cable;
2. Electric Lines. The electrical power distribution shall be installed in accordance with the specifications of the Rules and Regulations of the Department of Public Works of the Town of North Andover in effect at the time of application.

17.11.19 Street Signs

Street signs shall be installed at all intersections in conformity with the specifications of the Department of Public Works. The signposts at the intersection of each street with any other street, shall have affixed thereto a sign designating such street as a private way.

17.11.20 Monuments

Monuments shall be four feet long, 6 inch square concrete or granite, and shall be installed at all roadway intersections, at all points of change in direction or at curvature of

roadways, at two (2) property corners of all new lots and at any other points where, in the opinion of the Board, permanent monuments are necessary.

1. Monument Spacing. Monuments located in the street right-of-way shall be spaced so as to be within sight of each other, the sight lines being contained wholly within the street right-of-way limits. The maximum interval shall be one thousand feet (1000');
2. Monument Materials. Monuments shall be standard granite markers of not less than four feet (4') in length and not less than five inches (5") square, and shall have a drill hole in the center. If subsoil conditions prohibit installation of four (4') foot monuments, with advance approval by the Board, monuments meeting alternative specifications shall be installed. Monuments shall be set flush with the finished grade; and
3. Monument Certification. No permanent monuments shall be installed until all construction, which would destroy or disturb the monuments is completed. Placement and location of bounds are to be certified by a registered professional land surveyor after installation of the street, and shall be shown on the "as-built" or record plans.

17.11.21 Subzone Design Standards

1. *Residential Mixed-Use Zone*

Location: As shown on the OSGOD Map.

- a. Building Type: The dwelling units in Residential Mixed-Use Zone may be situated in a single structure or in multiple structures.
- b. Nonresidential Uses: If a building containing residential uses also includes permitted retail, restaurant, and professional services or other uses in the Residential Mixed-Use Zone, the nonresidential uses shall be centrally located on the ground floor of the building in which it is contained. Notwithstanding the foregoing, non-residential uses are preferred, but not required, to be located in buildings containing residential uses, and non-residential uses may be located in buildings which are separate from buildings containing residential uses as long as the non-residential use and building are designed to complement the primary residential use.

2. *Mixed-Use Development Zone*

Location: As shown on the OSGOD Map.

- a. Building Type: For buildings which include a mix of residential and non-residential uses, the dwelling units in such buildings shall be situated over the allowed non residential space. Buildings may also be constructed which contain either solely residential uses or solely non-residential uses.
- b. Nonresidential Uses: Non-residential uses are not required to be located in

buildings containing residential uses, and non-residential uses may be located in buildings which include no residential uses.

3. *Business Opportunity Development Subzone*

- a. Permitted uses in the Business Opportunity Development Subzone shall not exceed 150,000 square feet per development unless waived by the PAA.

17.12 Application for Plan Approval

17.12.1 Preapplication

Prior to the submittal of a site plan, a "Concept Plan" may be submitted to help guide the development of the definitive site plan for site buildout and individual elements thereof. Such Concept Plan should reflect the following:

1. Overall building envelope areas;
2. Approximate building massing, showing heights;
3. Open space and natural resource areas; and,
4. General site improvements, groupings of buildings, and proposed land uses.

The Concept Plan is intended to be used as a tool for both the applicant and the PAA to ensure that the proposed development design will be consistent with the design standards and other requirements of the OSGOD.

17.12.2 Application Submission.

An application for Plan Approval shall be submitted to the PAA on the form provided by the PAA, along with application fees which shall be as set forth in the Regulations.

17.12.3 Required Submittals

The application for Plan Approval shall be accompanied by such plans and documents as may be required and set forth in the PAA's Regulations. All site plans shall be prepared by a certified architect, landscape architect, and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in the Commonwealth of Massachusetts. All building elevations shall be prepared by a certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of one inch equals forty feet (1"=40') or larger, or at a scale as approved in advance by the PAA.

