

**ARTICLE III**

**USE REGULATIONS**

3.01 Applicability of Use Regulations.

Except as provided in the Zoning Act or in this By-Law, no building, structure, or land shall be used except for the purposes permitted in the district and as described in the section. Any use not listed shall be construed as prohibited.

(Art. 45, 5-9-1978; Art. 23, 5-5-1981)

3.02 Permitted Uses.

The following Table of Use Regulations designates for each zoning district the uses permitted by right (P), the uses that may be permitted by a special permit in the district in accordance with Article V (S), the uses not permitted (NP), and uses that are not applicable (NA). In the Business Village Mixed Use Zone mixed uses shall be allowed provided that each principal use is separately allowed in the bylaw for the Business Village District. (Art. 45, 5-9-1978; Art. 23, 5-5-1981; Art. 25, 5-4-1982; Art. 41, 5-7-1985; Art. 37, 5-2-1990; Art. 34, 5-1-2001; Art. 31, 5/4/2004; Art. 41, 5-4-2005)

**Table of Use Regulations**

**Overlay Districts**

<b>Elderly Housing District</b>	Permitted in all zones by Special Permit. See Article III, 3.16
<b>Groundwater Protection District</b>	See Article XI for delineation and permitted uses.
<b>Flood Plain District</b>	See Article VI for delineation and permitted uses.

**Zones**

<b>Residential</b>	<b>ORA = Outlying Residential and Agricultural</b>	<b>Mixed Use</b>	<b>BV= Business Village</b>
	<b>IRA = Inner Residential and Agricultural</b>	<b>Commercial</b>	<b>BH = Business Highway</b>
	<b>CR = Central Residential</b>		<b>BP = Business Park</b>

**Abbreviations:** P = Permitted, S = Special Permit, NP = Not Permitted, NA = Not Applicable

<b>Permitted Uses</b>		<b>ORA</b>	<b>IRA</b>	<b>CR</b>	<b>BV</b>	<b>BH</b>	<b>BP</b>
<b>1. Residential</b>							
1.1	Single Family Dwelling	P	P	P	P	NP	P
1.2	Two Family Dwelling	NP	NP	NP	S	NP	NP
1.3	Multi-Family Dwelling	NP	NP	NP	S	NP	NP
1.4	Multi-Family Residence for the Elderly	See Elderly Housing Overlay District above.					
1.5	Lodging and Boarding houses	S	S	S	S	NP	S
1.6	Temporary Accessory Apartments	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	NA	P <sup>1</sup>
<b>2. Community Facilities</b>							
2.1	Church	P	P	P	P	P	P
2.2	Non-Profit School	P	P	P	P	P	P
<b>Permitted Uses</b>		<b>ORA</b>	<b>IRA</b>	<b>CR</b>	<b>BV</b>	<b>BH</b>	<b>BP</b>
2.3	For Profit School	NP	NP	NP	S	S	S
2.4	Town building except Public Works	P	P	P	P	P	P

	Garage and Fire Station						
2.5	Town Public Works Garage and Fire Station	S	S	S	S	P	S
2.6	Publicly-owned recreational facilities	P	P	P	P	P	P
2.7	Privately-owned recreational facilities	S	S	NP	NP	NP	S
2.8	Library or Museum	P	P	P	P	P	P
2.9	Cemetery	S	S	NP	NP	NP	S
2.10	Day Camp for children	S	S	S	S	NP	S
2.11	Public Utilities	S	S	S	S	S	S
2.12	Civic and Social Organizations	S	S	S	S	S	S
2.13	Communications and telephone towers	See Article XII for restrictions and regulations.					
2.14	Hospital	S	S	NP	NP	S	S
2.15	Nursing and Community Care Facilities	S	S	S	S	S	S
2.16	Conference and Event Facility	S	S	S	S	S	S

