ZONING ORDINANCE: CHAPTER XXXVIII
with
AMENDMENTS THROUGH MARCH 2013

CHAPTER 38

ZONING ORDINANCE

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BEVERLY LAND USE SCHEDULE

PRINCIPAL USES	ZONING DISTRICT																
	R-90	R-45	R-22	R-15	R-10	R-6	RMD	RHD	RSD	CN	CC	CG	IR	IG	HD	WD	WDR
RESIDENTIAL USES																	
One-family, detached	P	P	P	P	P	P	P	P	P	P	P						
Two-family, detached						P	P	P	P	P	P						
* Multi-family							P	P	P		SP					P	P
* Multi-family/commercial										P	P	P					
Rooming, lodging, boarding house								SP			SP						
Planned residential development	SP	SP	SP	SP			SP		P								
Subsidized elderly housing	SP	SP	SP	SP	SP	SP	P	P	P	SP	P	SP	SP	SP	SP		
INSTITUTIONAL AND RECREATIONAL USES																	
Hospital, nursing home, ambulance depot															P		
Gymnasium, health club, public pool								SP	P		SP	P				SP	SP
Golf, beach, tennis club	SP	SP							P								
Private, quasi-public, charitable club or community service organization								SP	SP	SP	SP	SP				SP	SP
Public recreational boating facilities												P					
Commercial marina	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		P	P
Historic site or non-profit museum	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Private, non-commercial stable	SP	SP	SP	SP	SP	SP			SP	SP	SP	SP	SP	SP			
City-operated sanitary landfill	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
COMMERCIAL USES																	
Bed and breakfast establishment	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
Hotel or motel											SP	P	SP			SP	SP
Home occupation	P	P	P	P	P	P	P	P	P	P	P	P			P	P	P
Local retail establishment > 5,000 sq. ft.									P	P	P	P			P	SP	SP
Retail establishment											P	P				SP	SP
Personal and consumer service									P	P	P	P			P	SP	SP
Business and professional office, medical clinic										P	P	P	P	P	P	SP	SP
Funeral home										P	P	P					
Restaurant, no take out									P	SP	P	P	SP	SP	P	P	P
Fast-food establishment												P		SP			
Indoor commercial recreation											SP	P	SP			SP	SP
Gasoline station												SP					
Car, truck, and RV sales; car wash												P					
*Animal hospital or kennel													SP	SP			
Commercial riding stable	SP	SP															
*Agricultural, horticultural and floricultural uses	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Commercial fishing, no processing																P	P
INDUSTRIAL, UTILITY, WHOLESALE & TRANSPORTATION USES																	
Manuf., assembly, processing & packaging within a bldg.													P	P			
Research, development, and testing											P	P	P	P			
Printing and publishing											P	P	P	P			
Auto body, paint, or repair shop													SP	SP			
Contractor's or craftsmen's shop													P	P			
Warehouse, mini-storage, bottling plant, frozen food locker, wholesale establishment, ice manufacturing													SP	P			
*Open storage of new building materials													SP	P			
*Open or encl. storage of coke, coal, sand or similar materials														SP			
* General industrial uses														P			
Motor or rail freight														SP			
Taxi, rail, or bus terminal										SP	P	P	P	P			
Public services (no outdoor storage)	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	P	P	SP	SP	SP
Utility company terminal enclosures	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Parking lot or garage as principal use											SP	SP	SP	SP		SP	SP
Comm. prkg. lot in res. zone when abutting comm. zone								SP									
Comm. mobile radio srvc. trans, facilities, structures, towers	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	

SP = special permit required; P = permitted use; * = subject to certain requirements

This schedule of uses is a summary of the Ordinance requirements and is included only for ease of reference. In the event of inconsistencies between this schedule and the text of the Ordinance, the text shall be controlling.

TABLE OF DIMENSIONAL REQUIREMENTS

A comparative Table of Dimensional Requirements for each of the Zoning Districts described in Section 38-7 through Section 38-23 of this Ordinance is presented below. This Table is presented for comparative purposes, and shall not replace or supersede any requirements specifically set forth or referenced in Section 38-7 through Section 38-23 of this Ordinance.

DISTRICT	MINIMUM LOT AREA	FRONTAGE	MINIMUM YARDS			MAXIMUM HEIGHT
			FRONT	SIDES	REAR	
R-90	90,000 sf	225'	30'	20'	25'	35'
R-45	45,000 sf	175'	30'	20'	25'	35'
R-22	22,000 sf	150'	30'	15'	25'	35'
R-15	15,000 sf	125'	30'	15'	25'	35'
R-10	10,000 sf	100'	20'	15'	25'	35'
R-6	6,000 sf plus 1,000 sf for one additional dwelling unit (d.u.)	65'	20'	10'	25'	35'
RMD	8,000 sf plus 4,000 sf for additional d.u. over two	65'	20'	10'	20'	35'
RHD	6,000 sf plus 3,000 sf for additional d.u. over two	50'	15'	10'; 15' if over 3 stories	20'	55'
RSD	See Section 38-15 Part D					
CN	Same as Least Restrictive Adjacent Residential District					
CC*	none	none	none	none	none	55'
CG**	10,000 sf	80'	30'	15'	15'	35'
HD	10 acres	225'	30'	20'	25'	65'
IR	2 acres	225'	30'	20'	25'	60'
IG	none	none	none	none	none	35'; 70' if bldg. is set back 400'
WD	See S. 38-22	none	5'	25'	20'	35'
WDR	See S. 38-23	65'	5'	25'	20'	See S. 38-23

*For CC-zoned lots with side and/or rear lot lines abutting residentially-zoned lots, setback and height requirements are the same as that abutting residential zone.

**See Section 38-18 Part D.

38-1 TITLE, PURPOSE, AND INTERPRETATION

A Short Title

This ordinance shall be known and may be cited as the Zoning Ordinance of the City of Beverly, Massachusetts referred to herein as "this ordinance."

B Purpose

This ordinance is designed for the following purposes:

(1) To lessen congestion in the streets.
(2) To secure safety from fires, panic, and other dangers.
(3) To promote health and the general welfare.
(4) To provide adequate light and air.
(5) To avoid undue, concentration of population.
(6) To prevent the overcrowding of land.
(7) To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.
(8) To prevent pollution of air and water.
(9) To encourage the most appropriate use of land throughout the City.
(10) To conserve and protect land values and amenities.
(11) To encourage orderly development of land.
(12) To encourage the appropriate use of our existing built environment including the adaptive reuse of older buildings.

C Interpretation

In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements, adopted for the promotion of the public health, safety, morals, and general welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, and ordinances, the most restrictive or that imposing the higher standards shall govern.

38-2 DEFINITIONS

A Meanings of Certain Words and Phrases

For the purposes of this ordinance, words used in the present tense include the future; the singular number includes the plural, and the plural includes the singular. The word "lot" shall include "plot" or "parcel". The word "structure", shall include the word "building", where the context requires. The word "used" shall include the words "arranged", "designed", "rented" "leased" "intended to be used", and "occupied". The word "shall" is mandatory; and the word "may" is permissive.

B Other Words and Phrases

Certain other terms or words shall be interpreted as follows:

1. Accessory Apartment - A dwelling unit located within an owner-occupied single-family dwelling with one or more rooms including kitchen and bathroom facilities that are separate from those of the principal dwelling. The unit shall be constructed so as to maintain the appearance and essential character of a single-family dwelling. Only relatives, i.e. brothers, sisters, parents, grandparents, in-laws, children and/or grandchildren, of the residing owners of the principal dwelling unit may occupy the unit. (Rev. 6-26-87)(Ord. No. 72, 7-5-12)

2. Affordable Housing Restriction - A right, either in perpetuity or for a specified number of years, whether or not stated in the form of a restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or other instrument executed by or on behalf of the owner of the land appropriate to (a) limiting the use of all or part of the land to occupancy by persons, or families of low or moderate income in either rental housing or other housing (b) restricting the resale price of all or part of the property in order to assure its affordability by future low and moderate income purchasers or (c) in any way limiting or restricting the use of enjoyment of all or any portion of the land for the purpose of encouraging or assuring creation or retention of rental and other housing for occupancy by low and moderate income persons and families. (Ord. No. 103, 7-17-07)

3. Affordable Housing Unit - A dwelling unit that is affordable to and occupied by a low- or moderate-income household and meets the requirements of the Local Initiative Program (LIP) for inclusion on the Chapter 40B Subsidized Housing Inventory. (Ord. No. 103, 7-17-07)

4. Airport Approach Zone - An area of 500 feet in width at the end of an airport runway or landing strip and 2,500 feet in width at a distance of

10,200 feet. The centerline of this zone shall coincide with the centerline of the runway or landing strip extended.

5 Airport Hazard - Any structure, tree, or aerial emission which obstructs the aerial approaches of a publicly-owned airport or impairs the reasonable visibility in the vicinity thereof, electrical impulses and disturbances which interfere with radio aids or communications, and lights which might result in glare in the vision of aircraft pilots or be confused with airport lights.

6. Animal feedlot - A plot of land on which twenty-five (25) or more animals per acre are kept exclusively for the purpose of feeding. This definition shall not be construed as prohibiting farming lawfully being constructed under the provisions of the City of Beverly Zoning Ordinance and/or Massachusetts General Laws, Chapter 40A, Section 3. (Rev. 3-5-90)

7. Aquifer - Geologic formation composed of rock or sand and gravel that contains significant amounts of potentially recoverable potable water. (Rev. 3-5-90)

8. Area Median Income (AMI) - The median family income for the metropolitan area that includes the City of Beverly, as defined in the annual schedule of low- and moderate-income limits published by the U.S. Department of Housing and Urban Development, and adjusted for household size. (Ord. No. 103, 7-17-07)

9. Auto Body Shop - A business establishment engaged in motor vehicle painting, body and collision repair, frame straightening or any combination of the above.

10. Basement - An area partly underground but having at least one half of its clear ceiling height above the mean finished grade level at the foundation. A basement shall be considered as a story if used for dwelling or business purposes.

11. Bed & Breakfast Establishment - The renting of not more than five (5) rooms as a lodging, without separate cooking facilities and for not more than eight (8) persons for a term of residence of less than eight (8) days. These establishments shall be residential in both character and appearance, and off-street parking areas shall be screened from abutting residential uses in a manner defined by Section 38-2.B.52 of this Ordinance. The owner of a bed and breakfast establishment shall be required to reside either on the premises of the establishment or on an abutting parcel. (Rev. 3-19-91, 6-18-91, 5-13-96)

12. Board of Appeals - The Board of Appeals of the City of Beverly.

13. Building - Any independent structure having a roof with structural supports for the shelter or enclosure of persons, animals, or property.

    a. Building, Accessory- A building subordinate to and located on the same lot with a main building, the use of which is clearly incidental to that of the main building, such as a detached garage or barn.

14. Cellar - An area partly underground having more than one-half of its clear ceiling height below the mean finished grade level at the foundation.

15. Commercial Vehicle - Any motor vehicle which meets the definition of 'commercial vehicle' as defined in 540 CMR 2.05, as may be amended.(Ord. No. 169, 8-27-96)

16. Comprehensive Plan - A document prepared and/or adopted by the Planning Board to guide the long-range development of the City, and which considers the type, location, arrangement, and/or density of land uses, streets, and necessary community services.

17. Congregate Elderly Housing - An alternative housing arrangement for elderly or handicapped persons choosing to share a living arrangement with others. Residents have their own dwelling unit or bedroom, and share areas such as living rooms, dining areas, and kitchens. Support services such as house cleaning, meals, transportation, and minor health care are provided on-site. This definition excludes nursing homes and half-way houses. (Rev. 7-20-87)

18. Construction - Those lot improvements including foundations, the erection of new buildings, expansion of footprints or existing structures, and the addition of impervious surface(s). The term construction shall not include fences, stone walls, and walks or paths made with solely porous materials." (Rev. 5-20-93)

19. Cornice - Any permanent continuous horizontally projecting feature surmounting a wall or other portion of a building. (Rev. 4-10-90)

20. Coverage - The ratio of the total ground floor area of buildings to the total area of the lot, expressed as a percentage.

21. Domestic Employee - Person actually employed upon a premises for monetary compensation by the resident family thereof for not less than 30 hours per week and who provided domestic services to such family. (Ord. No. 43, 3-14-00)

22. Dwelling - A building used only for permanent habitation by one or more families. The term shall not include hotel, motel, rooming house, hospital, or other accommodation used for transient lodging.

    a. Dwelling Unit - One or more living and sleeping rooms providing complete living facilities for the use of one or more individuals constituting a single family, with permanent provisions for living, sleeping, eating, cooking and sanitation. The term shall not include hotel, motel, bed and breakfast, rooming house, hospital, or other accommodation used for transient lodging. (Ord. No. 43, 3-14-00)

    b. Dwelling, One-Family or Single-Family - A detached dwelling, other than a stationary trailer or mobile home, containing only one dwelling unit.

    c. Dwelling, Two-Family - Two attached dwelling units in one building.

    d. Dwelling, Semi-detached - A one-family dwelling attached by no more than one common wall to another one-family dwelling and each dwelling may be on separate lots.

    e. Dwelling, Multi-Family - A dwelling containing three or more dwelling units.

    f. Dwelling, Multiple Group - A group of two or more multi-family dwellings occupying a parcel of land in one or common ownership and having common open space.

23. Elderly - Persons fifty-five (55) years or older, or those persons permanently disabled.

24. Family - One or more persons occupying a dwelling unit and living and cooking together on the premises as a single, non-profit, housekeeping unit and further defined as one of the following:

    (1) Any number of persons related by blood, by adoption, by foster home placement, and/or by marriage.

    (2) Up to and including four persons not related to each other by blood, by adoption, by foster home placement, and/or by marriage.

    (3) A combination of persons related by blood, by adoption, by foster home placement, and/or by marriage (such groups so related being one for the purpose of this definition) and no more than three other

individual persons without consideration of the relationship that such three persons might have, if any, to each other.

Irrespective of the requirements of paragraph A above, DOMESTIC EMPLOYEES as herein defined need not occupy the same dwelling unit nor live and cook together in the same premises as a single, non-profit housekeeping unit with their employer FAMILY, but nonetheless for the purposes of the ordinance shall be deemed members of a resident family in accordance with and as restricted by paragraph A3 above. (Ord. No. 43, 3-14-00)

25. Fast-Food Restaurant - A food service establishment with a drive-in window.

26 Floor Area, Gross - The sum of the areas of the several floors of a building, including areas used for human occupancy in basements, attics, and penthouses, as measured from the exterior faces of the walls. It does not include cellars, unenclosed porches, or attics not used for human occupancy or any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of this ordinance, or any such floor space intended and designed for accessory heating and ventilation equipment.

27. Floor Area Ratio (FAR) - The ratio of the gross floor area of the building to the total lot area.

28. Frontage - The distance between either (1) the points of intersection of the side lot lines and the street right of way, measured along the street line, being an unbroken distance along the street; or (2) the points of intersection of the side lot lines and the rear line of the required front yard extended to the street right of way, being an unbroken distance along the rear line of the required front yard, whichever is smaller. For the purposes of this Ordinance, there shall be both rights of access and potential safe year round practical vehicular access, unimpeded by:

    1. wetlands, unless a wetlands crossing has been approved by the Conservation Commission; or
    2. topography which prevents a proposed driveway from meeting the requirements of Section 38-25.E.2.e. of this Ordinance, unless the Board of Appeals has granted an exception as provided in Section 38-28 of this Ordinance; or
    3. other natural or manmade barriers

    between the frontage line and a potential building site. Only sufficient frontage on one of the following types of ways shall be recognized for zoning purposes:

1. a public way or a way certified by the City Clerk that is maintained and used as a public way;

2. a way shown on a plan approved and endorsed by the Beverly Planning Board in accordance with the Subdivision Control Law; or

3. a way physically in existence when the Subdivision Control Law became effective in Beverly having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or be erected thereon.

When a lot is bounded by more than one street, any one of them, but only one, may be designated as the frontage street by the owner, provided that that street provides sufficient frontage as required by the Zoning Ordinance; however, in the case of a lot bounded by two streets forming an interior angle of more than one hundred and thirty-five degrees (135°), their combined frontage between lot lines may be used to satisfy the lot frontage requirement. (Rev. 7-17-91; Ord. No. 43, 3-14-00; Ord. No. 161, 6-24-04)

29. Gasoline Station - Building and premises where gasoline, oil, grease, batteries, tires, automobile accessories, and incidentals are sold at retail and where minor servicing and repairs take place. Major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, or smoke are not included in this definition.

30. Groundwater - All the water found beneath the surface of the ground. In this Ordinance the term refers to the slowly moving subsurface water present in aquifers and recharge areas.

31. Height - The vertical distance from the lower of a) the average grade of the footprint of the building, or b) the average grade at the front of the building, to the top of the highest roof beams of a flat or pitched roof. (Ord. No. 169, 8-27-96)

32. Home Occupation or Home Professional Office - The use of a room in a dwelling as an office, studio, or workroom for occupation at home by a person residing on the premises and in connection with which the primary use is not the sale of commodities on the premises and which:

(1) shall not have more than one (1) employee (other than the owner/occupant) engaged on the premises at any one time.