17.13 Procedures

17.13.1 Filing

An applicant for Plan Approval shall file the required number of copies of the application form and the other required submittals as set forth in the Regulations with the Town Clerk, and a copy of the application including the date of filing certified by the Town Clerk shall be filed forthwith with the PAA. An Applicant is encouraged to review the final application with the PAA or its Agent to confirm application completeness prior to filing the final application with the Town Clerk and PAA.

17.13.2 Circulation to Other Boards

Upon receipt of the Application, the PAA shall immediately provide a copy of the application materials to the Board of Selectmen, Board of Appeals, Board of Health, Conservation Commission, Fire Department, Police Department, Building Commissioner, Department of Public Works, and other municipal officers, agencies or boards for comment, and any such board, agency or officer shall provide any written comments within 60 days of its receipt of a copy of the plan and application for approval.

17.13.3 Hearing

The PAA shall hold a public hearing for which notice has been given as provided in Section 11 of G.L. Chapter 40A. The decision of the PAA shall be made, and a written notice of the decision filed with the Town Clerk, within 120 days of the receipt of the application by the Town Clerk. The required time limits for such action may be extended by written agreement between the applicant and the PAA, with a copy of such agreement being filed in the office of the Town Clerk. Failure of the PAA to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the application and site plan.

17.13.4 Peer Review

The applicant shall be required to pay for reasonable consulting fees to provide peer review of the Plan Approval application, pursuant to G.L. c. 40R. Such fees shall be held by the Town in a separate account and used only for expenses associated with the review of the application by outside consultants, including, but not limited to, attorneys, town counsel, engineers, urban designers, housing consultants, planners, and others. Any surplus remaining after the completion of such review, including any interest accrued shall be returned to the applicant.

17.14 Decision

17.14.1 Waivers

Upon the request of the Applicant, but subject to Section 17.8.12 as to Affordability, the Plan Approval Authority may waive dimensional and any other requirements of Section 17.0, including but not limited to, the design standards of Section 17.10, in the interests

of design flexibility and overall development quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the OSGOD, or if it finds that such waiver will allow the development to achieve the density, Affordability, mix of uses, and/or physical character allowable under this Section 17.0.

17.14.2 Plan Review

An Application for Plan Approval shall be reviewed for consistency with the purpose and intent of this Section, and such Plan Review shall be construed as an as-of-right review and approval process as required by and in accordance with the Enabling Laws.

17.14.3 Plan Approval

Plan Approval shall be granted where the PAA finds that:

1. The applicant has submitted the required fees and information as set forth in the Regulations;
2. The development and site plan meet the requirements and standards set forth this Section 17.0, or a waiver has been granted there from; and,
3. Any extraordinary adverse potential impacts of the development on nearby properties have been adequately mitigated.

17.14.4 Plan Disapproval

A site plan may be disapproved only where the PAA finds that:

1. The applicant has not submitted the required fees and information as set forth in the Regulations; or
2. The development and site plan do not meet the requirements and standards set forth this Section 17.0, or a waiver has been granted there from; or
3. It is not possible to adequately mitigate significant adverse potential impacts on nearby properties by means of suitable conditions.

17.14.5 Form of Decision

The PAA shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the PAA. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. If a plan is approved

by reason of the failure of the PAA to timely act, the Town Clerk shall make such certification on a copy of the application or notice. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the applicant.

17.15 Change in Plans after Approval by PAA

17.15.1 Minor Change

After Plan Approval, an applicant may be apply to make minor changes involving minor utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall buildout or building envelope of the site, or provision of open space, number of housing units, or housing need or affordability features. Such minor changes must be submitted to the PAA on redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the PAA. The PAA may authorize such changes at any regularly scheduled meeting, without need upholding a public hearing. The PAA shall set forth any decision to approve or deny such minor change by motion and written decision, and provide a copy to the applicant for filing with the Town Clerk.

17.15.2 Major Change

Those changes deemed by the PAA to constitute a major change because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the PAA as a new application for Plan Approval pursuant to this Section 17.0.