<b>3.</b>	<b>Agriculture</b>						
3.1	Agricultural, horticultural, viticultural and floricultural production	P	P	P	P	P	P
3.2	Non-commercial forestry	P	P	P	P	P	P
3.3	Commercial forestry (excluding milling)	S	S	NP	NP	S	S
3.4	Farm Stand (on property of less than 5 acres)	P	P	S <sup>2</sup>	S <sup>2</sup>	S <sup>2</sup>	P
3.5	Farm Stand (on property of more than 5 acres)	P <sup>2</sup>					
3.6	Farmers Markets	S	S	P	P	P	S
3.7	Home farm products stand	P	P	P	P	NA	P
3.8	Raising of livestock for commercial use	S	S	S	NP	NP	S
3.9	Commercial kennels, stables or veterinary hospital	S	NP	NP	NP	P	S

<b>4.</b>	<b>Retail and Service</b>						
4.01	Retail establishment selling principally convenience goods	NP	NP	NP	P	NP	NP
4.02	Retail establishment selling general merchandise	NP	NP	NP	P	NP	NP
4.03	Hardware store	NP	NP	NP	P	NP	NP
4.04	Retail establishment selling foods	NP	NP	NP	P	NP	NP
4.05	Retail establishment selling sporting goods	NP	NP	NP	P	NP	NP
4.06	Pharmacy (Drug Store)	NP	NP	NP	P	NP	NP
4.07	Optical Goods Store	NP	NP	NP	P	NP	S
4.08	Cosmetics, beauty supply and perfume store	NP	NP	NP	P	NP	S
4.09	Retail establishment selling hand-crafts	NP	NP	NP	P	NP	S
4.10	Retail establishment selling motor vehicles	NP	NP	NP	NP	S	NP
4.11	Dry-cleaning and laundry establishment (except coin operated)	NP	NP	NP	P	NP	NP
4.12	Restaurant	NP	NP	NP	S	NP	S
4.13	Guest House and Bed and Breakfast	S	S	S	S	S	S
4.14	Drive-in and drive-through eating establishment	NP	NP	NP	NP	NP	NP
4.15	Funeral Establishment	NP	NP	NP	S	S	NP
4.16	Bank (full service)	NP	NP	NP	P	S	S

4.17	Exterior Automatic Teller Machines	NP	NP	NP	S	S	S
4.18	Interior Automatic Teller Machines	NP	NP	NP	P	P	S
<b>Permitted Uses</b>		<b>ORA</b>	<b>IRA</b>	<b>CR</b>	<b>BV</b>	<b>BH</b>	<b>BP</b>
4.19	Drive-in and drive-through establishment	NP	NP	NP	S	S	NP
4.20	Automotive repair or service	NP	NP	NP	NP	S	NP
4.21	Professional, technical, scientific and business offices	NP	NP	NP	P	P	S
4.22	Other business repair services	NP	NP	NP	P	P	S
4.23	Art Gallery	NP	NP	NP	P	NP	S
4.24	Fitness and recreational sports facilities	NP	NP	NP	S	S	S
4.25	Barber Shops	NP	NP	NP	P	NP	S
4.26	Beauty Salons	NP	NP	NP	P	NP	S
4.27	Skin and Nail Care Salons	NP	NP	NP	P	NP	S
4.28	Medical and Dental Offices	NP	NP	NP	P	S	S
4.29	Chiropractors' Offices	NP	NP	NP	P	S	S
4.30	Amusement or recreation services	NP	NP	NP	NP	NP	NP
4.31	Commercial parking lot	NP <sup>3</sup>					
4.32	Installation of WECS	P <sup>4</sup>					
<b>5. Trades, Wholesale, Transportation and Industrial</b>							
5.01	Manufacturing	NP	NP	NP	NP	S	S
5.02	Construction industry and supplies	NP	NP	NP	NP	S	S
5.03	Transportation services	NP	NP	NP	S	S	NP
5.04	Commercial earth and stone removal	NP	NP	NP	NP	NP	NP
5.05	Processing and/or storage of earth products	NP	NP	NP	NP	NP	NP
5.06	Warehouses	NP	NP	NP	NP	NP	NP
5.07	Distribution centers	NP	NP	NP	NP	NP	NP
5.08	Storage Facilities	NP	NP	NP	NP	NP	NP
5.09	Wholesale automobile sales	NP	NP	NP	NP	NP	NP
5.10	Research office and development facilities	NP	NP	NP	NP	S	S
<b>6. Accessory Uses</b>							
6.01	Home Occupation	P	P	P	P	NA	P
6.02	Accessory building or other structure subject to provisions of Article VI	P	P	P	P	P	P
6.03	Accessory uses normally incidental to residential uses including keeping of domestic animals and agricultural and horticultural uses	P	P	P	P	NA	P
6.04	Accessory private garage for not more than three commercial vehicles except on farm	S	S	S	S	S	P
6.05	Storage of one unregistered motor vehicle, trailer, boat or motorized home in the open not within any required setback	P	P	P	P	P	P
6.06	Accessory outside storage necessary for operation of principal use	S	S	S	S	S	S
6.07	Accessory Signs	P	P	P	P	P	P
6.08	Accessory parking and loading spaces	P	P	P	P	P	P