(2) shall provide off-street parking spaces on site at the following ratio: one (1) space for each vehicle owned by the occupants of the home, up to a maximum of two (2) spaces; one (1) space for the employee of the home occupation or home professional office, if there is one; and one (1) space for a client if the nature of the occupation or office warrants such space to be determined by the Building Inspector. In any case, no more than four (4) spaces shall be provided on site and the portion of the lot serving as the parking area shall be screened from abutting properties in accordance with the requirements of Section 38-2.B.52.b., c., d., or e. of this Ordinance;

(3) shall not have more than one commercial vehicle parked on the premises at any one time.

(4) shall have no exterior display or storage of materials beyond that permitted by this Chapter. (Ord. No. 49, 3-25-96)

33. Impervious Surface - material on the ground that does not allow surface water to penetrate into the soil. (Rev. 3-5-90)

34. Leachable wastes - waste materials including solid wastes sewage, sludge, and agricultural wastes that are capable of releasing water-borne contaminants to the surrounding environment. (Rev. 3-5-90)

35. Lineal Frontage - the length in feet an establishment faces a street or public right of way at first floor or entrance level. (Rev. 4-10-90)

36. Local Initiative Program - A program administered by the Massachusetts Department of Housing and Community Development (DHCD) pursuant to 760 CMR 45.00 to develop and implement local housing initiatives that produce affordable housing. (Ord. No. 103, 7-17-07)

37. Lot - A parcel of land in identical ownership throughout of at least sufficient size to meet the minimum requirements of this Ordinance for use, frontage, coverage, and area and to provide required yards and other open spaces. The area of a lot is that area, in square feet or acres, enclosed by the lot lines of a single lot. In calculating the area of a LOT for purposes of determining such LOT's conformance with the minimum area requirements of the Zoning Ordinance (but not for any other dimensional calculations), no portion of such LOT shall be included which:

(i) is subject to an easement or right-of-way that is recorded (or shown on a plan that is recorded or to be recorded) and that serves property outside the LOT, or

(ii) is subject to a restriction that by its terms prevents or prohibits the owner of such lot from making any substantial use of that portion of the LOT;

but neither (i) or (ii) above shall apply to any easement, right of way, or restriction that is either for utility or conservation purposes or that is held by or generally open to governmental agencies or the public.

Additionally, for lots created after July 15, 1996, no more than twenty percent (20%) of that portion of a lot classifiable as freshwater or coastal wetlands under the provisions of M.G.L. Chapter 131 Section 40 as amended shall be included in the calculation of a lot's area for purposes of determining conformance with the Zoning Ordinance.

a. Lot, Corner: A lot with frontage on two or more streets at their intersection, where the interior angle of the intersection is less than one hundred and thirty (130) degrees.

b. Lot, Non-conforming: A lot of record at the time this Ordinance becomes effective but which does not conform with the regulations for the district in which it is located.

c. Lot Width: See "Frontage" definition in this section. (Ord. No. 49, 3-25-96; Ord. No. 169, 8-27-96; Ord. No. 161, 6-24-04; Ord. No. 206, 12-29-05)

38. Low-or Moderate-Income Household - A household with income at or below 80% of area median income, adjusted for household size. In a development with affordable housing units, eligible low- or moderate-income household means the household that purchases or rents an affordable housing unit as its principal residence. (Ord. No. 103, 7-17-07)

39. Major Recreational Equipment - Boat and boat trailers, travel trailers, pick-up campers or coaches, motorized dwellings, tent trailers, and similar devices.

40. Market-Rate Housing - In a development with affordable housing, market-rate housing means all units other than the affordable housing units as defined in this Ordinance.

41. Maximum Affordable Purchase Price or Rent - For homeownership units, a purchase price that is affordable to a low- or moderate-income household paying not more than 30% of gross monthly income for a mortgage payment, property taxes, insurance and condominium fees where applicable; and for rental units, a monthly rent that is affordable to a low- or moderate-

income household paying no more than 30% of its gross monthly income for rent and utilities. The household income used to compute the maximum affordable purchase price or rent shall be adjusted for household size, considering the household size for which a proposed affordable unit would be suitable under guidelines of the Local Initiative Program or, where no such guidelines exist, under regulations adopted by the Planning Board. (Ord. No. 103, 7-17-07)

42. Mean - A number or point which is halfway between the two extremes.

43. Mining of land - the removal and relocation of geologic materials such as topsoil, sand and gravel, metallic ores, or bedrock. (Rev. 3-5-90)

44. Mixed Use – Two or more compatible uses on a single parcel pursuant to a single development plan which may include, without limitation, office, retail, residential, medical, educational, recreational and/or civic uses. (Ord. No. 230, 2-19-09)

45. Mobile Home - A detached residential dwelling unit designed for transportation after fabrication on streets or highways on its own wheels or on flatbed or other trailer, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy, except for assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities, etc. A travel trailer is not to be considered as a mobile home.

46. Mobile Home Park - Any lot used to accommodate two (2) or more individual mobile homes, including all necessary buildings, tents, or other appurtenances; and regardless of whether a charge is made for such accommodations. A mobile home park does not include the parking of unoccupied homes for inspection and sale as a commercial business.

47. Planning Board - The Planning Board of the City of Beverly.

48. Primary Façade – The length in feet of that side of an establishment's structure that faces a street or public right of way at first floor or entrance level. (Ord. No. 59, 5-29-03)

49. Private Passenger Motor Vehicle - Any motor vehicle which meets the definition of 'private passenger motor vehicle' as defined in 540 CMR 2.05, as may be amended. (Ord. No. 169, 8-27-96)

50. Public Open Space - Space left without a structure of any kind and without parking lots which is dedicated to the City via an easement obtained from the property owner. This space may be beaches, pedestrian walkways, picnic area, landscaping, or other green space.

51. Public Recreational Boating Facility - A facility on and abutting tidal waters for berthing of recreational vessels at which all berths and accessory uses thereto are available for patronage by the general public on a seasonal or transient basis. Such facility may be either publicly or privately owned, and may include town piers, or community sailing centers or yacht clubs offering open membership to the public. Nothing in this provision shall be construed as allowing the storage of recreational vessels and/or recreational and marine equipment off the premises of the facility, nor as prohibiting the adoption of minimum eligibility criteria of broad, objective applicability, such as basic knowledge of boating safety or a willingness to make regular work commitments; nor as prohibiting the reservation of a berth for the operation of said facility. (Ord. No. 254, 11-23-94)

52. Recharge areas - areas composed of permeable stratified sand and gravel and certain wetlands that collect precipitation or surface water and carry it to aquifers. (Rev. 3-5-90)

53. Screening - A visual barrier which may be:

    a. Masonry wall, brick veneer, tilt wall concrete, or poured in place concrete, minimum height of 6 feet;

    b. A five foot wide and five foot high evergreen landscaping strip;

    c. A landscaped earthen berm at least five (5) feet in height;

    d. Wood fence with permanent slats, not less than 6 feet in height;

    e. Combination of the above. (52. a.- e. Rev. 6-26-87 and 7-1-92)

54. Setback - A line beyond which the foundation wall and/or any enclosed covered porch or other enclosed portion of a building shall not project. In the case of private easements that serve as legal frontage, for, or provide vehicular access to any lot, minimum yard setbacks required by this Ordinance shall be measured from the side line of the private easement or the property line, whichever is closest to the location of the building. (Ord. No. 10, 5-4-06)

55. Shared Parking – A parking arrangement within a Mixed Use development which allows for the sharing of parking spaces by more than one use, each with different parking occupancy demand patterns. (Ord. No. 230, 2-19-09)

56. Signs: The definitions specific to signs shall control where there is any inconsistency between the definitions specific to signs and the general definitions of this ordinance.

a) Abandoned Sign – a sign which no longer identifies or advertises a bona fide business, owner, lessor, lessee, service, product, or activity, or for which no legal owner can be found, or if found, disclaims any interest in the sign.

b) Animated Sign – any sign with visible moving parts which includes any illumination sign on which the artificial light is not maintained stationary, or constant in intensity and color at all times when such sign is in use. For this purpose, any revolving, illuminated sign shall be considered an "animated sign."

c) Advertising Sign – a sign which directs attention to a business, profession, commodity, service, or entertainment conducted, sold, or offered elsewhere than upon the same premises.

d) Alteration to Sign – any enlargement, rewording (other than in the case of theatre or cinema signs or other sign boards with automatically changing messages) redesigned or altered in any way, other than routine maintenance, including repainting in a different color, or, any work on a sign that has deteriorated to such an extent that the cost of restoration would exceed thirty (30) percent of the replacement cost of the sign at time of restoration. Any alteration to a sign and all altered signs, must conform to the requirements of this ordinance.

e) Area of Sign – the area of a sign shall be considered to be that of the smallest rectangle or other convex shape which encompasses all the letters and symbols of the sign message or such message together with any frame, background, trim, or other integral part of the display on which such message is placed.

f) Awning Sign – any sign placed on the face of an awning. An awning is a flexible, woven cloth fabric mounted above and/or projected above a window or door.

g) Canopy Sign – a sign located on a rigid structure erected over gas pumps at gas filling stations or over other automobile services area.

h) Cluster Sign – two or more signs integrated into one freestanding sign structure.

i) Defunct Sign – signs which advertise an activity, business, project, or service no longer produced or conducted on the premises upon which the sign is located.

j) Directory Sign – a sign located on a building, or freestanding within the area between the building and one-half the distance to the nearest property line, which identifies the occupants and their location within a building.

k) Freestanding Sign – a sign, including the supporting device, not part of or attached to any building but located elsewhere on a lot.

l) Obstructing Sign – a sign which obstructs a fire escape, window, door, or other opening, or which prevents free passage from one part of a roof to any other part thereof.

m) Off-premise Sign – a sign which advertises or announces a use conducted or goods available elsewhere than on the lot on which the sign is located.

n) Portable Sign – a freestanding sign not permanently affixed, anchored, or secured to the ground or structure on the lot it occupies.

o) Projecting Sign – any sign which is attached to a building or other structure which projects more than twelve (12) inches from the wall surface of the building or structure in front of which the sign is positioned.

p) Roof Sign – any sign erected, constructed, and maintained upon or over the roof of any building.

q) Sandwich Board Sign – an "A-frame" shaped sign that identifies or advertises a place of business and that consists of two sign boards that are hinged together at the top and on which an establishment's name has been factory-imprinted. (Ord. No. 57, 6-20-07)

r) Temporary Sign – any sign intended to be maintained for a continuous period not to exceed fourteen (14) days.

s) Wall Sign – sign or letters placed on the building which projects no more than twelve (12) inches from and is parallel to the face of the building.

t) Window Sign – signs painted or posted on an interior translucent surface including windows or doors. In the case of individually lettered signs, sign area shall be the smallest geometrical shape which contains the letters.

Any exterior design feature of a building or structure that is associated with the corporate image or identification of a business which effectively results in extending the area of a sign shall be considered a sign and subject to regulation under this ordinance. The term "exterior design features" shall include but not be limited to rigid canopies, feature strips, roofs, graphics, and color. (Rev. 4-10-90; Ord. No. 59, 5-29-03)

57. Solid wastes - useless, unwanted, or discarded solid material with insufficient liquid content to be free flowing. This includes, but is not limited to, rubbish, garbage, scrap junk, refuse, inert fill material and landscape refuse. (Rev. 3-5-90)

58. Story - That portion of a building included between the floor and floor or roof next above. A half-story is a partial story under a sloping roof, the wall plates of which on two exterior walls are not more than two (2) feet above the floor of such partial story.

59. Structure - A construction including, but not limited to, buildings as herein before defined, stadiums, radio towers, fences, freestanding signs, projecting sign and other structural facilities. (Ord. No. 59, 5-29-03)

60. Subsidized Elderly Housing – A residential development in which (a) at least eighty percent (80%) of the units are occupied by at least one person age fifty five (55) and over, (b) at least fifteen percent (15%) of the units ("the affordable units") are designated for occupancy by persons of low or moderate income as determined by the Federal Department of Housing and Urban Development ("HUD") for the Boston, MA/New Hampshire PMSA, and (c) at least ten percent (10%) of the constructed units are designed and equipped for those with disabilities. There shall be a deed restriction for such affordable units, regardless of the form of ownership or tenancy, that ensures occupancy of the units by those of low or moderate income as defined by HUD in perpetuity. (Ord. No 206, 12-29-05)

61. Subsidized Housing Inventory - The Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory. (Ord. No. 103, 7-17-07)

62. Use - The principal purpose for which a lot or the principal building thereon is designed, occupied, maintained, or intended to be used.

    a. Use, Accessory - A use of a building, land, or portion thereof, normally incidental to the permitted use of the premises.

    b. Use, Non-conforming – A use which lawfully exists at the time this ordinance becomes effective but which does not conform with the regulations for the district in which it is located.

c. Use, Principal - Any primary purpose for which a structure or lot is designed, arranged, occupied, or intended, which may be used or maintained under this ordinance. The use of any structure or land on the same lot and incidental or supplementary thereto and permitted under this Ordinance shall be considered as accessory use.

63. Used Car Sales - A retail establishment displaying and selling four (4) or more previously-owned vehicles per year.

64. Yard - A required open space lying between a building or outer building of a group and the nearest lot line.

a. Yard, Front - An open space extending for the full width of the lot between the front line of the building wall and the front lot line. on corner lots either street may be designated as the front yard regardless of the address or entrance location of the building. The front -yard setback shall apply to one street only.

b. Yard, Rear - An open space extending the full width of the lot between the rear line of the building wall and the rear lot line. An accessory building or accessory use as herein permitted may be located in the rear yard. (Rev. 7-1-92)

c. Yard, Side - An open space extending for the full length of a building between the building wall and the side lot line. On triangular-shaped lots, each side yard setback shall be paralleled and extended to a rear point of intersection within the lot.

38-3 ZONING DISTRICTS

A Division into Districts

The City of Beverly, Massachusetts is hereby divided into eighteen Zoning Districts to be designated as follows:

Designation	Description
R-90	One-family residential
R-45	One-family residential (suburban density)
R-22	One-family residential (suburban density)
R-15	One-family residential (urban density)
R-10	One-family residential (urban density)
R-6	One and two-family residential
RMD	Multi-family residential
RHD	Multi-family residential (high density)
RSD	Special residential development (high density)
CN	Neighborhood commercial
CC	Central business district
CG	General commercial (automobile oriented)
IR	Restricted industrial, research and office
IG	General industrial
HD	Hospital district
WD	Waterfront development
WDR	Waterfront development residential
MOSR	Municipal open space and recreation

Specific use and dimensional regulations applicable to each of these Districts are shown in Sections 38-6 through Section 38-23 and Section 38-33. General provisions applicable to all districts are included throughout this ordinance.

B Overlay Districts

Overlay districts to the Zoning Ordinance may be established within the City of Beverly. These overlay districts and their attendant requirements are presented in Section 38-31 of this Ordinance.

38-4 ZONING MAP

A Zoning District Map

1. The location and boundary of the zoning districts are shown on the "Zoning District Map" of the City of Beverly Massachusetts as amended, such map to be part of this Ordinance duly certified and filed in the Office of the City Clerk.

2. Amendments to district boundaries shall be entered on said map.

B Interpretation of District Boundaries

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning District Map, the following rules shall apply:

1. Where a boundary is indicated as a highway, street, alley, railroad, water course or City boundary, it shall be construed to be the center line thereof or such City boundary.

2. Where a boundary is indicated as approximately parallel to a highway, street, alley, railroad, water course or City boundary, it shall be construed as parallel thereto and at such distance from the centerline thereof, as shown on the Zoning District Map.

3. If no dimension is given on the Zoning District Map, the location of any boundary shall be determined by use of the scale shown on the Zoning District Map.

4. Where a zoning district boundary line divides a lot under a single ownership at the time of the effective date of this Ordinance, district regulations governing either portion of the severed lot may be extended up to 50 feet into the adjoining district. (Rev. 6-26-87)

5. The Board of Appeals shall resolve all boundary questions not covered by Section 38-4.B.1. through 38-4.B.4. above.

38-5 GENERAL PROVISIONS

A Application of Regulations

1. Except as hereinafter provided, no building or structure or part thereof and no lot or land or part thereof shall hereinafter be used in any manner which does not conform to the use regulations of this Ordinance for the district in which such building, structure, lot or land is located.

2. Except as hereinafter provided, no building or structure or part thereof shall hereinafter be erected, altered, enlarged, or rebuilt in any manner which does not conform to the dimensional regulations of this Ordinance in the district in which such building or structure is located. (Ord. No. 170, 12-4-06)

B Undersized Lots of Record

Any lot lawfully laid out by plan or deed duly recorded, as defined in Section 81L of Chapter 41 of the Massachusetts General Laws, or any lot shown on a plan endorsed with the words "approval under the subdivision control law not required" or words of similar import, pursuant to Section 81P of Chapter 41 of the Massachusetts General Laws, which has a lesser area, frontage, width, and depth required under this amendment for the district in which such lot is located shall be subject to the provisions of Chapter 40A, Section 6 of the Massachusetts General Laws. The minimum side yard for such lots shall not be less than eight (8) feet.