17.16 Severability and Authority.

This Section 17.0 is promulgated pursuant to the authority of G.L. c. 40R and G.L. c. 40A, as applicable. If any provision of this Section 17 is found to be invalid by a court of competent jurisdiction, the remainder of Section 17 shall not be affected but shall remain in full force and effect. The invalidity of any provisions of this Section 17 shall not affect the validity of the remainder of this Section.

TABLE 1: Summary of Use Regulations

Permitted Use	Industrial 2 Zone	40R Subdistrict	40R Subdistrict	40R Subdistrict
Agricultural Use*	Y	Y	Y	Y
Art Gallery	Y	N	Y	Y
Auto Service Station*	N	N	N	N
Auto & Vehicle Repair/ Body Shop	N	N	N	N
Bus Garage	N	N	N	N
Business & Other Offices	Y	N	Y	Y
Car Wash	N	N	N	N
Commuter Rail System	Y	N	N	Y
Congregate Housing	N	Y	Y	N
Continuing Care Retirement Center	N	Y	Y	N
Day Care Center	SP	Y	Y	N
Eating & Drinking Establishment	N*	Y ¹	Y ¹	Y
Funeral Parlor	N	N	Y	Y
Golf Course	Y	N	N	Y
Guest House	N	N	Y	N
Incubator or Business Park	N	N	Y	Y
Independent Elderly Housing	N	Y	Y	N
Indoor Place of Amusement or Assembly	N	N	SP	SP
Indoor Ice Skating Facility	SP	N	SP	SP
Lumber, Fuel Storage or Contractor's Yard	Y	N	N	N
Manufacturing*	Y	N	N	Y
Medical Center*	Y	N	Y	Y
Motel or Hotel	N	N	Y	Y
Multi-Family Dwellings & Apts.	N	Y	Y	N
Municipal Recreation Area	N	N	N	N
New Car Sales*	N	N	N	N
Non-Profit School	Y	Y	SP	SP
Nursing & Convalescent Homes*	N	N	Y	N
One-Family Dwelling	N	N	N	N
Personal Services	N*	Y ¹	Y	Y
Places of Worship	Y	Y	Y	Y
Printing & Reproduction	Y	N	N	Y
Private School for Profit	Y	Y	SP	SP
Professional Offices*	Y	N	Y	Y
Public Building or Use	Y	N	Y	Y
Public Garages & Accessory Buildings	N	N	SP	SP
Public Service Corporation	N	N	N	N
Public Sanitary Disposal Site	N	N	N	N
Public Storage of Equipment	N	N	N	N
Outdoor Recreation Area	SP	Y	Y	Y
Research & Development Facilities	Y	N	SP	Y
Retail Establishment	N*	Y ¹	Y ¹	Y
Retail Plaza	N	N	SP	Y
Rooming House	N	N	N	N
Taxis Depot	N	N	N	N
Town House	N	N	N	N
Two Family Dwelling	N	N	N	N
Veterinary Hospital & Kennel	N	N	N	N
Warehousing & Wholesaling	Y	N	N	N
Windmills	N	N	N	Y

NOTES:

* - See detailed District Use Regulations for uses allowed in the Industrial 2 (I-2) Zoning District as defined in Section 4 of the Zoning Bylaw.

SP - Allowable with a Special Permit only.

Y¹ - Refer to Sections 17.6.1 and 17.6.2 for gross floor area restrictions.

TOWN OF NORTH ANDOVER
PLANNING BOARD
CHAPTER 40R RULES AND REGULATIONS

GOVERNING APPLICATIONS FOR PLAN APPROVAL
Pursuant to MGL Chapter 40R, 760 CMR 59.00,
and Section 17.00 Of The Town of North Andover Zoning Bylaw
entitled "Osgood Smart Growth Overlay District"

DATED MAY 14, 2007,

AS APPROVED BY THE MASSACHUSETTS DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT
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- 1.0 Preamble and Explanatory Note
- 2.0 Application Contents and Requirements
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1.0 PREAMBLE AND EXPLANATORY NOTES

Pursuant to authority granted under G.L. Chapter 40R, implementing regulations at 760 CMR 59.00, and Section 17.0 (Osgood Smart Growth Overlay District) of the Town of North Andover Zoning Bylaw (collectively, the "Enabling Requirements"), these Town of North Andover Planning Board Chapter 40R Rules and Regulations (the "Regulations") are intended to supplement those rules and procedures set forth in the Enabling Requirements in order to further guide the Town and applicants under the process and procedures set forth on Section 17.0. These Regulations shall be administered by the Planning Board, as Plan Approval Authority, set forth in Section 17.0 of the Zoning Bylaw.