6.09	Swimming pools, tennis courts and similar uses accessory to a residence.	P	P	P	P	P	P
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Footnotes
<sup>1</sup> In accordance with Article VII, 7.03 Temporary Accessory Apartment Special Permit By-Law
<sup>2</sup> Subject to definition and restrictions of MGL40A
<sup>3</sup> Except in accordance with Article III, 3.13 and 3.14
<sup>4</sup> See Article IV, 4.11 for regulations

### 3.03 Uses Subject to Other Regulations.

Uses permitted by right or by special exception shall be subject, in addition to use regulations, to all other provisions of this By-Law. (Art. 45, 5-9-1978; Art. 23, 5-5-1981)

### 3.04 Table of Use Regulations.

See table on accompanying pages which is declared to be a part of this By-Law.

### 3.05 Nonconforming Uses.

Any lawful building or use of a building or premises or part thereof existing at the time this By-Law or any amendment thereto is adopted, may be continued although such building or use does not conform to the provisions thereof. No nonconforming use shall be changed, moved, or extended in time or space and no nonconforming building or structure shall be structurally or substantially altered, or enlarged or replaced by a new building unless, upon application to the Permit Granting Authority, it can be shown that such change, if carried out, would not be more detrimental or objectionable to the neighborhood. No nonconforming use can be changed, moved or re-established where such use has been discontinued for a period of two (2) years or more.

In no event shall a nonconforming use of a building, structure, or use of land or premises be changed, altered, enlarged, extended, or be held to include racing with pari-mutuel betting except to the extent already in use for a period not to exceed six (6) days at the Essex Agricultural Fair, but to no greater extent.

(Art. 3, 6-25-1947; Art. 45, 5-9-1978; Art. 23, 5-5-1981; Art. 29, 5-6-1986; Art. 48, 5-7-1987)

### 3.06 Uses in Business Park District.

In addition to those uses permitted in the Business Park District in the Table of Use Regulations<sup>1</sup>, all uses permitted in the outlying Residential and Agricultural District shall be permitted in the Business Park District either by right or by special permit as such uses are permitted in the Outlying Residential and Agricultural District, and all provisions of this By-Law governing ORA uses, including the dimensional and density requirements of Article IV hereof, shall apply to any such ORA uses in the Business Park District. (Art. 45, 5-9-1978; Art. 23, 5-5-1981)

### 3.07 Uses in Residential Districts.

In addition to those uses set forth in the Table of Use Regulations\*, the following uses shall be permitted in the Central Residential, Inner Residential and Agricultural, and Outlying Residential and Agricultural Districts:

A. Professional offices in private residences maintained by the residents thereof which are an accessory use as defined by the By-Law.