C Building Permits Issued Prior to Adoption of This Ordinance

All building permits issued prior to the adoption of this Chapter are subject to the provisions of Chapter 40A, Sections 6 and 7 of the Massachusetts General Laws.

D Obstruction to Air Navigation

1. In airport approach zones for instrument-landing runways, building and other structure heights shall be limited to provide a clear glide path of 34:1 from the end of the runway.

2. No use shall be permitted which creates electrical interference with navigation aids or communications between airport and aircraft, impairs landing, takeoff, or maneuvering of aircraft by reasons of glare, smoke, dust, and the like; and makes it difficult to distinguish between airport lights and others.

3. Any authorization for variance from the terms of the section granted by the Board of Appeals may require the applicant to permit the City to install, operate, and maintain such markers and lights as may be necessary to indicate the presence of an airport hazard.

E Height Exceptions

1. Building height limits set forth in this Ordinance shall not apply to belfries, chimneys, cupolas, domes, flagpoles, flues, monuments, spires, water towers and tanks, air conditioning units, nor to similar structures and mechanical appurtenances placed on roofs, except where such structures are located within an airport approach zone; and provided that no such structures shall be used for human occupancy. (Ord. No. 28, 4-30-97)

2. A parapet wall, cornice, or similar architectural element shall not exceed more than four (4) feet above the height limits prescribed in this Ordinance.

3. Additional stories on sloping lots - On a sloping lot, a story or stories in addition to the number permitted in the District in which such lot is located shall be permitted on the downhill side of a building erected on such lot, provided that the building height shall not otherwise be increased above that specified for the district.

(E.4 deleted by Ord. No. 170, 12-4-06)

F. Area, Lot Width, Yards

1. Joint use of lot prohibited - No part of a yard or other open space about any building required for the purpose of complying with this Ordinance shall be included as part of a yard or other open space similarly required for another building.

2. Reduction of area - No lot shall be changed in size, shape, or ownership so that the height, area, yard, or off-street parking requirements herein prescribed are no longer satisfied. This paragraph shall not apply where a portion of a lot is acquired for a public purpose.

3. Yards

a. Every part of a required yard shall be open to the sky and unobstructed except for accessory buildings in the yard area, and except for ordinary projections of the belt courses, cornices, sills, skylights, and ornamental features projecting from the

building not more than twelve (12) inches. Open or lattice-enclosed fire escapes and the ordinary projections of chimneys and flues are permitted.

b. Projecting eaves, chimneys, bay windows, balconies, open fire escapes, and like projections which do not project more than three and one-half feet; and unenclosed steps, unroofed porches, enclosed bulkheads, and the like which do not project more than ten feet beyond the line of the foundation wall, may extend into the required yards otherwise provided for the district in which the structure is built. (Rev. 7-1-92)

(F.3.c. deleted by Ord. No. 170, 12-4-06)

4. Every lot shall have a minimum frontage (as defined above) on a way, public or private, which shall be equivalent to the minimum lot width, except as noted in Section 38-5.I. below.

5. Any lot on which more than one house existed at the time of the adoption of this Ordinance may be divided with a minimum of non-conformance, and sold to separate owners and used with a minimum of non-conformance.

G Corner Clearance

On a corner lot, buildings may be erected subject to the provisions of the density and dimensional requirements of the applicable District, but nothing else shall be erected, placed, planted, or allowed to grow in such a manner as to obstruct vision at intersections between a height of three (3) and eight (8) feet above the street grades in the triangular area bounded by the street lines of such corner lot and a line joining points along said street lines of 25 feet from their intersection.

H Severability

The separate provisions of this Ordinance and the Zoning Map are adopted with the intent that each shall have force and effect separately and independently, except insofar as by expressed reference or necessary implication any one, or any part thereof, is made dependent upon another.

The invalidity of any provision or part thereof shall not affect the validity of any other provision.

I Pork Chop Shaped Lots

1. The Beverly Planning Board may authorize Pork Chop Shaped Lots by Special Permit in residential and industrial districts on streets in existence at the date of adoption of this Ordinance (December, 1984) and on new streets in industrial zoning districts if the following conditions are met:

   a. That the site is an appropriate location for the proposed use and that the character of adjoining uses will not be adversely affected.

   b. That no factual evidence is found that property values in the district will be adversely affected by such use.

   c. That no undue traffic and no nuisance or unreasonable hazard will result.

   d. That adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed uses.

   e. That there are no valid objections from abutting property owners based on demonstrable fact.

   f. That the minimum lot area of the Pork Chop Shaped Lot be at least the minimum lot area required in the zoning district in which the pork chop shaped lot is located except the portion of the lot which is the narrow strip or portion of the lot to the way, shall not be included in the lot area calculation.

   g. That the width of the Pork Chop Shaped Lot measured at the shortest distance between side lot lines is no less than seventy-five (75) feet at any point between the street and the existing or proposed building on the lot. Pork Chop lots approved by the Planning Board previous to December, 1984, with less than the required frontage but at least 20 feet of frontage shall be considered valid building lots for a period of fifteen (15) years from the date of adoption of this zoning amendment (9/5/91). On September 5, 2006, any pork-chop lot approved by the Planning Board prior to December 1984 which is vacant or for which a valid building permit has not yet been issued, shall lose its status as a "grandfathered" lot and be considered unbuildable. (Rev. 9-5-91)

h. All front, rear, and side yard setbacks shall be the same as the minimum setbacks specified for the zone in which the lot is located. (Rev. 6-26-87)

i. That the depth of that portion of the lot which fails to satisfy the lot frontage requirements set forth in Section 38-2.B.26 between the street and the existing or proposed building on the lot cannot exceed a distance of two hundred and fifty (250) feet from the street.

j. That there is not more than one (1) other Pork Chop Shaped Lot with frontage contiguous to it.

2. The Planning Board shall follow the procedural requirements for Special Permits as per Massachusetts General Law Chapter 40A and as per the Beverly Zoning Ordinance Section 38-28 and Section 38-29 which includes notice and public hearings.

J Wind Energy Conversion Systems

Wind energy conversion systems devices which convert wind energy to mechanical or electrical energy are allowed by Special Permit from the Board of Appeals, if the applicant demonstrates that the installation will not cause a) excessive noise (excessive noise being above 50 dBA at the nearest lot line), or b) interference with local television and radio reception or otherwise derogate substantially from the public good, as well as meeting requirements of Section 38-28.C., except wind energy conversion systems are allowed by right if they meet all of the following conditions:

1. A single windmill or wind energy conversion system may be used on a lot for generating power primarily for on-site use.

2. The minimum setback distance for all wind energy conversion systems from any abutter's property line shall be (and shall continue to be for the life of the installation) at least equal to the maximum height of the machine from grade, plus twenty (20) feet. Setbacks will be measured to the center of the tower base.

3. The maximum tower height shall be seventy (70) feet from grade to the center of the rotor.

4. Climbing access to the tower shall be limited by the installation of a fence with a locked gate around the tower base no lower than 6 feet and constructed in such a manner as to restrict passage through said fence or by limiting tower climbing apparatus to no lower than 10 feet from the ground.

5. The diameter of a rotor may not exceed thirty (30) feet.

6. The energy conversion system will be considered abandoned if not properly maintained for a period of two years or if designated a safety hazard by the Building Inspector. The owner of any wind energy conversion system which is considered to be abandoned or considered to be a safety hazard shall be required to immediately dismantle the installation. There will be a fine of up to one hundred dollars ($100) for each day after notification to dismantle.

7. The wind energy conversion system may not interfere with TV and radio reception. The applicant may be asked to bring in consultants at his/her own expense to certify that the system will not interfere with TV and radio reception. After the installation, if neighbors can demonstrate that there is excessive interference, the Board of Appeals may order that the wind energy conversion system be dismantled or modified to eliminate the interference.

8. The wind energy conversion system shall be installed in accordance with the instructions of the manufacturer and shall be installed on a tower approved by wind energy conversion system manufacturer, and shall be serviced in accordance with the manufacturer's instructions. There must be a structural support and foundation plan stamped and approved by a registered engineer in the Commonwealth of Massachusetts.

9. All certifications and plans required shall be at the applicant's expense.

10. The wind energy conversion system shall not cause excessive noise, above 50 dBA, at the nearest lot line.

K Solar Access

1. A solar energy collection system is a device, or combination of devices, or structures that are part of a device, or structure that uses incident solar radiation for passive solar space heating or that transforms incident solar radiation into thermal, mechanical, or electrical energy primarily for a main building on a lot and provides at least 5% of the building's energy needs.

2. When a solar energy collection system is installed on a lot, accessory structures or vegetation on an abutting lot shall not be located as to block the solar collector's access to solar energy. The portion of a solar collector that is protected is that portion which:

a. is located so as not to be shaded between the hours of 9:00 a.m. and 3:00 p.m. by a hypothetical 12 foot obstruction located on the lot line; and

b. has an area not greater than one-half of the heated floor area of the structure served.

3. This subsection does not apply to structures or vegetation existing in an abutting lot at the time of installation of the solar energy collection system, or on the effective date of this Ordinance, whichever is later. This subsection controls any accessory structures erected on, or vegetation planted in abutting lots after the installation of the solar energy collection system.

4. A statement that a solar energy collection system is installed on the lot shall be filed and recorded with the City Clerk, and the date of the installation shall be the date of the recording. Included will be a description of the site and location of the solar energy collection system.

L Removal of Sod, Loam, and Gravel

The removal of sod or loam or the removal of gravel or other mineral matter for commercial purposes shall be prohibited except by approval of the Board of Appeals. In acting upon applications under this Section, the following conditions shall be observed:

1. The Board of Appeals shall hold a public hearing after notifying all interested parties, as provided by Chapter 40A of the Massachusetts General Laws.

2. The applicant shall furnish a plan showing present and proposed conditions and state a time of completion.

3. The Board of Appeals shall consider the neighborhood and its future development in passing on applications.

4. The applicant shall furnish a performance bond of an amount determined by the Board of Appeals and surety satisfactory to the City Treasurer.

5. The applicant shall authorize the City to use the proceeds of the bond to restore the property to a condition not detrimental to the neighborhood or its future development if the work is not completed within two years of the proposed time.

6. No permits shall be granted for periods longer than five (5) years.

This section shall not apply to excavation or grading for streets, driveways, or walks, or in relation to structures for which a permit has been granted according to City Ordinances, or to the construction and operation of wells for water supply or excavation of trenches for drainage or sanitary purposes, except in the case of new subdivisions, in which case permission must be obtained from the Planning Board. Furthermore, this Section shall not apply to any earthwork within a new subdivision in which case permission must be obtained from the Planning Board and the Planning Board must review the present and planned grades and drainage, and the earthwork must follow the approved subdivision plan.

M Design Review Board

1. Purpose - the design review board shall review items for which building permits are sought and all proposals before the board of aldermen, board of appeals or planning board when such permits or proposals concern projects involving new construction or additions amounting to a twenty-five (25) percent or greater expansion of existing structures in the Central Commercial (CC), Neighborhood Commercial (CN), General Commercial (CG), Restricted Industrial (IR), General Industrial (IG), and Waterfront District (WD) zones. Additionally, the design review board will review all projects which involve IDFA loans, and those projects involving special permits and zoning variances in the CC, CN, CG, IR, IG, and WD zones at the request of the building inspector, City Planner, Planning Board, Aldermen, or Mayor, the Design Review Board shall review any new construction or rehabilitation project in any commercial, industrial, or "WD" zoning district. The board shall also review all signs requiring a sign permit from the building inspector. The recommendations of the design review board will be in order to help guide physical changes, so that these changes shall carry out the design objectives of the "Waterfront Revitalization Phase II Report: (pp. 4, 5, & 6), the building treatment recommendations of the "Downtown Revitalization Plan" (pp. 103-124) and the General Guidelines of the Beverly Sign Ordinance.

2. Appointment - the mayor shall appoint, subject to confirmation by the Board of Aldermen, a design review board to consist of seven (7) members: one (1) member shall be a representative from the Planning Staff, one (1) member from the Planning Board, one (1) member from the Board of Appeals, one (1) member from the Historic Commission and the remaining three (3) members shall include, if possible: one (1) architect, one (1) architect or landscape architect or

graphic designer, and one (1) business person and/or property owner from one of the designated design review districts.

3. Term - for the three (3) appointed members, the mayor shall initially appoint one member for three (3) years, one for two (2) years, and one for one year. Thereafter, one member shall be appointed, each year for a three year term. Vacancies shall be filled by appointment by the mayor and confirmation by the board of aldermen for the unexpired term.

4. Recommendation Procedure - The design review board shall, in cases where the planning board, zoning board of appeals or board of aldermen are involved, formally notify such board of a recommendation at least fourteen (14) days before a decision (vote or other action) is to be made. A representative from the Planning Staff may, in appropriate cases act as spokesman for the design review board and forward such recommendation to the appropriate board. In cases of building improvements or sign proposals under the design review board's jurisdiction where no planning board or zoning board of appeals action is necessary, a representative from the Planning Staff shall formally notify the building inspector of a recommendation before the applicant in question may obtain the necessary permits. In such cases, the building inspector shall be notified of a design review board recommendation within fourteen (14) days of building permit application. (M 1.- 4. Rev. 3-27-90)

5. The fees for the required reviews shall be as follows:

   Application fee for signs and canopies: $2.00 per Sq. Ft.
   Application fee for new building construction $100.00
   (Ord. No. 43, 3-14-00)

N Prohibition on Construction Near Wenham Lake

Other provisions of the zoning ordinance notwithstanding, no construction of any kind within 100' of Wenham Lake for residentially-used property, and no construction of any kind within 150' of Wenham Lake for property used for any purpose other than residential, shall be permitted.

Governmental uses and buildings under the jurisdiction of the City of Beverly shall not be exempt except by two-thirds vote of the Board of Aldermen. (See also Section 38-31, Watershed Protection Overlay District) (Rev. 5-20-93)

O Horticultural and Floricultural Activities

Nothing in this Ordinance shall be deemed to prevent horticultural or floricultural activities for personal use or consumption and nothing in this Ordinance shall be deemed to prohibit the sale of horticultural or floricultural products grown entirely on the premises from which it is sold during the months of May, June, July, August, and September, regardless of lot size. (Ord. No. 57, 1-2-96)

P Towers and Antennae

1. All communication towers and antennae allowed via "special permit" and other like facilities to be erected to a maximum height one hundred feet (100') and be set back minimum distance of the total height plus twenty feet (20') to the nearest abutting property, measured from the center of the tower or structure.

2. Climbing access to the tower shall be limited by the installation of a fence with a locked gate around the tower base no lower than six feet (6') and constructed in such a manner as to restrict passage through said fence or by limiting tower climbing apparatus to no lower than ten feet (10') above ground.

   a. Other provisions of this Ordinance notwithstanding, television and communication antennae may be erected on any governmentally-owned structure in any zoning district, and may be erected on any structure existing at the time of adoption of this Ordinance regardless of ownership in any non-residential zoning district, without a special permit: provided, however, that the antennae do not project more than twenty feet (20') above the top of the structures on which they are located.

   b. Special Permits shall not be required for television and communication antennae erected by non-commercial users for non-commercial purposes: provided, however, that such antennae must meet the height and setback requirements applicable to the zoning district in which they are located. (Ord. No. 28, 4-30-97)

38-6 COMMON PERMITTED USES
(Ord. No. 206, 12-29-05)

A Exempted Uses

Government uses and buildings under the jurisdiction of the City of Beverly are allowed in all districts. Additionally, those uses exempted from the provisions of this Ordinance in accordance with Massachusetts General Laws Chapter 40A, Section 3 are allowed in all zoning districts, subject to the provisions and requirements of that Section of State law. Utility company terminal enclosures, service cabinets, and underground vaults are allowed in all districts, provided they are screened (see Section 38-2.B for definition of screening).

B. Accessory Buildings in Residential Districts
(Ord. No. 169, 8-27-96, Ord. No. 206, 12-29-05)

1. The term "accessory building" is defined in Section 38-2.B. of this Ordinance. It does not include *attached* garages.

2. Accessory buildings including detached garages, pool houses, barns, greenhouses, and tool sheds shall be permitted anywhere in the side or rear yard of any lot in a residential zoning district if they a) conform to the required rear yard and side yard requirements, b) occupy twenty five percent (25%) or less of the area of such yard(s) and c) are no taller than fifteen (15) feet in height or a height equal to one half the distance to the nearest lot line, to a maximum of twenty-two (22) feet. No accessory building may be constructed within the front yard of a lot.

   Accessory buildings located within the minimum setback requirements applicable to the main building are subject to the dimensional requirements outlined below and may occupy no more than twenty five percent (25%) of the side or rear yard area.