To the extent that there is any conflict between the Regulations and Section 17.0, the provisions of Section 17.0 shall govern. Moreover, to the extent there is any conflict between these Regulations and/or Section 17.0, and the Enabling Laws, the terms of the Enabling Laws shall govern. These Regulations shall not become effective until such time as the Massachusetts Department of Housing and Community Development (DHCD) has issued a "Letter of Approval" which is a letter issued by the DHCD to the Town of North Andover after the adoption of its Smart Growth Zoning for a District, confirming final approval of the Town's OSGOD District under the Enabling Laws in accordance with the procedures outlined in 760 CMR 59.05(4). Moreover, terms not defined herein shall be governed by the definitions set forth in the Enabling Requirements.

2.0 APPLICATION CONTENTS AND REQUIREMENTS

2.1 Application Contents - The following information shall be submitted as part of an Application for Plan Approval for commercial and residential development unless otherwise waived by the Plan Approval Authority if it finds that such information is not needed for a thorough review of the Project:

- (1) Plan Application in a form provided by the PAA, along with application fees as required in 5.0 Project Review Fees Drawings prepared at a scale of one inch equals forty feet (1"=40') or larger, or at a scale as approved in advance by the Town Planner.
- (2) All site plans shall be prepared by a certified architect, landscape architect, and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in the Commonwealth of Massachusetts. All building elevations shall be prepared by a certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of one inch equals forty feet (1"=40') or larger, or at a scale as approved in advance by the Town Planner;
- (3) The following information must be submitted along with the application:
 - (a) NORTH ARROW/LOCATION MAP: A north arrow and a location map showing surrounding roadways and land uses adjacent to the site (1"=1500'). Location Map should show at least one intersection of two existing Town roadways.
 - (b) SURVEY OF LOT/PARCEL: A boundary survey conforming to the requirements of the Essex County Registry of Deeds Office. The survey shall be dated and include any revision made to the survey or site plan. Any change in the survey shall be recorded before site plan approval may be granted.
 - (c) NAME/DESCRIPTION OF PROJECT: The name of the development and the names, addresses and telephone numbers of the project listing tenants, land uses, development phases, or other pertinent information necessary to evaluate the proposed development plan.
 - (d) EASEMENTS/LEGAL CONDITIONS: Identification of easement(s) or legal encumbrances(s) that are related to the sites physical development, and a listing of any condition(s) placed upon the site by any public body or agency, with the authority to place conditions on the site's development.
 - (e) TOPOGRAPHY: The present and proposed topography of the site, utilizing

two foot (2') contour intervals. The contours shall extend at least fifty (50') feet beyond the site boundaries by estimation of the professional submitting the plan.