B. Home occupations which (i) are carried on by a resident who lives on the premises and involve not more than two (2) additional employees and (ii) in no way injures or are offensive to the neighborhood by reason of the emission of odors, fumes, dust, smoke, vibration, noise, or other cause, and provided further that not more than twenty-five (25%) percent of the floor area of the premises is used for such Home Occupation. (Art. 23, 5-5-1981; Art. 41, 5-2-1990)

C. Rental of a museum which is located in an Historic Building, or the use of museum as a function facility including rental to unrelated entities, including but not limited to individuals and corporations, shall be subject to the following conditions:

1. Such use at any time by the same user shall not be for more than two (2) consecutive days; and

2. Such use shall not be permitted after 11:30 PM; and

3. Such use shall not create any undue disturbance caused by noise, smoke, vapors, fumes, dust or odors; and

4. Such use shall not unduly impair traffic.  
(Art. 43, 5/4/1978; Art. 38, 5/7/1997; Art. 30, 5/6/1998)

### 3.08 Uses of Public Address Systems or Loudspeakers.

In the Business District Village, Business District Highway, or Business Park District, the following uses shall not be permitted except when authorized by the Permit Granting Authority:

A. Public address systems operating between sunset and sunrise.  
(Art. 3, 6-25-1947; Art. 24, 3-5-1951; Art. 45, 5-9-1978; Art. 23, 5-5-1981)

### 3.09 Uses in the Business Village District

A. Principal Uses as permitted in the table of Use Regulations

B. Mixed uses shall be allowed in structures in the Business Village District provided that each principal use is separately allowed in the Table of uses for the Business Village District.

C. Buffer Strips shall be required for lots in the Business Village District. Such buffer strips shall conform to the following standards.

1. The buffer strip shall be at least ten (10) feet wide and planted with grass, groundcover, or shrubbery.

2. For lots with multi-family use, the buffer strip shall contain a screen of evergreens no less than six (6) feet in height and five (5) feet in width, or it shall contain a dense man-made screen, or a combination of the above two (2) screens.

3. Where man-made screens are erected, these shall be designed to present an attractive façade which shall reflect the general architectural style of the premises.

4. Whichever screen is proposed, it shall be so located on the buffer strip and be of such dimensions as to effectively protect the premises from exterior lights, noise, scattered refuse, dust, and smoke.

5. Access across buffer strips shall be subject to review and approval of the Permit Granting Authority.

6. The ten (10) foot requirement of Section 3.09 C.1 may be reduced to five (5) feet with the approval of the Permit Granting Authority.

D. Parking requirements shall be calculated according to the separate uses within mixed use structures,” or take any other action relative thereto.

E. Severability. All the clauses of this bylaw are distinct and severable, and if any clause shall be deemed illegal, void, or unenforceable, it shall not affect the validity, legality, or enforceability of any other clause or portion of this by-law. (Art. 23, 5-5-1981; Art. 40, 5-7-1985; Art. 33, 5-4-2004)

### 3.10 Prohibited Uses.

No property shall be used for racing with pari-mutuel betting except to the extent already in use for a period not to exceed six (6) days at the Essex Agricultural Fair, but to no greater extent.  
(Art. 3, 6-25-1947; Art. 45, 5-9-1978; Art. 23, 5-5-1981)

### 3.11 Signs in the Business District.

Deleted by Topsfield Annual Town Meeting vote held May 3, 1988, with the approval of the Attorney General.

### 3.12 Signs in the Residential District.

Deleted by Topsfield Annual Town Meeting vote held May 3, 1988, with the approval of the Attorney General.

### 3.13 Parking of Automobiles.

The following shall not be permitted in the Central Residential, Inner Residential and Agricultural and the Outlying Residential and Agricultural Districts either as an accessory use or by authority of the Board of Appeals:

A. The parking of automobiles where a direct or indirect charge therefor is made except to the extent already in use for periods not to exceed ten (10) days at the Essex Agricultural Fair, but to no greater extent. (Art. 45, 5-9-1978; Art. 23, 5-5-1981)

### 3.14 Parking of Automobiles.

In the Business District Highway, Business District Village and Business Park District the following uses shall not be permitted:

A. The parking of automobiles on premises except as an accessory use or for a period not to exceed ten (10) days at the Essex Agricultural Fair, but to no greater extent.  
(Art. 45, 5-9-1978; Art. 23, 5-1)

### 3.15 Additional Accessory Uses.

In addition to the uses permitted in Table of Use Regulations,<sup>ii</sup> the following accessory uses shall be permitted in the Central Residential District, Business District Village, Business District Highway and Inner Residential and Agricultural District:

- A. Storage of one unregistered motor vehicle in the open.
- B. Storage of trailer, boat or motorized home in the open.  
(Art. 23, 5-5-1981; Art. 14, 5-7-1985)

### 3.16 Elderly Housing District.

A. Permitted Uses and Special Permit Uses. In an Elderly Housing District no building or land shall be used and no buildings shall be erected or converted except for the following purposes:

1. To provide, upon the grant by the Planning Board of a Special Permit and the approval of Site Plan, Multifamily residences for the Elderly, such housing to be owned and controlled only by a non-profit organization or by the Town or jointly as permitted by law; or after said grant and an approved Site Plan, by a Cooperative Housing Corporation organized pursuant to Massachusetts General Laws, Chapter 157B, jointly with the Town or otherwise.

a. For the purposes of Subsection 1, above, a "non-profit" organization shall mean a corporation, foundation or other organization no part of the net earnings of which inures to the benefit of any private shareholder or individual and which, if appropriate, has been organized pursuant to Massachusetts General Laws, Chapter 180, as amended.

2. Any of the uses permitted, as a matter of right in the underlying Residential District with the development regulations applicable to such District as set forth in the Zoning By-Law for such underlying Residential District. (Art. 29, 5-3-1988)

B. Accessory uses permitted in an Elderly Housing District shall include:

1. Garages;

2. One separate building, not exceeding one story in height, to house snow removal and mowing machines, garden and other tools and equipment required to maintain and service housing for the elderly;

3. One building not exceeding thirty-five (35) feet in height and used as a common building by the residents of the District, which building may include central kitchen and dining facilities for residents thereof and their guests and may also provide lounge and meeting rooms for the common use of residents and their guests.  
(Art. 29, 5-3-1988)

C. Special Permit and Site Plan Approval. In an Elderly Housing District no building shall be constructed, enlarged or changed to accommodate multifamily residences for the elderly except in conformity to this By-Law and to a Special Permit granted by the Planning Board and a Site Plan bearing the approval of the Planning Board. The Planning Board shall not approve any such Special Permit or Site Plan unless the applicable standards in Massachusetts General Laws and the following standards and criteria are met:

1. Standards.

a. The Planning Board shall find that the proposed plan of development is in harmony with the purposes and intent of this By-Law as set forth herein.

b. Where land is to be developed for multifamily residences for the elderly, the site shall contain not less than ten (10) acres.

c. All elderly housing shall be owned and controlled by a non-profit organization or by the Town or jointly so far as permitted by law; or by a Cooperative Housing Corporation organized pursuant to Massachusetts General Laws Chapter 157B, jointly with the Town or otherwise.

d. All newly constructed housing developed in an Elderly Housing District shall have not more than five (5) dwelling units per acre of buildable area.

e. All buildings, including accessory buildings, shall cover not more than thirty (30%) percent of the buildable area of the site.

f. The site shall have frontage of not less than fifty (50) feet on a public way.

g. Every structure in an Elderly Housing District shall be so located so as not to extend closer than thirty (30) feet from the street line.

h. The proposed plan shall provide that there shall be on the site off-street parking of not less than six (6) nor more than eight (8) parking spaces for each three (3) elderly dwelling units contained in the development. Parking spaces within a garage shall be counted toward the required number of parking spaces.

i. Roads and ways within the development shall be constructed in accordance with the Planning Board Subdivision regulations with such waivers, if any, as the Planning Board deems appropriate.

j. The entire site shall be a size and shape as shall provide a housing site which will be in harmony with the natural terrain and other features of the site and will preserve natural vistas and the existing rural or other character of the neighborhood.

k. The site shall be supplied with a water system approved by the Planning Board with the advice of the Water Department, adequate to meet the needs of the units constructed on the site.

l. All dwelling units must be served by adequate sewage treatment facilities or an on-site sewage disposal system approved by the Board of Health or other appropriate approval agency.

m. No site on a plan for which an approval is granted under this section may be subdivided so as to create additional buildable lots and a notation to that effect shall be shown on the Site Plan.