3. The maximum number of accessory buildings permitted on a lot is two (2). The Zoning Board of Appeals may authorize additional accessory buildings, by special permit.

4. In addition to the setback requirements outlined below, an accessory building shall be sited at least five (5) feet from the main building on the lot.

5. Dimensional Requirements for Accessory Buildings

a. Minimum front yard setback: same as for main building.

b. Minimum side and/or rear yard setback: five (5) feet if less than ten (10) feet in height; otherwise, setbacks applicable to the main building apply.

c. Maximum height: Ten (10) feet if located within the required side or rear yard setback; otherwise, the maximum height is fifteen (15) feet, or a height equal to one half the distance to the nearest lot line, to a maximum of twenty two (22) feet.

d. Maximum size: One hundred (100) square feet if located within the required side or rear yard setback; otherwise, maximum size is twenty five percent (25%) of the yard's area.

The Zoning Board of Appeals shall have the authority under M.G.L. Chapter 40A, Section 6 to permit relief from the maximum height and size requirements of this section.

C Accessory Buildings and Uses in Other Districts

Accessory buildings and uses required for and clearly incidental to the main building or use in all non-residential zoning districts are permitted. Such accessory buildings shall be permitted anywhere in the side or rear yard of any lot in a non-residential zoning district if they conform to the required rear and side yard setback requirements and height restrictions applicable to the main building. No accessory building may be constructed within the front yard of a lot.

D Swimming Pools and Tennis Courts

1. Swimming pools and tennis courts shall be permitted in the side or rear yards but with a minimum setback from any rear or side lot line of ten (10) feet. No tennis court or swimming pool may be constructed within the front yard of a lot.

2. Swimming pool shall be enclosed by a safety fence of not less than four (4) feet in height. Above-ground pools must be equipped with a self-closing gate, latch and lock around the ladder access. No pool shall be filled with water before a permanent fence has been erected and, in the case of an above ground pool, a self-closing gate, latch and lock installed around the ladder access. (Ord. No. 206, 12/29/05)

38-7 R-90 - ONE-FAMILY DISTRICT

A General Description

This district is established to principally provide for single-family detached residences on large lots (approximately 2 acres minimum). Related recreational, agricultural, and educational facilities are allowed under special conditions.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Historic site including historic dwellings, or museum not operated for profit.
3. Sanitary landfill facilities; provided that the same are operated by the municipality or pursuant to a municipal lease or license.
4. Home occupation as defined herein.
5. Agricultural, horticultural, and floricultural (as defined in M.G.L. Chapter 61A) uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of five (5) acres. (Ord. No. 57, 1-2-96)
6. Those uses, including accessory buildings, allowed by right under Section 38-6.

C Uses By Special Permit

The following uses are only allowed by a Special Permit, granted by the Board of Appeals:

1. Planned residential development, subject to the provisions of Section 38-24.A. below.
2. Subsidized elderly housing.
3. Golf club, beach club, or tennis club.
4. Commercial marina for the sale, mooring, and rental of boats.
5. Private, non-commercial stable.
6. Commercial riding stable.
7. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
8. Bed & breakfast establishments. (Rev. 3-19-91)
9. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
10. Pork-chop lots on streets in existence prior to December, 1984, subject to the provisions of section 38-5.I. above.

11. Horticultural and floricultural (as defined by M.G.L. Chapter 61A) uses on lots with at least one (1) acre but less than five (5) acres. (Ord. No. 57, 1-2-96)
12. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1.	Minimum lot area:	90,000 square feet
2.	Minimum lot frontage:	225 feet (Rev. 7-1-92)
3.	Minimum front yard setback:	30 feet
4.	Minimum side yard setback:	20 feet
5.	Minimum rear yard setback:	25 feet
6.	Maximum building height:	35 feet

7. For "Cluster" development, see Section 38-24.B.

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the R-90 District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. No major recreational equipment as defined herein shall be parked or stored in the District, except in a carport, or enclosed buildings, or in the side yard or rear yard area. No such equipment shall be used for living, sleeping, or housekeeping purposes on the lot on which it is stored.

38-8 R-45 - ONE-FAMILY DISTRICT

A General Description

This district is established to principally provide for single-family detached residences at suburban density on moderately large lots (approximately 1 acre minimum). Related recreational, agricultural, and educational facilities are allowed under special conditions.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Historic site including historic dwellings, or museum not operated for profit.
3. Sanitary landfill facilities; provided that the same are operated by the municipality or pursuant to a municipal lease or license.
4. Home occupation as defined herein.
5. Agricultural, horticultural, and floricultural (as defined in M.G.L. Chapter 61A) uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of five (5) acres. (Ord. No. 57, 1-2-96)
6. Those uses, including accessory buildings, allowed by right under Section 38-6.

C Uses By Special Permit

The following uses are only allowed by a Special Permit, granted by the Board of Appeals:

1. Planned residential development, on a minimum lot size of ten (10) acres, subject to the provisions of Section 38-24.A. below.
2. Subsidized elderly housing.
3. Golf club, beach club, or tennis club.
4. Commercial marina for the sale, mooring, and rental of boats.
5. Private, non-commercial stable.
6. Commercial riding stable.
7. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
8. Bed & breakfast establishments. (Rev. 3-19-91)
9. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
10. Pork-chop lots on streets in existence prior to December, 1984, subject to the provisions of Section 38-5.I. above.

11. Horticultural and floricultural (as defined by M.G.L. Chapter 61A) uses on lots with at least one (1) acre but less than five (5) acres. (Ord. No. 57, 1-2-96)
12. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1.	Minimum lot area:	45,000 square feet
2.	Minimum lot frontage:	175 feet (Rev. 7-1-92)
3.	Minimum front yard setback:	30 feet
4.	Minimum side yard setback:	20 feet
5.	Minimum rear yard setback:	25 feet
6.	Maximum building height:	35 feet

7. For "Cluster" development, see Section 38-24.B.

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the R-45 District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. No major recreational equipment as defined herein shall be parked or stored in the District, except in a carport, or enclosed buildings, or in the side yard or rear yard area. No such equipment shall be used for living, sleeping, or housekeeping purposes on the lot on which it is stored.

38-9 R-22 - ONE-FAMILY DISTRICT

A General Description

This district is established to principally provide for single-family detached residences at suburban density on medium sized lots (approximately 1/2 acre minimum). Related recreational, agricultural, and educational facilities are allowed under special conditions.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Historic site including historic dwellings, or museum not operated for profit.
3. Sanitary landfill facilities; provided that the same are operated by the municipality or pursuant to a municipal lease or license.
4. Home occupation as defined herein.
5. Agricultural, horticultural, and floricultural (as defined in M.G.L. Chapter 61A) uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of five (5) acres. (Ord. No. 57, 1-2-96)
6. Those uses, including accessory buildings, allowed by right under Section 38-6.

C Uses By Special Permit

The following uses are only allowed by a Special Permit, granted by the Board of Appeals:

1. Planned residential development, subject to the provisions of Section 38-24.A. below.
2. Subsidized elderly housing.
3. Commercial marina for the sale, mooring, and rental of boats.
4. Private, non-commercial stable.
5. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
6. Bed and breakfast establishments. (Rev. 3-19-91)
7. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
8. Pork-chop lots on streets in existence prior to December, 1984, subject to the provisions of Section 38-5.I. above.
9. Horticultural and floricultural (as defined by M.G.L. Chapter 61A) uses on lots with at least one (1) acre but less than five (5) acres. (Ord. No. 57, 1-2-96)

10. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. Minimum lot area: 22,000 square feet
2. Minimum lot frontage: 150 feet (Rev. 7-1-92)
3. Minimum front yard setback: 30 feet
4. Minimum side yard setback: 15 feet
5. Minimum rear yard setback: 25 feet
6. Maximum building height: 35 feet
7. For "Cluster" development, see Section 38-24.B.

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the R-22 District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. No major recreational equipment as defined herein shall be parked or stored in the District, except in a carport, or enclosed buildings, or in the side yard or rear yard area. No such equipment shall be used for living, sleeping, or housekeeping purposes on the lot on which it is stored.

38-10 R-15 - ONE-FAMILY DISTRICT

A General Description

This district is established to principally provide for single-family detached residences at urban density on medium sized lots (approximately 1/3 acre minimum). Related recreational, agricultural, and educational facilities are allowed under special conditions.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Historic site including historic dwellings, or museum not operated for profit.
3. Sanitary landfill facilities; provided that the same are operated by the municipality or pursuant to a municipal lease or license.
4. Home occupation as defined herein.
5. Agricultural, horticultural, and floricultural (as defined in M.G.L. Chapter 61A) uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of five (5) acres. (Ord. No. 57, 1-2-96)
6. Those uses, including accessory buildings, allowed by right under Section 38-6.

C Uses By Special Permit

The following uses are only allowed by a Special Permit, granted by the Board of Appeals:

1. Planned residential development, subject to the provisions of Section 38-24.A. below.
2. Subsidized elderly housing.
3. Commercial marina for the sale, mooring, and rental of boats.
4. Private, non-commercial stable.
5. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
6. Bed and breakfast establishments. (Rev. 3-19-91)
7. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
8. Pork-chop lots on streets in existence prior to December, 1984, subject to the provisions of Section 38-5.I. above.

9. Horticultural and floricultural (as defined by M.G.L. Chapter 61A) uses on lots with at least one (1) acre but less than five (5) acres. (Ord. No. 57, 1-2-96)
10. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1.	Minimum lot area:	15,000 square feet
2.	Minimum lot frontage:	125 feet (Rev. 7-1-92)
3.	Minimum front yard setback:	30 feet
4.	Minimum side yard setback:	15 feet
5.	Minimum rear yard setback:	25 feet
6.	Maximum building height:	35 feet

7. For "Cluster" development, see Section 38-24.B.

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the R-15 District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. No major recreational equipment as defined herein shall be parked or stored in the District, except in a carport, or enclosed buildings, or in the side yard or rear yard area. No such equipment shall be used for living, sleeping, or housekeeping purposes on the lot on which it is stored.

38-11 R-10 - ONE-FAMILY DISTRICT

A General Description

This district is established to principally provide for single-family detached residences at urban density on small sized lots (approximately 1/4 acre minimum). Related recreational, agricultural, and educational facilities are allowed under special conditions.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Historic site including historic dwellings, or museum not operated for profit.
3. Sanitary landfill facilities; provided that the same are operated by the municipality or pursuant to a municipal lease or license.
4. Home occupation as defined herein.
5. Agricultural, horticultural, and floricultural (as defined in M.G.L. Chapter 61A) uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of five (5) acres. (Ord. No. 57, 1-2-96)
6. Those uses, including accessory buildings, allowed by right under Section 38-6.

C Uses By Special Permit

The following uses are only allowed by a Special Permit, granted by the Board of Appeals:

1. Subsidized elderly housing.
2. Commercial marina for the sale, mooring, and rental of boats.
3. Private, non-commercial stable.
4. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
5. Bed and breakfast establishments. (Rev. 3-19-91)
6. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
7. Pork-chop lots on streets in existence prior to December, 1984, subject to the provisions of Section 38-5.I. above.
8. Horticultural and floricultural (as defined by M.G.L. Chapter 61A) uses on lots with at least one (1) acre but less than five (5) acres. (Ord. No. 57, 1-2-96)

9. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. Minimum lot area: 10,000 square feet
2. Minimum lot frontage: 100 feet (Rev. 7-1-92)
3. Minimum front yard setback: 20 feet
4. Minimum side yard setback: 15 feet
5. Minimum rear yard setback: 25 feet
6. Maximum building height: 35 feet
7. For "Cluster" development, see Section 38-24.B.

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the R-10 District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. No major recreational equipment as defined herein shall be parked or stored in the District, except in a carport, or enclosed buildings, or in the side yard or rear yard area. No such equipment shall be used for living, sleeping, or housekeeping purposes on the lot on which it is stored.

38-12 R-6 - ONE-FAMILY AND TWO-FAMILY DISTRICT

A General Description

This district is established to provide for single-family and two-family residences at urban density on small sized lots (6,000 square foot minimum). Related recreational, agricultural, and educational facilities are allowed under special conditions.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Semi-detached dwelling and two-family dwelling.
3. Historic site including historic dwellings, or museum not operated for profit.
4. Sanitary landfill facilities; provided that the same are operated by the municipality or pursuant to a municipal lease or license.
5. Home occupation as defined herein.
6. Agricultural, horticultural, and floricultural (as defined in M.G.L. Chapter 61A) uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of five (5) acres. (Ord. No. 57, 1-2-96)
7. Those uses, including accessory buildings, allowed by right under Section 38-6.

C Uses By Special Permit

The following uses are only allowed by a Special Permit, granted by the Board of Appeals:

1. Subsidized elderly housing.
2. Commercial marina for the sale, mooring, and rental of boats.
3. Private, non-commercial stable.
4. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
5. Bed and breakfast establishments. (Rev. 3-19-91)
6. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
7. Pork-chop lots on streets in existence prior to December, 1984, subject to the provisions of Section 38-5.I. above.

8. Horticultural and floricultural (as defined by M.G.L. Chapter 61A) uses on lots with at least one (1) acre but less than five (5) acres. (Ord. No. 57, 1-2-96)
9. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. Minimum lot area: 6,000 square feet plus 1,000 square feet for one additional dwelling unit.
   Minimum lot area for semi-detached dwelling unit: 3,500 square feet.
2. Minimum lot frontage: 65 feet (Rev. 7-1-92)
   Minimum lot width for semi-detached dwelling unit: 40 feet
3. Minimum front yard setback: 20 feet
4. Minimum side yard setback: 10 feet
   Minimum side yard setback for semi-detached dwelling unit: 15 feet (one side only)
5. Minimum rear yard setback: 25 feet
6. Maximum building height: 35 feet

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the R-6 District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. No major recreational equipment as defined herein shall be parked or stored in the District, except in a carport, or enclosed buildings, or in the side yard or rear yard area. No such equipment shall be used for living, sleeping, or housekeeping purposes on the lot on which it is stored.

38-13 RMD - MULTI-FAMILY DISTRICT

A General Description

This district is established to provide for multi-family residences at medium density. Related recreational, agricultural, and educational facilities are allowed under special conditions.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Semi-detached dwelling and two-family dwelling.
3. Multi-family dwelling or apartment house, subject to the requirements of Section H below.
4. Historic site including historic dwellings, or museum not operated for profit.
5. Subsidized elderly housing.
6. Sanitary landfill facilities; provided that the same are operated by the municipality or pursuant to a municipal lease or license.
7. Home occupation as defined herein.
8. Agricultural, horticultural, and floricultural (as defined in M.G.L. Chapter 61A) uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of five (5) acres. (Ord. No. 57, 1-2-96)
9. Those uses, including accessory buildings, allowed by right under Section 38-6.

C Uses By Special Permit

The following uses are only allowed by a Special Permit, granted by the Board of Appeals:

1. Planned residential development, subject to the provisions of Section 38-24.A.
2. Commercial marina for the sale, mooring, and rental of boats.
3. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
4. Bed and breakfast establishments. (Rev. 3-19-91)
5. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
6. Pork-chop lots on streets in existence prior to December, 1984, subject to the provisions of Section 38-5.I. above.
7. Horticultural and floricultural (as defined by M.G.L. Chapter

61A) uses on lots with at least one (1) acre but less than five (5) acres. (Ord. No. 57, 1-2-96)

8. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. Minimum lot area: 8,000 square feet plus 4,000 square feet for each additional dwelling unit-over two.
   Minimum lot area for semi-detached dwelling unit: 3,500 square feet. (Rev. 10-8-87)
2. Minimum lot frontage: 65 feet (Rev. 7-1-92)
   Minimum lot width for semi-detached dwelling unit: 40 feet
3. Minimum front yard setback: 20 feet
4. Minimum side yard setback: 10 feet
   Minimum side yard setback for semi-detached dwelling unit: 15 feet (one side only)
5. Minimum rear yard setback: 20 feet
6. Maximum building height: 35 feet

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the RMD District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. No major recreational equipment as defined herein shall be parked or stored in the District, except in a carport, or enclosed buildings, or in the side yard or rear yard area. No such equipment shall be used for living, sleeping, or housekeeping purposes on the lot on which it is stored.

H Special Requirements for Multiple Dwellings

The development of multiple dwellings which includes town-houses shall be in accordance with the density and dimensional requirements of Section D above, and the following:

1. No multiple dwelling shall measure more than 125 feet on its long side; except that where front and rear setback offsets of at least three

(3) feet are provided at 50 foot intervals more or less, the length of said dwelling shall not exceed a length of 200 feet.

2. In multiple dwelling groups, the minimum spacing between buildings shall be as follows: front-to-front, front-to-rear, and rear-to-rear 60 feet; end-to-end (with facing windows) - not less than their average height; end-to-end (without facing windows) or corner-to-corner (offset) - not less than one-half of their height. Front-to-rear siting shall be avoided if at all practicable.