- (f) ZONING INFORMATION: All applicable Zoning Bylaw information shall be provided regarding the site's development. This information shall be placed in a table and list all parking, setbacks, percent of lot coverage, floor area ratio, number of dwelling units, total amount of square feet, size of signs and any other applicable zoning information necessary for the proper review of the site plan by the Town Planner and Plan Approval Authority.
- (g) STORMWATER DRAINAGE: All storm water drainage control facilities utilized by the site shall be shown on the site plan. Storm water drainage calculations which support the design of the control facilities shown the plan shall be submitted to the Department of Public Works for review and approval. Calculations shall show a mitigation of runoff to zero of the 2, 10, and 100 year storm event.
- (h) BUILDING LOCATION: Identification of all existing and proposed structure(s) located on the site. The number of stories, overall height in feet and gross floor area in square feet of all structure shall be indicated.
- (i) BUILDING ELEVATION: A drawing of the exterior of the building, as viewed from the front (street view) must be submitted. The PAA may request side and rear views if relevant to the PAA's review. This drawing must be at least 8" x 11" in size.
- (j) LOCATION OF PARKING/WALKWAYS: Identification of the location of all existing and proposed parking and walkways areas, including curb cuts that will be used to access the site from adjacent roadways, or access points.
- (k) LOCATION OF WETLANDS/NOTICE OF INTENT: All resource areas as defined in M.G.L. Chapter 131, Section 40 and the Town's Wetland Bylaw, shall be shown on the site plan as approved by the North Andover Conservation Commission either through the issuance of the Commission by an Order or Determination.
- (l) LOCATION OF WALLS/SIGNS: Identification of the location, height and materials to be used for all retaining walls and signs located on the site.
- (m) LOCATION OF ROADWAYS/DRIVES: Identification of all right of ways and driveways including the type of curb and gutter to be used, and their dimensions. Distances to all the nearest roadways and/or curb cuts shall be shown for both sides of any streets which is adjacent to the site.
- (n) OUTDOOR STORAGE/DISPLAY AREAS: Identification of the location

and type of outdoor storage and display areas on the site.

- (o) **LANDSCAPING PLAN:** Identification of the location and landscape schedule of all perimeter and interior landscaping, including but not limited to proposed paving materials for walkways, fences, stonewalls and all planting materials to be placed on the site. In addition, all existing trees over 12 inches DBH, to be saved or removed shall be shown on the site plan. Any landscaping shall be indicated on the site plan in tabular form showing the amount required and the amount provided.
- (p) **REFUSE AREAS:** Identification of the location of each outdoor refuse storage area, including the method of storage and screening. All refuse areas must be fully enclosed.
- (q) **LIGHTING FACILITIES:** Identification of the proposed illumination, indicating the direction and the degree of illumination offered by the proposed lighting facilities, including an example of the light fixture to be used.
- (r) **DRAINAGE BASIN STUDY:** A detailed hydrology study for the site. Included in this study is the proposed storm water runoff rates into the existing drainage system and its potential down-stream impact on the existing drainage system.
- (s) **TRAFFIC IMPACT STUDY:** Identification of existing traffic levels, along with the expected traffic impacts to occur based upon the proposed project. For projects which access state highways, a traffic impact study shall be filed with MEPA (if applicable). A copy of any MEPA filing shall also be filed with the PAA.
- (t) **COMMONWEALTH REVIEW:** Any information required and submitted to any agency of the Commonwealth, shall be filed with the PAA upon the initial submission of the project for Board review.
- (u) **UTILITIES:** All utilities, including water line locations, sewer line locations and profiles, and storm drainage systems.
- (v) **FISCAL IMPACT:** Projections of costs rising from increased demand for public services and infrastructure; provisions of benefits from increased tax revenues, employment and infrastructure improvements; and impacts on adjacent property values.

COMMUNITY IMPACT: Analysis of the project's impact on the surrounding neighborhood in terms of architectural consistency, pedestrian movement and overall character; impacts on nearby historic structures or site; and an evaluation of the proposed project's consistency and compatibility with existing local and regional plan.