n. Elderly dwellings constructed under this section shall not be eligible for subsequent conversion to conventional apartments.

o. Buildings shall be designed to be consistent with the appearance of the Town and shall be complementary in exterior design with each other and, where applicable, with the existing neighborhood in which the development is located.

p. Sufficient security must be provided to insure completion of the development and continuing compliance upon its completion with the provisions of the approval.

q. A Buffer Zone shall be required between the Elderly Housing Development and adjoining properties to provide visual and privacy for such adjoining properties. The Planning Board may require appropriate landscaping, fencing and other site improvements to accomplish such purposes and the Site Plan shall be accompanied by a Landscape Plan drawn by a Landscape Architect, which Plan shall indicate the species, height and density of landscaping to provide the necessary Buffer Zone. In no case shall said Buffer Zone be less than twenty-five (25) feet in depth for all side and rear boundaries of the site.

r. No building in an Elderly Housing District shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height.

s. A plan shall be prepared by the petitioner which shall, to the extent allowable by law, give a preference for elderly dwelling units within a development first to Topsfield residents, then to immediate family members of Topsfield residents, and then to former residents of Topsfield. The

petitioner shall furnish the Planning Board with an eligibility plan for the Elderly Housing Development, which plan shall be subject to the approval of the Planning Board.

t. Site Plan Review under this section shall be conducted in conformance with the requirements, rules, and regulations set forth in Article IX, and the regulations adopted thereunder, except that any requirements set forth herein above which are more particular or stringent shall govern.

2. Site Plan and Special Permit Approval Application.

a. Eligibility:

An applicant may submit to the Planning Board for a Special Permit and Site Plan Approval a plan of land.

b. Contents of the Application.

Each application shall include:

(i) All information required for submission of a Definitive Plan for Standard Subdivisions as provided for in Planning Board's Rules and Regulations governing the subdivision of land.

(ii) Provisions for privacy and security.

(iii) Provisions for parking.

(iv) Proposed landscaping, exterior lighting, architectural exterior design and elevations, typical floor plans.

(v) Projected phasing, timing of construction, type of ownership, and proposed covenants and/or agreements binding on occupants.

(vi) Projected advantages to the Town of the proposed development compared to alternative permitted uses at the same site.

(vii) Projected revenues to the Town in taxes or payments in lieu of taxes.

(viii) An Eligibility Plan for the Development as required under Section 1(s).

(Art. 29, 5-3-1988; Art. 16, 5-4-1993)

D. Procedure. The original and five (5) copies of the application shall be filed with the Planning Board and with the Town Clerk.

The Planning Board, acting as the Site Plan Approval Authority and Special Permit Granting Authority under this section, shall give notice, conduct public hearing and render a decision in conformity with Massachusetts General Laws, Chapter 40A, Section 9, and Section 5.04 of the Zoning By-Law.

E. Grant of Approval. The Planning Board shall grant an approval if it determines that the plan as proposed meets the standards for granting Special Permits and:

1. The plan promotes the more efficient use of land in harmony with its natural features, watercourses, scenic areas, natural vistas, existing rural character, and similar community assets within the general intent of the Zoning By-Law and the long-range plan of the Town.

2. The plan protects adjoining premises against serious detrimental effects by providing inter alia, surface water drainage, sound and sight barriers and preservation of views, light and air.

3. The plan provides for convenience and safety of vehicular and pedestrian movement within the site, and for appropriate location of driveway openings in relation to traffic or to adjacent streets.

4. The plan provides for adequate methods of disposal of refuse and other wastes.

5. The plan provides for suitable architectural design and a favorable relationship of structures and open space to the natural landscape, barriers and preservation of views, light and air.

F. Additional Provisions.

1. Construction must commence within one year of the granting of the approval. Construction must be completed within two (2) years of its commencement unless otherwise provided for in the approval.

2. No zoning map amendment shall create an Elderly Housing District except upon the petition by the owner of, or one holding a valid purchase and sale agreement on, the land to be so designated. (Art. 29, 5-3-1988)

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**Editor's Note:** The Table of Use Regulations can be found following this Article III.

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