3. Interior private ways shall have a minimum width of 24 feet for two-way traffic and 18 feet for one-way traffic and shall be paved in accordance with City specifications. Minimum building setbacks from such private access drives shall be 35 feet and 30 feet, respectively, from the centerlines thereof. (Rev. 7-1-92)

4. All multiple-family dwellings shall be served by public or equivalent sanitary sewer and water systems. No building permit shall be granted unless the Building Inspector shall first receive a report from the Commissioner of Public Works that provision has been made for the disposal of sewage into the system of sufficient capacity.

5. All electrical and telephone service shall be provided underground to all buildings within a multiple dwelling group project. Antennae for the purposes of television reception shall be provided within a building wherever practicable, or else by one master antennae for the project.

6. No multiple dwelling group nor any individual multiple dwelling shall be permitted unless provision shall be made for adequate snow removal and trash and garbage disposal.

7. Sufficient enclosed area and equipment shall be provided within each multiple-family dwelling for laundering and drying purposes. No outside area shall be provided for such purposes, unless such area is enclosed by a solid screen of evergreen shrubs or fencing at least six (6) feet high.

8. A plan showing recreational facilities must be approved by the Planning Board. The area shall be a minimum of 10% of the gross area of the site and shall be contiguous.

38-14 RHD - MULTI-FAMILY DISTRICT

A General Description

This district is established to provide principally for multi-family residences at high density. Related recreational, agricultural, and educational facilities as well as elderly housing, rooming and boarding houses, and health clubs are allowed under special conditions.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Semi-detached dwelling and two-family dwelling.
3. Multi-family dwelling or apartment house, subject to the requirements of Section H below.
4. Historic site including historic dwellings, or museum not operated for profit.
5. Subsidized elderly housing.
6. Sanitary landfill facilities; provided that the same are operated by the municipality or pursuant to a municipal lease or license.
7. Home occupation as defined herein.
8. Agricultural, horticultural, and floricultural (as defined in M.G.L. Chapter 61A) uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of five (5) acres. (Ord. No. 57, 1-2-96)
9. Those uses, including accessory buildings, allowed by right under Section 38-6.

C Uses By Special Permit

The following uses are only allowed by a Special Permit, granted by the Board of Appeals:

1. Rooming, lodging, or boarding house.
2. Gymnasium, health club, commercial swimming pool.
3. Private or quasi-public club, charitable institution, or community service organization except where the chief activity is a service customarily carried on as a business.
4. Commercial marina for the sale, mooring, and rental of boats.
5. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
6. Bed and breakfast establishments. (Rev. 3-19-91)

7. Pork-chop lots on streets in existence prior to December, 1984, subject to the provisions of Section 38-5.I. above.
8. Parking lot for commercial use in adjoining Commercial District.
9. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
10. Horticultural and floricultural (as defined by M.G.L. Chapter 61A) uses on lots with at least one (1) acre but less than five (5) acres. (Ord. No. 57, 1-2-96)
11. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. Minimum lot area: 6,000 square feet plus 3,000 square feet for each additional dwelling unit over two.
   Minimum lot area for semi-detached dwelling unit: 3,500 square feet. (Rev. 6-26-87)
2. Minimum lot frontage: 50 feet
   Minimum lot width for semi-detached dwelling unit: 40 feet
   (Rev. 6-26-87)
3. Minimum front yard setback: 15 feet (Rev. 6-26-87)
4. Minimum side yard setback: 10 feet, 15 feet if over three (3) stories
   Minimum side yard setback for semi-detached dwelling unit: 15 feet (one side only)
5. Minimum rear yard setback: 20 feet
6. Maximum building height: 55 feet (Rev. 10-9-87)

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the RHD District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. No major recreational equipment as defined herein shall be parked or stored in the District, except in a carport, or enclosed buildings, or in the side yard or rear yard area. No such equipment shall be used for living, sleeping, or housekeeping purposes on the lot on which it is stored.

H Special Requirements for Multiple Dwellings

The development of multiple dwellings which includes town-houses shall be in accordance with the density and dimensional requirements of Section D above, and the following:

1. No multiple dwelling shall measure more than 125 feet on its long side; except that where front and rear setback offsets of at least three (3) feet are provided at 50 foot intervals more or less, the length of said dwelling shall not exceed a length of 200 feet.

2. In multiple dwelling groups, the minimum spacing between buildings shall be as follows: front-to-front, front-to-rear, and rear-to-rear 60 feet; end-to-end (with facing windows) - not less than their average height; end-to-end (without facing windows) or corner-to-corner (offset) - not less than one-half of their height. Front-to-rear siting shall be avoided if at all practicable.

3. Interior private ways shall have a minimum width of 24 feet for two-way traffic and 18 feet for one-way traffic and shall be paved in accordance with City specifications. Minimum building setbacks from such private access drives shall be 35 feet and 30 feet, respectively, from the centerlines thereof.

4. All multiple-family dwellings shall be served by public or equivalent sanitary sewer and water systems. No building permit shall be granted unless the Building Inspector shall first receive a report from the Commissioner of Public Works that provision has been made for the disposal of sewage into the system of sufficient capacity.

5. All electrical and telephone service shall be provided underground to all buildings within a multiple dwelling group project. Antennae for the purposes of television reception shall be provided within a building wherever practicable, or else by one master antennae for the project.

6. No multiple dwelling group nor any individual multiple dwelling shall be permitted unless provision shall be made for adequate snow removal and trash and garbage disposal.

7. Sufficient enclosed area and equipment shall be provided within each multiple-family dwelling for laundering and drying purposes. No outside area shall be provided for such purposes, unless such area is enclosed by a solid screen of evergreen shrubs or fencing at least six (6) feet high.

8. A plan showing recreational facilities must be approved by the Planning Board. The area shall be a minimum of 10% of the gross area of the site and shall be contiguous.

38-15 RSD - SPECIAL RESIDENTIAL DISTRICT

A General Description

This district is established to provide principally for special residential development at high density, as well as one-family, two-family, and multi-family residences at high density. Related recreational, agricultural, and educational facilities as well as elderly housing, health, golf, and tennis clubs are allowed under special conditions.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Semi-detached dwelling and two-family dwelling.
3. Multi-family dwelling or apartment house, subject to the requirements of Section H below.
4. Planned residential development, subject to the provisions of Section 38-24.A. below.
5. Subsidized elderly housing.
6. Gymnasium, health club, commercial swimming pool, subject to the provisions of Section G.2 below.
7. Golf club, beach club, tennis club, subject to the provisions of Section G.2 below.
8. Historic site including historic dwellings, or museum not operated for profit.
9. Sanitary landfill facilities; provided that the same are operated by the municipality or pursuant to a municipal lease or license.
10. Home occupation as defined herein.
11. Retail establishment serving local area needs including, but not limited to, drug, grocery and baked goods store with up to 5,000 square feet of floor area per establishment, subject to the provisions of Section G.2 below.
12. Personal and consumer service establishments including, but not limited to, barber or beauty shop and laundromat, subject to the provisions of Section G.2 below.
13. Restaurant selling food for consumption entirely on the premises, subject to the provisions of Section G.2 below.
14. Agricultural, horticultural, and floricultural (as defined in M.G.L. Chapter 61A) uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of five (5) acres. (Ord. No. 57, 1-2-96)
15. Those uses, including accessory buildings, allowed by right under Section 38-6.

C Uses By Special Permit

The following uses are only allowed by a Special Permit, granted by the Board of Appeals:

1. Private or quasi-public club, charitable institution, or community service organization except where the chief activity is a service customarily carried on as a business.
2. Commercial marina for the sale, mooring, and rental of boats.
3. Private, non-commercial stable.
4. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
5. Pork-chop lots on streets in existence prior to December, 1984, subject to the provisions of Section 38-5.I. above.
6. Bed and breakfast establishments. (Rev. 3-19-91)
7. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
8. Horticultural and floricultural (as defined by M.G.L. Chapter 61A) uses on lots with at least one (1) acre but less than five (5) acres. (Ord. No. 57, 1-2-96)
9. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. The lot on which the building or group of buildings are constructed shall have a minimum area of 3,600 square feet for each dwelling unit in the development. Maximum coverage by buildings (not including the landscaped exterior of underground garage space) shall not exceed fifteen percent (15%) of the gross area of the lot or tract. Said lot or tract may have roads or ways constructed thereon, and the approval of said roads or ways by the Beverly Planning Board under the Subdivision Control Law (M.G.L. Chapter 41) shall not be deemed to divide said lot or tract into two or more lots or tracts.

2. No multiple dwelling shall measure more than 125 feet on its long side; except that where front and rear setback offsets of at least three (3) feet are provided at 50 foot intervals more or less, the length of said dwelling shall not exceed a length of 200 feet.

3. Accessory commercial uses permitted by this Ordinance shall not occupy more than two percent (2%) of the total gross floor space of multi-family dwellings. No exterior signs advertising such uses and no illuminated interior signs displayed in windows shall be permitted.

4. Except for fences, walls, gardens, and landscape features, no dwelling or structure shall be erected closer than two hundred (200) feet from the boundary line of land located in another district.

5. No building shall exceed 55 feet in height measured from the level of the principal entrance. (Rev. 6-26-87)

6. Not more than fifteen percent (15%) of the dwelling units within the district shall contain, three (3) or more bedrooms.

7. In multiple dwelling groups, the minimum spacing between buildings shall be as follows: front-to-front, front-to-rear, and rear-to-rear 60 feet; end-to-end (with facing windows) - not less than their average height; end-to-end (without facing windows) or corner-to-corner (offset) - not less than one-half of their height. Front-to-rear siting shall be avoided if at all practicable.

8. Interior private ways shall have a minimum width of 24 feet for two-way traffic and 18 feet for one-way traffic and shall be paved in accordance with the applicable rules and regulations of the Planning Board adopted under said Subdivision Control Law. Buildings other than carports or garages shall be set back not less than thirty-five (35) feet from the centerline of two-way interior private ways and not less than thirty (30) feet from the centerline of one-way interior private ways. Paved off-street parking spaces adjacent to such ways shall not be considered as part of said ways for purposes of computing the dwelling building setbacks therefrom.

9. All multiple-family dwellings shall be served by public or equivalent sanitary sewer and water systems. No building permit shall be granted unless the Building Inspector shall first receive a report from the Commissioner of Public Works that provision has been made for the disposal of sewage into the system of sufficient capacity.

10. All electrical and telephone service shall be provided underground to all buildings within a multiple dwelling group project. No building shall have more than one exterior television or radio antenna.

11. Sufficient enclosed area and equipment shall be provided within each multiple-family dwelling for laundering and drying purposes. No outside area shall be provided for such purposes, unless such area is enclosed by a solid screen of evergreen shrubs or fencing at least six (6) feet high.

12. No multiple dwelling group nor any individual multiple dwelling shall be permitted unless provision shall be made for adequate snow removal and trash and garbage disposal.

13. A plan showing recreational facilities must be approved by the Planning Board. The area shall be a minimum of 10% of the gross area of the site and shall be contiguous.

14. A site plan of the proposed development, including the location, length, and layout of proposed buildings, structures, roads, parking areas, recreational facilities, utilities, and other improvements must be approved by the Planning Board.

E Parking Requirements

1. At least two (2) paved off-street parking spaces shall be provided for each dwelling unit.

2. Off-street parking for other uses shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the RSD District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. No major recreational equipment as defined herein shall be parked or stored in the District, except in a carport, or enclosed buildings, or in the side yard or rear-yard area. No such equipment shall be used for living, sleeping, or housekeeping purposes on the lot on which it is stored.

2. Commercial and recreational uses clearly accessory or incidental to the principal use of the RSD District shall be permitted on the approval of a site plan by the Planning Board. Other commercial and recreational uses shall be allowed upon the approval of a site plan thereof by the Planning Board and upon the granting of a special permit therefor by the Board of Appeals.

38-16 CN - NEIGHBORHOOD COMMERCIAL DISTRICT

A General Description

This district is established principally to allow for limited commercial development adjacent to residential neighborhoods, intended to serve primarily those neighborhoods.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Semi-detached and two-family dwellings.
3. One or more dwellings in a permitted commercial building. (Rev. 6-26-87)
4. Historic site including historic dwellings, or museum not operated for profit.
5. Sanitary landfill facilities, provided that the same are operated by the municipality, or pursuant to a municipal lease or license.
6. Home occupation as defined herein.
7. Retail establishment serving local area needs including, but not limited to, drug, grocery, baked goods store, and photo processing stores, with up to 5,000 square feet of floor area per establishment.
8. Personal and consumer service establishments including, but not limited to, barber or beauty shop and laundromat.
9. Business and professional offices; banks.
10. Funeral home.
11. Agricultural, horticultural, and floricultural uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of 5,000 square feet.
12. Accessory buildings and uses required for and clearly incidental to the principal building or use are permitted.
13. Any use allowed by right under Section 38-6.

C Uses by Special Permit

The following uses are only allowed by Special Permit, granted by the Board of Appeals:

1. Subsidized elderly housing.
2. Other private or quasi-public club, charitable institution, or community service organization except where the chief activity is a service customarily carried on as a business.
3. Commercial marina for the sale, mooring, and rental of boats.

4. Private, non-commercial stable.
5. Restaurant selling food for consumption entirely on the premises.
6. Taxi, rail, bus passenger terminal.
7. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
8. Bed and breakfast establishments. (Rev. 3-19-91)
9. Any use, including accessory uses, allowed by Special Permit under Section 38-6.
10. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. Dimensional requirements are the same as the least restrictive adjacent residential district.

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the CN District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. Screening of conflicting uses - at the time of occupancy of a new non-residential use, or the expansion of the outside outline of an existing non-residential use of any lot in an industrial or commercial district, there shall be a bufferyard along each boundary which adjoins an "R" District or use. This bufferyard shall consist of landscaped plantings, including evergreens, the plantings to be of such height and density as is needed to adequately screen from view, any light glare, parking lots, loading bays, accessory buildings or uses. Fences, walls, and earthen berms may be included as part of the bufferyard, but shall not be used in place of the landscaped screening.

   The adequacy of screening and landscaping shall be approved by the Building Inspector, after consultation with the Planning Board, and shall be incorporated in the Building Inspector's records. In the event a Special Permit or site plan review is required, the Planting Plan shall be considered in this review. Required screening and landscaping shall be in good condition and appearance. Failure to maintain same shall be

deemed a violation of this Ordinance, and shall be subject to the enforcement procedures contained herein. (Rev. 6-26-87)

2. No retail or commercial establishment may operate between the hours of 12:00 midnight and 5:00 A.M. (Rev. 9-5-91)

38-17 CC - CENTRAL BUSINESS DISTRICT
(Ord. No. 35, 6-11-07)

A General Description

This district is established to provide principally for a central commercial business district.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Semi-detached and two-family dwelling.
3. One or more dwellings in a permitted commercial building, provided the floor area of the dwellings does not exceed 75% of the total floor area of the building and further provided that the minimum 25% commercial space is located on the first floor of the structure. (Rev. 6-26-87)
4. Subsidized elderly housing, subject to the provisions of Section 38-17D. below.
5. Historic site including historic dwellings, or museum not operated for profit.
6. Sanitary landfill facilities, provided that the same are operated by the municipality, or pursuant to a municipal lease or license.
7. Home occupation as defined herein.
8. Retail establishments.
9. Personal and consumer service establishments including, but not limited to, barber or beauty shop and laundromat.
10. Business and professional offices; banks.
11. Funeral home.
12. Restaurant selling food for consumption entirely on the premises.
13. Agriculture, horticultural, and floricultural uses and expansion or reconstruction of existing structures relating thereto a minimum lot size of 5,000 square feet.(Rev. 6-26-87)
14. Administrative offices, data processing centers, and laboratory for scientific and industrial research including testing and product development. (Rev. 6-26-87)
15. Printing and publishing establishment, including photostatic copying.
16. Taxi, rail, bus passenger terminal.
17. Accessory buildings and uses required for and clearly incidental to the principal building or use are permitted.
18. Those uses allowed by right under Section 38-6.

C Uses by Special Permit

The following uses are only allowed by Special Permit, granted by the Planning Board:

1. Multi-family dwelling or apartment house in which the residential use comprises from 76% to 100% of the total floor area of the building, subject to the requirements of Section H below. (Rev. 6-26-87)
2. Rooming, lodging, or boarding house.
3. Gymnasium, health club, commercial swimming pool.
4. Other private or quasi-public club, charitable institution, or community service organization except where the chief activity is a service customarily carried on as a business.
5. Commercial marina for the sale, mooring, and rental of boats.
6. Private, non-commercial stable.
7. Hotel or motel.
8. Place of commercial recreation such as a theater, bowling alley, roller skating rink or ice skating rink where the use is conducted entirely indoors. For purposes of this subsection, the term commercial-indoor recreation does not include those uses regulated by M.G.L. Chapter 140, Section 183A. (Rev. 5-20-93)
9. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
10. Parking lots or garages as principal use of the lot.
11. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
12. Commercial mobile radio service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

The following uses are only allowed by Special Permit, granted by the Board of Appeals:

1. Bed and Breakfast establishments. (Rev. 3-19-91)

D Building and Area Requirements

1. Commercial uses, residential uses or combined commercial/residential uses on "CC" - zoned lots with side and/or rear yards abutting a residential zoning district:

   a. Minimum lot area - none for 100% commercial use; 1,000 sq. ft. of total lot area per dwelling unit for residential use
   b. Minimum lot frontage - none for 100% commercial use; 50 feet for residential use
   c. Minimum front yard setback - none

d. Minimum side yard setback 10 feet, 15 feet if building is over 3 stories for that side yard which abuts the side or rear yard of a residentially zoned lot

e. Minimum rear yard setback - 20 feet - if the rear yard abuts a side or rear yard of a residentially zoned lot

f. Maximum building height - 55 feet when "RHD" is the abutting residential district, 35 feet when "RMD" or "R6" is the abutting residential district.