3.0 PROCEDURES

- 3.1 An application for Plan Approval shall be filed by the applicant with the town clerk and a copy of the application including the date of filing certified by the town clerk shall be filed forthwith with the Plan Approval Authority. The PAA shall hold a public hearing for which notice has been given as provided in section 11 of chapter 40A.
- 3.2 The decision of the PAA shall be made, and a written notice of the decision filed with the town clerk, within 120 days of the receipt of the application by the town clerk. The required time limits for such action may be extended by written agreement between the applicant and the PAA, with a copy of such agreement being filed in the office of the town clerk. Failure of the PAA to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the Project. The applicant who seeks approval of a Project by reason of the failure of the PAA to act within such time prescribed, shall notify the town clerk, in writing within 14 days from the expiration of said 120 days or extended time, if applicable, of such approval and that notice has been sent by the applicant to parties in interest. The applicant shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to this section and shall be filed within 20 days after the date the town clerk received such written notice from the applicant that the PAA failed to act within the time prescribed.
- 3.3 The PAA shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the town clerk and that all plans referred to in the decision are on file with the PAA. If 20 days have elapsed after the decision has been filed in the office of the town clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the town clerk shall so certify on a copy of the decision. If the plan is approved by reason of the failure of the approving authority to timely act, the clerk shall make such certification on a copy of the application.
- 3.4. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the applicant.
- 3.5 Any court authorized to hear appeals under section 17 of chapter 40A shall be authorized to hear an appeal from a decision under this section by a party who is aggrieved by such decision. Such appeal may be brought within 20 days after the decision has been filed in the office of the town clerk.

4.0 APPLICATION FORM

Town of North Andover Plan Approval Authority (Planning Board)

Application Check List for OSGOD Plan Review

Procedure and Requirements for Filing an Application for OSGOD Plan Review

The following information must be submitted thirty (30) days prior to the first public hearing (if necessary). The information herein is an abstract of more specific requirements listed in the Zoning Bylaw Section 17.0 Osgood Smart Growth Overlay District and is not meant to supersede them.

- **Step 1: Pick up application package:**
The petitioner picks up complete application package and Zoning Bylaw to reference specific requirements.
- **Step 2: OSGOD Application Form:**
Petitioner completes (3) copies of the application form. All information as required shall be completed.
- **Step 3: Plan Preparation:**
Petitioner submits all of the required plan information as cited in Section 17.0 in the North Andover Zoning Bylaw and/or these Rules & Regulations.
- **Step 4 : Submit Application:**
Petitioner submits (3) typewritten applications time stamped by the Town Clerk, ten (10) copies of the plan 1" = 40' prepared by a Registered Professional Engineer or Land Surveyor, abutters list certified by the assessors office and filing fee's.

The petitioner is responsible for recording certification of the decision and any accompanying plans at the Essex North Registry of Deeds, Lawrence Massachusetts, and shall complete the Certification of recording form and forward it to the Planning Department.

Important Phone Numbers

- | | |
|----------------|---------------------------|
| ❖ 978-688-9535 | Planning Department |
| ❖ 978-688-9542 | Planning Department's Fax |
| ❖ 978-688-9501 | Town Clerk's Office |

See Section 17.0 of the North Andover Zoning Bylaw for more detailed information

Town of North Andover Planning Board

Application for OSGOD Permit

Please type or print clearly:

1. **Petitioner:** _____
Address: _____
Telephone Number: _____

2. **Owners of the Land:** _____
Address: _____
Telephone Number: _____
Number of years ownership: _____

If applicant is not the owner, please state interest in property: _____

3. **Request for an OSGOD Permit under Section 17.0 of the North Andover Zoning Bylaw to** _____

4. **Location of Property:** _____
Zoning District: _____
Assessors: _____ **Map:** _____ **Lot #** _____
Registry of Deeds: **Book #:** _____ **Page #** _____

5. **Existing Lot:**
Lot Area (Sq. Ft): _____ **Building Height:** _____
Street Frontage: _____ **Side Setbacks:** _____
Font Setback: _____ **Rear Setback:** _____
Floor Area Ration: _____ **Lot Coverage:** _____

6. **Proposed Lot (if applicable):**
Lot Area (Sq.Ft.): _____ **Building Height:** _____

Street Frontage: _____
Front Setback: _____
Floor Area Ratio: _____

Side Setback: _____
Rear Setback: _____
Lot Coverage: _____

7. Required Lot (as required by Zoning Bylaw);

Lot Area (Sq.Ft.): _____
Street Frontage: _____
Front Setback: _____
Floor Area Ratio: _____

Building Height: _____
Side Setback: _____
Rear Setback: _____
Lot Coverage: _____