Commercial uses, residential uses or combined commercial/residential uses which abut residential zoning district by a public way with an average width of at least 25 feet or a railroad right of way of at least 25 feet, there shall be no setback requirement.

2. Residential uses which do not abut a residential zoning district:

a. Minimum lot area: 1,000 sq.ft. of total lot area per dwelling unit
b. Minimum lot frontage: 50 feet
c. Minimum front yard setback: 15 feet
d. Minimum side yard setback: 10 feet, 15 feet if over 3 stories
e. Minimum rear yard setback: 20 feet
f. Maximum height - 55 feet / 75 feet*

* The Planning Board may authorize, by special permit, an increase in building height over 55 feet, to a maximum of 75 feet for uses under subsection 38-17.D.2., 3., and 5. only, and only for lots zoned "CC overlay" on the official City zoning map, and only when the provisions of Section 38-17.G. below are met.

3. Commercial uses which do not abut a residential district:

a. Minimum lot area: none
b. Minimum lot frontage: none
c. Minimum front yard setback: none
d. Minimum side yard setback: none
e. Minimum rear yard setback: none
f. Maximum height: 55 feet / 75 feet*

* The Planning Board may authorize, by special permit, an increase in building height over 55 feet, to a maximum of 75 feet for uses under subsection 38-17.D.2., 3., and 5. only, and only for lots zoned "CC overlay" on the official City zoning map, and only when the provisions of Section 38-17.G. below are met.

4. Commercial or residential uses within structures existing at the time of the adoption of the Zoning Ordinance:

   a. Minimum lot area: none for commercial use; 1,000 sq.ft. of total lot area per dwelling unit for residential uses
   b. Minimum lot frontage: none
   c. Minimum front yard setback: none
   d. Minimum side yard setback: none
   e. Minimum rear yard setback: none
   f. Maximum height: 55 feet (D 1. - 4. Rev. 6-6-90 & 7-1-92)

5. Combined commercial/residential uses on lots with side and/or rear yards which do not abut a residential zoning district:

   a. Minimum lot area - none
   b. Minimum lot frontage - 50 feet
   c. Minimum front yard setback - none
   d. Minimum side yard setback - none
   e. Minimum rear yard setback - none
   f. Maximum building height - 55 feet/75 feet*

   * The Planning Board may authorize, by special permit, an increase in building height over 55 feet, to a maximum of 75 feet for uses under subsection 38-17.D.2., 3., and 5. only, and only for lots zoned "CC overlay" on the official City zoning map, and only when the provisions of Section 38-17.G. below are met.

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below, and with the parking requirements applicable to the Depot Parking Overlay District described in Section 38-17.E.2. below. (Ord. No. 61, 7-12-11)

2. Having determined that a reduction in the parking requirement for two-bedroom dwelling units within walking distance of the Beverly MBTA Depot is reflective of actual demand and would be beneficial in encouraging "smart growth" residential development, the City of Beverly hereby establishes the Depot Parking Overlay District, which shall include those lots within the CC District south of Federal Street and having frontage on Rantoul Street. The Depot Parking Overlay District is shown on the official City of Beverly Zoning Map. The off street parking requirement for one (1) and two (2) bedroom dwelling units located in the Depot

Parking Overlay District shall be one (1) off street parking space per dwelling unit. (Ord. No. 61, 7-12-11)

F Sign Requirements

1. All signs in the CC District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. Screening of conflicting uses - at the time of occupancy of a new non-residential use, or the expansion of the outside outline of an existing non-residential use of any lot in an industrial or commercial district, there shall be a bufferyard along each boundary which adjoins an "R" District or use.

   This bufferyard shall consist of landscaped plantings, including evergreens, the plantings to be of such height and density as is needed to adequately screen from view, any light glare, parking lots, loading bays, accessory buildings or uses. Fences, walls, and earthen berms may be included as part of the bufferyard, but shall not be used in place of the landscaped screening.

   The adequacy of screening and landscaping shall be approved by the Building Inspector, after consultation with the Planning Board, and shall be incorporated in the Building Inspector's records. In the event a Special Permit or site plan review is required, the Planting Plan shall be considered in this review. Required screening and landscaping shall be in good condition and appearance. Failure to maintain same shall be deemed a violation of this Ordinance, and shall be subject to the enforcement procedures contained herein. (Rev. 6-26-87)

2. The following provisions shall apply to those buildings in the CC zoning district that are authorized by Special Permit from the Planning Board to exceed 55' in height:

   a. The perimeter of at-grade parking areas shall be screened from abutting properties and streets by a landscape buffer at least eight feet (8') in width;

   b. During the special permit process, the Design Review Board shall have issued a finding that the design of the proposed development is consistent with the general intent of the City's Design Guidelines for Tall Buildings dated January 2007 and with the objectives embodied therein.

H Special Requirements for Multiple Dwellings

The development of multiple dwellings which includes townhouses shall be in accordance with the density and dimensional requirements of Section D above, and the following:

1. No multiple dwelling shall measure more than 125 feet on its long side; except that where front and rear setback offsets of at least three (3) feet are provided at 50 foot intervals more or less, the length of said dwelling shall not exceed a length of 200 feet.

2. In multiple dwelling groups, the minimum spacing between buildings shall be as follows: front-to-front, front-to-rear, and rear-to-rear 60 feet; end-to-end (with facing windows) - not less than their average height; end-to-end (without facing windows) **or** corner-to-corner (offset) - not less than one-half of their height. Front-to-rear siting shall be avoided if at all practicable.

3. No multiple dwelling group nor any individual multiple dwelling shall be permitted unless provision shall be made for adequate snow removal and trash and garbage disposal.

4. Sufficient enclosed area and equipment shall be provided within each multiple-family dwelling for laundering and drying purposes. No outside area shall be provided for such purposes, unless such area is enclosed by a solid screen of evergreen shrubs or fencing at least-six (6) feet high.

(Ord. No. 35, 6-11-07; Ord. No. 61, 7-12-11)

38-18 CG - GENERAL COMMERCIAL DISTRICT

A General Description

This district is established to provide principally for suburban and automotive related commercial development outside of residential areas.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. One or more dwellings in a permitted commercial building.
2. Historic site including historic dwellings, or museum not operated for profit.
3. Sanitary landfill facilities, provided that the same are operated by the municipality, or pursuant to a municipal lease or license.
4. Hotel or motel.
5. Home occupation as defined herein.
6. Retail establishments.
7. Gymnasium, health club, commercial swimming pool.
8. Personal and consumer service establishments including, but not limited to, barber or beauty shop and laundromat.
9. Business and professional offices; banks.
10. Funeral home.
11. Restaurant selling food for consumption entirely on the premises.
12. Fast food restaurant.
13. Place of commercial recreation such as a theater, bowling alley, roller skating rink or ice skating rink where the use is conducted entirely indoors. For purposes of this subsection, the term commercial-indoor recreation does not include those uses regulated by M.G.L. Chapter 140, Section 183A. (Rev. 5-20-93)
14. Agricultural, horticultural, and floricultural uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of 5,000 square feet.
15. Administrative offices, data processing centers, and laboratory for scientific and industrial research including testing and product development.
16. Printing and publishing establishment.
17. Taxi, rail, bus passenger terminal.
18. Car wash; establishment for the sale of automobiles, trucks, travel trailers, and major recreational equipment, but excluding heavy repair of same. (Rev. 6-26-87)
19. Accessory buildings and uses required for and clearly incidental to the principal building or use are permitted.

20. Those uses allowed by right under Section 38-6.
21. Public recreational boating facility. (Ord. No. 254, 11-23-94)

C Uses by Special Permit

The following uses are only allowed by Special Permit, granted by the Board of Appeals:

1. Subsidized elderly housing, subject to the provisions of Section 38-18.D. below.
2. Other private or quasi-public club, charitable institution, or community service organization except where the chief activity is a service customarily carried on as a business.
3. Commercial marina for the sale, mooring, and rental of boats.
4. Private, non-commercial stable.
5. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
6. Gasoline station.
7. Parking lots or garages as principal use of the lot.
8. Bed and breakfast establishments. (Rev. 3-19-91)
9. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
10. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. Minimum lot area: 10,000 sq. ft.
2. Maximum lot coverage: 35% by buildings and accessory structures, no more than 65% total impervious area as defined below. Impervious lot coverage may be increased up to 75% of lot by site plan approval granted by the Planning Board in accordance with Section 38-29.C. of the Zoning Ordinance. The 35% of the lot that is not buildable (or, in the case of site plan approval, 25%) shall either remain in its natural state or improved by loaming, seeding, grading, planting, and/or landscaping, in accordance with final site plan approval. For the purpose of this section "impervious area" shall be defined to mean the area of the lot covered by buildings, structures, parking, paved walkways, vehicular access and egress area, loading and unloading areas, loading docks, dumpsters and all areas that are paved or not in their natural vegetative state or landscaped.
3. Minimum lot frontage: 80 feet (Rev. 7-1-92)
4. Minimum front yard setback: 30 feet
5. Minimum side yard setback: 15 feet
6. Minimum rear yard setback: 15 feet

7. Maximum building height: 35 feet

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the CG District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. Screening of conflicting uses - at the time of occupancy of a new non-residential use, or the expansion of the outside outline of an existing non-residential use of any lot in an industrial or commercial district, there shall be a bufferyard along each boundary which adjoins an "R" District or use. This bufferyard shall consist of landscaped plantings, including evergreens, the plantings to be of such height and density as is needed to adequately screen from view, any light glare, parking lots, loading bays, accessory buildings or uses. Fences, walls, and earthen berms may be included as part of the bufferyard, but shall not be used in place of the landscaped screening.

   The adequacy of screening and landscaping shall be approved by the Building Inspector, after consultation with the Planning Board, and shall be incorporated in the Building Inspector's records. In the event a Special Permit or site plan review is required, the Planting Plan shall be considered in this review.

   Required screening and landscaping shall be in good condition and appearance. Failure to maintain same shall be deemed a violation of this Ordinance, and shall be subject to the enforcement procedures contained herein.

38-19 IR AND IR OVERLAY- RESTRICTED INDUSTRIAL, RESEARCH & OFFICE DISTRICT
(Ord. No. 230, 2-19-2009)

A General Description

This district is established to provide principally for office complexes, light industrial parks, and necessary support facilities, including ancillary storage, service, and retail uses. The IR Overlay district is established to provide principally for mixed use commercial development within the IR district. Lots zoned "IR Overlay" on the official City zoning map shall be subject to all of the provisions of the IR district, unless specifically provided otherwise.
(Ord. No. 230, 2-19-09)

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Historic site including historic dwellings, or museum not operated for profit.
2. Sanitary landfill facilities, provided that the same are operated by the municipality, or pursuant to a municipal lease or license.
3. Business and professional offices; banks.
4. Agricultural, horticultural, and floricultural uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of 5,000 square feet.
5. Manufacturing, assembly, processing, packaging, research and testing operations including the following uses, provided that such operations shall be conducted entirely within an enclosed building or structure: products developed from previously-processed materials such as bone, ceramic, cloth, glass, leather, metals, plastics, paper, rubber (except tires), wood (except planing mills), electrical and mechanical instruments and appliances, optical goods, cosmetics, toiletries, and pharmaceutical products.
6. Manufacturing, assembly, processing, packaging, research and testing operations associated with renewable or alternative energy research and development facilities, provided that any outdoor operations are limited to those that require outside siting, are associated with the testing of materials and/or equipment, and can be maintained and operated in a manner that does not negatively affect abutting properties. (Ord. No. 57, 7-12-11)
7. Administrative offices, data processing centers, and laboratory for scientific and industrial research including testing and product development.
8. Printing and publishing establishment, including photostatic copying services.

9. Taxi, rail, bus passenger terminal.
10. Contractors' or craftsmen's shop, including carpentry, welding, ornamental iron works, electrical and machine shops, provided that such use is not located within 200' of any "R" District, and further provided that such use is screened from surrounding uses, as defined in Section 38-2.B.52.
11. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
12. Accessory buildings and uses required for and clearly incidental to the principal building or use are permitted.
13. Those uses allowed by right under Section 38-6.

C Uses by Special Permit

The following uses are only allowed by Special Permit, granted by the Board of Appeals:

1. Subsidized elderly housing.
2. Commercial marina for the sale, mooring, and rental of boats.
3. Private, non-commercial stable.
4. Hotel or motel.
5. Restaurant selling food for consumption entirely on the premises.
6. Place of commercial recreation such as a theater, bowling alley, roller skating rink or ice skating rink where the use is conducted entirely indoors. For purposes of this subsection, the term commercial-indoor recreation does not include those uses regulated by M.G.L. Chapter 140, Section 183A. (Rev. 5-20-93)
7. Animal hospital or commercial kennel, provided that such use shall not be within 200 feet of any residential district and the kennel area shall be completely enclosed by a solid wall or fence.
8. Auto body or paint shop; vehicle repair garage excluding the repair of heavy motorized equipment and the open storage of inoperable equipment, provided that such use shall be permitted upon the approval of a Special Permit therefor by the Board of Appeals. Review shall follow the procedural requirements in Section 38-29.C. Special attention should be given to possible adverse noise, odor, or visual effects of the use upon the surrounding neighborhood. Proper screening and buffering should be provided to eliminate undesirable adverse effects.
9. Warehouses; including mini-storage warehouses, where all storage is indoors, bottling plant, frozen food locker, ice manufacturing plant, wholesale establishment, and similar distribution center.
10. Open storage of new building materials, machinery and metal products, but not including junk, scrap, metal, wastepaper, and similar used materials; provided that the area is enclosed within a wall, solid

fence, or compact evergreen hedge at least six (6) feet in height. (Rev. 6-26-87)

11. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
12. Parking lots or garages as principal use of the lot.
13. Pork-Chop lots on streets in existence prior to December, 1984, subject to the provisions of section 38-5.I. above.
14. Bed and breakfast establishments. (Rev. 3-19-91)
15. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
16. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

The following uses are only allowed by Special Permit, granted by the Planning Board, and only for lots zoned "IR Overlay" on the official City zoning map:

a. Retail establishments
b. Restaurant selling food both for consumption on and off the premises
c. Dwellings in a Mixed Use development
d. Gymnasium, health club, indoor commercial swimming pool
e. Personal and consumer service establishments including, but not limited to, barber or beauty shop and Laundromat

(Ord. No. 230, 2-19-09)

D Building and Area Requirements

1. Minimum lot area: 2 acres
2. Maximum lot coverage: 40%, no more than 60% including parking. The Planning Board may authorize, by Special Permit, an increase in impervious lot coverage to 75% for lots zoned "IR Overlay" on the official City zoning map, and only for lots that satisfy the minimum lot area requirement in the IR District as provided above. (Ord. No. 230, 2-19-09)
3. Minimum lot frontage: 225 feet
4. Minimum front yard setback: 30 feet, 150 feet for buildings and for parking which abut Residential Districts.
5. Minimum side yard setback: 20 feet
6. Minimum rear yard setback: 25 feet
7. Maximum building height: 60 feet

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below. The Planning Board may modify the

parking requirements for lots zoned "IR Overlay" on the official City zoning map in accordance with Section 38-25.F below. (Ord. No. 230, 2-19-09)

F Sign Requirements

1. All signs in the IR District shall conform to the regulations set forth in Section 38-26 below. That one freestanding sign of no more than 35 square feet and no more than 15-feet above grade identifying multiple users shall be permitted for a Mixed use development on a lot zoned "IR Overlay" on the official City zoning map. (Ord. No. 230, 2-19-09)

G Special Requirements

1. Screening of conflicting uses - at the time of occupancy of a new non-residential use, or the expansion of the outside outline of an existing non-residential use of any lot in an industrial or commercial district, there shall be a bufferyard along each boundary which adjoins an "R" District or use. This bufferyard shall consist of landscaped plantings, including evergreens, the plantings to be of such height and density as is needed to adequately screen from view, any light glare, parking lots, loading bays, accessory buildings or uses. Fences, walls, and earthen berms may be included as part of the bufferyard, but shall not be used in place of the landscaped screening.

   The adequacy of screening and landscaping shall be approved by the Building Inspector, after consultation with the Planning Board, and shall be incorporated in the Building Inspector's records. In the event a Special Permit or site plan review is required, the Planting Plan shall be considered in this review.

   Required screening and landscaping shall be in good condition and appearance. Failure to maintain same shall be deemed a violation of this Ordinance, and shall be subject to the enforcement procedures contained herein. (Rev. 6-26-87)

2. For lots zoned "IR Overlay" on the official City zoning map, Site Plan Review by the Planning Board will be required for any development requiring a Special Permit. (Ord. No. 230, 2-19-09)

38-20 IG - GENERAL INDUSTRIAL DISTRICT

A General Description

This district is established to provide principally for general industrial, research, and office use.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Historic site including historic dwellings, or museum not operated for profit.
2. Sanitary landfill facilities, provided that the same are operated by the municipality, or pursuant to a municipal lease or license.
3. Business and professional offices; banks.
4. Agricultural, horticultural, and floricultural uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of 5,000 square feet.
5. Products developed from previously-processed materials such as bone, ceramic, cloth, glass, leather, metals, plastics, paper, rubber (except tires), wood (except planing mills)
6. Electrical and mechanical instruments and appliances, optical goods.
7. Cosmetics, toiletries, and pharmaceutical products.
8. Administrative offices, data processing centers, and laboratory for scientific and industrial research including testing and product development.
9. Printing and publishing establishment.
10. Contractors' or craftsmen's shop, including carpentry, welding, ornamental iron works, electrical and machine shops, provided that such use is not located within 200' of any "R" District.
11. Warehouse, bottling plant, frozen food locker, ice manufacturing plant, wholesale establishment, and similar distribution center.
12. Open storage of new building materials, machinery and metal products, but not including junk, scrap, metal, wastepaper, and similar used materials; provided that the area is enclosed within a wall, solid fence, or compact evergreen hedge at least six (6) feet in height.
13. General industrial uses, including manufacture, assembly, processing, packaging, or other industrial operation (such as, but not limited to, the following: products developed from previously-processed materials such as bone, ceramic, cloth, glass, leather, metals, plastics, paper, rubber (except tires), wood (except planing mills), electrical and mechanical instruments and appliances, optical goods, cosmetics, toiletries, and pharmaceutical products, steam laundry, dry cleaning, and rug cleaning establishments, food products, machine shop, bottling works, box manufacture, textile manufacture, manufacture of boots and shoes), which would not be

offensive because of injurious or obnoxious noise, vibration, smoke, gas, fumes, odors, dust, or other objectionable feature, or become hazardous to the community on account of fire or explosion or any other cause, but the following are expressly prohibited:

a. Acid manufacture
b. Cement, lime, or gypsum manufacture
c. Explosives or fireworks manufacture
d. Glue manufacture
e. Incineration or reduction of garbage, offal, or dead animals, except such processing as may be conducted by the City and except solid waste resource recovery and disposal facilities
f. Smelting of zinc, copper, tin, or iron ores
g. Stockyard or abattoir

14. Taxi, rail, bus passenger terminal.
15. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
16. Accessory buildings and uses required for and clearly incidental to the principal building or use are permitted.
17. Those uses allowed by right under Section 38-6.

C. Uses by Special Permit

The following uses are only allowed by Special Permit, granted by the Board of Appeals:

1. Subsidized elderly housing.
2. Commercial marina for the sale, mooring, and rental of boats.
3. Private, non-commercial stable.
4. Restaurant selling food for consumption entirely on the premises.
5. Fast food restaurant. (Rev. 6-26-87)
6. Animal hospital or commercial kennel, provided that such use shall not be within 200 feet of any residential district and the kennel area shall be completely enclosed by a solid wall or fence.
7. Auto body or paint-shop; vehicle repair garage excluding the repair of heavy motorized equipment and the open storage of inoperable equipment, provided that such use shall be permitted upon the approval of a Site Plan thereof by the Planning Board and upon the granting of a Special Permit therefor by the Board of Appeals. Review shall follow the procedural requirements in Section 38-29.C. Special attention should be given to possible adverse noise, odor, or visual effects of the use upon the surrounding neighborhood. Proper screening and buffering should be provided to eliminate undesirable adverse effects.

8. Open storage of coke, coal, sand, or other similar materials or storage in silo or hoppers; provided that the area is enclosed within a wall, solid fence, or compact evergreen hedge at least six (6) feet in height.
9. Motor or rail freight; yard or building for the storing and servicing of trucks, trailers, or buses.
10. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
11. Parking lots or garages as principal use of the lot.
12. Pork-Chop lots on streets in existence prior to December, 1984, subject to the provisions of Section 38-5.I. above.
13. Bed and breakfast establishments. (Rev. 3-19-91)
14. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
15. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. Minimum lot area: none
2. Minimum lot frontage: none (Rev. 7-1-92)
3. Minimum front yard setback: none
4. Minimum side yard setback: none
5. Minimum rear yard setback: none
6. Maximum building height: 35 feet: provided, however, buildings set back a minimum of 400 feet from all abutting public ways shall be allowed a maximum building height of 70 feet. (Ord. No. 67, 7-16-01)

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the IG District shall conform to the regulations set forth in Section 238-26 below.

G Special Requirements

1. Screening of conflicting uses - at the time of occupancy of a new non-residential use, or the expansion of the outside outline of an existing non-residential use of any lot in an industrial or commercial district, there shall be a bufferyard along each boundary which adjoins an "R" District or use. This bufferyard shall consist of landscaped plantings, including evergreens, the plantings to be of such height and density as

is needed to adequately screen from view, any light glare, parking lots, loading bays, accessory buildings or uses. Fences, walls, and earthen berms may be included as part of the bufferyard, but shall not be used in place of the landscaped screening.

The adequacy of screening and landscaping shall be approved by the Building Inspector, after consultation with the Planning Board, and shall be incorporated in the Building Inspector's records. In the event a Special Permit or site plan review is required, the Planting Plan shall be considered in this review.

Required screening and landscaping shall be in good condition and appearance. Failure to maintain same shall be deemed a violation of this Ordinance, and shall be subject to the enforcement procedures contained herein.

38-21 HD - HOSPITAL DISTRICT

A General Description

This district is established to provide principally for medical, health care, and hospital-related uses.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Residential uses necessary to, or normally associated with a medical institution.
2. Hospitals, nursing care homes.
3. Historic site including historic dwellings, or museum not operated for profit.
4. Sanitary landfill facilities, provided that the same are operated by the municipality, or pursuant to a municipal lease or license.
5. Home occupation as defined herein.
6. Retail establishment serving local area needs including, but not limited to, drug, grocery and baked goods store, with up to 5,000 square feet of floor area per establishment.
7. Personal and consumer service establishments including, but not limited to, barber or beauty shop and laundromat.
8. Business and professional offices; banks.
9. Restaurant selling food for consumption entirely on the premises.
10. Agricultural, horticultural, and floricultural uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of 5,000 square feet.
11. Accessory buildings and uses required for and clearly incidental to the principal building or use are permitted.
12. Doctors' offices, medical clinics. (Rev. 6-26-87)
13. Any use allowed by right under Section 38-6. (Rev. 6-26-87)
14. Ambulance depot facility. (Rev. 6-26-87)

C Uses by Special Permit

The following uses are only allowed by Special Permit, granted by the Board of Appeals:

1. Subsidized elderly housing, subject to the provisions of Section 38-21.D. below.
2. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
3. Bed and breakfast establishments. (Rev. 3-19-91)

4. Any use, including accessory uses, allowed by Special Permit under Section 38-6.
5. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1.	Minimum lot area:	10 acres
2.	Minimum lot frontage:	225 feet (Rev. 7-1-92)
3.	Minimum front yard setback:	30 feet
4.	Minimum side yard setback:	20 feet
5.	Minimum rear yard setback:	25 feet
6.	Maximum building height:	65 feet

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the HD District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. All those commercial uses normally associated with the functioning of a hospital such as gift shop, coffee shop, medical offices, and laundry shall be permitted provided that such accessory retail uses be located entirely within the hospital building and no exterior or lighted interior window sign shall advertise the presence thereof. All those uses normally associated with the functioning of a college or university including a book store and cafeteria shall be permitted provided that such uses are clearly serving the needs of the institution to which they are accessory.

38-22 WD - WATERFRONT DEVELOPMENT DISTRICT

A General Description

This district is established to provide principally for mixed-use development and public access along the waterfront.

B Uses by Right

Property and building shall be used only for the following purposes:

1. Multi-family dwelling or apartment house, subject to the requirements of Section H below.
2. Home occupation as defined herein, subject to the provisions of Section G below.
3. Agricultural, horticultural, and floricultural uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of 5,000 square feet, and subject to the provisions of Section G below.
4. Commercial fishing excluding the processing of fish, except as provided by Section 38-22.B.7. below. (Processing: meaning canning, cooking, or freezing but not preparation of bait), subject to the provisions of Section G below.
5. Commercial marina for the sale, mooring, and rental of boats, subject to the provisions of Section G below. (Rev. 6-26-87)
6. Restaurant selling food for consumption entirely on the premises, subject to the provisions of Section G below. (Rev. 6-26-87)
7. Accessory buildings and uses required for and clearly incidental to the principal building or use are permitted.
8. Any use allowed by right under Section 38-6.

C Uses by Special Permit

The following uses are only allowed by Special Permit, granted by the Planning Board:

1. Gymnasium, health club, commercial swimming pool, subject to the provisions of Section G below.
2. Other private or quasi-public club, charitable institution, or community service organization except where the chief activity is a service customarily carried on as a business, subject to the provisions of Section G below.
3. Hotel or motel, subject to the provisions of Section G below.
4. Retail establishments, subject to the provisions of Section G below.

5. Personal and consumer service establishments including but not limited to, barber or beauty shop and laundromat, subject to the provisions of Section G below.
6. Business and professional offices; banks subject to the provisions of Section G below.
7. Place of commercial recreation such as a theater, bowling alley, roller skating rink or ice-skating rink where the use is conducted entirely indoors. For purposes of this subsection, the term commercial-indoor recreation does not include those uses regulated by M.G.L. Chapter 140, Section 183A. (Rev. 5-20-93)
8. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage, subject to the provisions of Section G below.
9. Parking lots or garages as principal use of a lot, subject to the provisions of Section G below.
10. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
11. Commercial Mobile Radio Service transmission facilities, structures, and/or towers. (Ord. No. 115, 6-11-96)

The following uses are only allowed by Special Permit, granted by the Board of Appeals:

1. Bed and breakfast establishments. (Rev. 3-19-91)

D Building and Area Requirements

1. Minimum lot area: none required
2. Maximum Floor Area Ratio (FAR): 0.25, unless modified by Special Permit as provided in Section G below. FAR calculations do not include structured parking.
3. Minimum lot frontage: none
4. Minimum front yard setback: 5 feet
5. Minimum side yard setback: 25 feet
6. Minimum rear yard setback: 20 feet
7. Maximum building height: 35 feet measured as the vertical distance from the average existing street grade along the lot, to the top of the highest roof beams of a flat roof, or the top of the highest ridge of a sloped roof, except that there may be uninhabited space under a sloped roof up to a total height of 40 feet. (D 1. - 7. Rev. 6-26-87)

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

2. One off-street parking space for each marina recreational or commercial boat slip shall also be provided.

F Sign Requirements

1. All signs in the WD District shall conform to the regulations set forth in Section 38-26 below. (Rev. 6-26-87)

G Special Requirements

1. All WD proposals, including new construction of any building(s) or water-based structure(s) (pier, slips, wharves, etc.) or any substantial addition(s) to same, must secure the appropriate federal, state, and local permits and licenses. These permits and licenses may include but are not limited to: U.S. Army Corps of Engineers Permit(s): Massachusetts DEP Division of Wetlands and Waterways Chapter 91 Tidelands License; and City of Beverly Conservation Commission Order of Conditions.

   Regulations mandated by any state or federal permit or license obtained for any non-water dependent, or water-dependent use (including the applicability of the public trust doctrine) may be more restrictive or require certain public benefits not stated or identified in this Ordinance.

   For any new development or substantial improvement to existing structures within the WD, the project proponent shall establish the location, if applicable, of the Commonwealth Tidelands (that land seaward of the historic mean low watermark) on any plan or site plan(s) drawn for a Special Permit, Building Permit, or other Permit required under this Ordinance.

2. For any use allowed in the WD District, the Planning Board through a Special Permit process may grant a bonus in Floor Area Ratio (FAR) increasing the FAR from 0.25 up to 1.0, in return for all of the following public benefits:

   a. The provision, including construction and maintenance, of a public pedestrian walkway along the water, a minimum of 12 feet in width, the exact location to be determined by the Planning Board, designed to connect to existing or future harborfront walkways on adjoining properties. Access from the public street to the harborfront walkway may be required at the discretion of the Planning Board. The walkway shall be open from sunrise to sunset.

b. For property which abuts Water Street, the provision, including construction (but not maintenance) of a public right-of-way along Water Street, so that there can be a minimum of a thirty (30) foot roadway and five (5) foot sidewalks on both sides in locations where the existing Water Street right-of-way is less than forty (40) feet.

c. All buildings shall be so designed and placed to allow 50-feet wide views to the waterfront at least every 150 feet from the street to the harbor. The longer side of each building shall be sited approximately perpendicular to the street and the water's edge, or as the Design Review Board may require, in order to preserve water views from the street.

d. The provision of a minimum of twenty percent (20%) of the floor area for a restaurant or water-dependent use (i.e. an office, commercial, retail or service establishment which is primarily marine or fishing related) as defined below:

1. Marine-related industries and services, including fish storage, fish products/processing and sales.
2. Harbor/marine supplies and services and ship supply.
3. Boat storage and service facilities, such as boat construction yards, drydock services boat repair shops, launching ramps, and marinas.
4. Sea/land loading and transfer areas for people and goods, including ferry terminals, loading areas, and docks.
5. Marine-related museums and aquariums, and public service facilities including harbormaster's quarters.

3. The Planning Board may grant bonus densities up to an FAR of 1.5 in exchange for all those incentives listed in Section 38-22.G.2.a. through 38-22.G.2.d. above, plus a provision requiring an additional 10% of the gross site area be developed and maintained as public open space (as defined in section 38-2). This provision is in addition to any open space requirements which may otherwise be required by this ordinance.

4. Should the Chapter 91 licensing and permitting regulations (administered by the Department of Environmental Protection), as may be amended, require some or all of the above public benefits,

additional public benefits may be required by the Planning Board. (G 1. - 4. Rev. 6-26-87)

H. Special Requirements for Multiple Dwellings

The development of multiple dwellings which includes town-houses shall be in accordance with the density and dimensional requirements of Section D above, except as may be modified by Section G above, and the following:

1. No multiple dwelling shall measure more than 125 feet on its long side; except that where front and rear setback offsets of at least three (3) feet are provided at 50 foot intervals more or less, the length of said dwelling shall not exceed a length of 200 feet.

2. In multiple dwelling groups, the minimum spacing between buildings shall be as follows: front-to-front, front-to-rear, and rear-to-rear 60 feet; end-to-end (with facing windows) - not less than their average height; end-to-end (without facing windows) or corner-to-corner (offset) - not less than one-half of their height. Front-to-rear siting shall be avoided if at all practicable.

3. Interior private ways shall have a minimum width of 24 feet for two-way traffic and 18 feet for one-way traffic and shall be paved in accordance with City specifications. Minimum building setbacks from such private access drives shall be 35 feet and 30 feet, respectively, from the centerlines thereof. (Rev. 7-1-92)

4. All multiple-family dwellings shall be served by public or equivalent sanitary sewer and water systems. No building permit shall be granted unless the Building Inspector shall first receive a report from the Commissioner of Public Works that provision has been made for the disposal of sewage into the system of sufficient capacity.

5. All electrical and telephone service shall be provided underground to all buildings within a multiple dwelling group project. Antennae for the purposes of television reception shall be provided within a building wherever practicable, or else by one master antennae for the project.

6. No multiple dwelling group nor any individual multiple dwelling shall be permitted unless provision shall be made for adequate snow removal and trash and garbage disposal.

7. Sufficient enclosed area and equipment shall be provided within each multiple-family dwelling for laundering and drying purposes. No outside area shall be provided for such purposes, unless such area is

enclosed by a solid screen of evergreen shrubs or fencing at least six (6) feet high.

8. A plan showing recreational facilities must be approved by the Planning Board. The area shall be a minimum of 10% of the gross area of the site and shall be contiguous.

38-23 WDR - WATERFRONT DEVELOPMENT RESIDENTIAL DISTRICT
(Ord. No. 109, 12-27-06)

A General Description

This district is established to provide principally for mixed-use development, residential development and public access along the waterfront.