8. Existing Building (if applicable):

Ground Floor (Sq.Ft.) _____
Total Sq. Ft.; _____
Use: _____

of Floors _____
Height: _____
Type of Construction: _____

9. Proposed Building:

Ground Floor (Sq.Ft.) _____
Total Sq. Ft.; _____
Use: _____

of Floors _____
Height: _____
Type of Construction: _____

10. Has there been a previous OSGOD Application/Permit from the Planning Board on these premises? _____. If so, when and for what type of construction? _____

11. Petitioner and Landowner signature(s):

Every application for an OSGOD Permit shall be made on this form, which is the official form of the Planning Board. Every application shall be filed with the Town Clerk's Office. It shall be the responsibility of the petitioner to furnish all supporting documentation with this application. The dated copy of this application received by the Town Clerk or Planning Office does not absolve the applicant from this responsibility. The petitioner shall be responsible for all expenses for filing and legal notification.

Petitioner's Signature: _____

Print or type name here: _____

Owner's Signature: _____

Print or type name here: _____

5.0 PROJECT REVIEW FEES

The following review fees are to cover administrative costs and professional municipal staff review. Additional peer review may be required as outlined in Section 17.13.4. Development Application shall require the following review fees:

General Fee is \$3,500 + \$0.25/sf

Example: 5,000 SF development would be calculated as:

$$\text{\$3,500 fee} + \text{\$1,250 (5,000 SF x \$0.25)} = \text{\textbf{TOTAL \$4,250}}$$

Project Application shall require the following review fees:

General Fee is \$9300 + \$50/unit above 200 units

Example: 200 Unit project would be calculated as:

$$\text{\$9,300 fee} = \text{\textbf{TOTAL \$9,300}}$$

Example: 250 Unit project would be calculated as:

$$\text{\$9,300 fee} + \text{\$2,500 (50 additional units x \$50 each)} = \text{\textbf{TOTAL \$12,100}}$$

Community Development Division

VOTED JUNE 4, 2007

ATTEST:

A True Copy

Joyce A. Bradshaw

Town Clerk



**TOWN OF NORTH ANDOVER
OFFICE OF THE TOWN CLERK
120 MAIN STREET
NORTH ANDOVER, MASSACHUSETTS 01845**

Joyce A. Bradshaw, CMMC
Town Clerk

Telephone (978) 688-9501
Fax (978) 688-9557

E-mail jbradshaw@townofnorthandover.com

This is to certify that the following vote on Article 28 was taken at the Dissolved Annual Town Meeting for the Town of North Andover held May 14, 2007, May 15, 2007, May 21, 2007 and June 4, 2007:

Article 28. Amend North Andover Zoning Map - Establish OSGOOD SMART GROWTH OVERLAY DISTRICT - Map 34 Parcel 17-1600 OSGOOD STREET-FORMER LUCENT TECHNOLOGIES SITE. UNANIMOUSLY VOTED to amend the Zoning Map of North Andover, pursuant to Section 3.2 of the Zoning Bylaw, to add as a zoning overlay, the OSGOOD SMART GROWTH OVERLAY DISTRICT; shown as Map 34, Parcel 17 and identified as 1600 Osgood Street, North Andover, Former Lucent Technologies Site. A map of the district is on file in the Office of the Town Clerk 120 Main Street with the following amendment:

Voted to add"Map 34, Parcel 15 after the words "Map 34, Parcel 17 and "to substitute an amended map with dimensions in place of the map originally on file with the Town Clerk's Office which did not have dimensions".

Vote on Article 28 to read as follows:

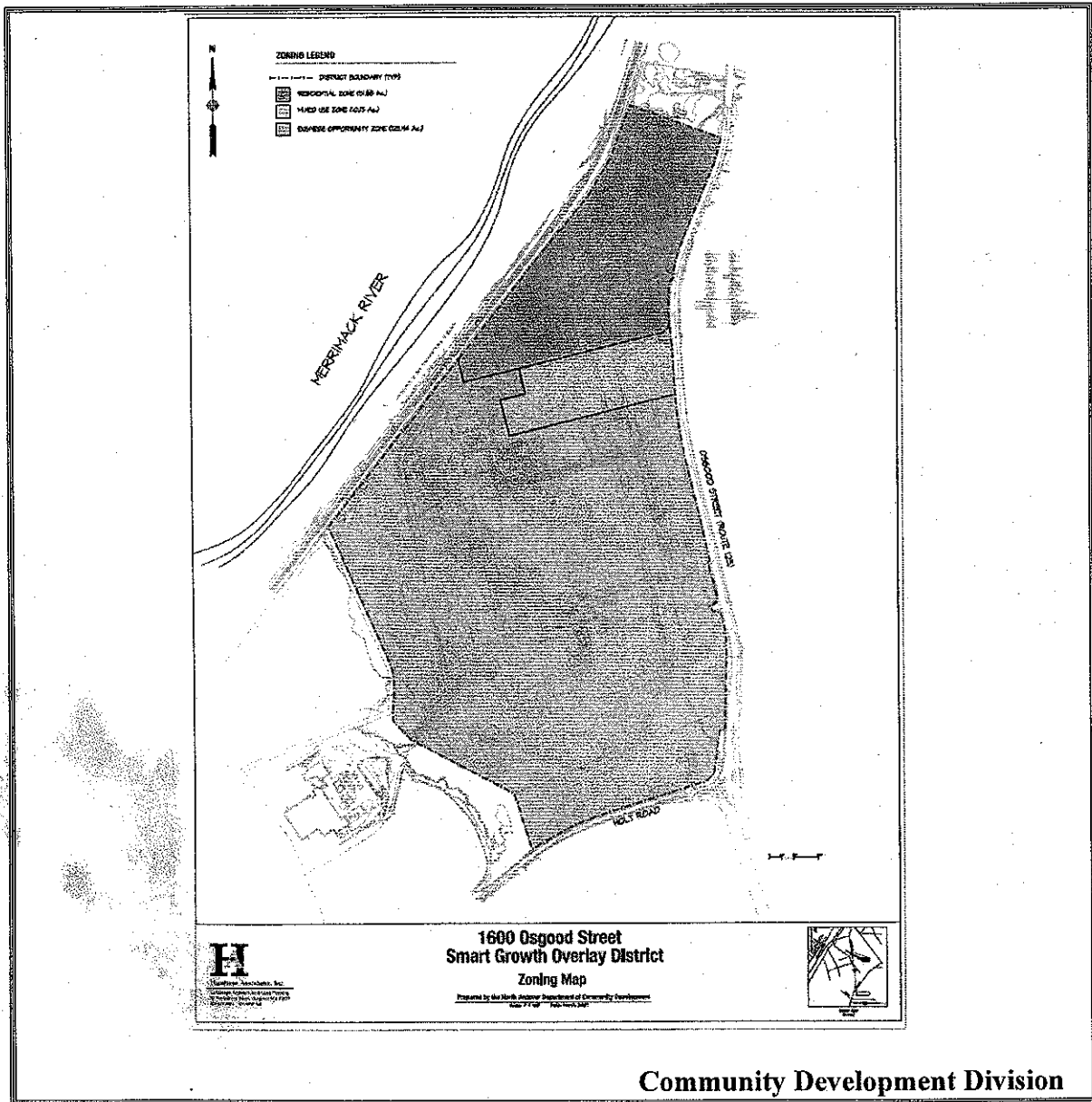
UNANIMOUSLY VOTED to amend the Zoning Map of North Andover, pursuant to Section 3.2 of the Zoning Bylaw, to add as a zoning overlay, the OSGOOD SMART GROWTH OVERLAY DISTRICT; shown as Map 34, Parcel 17 and Map 34 Parcel 15 and identified as 1600 Osgood Street, North Andover, Former Lucent Technologies Site. An amended map with dimensions is filed in the Office of the Town Clerk to replace the map originally on file.

ATTEST:

A True Copy

Joyce A. Bradshaw

Town Clerk



VOTED JUNE 4, 2007

ATTEST:
A True Copy
Joyce A. Chubb
Town Clerk