B Uses by Right

Property and building shall be used only for the following purposes:

1. Multi-family dwelling or apartment house, subject to the requirements of Section H below.
2. Home occupation as defined herein, subject to the provisions of Section G below.
3. Agricultural, horticultural, and floricultural uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of 5,000 square feet, and subject to the provisions of Section G below.
4. Commercial fishing excluding the processing of fish, except as provided by Section B.7. below. (Processing: meaning canning, cooking, or freezing but not preparation of bait), subject of the provisions of Section G below.
5. Commercial marina for the sale, mooring, and rental of boats, subject to the provisions of Section G below.
6. Restaurant selling food for consumption entirely on the premises, subject to the provisions of Section G below.
7. Accessory buildings and uses required for and clearly incidental to the principal building or use are permitted.
8. Any use allowed by right under Section 38-6.

C Uses by Special Permit

The following uses are only allowed by Special Permit, granted by the Planning Board:

1. Gymnasium, health club, commercial swimming pool, subject to the provisions of Section G below.
2. Other private or quasi-public club, charitable institution, or community service organization except where the chief activity is a service customarily carried on as a business, subject to the provisions of Section G below.
3. Hotel or motel, subject of the provisions of Section G below.
4. Retail establishments, subject to the provisions of Section G below.
5. Personal and consumer service establishments including but not limited to, barber or beauty shop and laundromat, subject to the provisions of Section G below.
6. Business and professional offices; banks subject to the provisions of Section G below.

7. Place of commercial recreation such as a theater, bowling alley, roller skating rink or ice skating rink where the use is conducted entirely indoors. For purposes of this subsection, the term commercial-indoor recreation does not include those uses regulated by M.G.L. Chapter 140, Section 183A.
8. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage, subject to the provisions of Section G below.
9. Parking lots or garages as principal use of a lot, subject to the provisions of Section G below.
10. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.

The following uses are only allowed by Special Permit, granted by the Board of Appeals:

1. Bed and breakfast establishments.

D Building and Area Requirements

1. Minimum lot area: 9,000 square feet plus 2,261 square feet for each additional dwelling unit over three.
2. Maximum Floor Area Ratio (FAR): 0.25, unless modified by Special Permit as provided in Section G below. FAR calculations do not include structured parking.
3. Minimum lot frontage: 65 feet
4. Minimum front yard setback: 5 feet
5. Minimum side yard setback: 25 feet
6. Minimum rear yard setback: 20 feet
7. Maximum building height: 35 feet measured as the vertical distance from the average existing paved street grade along the lot, to the top of the highest roof beams of a flat roof, or the top of the highest ridge of a sloped roof, except that there may be uninhabited space under a sloped roof up to a total height of 40 feet.

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-24 below.
2. One off-street parking space for each marina recreational or commercial boat slip shall also be provided.

F Sign Requirements

1. All signs in the WDR District shall conform to the regulations set forth in Section 38-25 below.

G Special Requirements

1. All WDR proposals, including new construction of any building(s) or water-based structure(s) (pier, slips, wharves, etc.) or any substantial addition(s) to same, must secure the appropriate federal, state, and local permits and licenses. These permits and licenses may include, but are not limited to: U.S. Army Corps of Engineers Permit(s): Massachusetts DEP Division of Wetlands and Waterways Chapter 91 Tidelands License; and City of Beverly Conservation Commission Order of Conditions.

   Regulations mandated by any state or federal permit or license obtained for any non-water dependent, or water-dependent use (including the applicability of the public trust doctrine) may be more restrictive or require certain public benefits not stated or identified in this ordinance.

   For any new development or substantial improvement to existing structures within the WDR, the project proponent shall establish the location, if applicable, of the Commonwealth Tidelands (that land seaward of the historic mean low watermark) on any plan or site plan(s) drawn for a Special Permit, Building Permit, or other Permit required under this ordinance.

2. For any use allowed in the WDR District, the Planning Board through a Special Permit process may grant a bonus in Floor Area Ratio (FAR) increasing the FAR from 0.25 up to 0.75, in return for all of the following public benefits:

   a. The provision, including construction and maintenance, of a public pedestrian walkway along the water, a minimum of 12 feet in width, the exact location to be determined by the Planning Board, designed to connect to existing or future harborfront walkways on adjoining properties. Access from the public street to the harborfront walkway may be required at the discretion of the Planning Board. The walkway shall be open from sunrise to sunset.

   b. For property which abuts Congress Street, the provision, including construction (but not maintenance) of a public right-of-way along Congress Street, so that there can be five (5) foot sidewalks on both sides.

   c. All buildings shall be so designed and placed to allow 50-feet wide views to the waterfront at least every 220 feet from the street to the harbor. The longer side of each building shall appropriately be sited in order to preserve water views from the street.

   d. The provision of an area of the land or building(s) having an area of a minimum of twenty percent (20%) of the floor area for a restaurant or water-dependent use (i.e. an office, commercial, retail or service establishment, or public space which is primarily marine or fishing related) as defined below:

1. Marine-related industries and services, including fish storage, fish products/processing and sales.
2. Harbor/marine supplies and services and ship supply.
3. Boat storage and service facilities, such as boat construction yards, drydock services, boat repair shops, launching ramps, and marinas.
4. Sea/land loading and transfer areas for people and goods, including ferry terminals, loading areas, and docks.
5. Marine-related museums and aquariums, and public service facilities including harbormaster's quarters.
6. Public walkway, parkland dedicated to public use, public fishing area, and public parking.

3. Should the Chapter 91 licensing and permitting regulations (administered by the Department of Environmental Protection), as may be amended, require some or all of the above public benefits, additional public benefits may be required by the Planning Board.

H Special Requirements for Multiple Dwellings

The development of multiple dwellings which includes town-houses shall be in accordance with the density and dimensional requirements of Section D above, except as may be modified by Section G above, and the following:

1. No multiple dwelling shall measure more than 125 feet on its long side; except that where front and rear setback offsets of at least three (3) feet are provided at 50 foot intervals more or less, the length of said dwelling shall not exceed a length of 220 feet.
2. In multiple dwelling groups, the minimum spacing between buildings shall be as follows: front-to-front, front-to-rear, and rear-to-rear 60 feet; end-to-end (with facing windows) - not less than their average height; end-to-end (without facing windows) or corner-to-corner (offset) - not less than one-half of their height. Front-to-rear siting shall be avoided if at all practicable.
3. Interior private ways shall have a minimum width of 24 feet for two-way traffic and 18 feet for one-way traffic and shall be paved in accordance with City specifications. Minimum building-setbacks from such private access drives shall be 35 feet and 30 feet, respectively, from the centerlines thereof, except those portions of drives which may serve parking under the building.
4. All multiple-family dwellings shall be served by public or equivalent sanitary sewer and water systems. No building permit shall be granted unless the Building Inspector shall first receive a report from the Commissioner of Public Works that provision has been made for the disposal of sewage into the system of sufficient capacity.
5. All electrical and telephone service shall be provided underground to all buildings within a multiple dwelling group project. Antennae for the purposes of

television reception shall be provided within a building wherever practicable, or else by one master antennae for the project.

6. No multiple dwelling group nor any individual multiple dwelling shall be permitted unless provision shall be made for adequate snow removal and trash and garbage disposal.
7. Sufficient enclosed area and equipment shall be provided within each multiple-family dwelling for laundering and drying purposes. No outside area shall be provided for such purposes, unless such area is enclosed by a solid screen of evergreen shrubs or fencing at least six (6) feet high.
8. A plan showing recreational facilities must be approved by the Planning Board. The area shall be a minimum of 10% of the gross area of the site, shall be contiguous, and shall include the 20% public space area provided for in G.2.d. above.

38-24 SPECIAL DENSITY AND DIMENSIONAL REGULATIONS

A Planned Residential Development (PRD)

1. Purposes - To provide for innovative design and flexibility in residential development, to provide for a mixture of housing types at certain locations; to provide for the economical installation and maintenance of streets and utilities; and to conserve open space and natural amenities.

2. Use Regulations - In any R-90, R-45, R-22, R-15, RMD, and RSD District, the Board of Appeals may permit by Special Permit a Planned Residential Development comprising a combination of the following uses: one-family dwellings, two-family dwellings, semi-detached dwellings, and multi-family dwellings, (rental or otherwise), public or private schools, public recreation and open space, fire stations, and other public facilities, membership clubs for the exclusive use of residents of the PRD, and Commercial Mobile Radio Service transmission facilities, structures, and/or towers. (Ord. No. 115, 6-11-96; Ord. No. 161; 6-24-04)

3. Procedure - Application for Special Permit for a PRD shall be filed and processed in accordance with Section 38-28 of this Ordinance, unless otherwise provided herein. Site Plan Review by the Planning Board is also required for PRD's - see Section 38-29.C. of this Ordinance for procedures and filing requirements. The Board of Appeals shall not take final action on an application for PRD until it has received a report thereon from the Planning Board within 35 days or until said Planning Board has allowed 35 days to elapse without submission of a report. An approved site plan shall thereafter be subject to the requirements of the City of Beverly (Planning Board Rules and Regulations). (Rev. 7-1-92)

4. Development Requirements - a PRD shall be subject to the requirements for the district in which the project is located, except in the case of existing structures, and except where modified and supplemented as follows:

   a. Minimum lot area of a PRD shall be:

      five (5) acres in the R-15 District;
      seven (7) acres in the R-22 District;
      ten (10) acres in the R-45 District;
      twelve (12) acres in the R-90 District.

There shall be no PRD's in the R-6 or R-10 Districts.

b. At least thirty percent (30%) of the gross area of the PRD shall be dedicated as permanent open space for the protection of natural drainage areas, the conservation of woodlands and other natural amenities, parks and recreation and other such public natural uses described or shown on the Comprehensive Plan and Official Map of the City of Beverly.

Upon recommendation of the Planning Board such open space shall be either; deeded to the City of Beverly for public use or conservation, subject to approval thereof by the Board of Aldermen; covenanted by the owner or developer with an association of residents of the PRD as permanent open space. If such space is retained in private ownership, as a condition in the granting of a Special Permit to permit the PRD, the owner or developer of the PRD shall establish a procedure for maintaining the open space in an orderly state.

This dedicated open space shall not include parking areas or drives and shall not be within the minimum yard requirements for building in the particular zoning district.

c. Lot requirements for one-family dwellings in a PRD may be reduced to not less than those dimensional requirements set forth in the next least restrictive "R" District in which the PRD is proposed.

d. Maximum density in dwelling units per gross area of a proposed PRD shall be the same as allowed in that district for a single-family dwelling as set forth in the requirements for the zoning district in which the project is located. This density calculation shall exclude wetlands as defined by M.G.L. Chapter 131 as amended, and shall exclude any standing bodies of water.

The applicant will file a Request for Determination with the Beverly Conservation Commission at the same time as filing with the Special Permit Granting Authority to determine the wetland area of the lot.

e. A PRD site at the time of application shall be served by both public water and sewer systems, such systems to be of sufficient capacity to accommodate increased density of development of the PRD as determined and approved by the Commissioner of Public Works. The Provisions of this

paragraph may be waived by the Commissioner of Public Works.

f. The provisions of this section are optional. The Planning Board or the Board of Appeals are not required to approve a PRD plan where it finds that, by increasing the density of the tract, the general area would be affected adversely by such action.

B Open Space Residential Design (OSRD) Site Plan Ordinance
(Ord. No. 105, 12-29-05)

This Open Space Residential Design Site Plan Ordinance encourages land-sensitive construction, siting and design of significant new residential projects through a cooperative exploration of alternatives which allows relaxation of current zoning and subdivision dimensional standards and which permits increased density in return for achievement of open space preservation targets.

I. Purpose and Intent

1. The Primary Purposes for this OSRD ordinance are the following:

(a) To allow for greater flexibility and creativity in the design of residential developments;

(b) To encourage the protection and permanent preservation of open space, forestry land, wildlife habitat, other natural resources including public water supplies, aquifers, water bodies and wetlands, and historical resources in a manner that is consistent with Beverly's Master Plan and Open Space and Recreation Action Plan (together, the "Master Plans");

(c) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;

(d) To minimize the total amount of disturbance on the site;

(e) To further the goals and policies of the Master Plans;

(f) To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner;

(g) To protect the regional water supply from contamination and to ensure it will be adequate to serve population requirements in the future.

2. The Secondary Purposes for the OSRD ordinance are the following:

(a) To protect the value of real property;

(b) To provide for a diversified housing stock;

(c) To provide affordable housing to persons of low and moderate income.

II. Applicability

1. Covered Projects. A covered project shall include any development or construction of new housing (including a condominium) on a tract of land that

(a) will create four (4) or more buildable lots by reason of a subdivision in the R-10, R-15 and R-22 zones or
(b) will create four (4) or more new dwelling units (excluding new units in an existing building) in the R-10, R-15 and R-22 zones or
(c) consists of an area of 2 acres or more in the R-10, R-15 and R-22 zones or
(d) consists of an area of 180,000 square feet (i.e. just over 4 acres) or more in the R-45 zone and will create three (3) or more buildable lots by reason of a subdivision or four (4) or more dwelling units (excluding new units in an existing building) or
(e) consists of an area of 300,000 square feet (just under 7 acres) or more in the R-90 zone and will create three (3) or more buildable lots by reason of a subdivision or four (4) or more dwelling units (excluding new units in an existing building)

shall be subject to this OSRD ordinance.
(Ord. No. 24, 7-2-08)

2. Zoning Classification. This OSRD ordinance shall apply only to those tracts (or to the portions thereof) located in one or more of the City's R-10, R-15, R-22, R-45, and R-90 residential zoning districts, but shall not apply to any tract or portion of a tract in an R-6, RSD, RHD or RMD zoning district. Any other residential project in a zoning district other than R-6, RSD, RHD, or RMD, may elect to be subject to this OSRD ordinance, but such election shall not eliminate the requirement to obtain a use variance or special permit where otherwise required in such non-residential zoning district.

3. Tract. A "tract" for the purposes of this OSRD ordinance shall consist of one or more contiguous lots under single legal or beneficial ownership or proposed to be developed as a single project, including in phases. Lots separated only by a private way shall be considered contiguous for the purposes of this OSRD ordinance.

   The calculation of the area of a "tract" shall be the same as the calculation of the area of a lot as set forth in the definition of "Lot" in Section 38-2 of this ordinance.
   (Ord. No. 24, 7-2-08)

   This ordinance shall not prevent endorsement of any qualified Approval Not Required ("ANR") plan but shall apply to all Covered Projects after ANR endorsement has been received or obtained.

   The Planning Board may waive the requirements of this Ordinance for any Approval Not Required ("ANR") plan, provided that it finds that:

   (a) no new building lots are being created; or
   (b) no more than two (2) new building lots are created **and**

      (i) the owner and his/her successors in title, through deed restriction, relinquish all rights of future division that will create additional building lots together or in conjunction with land outside the tract; and
      (ii) the applicant provides a plan identifying and delineating primary and secondary conservation areas, potentially buildable areas, and, where possible, proposed house location(s); and
      (iii) the applicant satisfies the Planning Board that siting of the new house(s) and associated site improvements, including stormwater management, conform to the purposes and intent of this Ordinance.
      (Ord. No. 24, 7-2-08)

4. OSRD Site Plan Approval. No building permit shall be issued for, nor any construction or foundation work be commenced on, any portion of a Covered Project without first obtaining OSRD Site Plan Approval pursuant to this OSRD Ordinance for the entire project.

III. Initial Review

1. Initial Review. Prior to submitting its application for an OSRD site plan approval, the applicant shall participate in initial review at one or more meetings of the Planning Board.

(a) The Planning Board shall send prior written notice of such review to the Beverly City Council, the Beverly Conservation Commission, the Beverly Board of Health, the Beverly Open Space and Recreation Committee, and such other municipal or regional entities as it shall judge appropriate. Such Council, Commission, Board, Committee, or other entity may send a representative to speak in an official or unofficial capacity during such review. In addition, the Planning Board shall, at the applicant's expense, send written notice, at least seven (7) days prior to the initial meeting at which such review shall take place, to each abutter and abutter of an abutter of the tract. The Planning Board shall also, at the applicant's expense, send legal notice of the initial meeting for publication in a newspaper of general circulation at least seven (7) days prior to said meeting. The purpose of initial review is to commence discussions with the Planning Board at the earliest possible stage in the development.

(b) At or during the initial review, the applicant shall submit two or more conceptual plans showing materially different alternative development configurations, shall describe the development and how it furthers the goals of this ordinance, shall incorporate the four-step General Design Process described in Section V.3 below, seek feedback from the Planning Board and/or its technical experts, and indicate a possible timetable for submittal of a formal application. Conceptual plans shall not be detailed, but shall show the general features of the site and the possible location of structures and ways. Imaginative and creative land use planning should be applied with the aim of furthering the purposes of this ordinance.

(c) At the expense of the applicant, the Planning Board may engage technical experts to perform preliminary review of the plans submitted by the applicant in order to facilitate selection of a Preferred Plan (as described in Section III.2 below) and submittal of a formal application for OSRD site plan approval. Prior to the initial review meeting, the Planning Board shall request comments from the Conservation Commission on all ecologically sensitive areas within its jurisdiction, including, but not limited to, wetlands, water bodies, and their buffer zones.

(d) The initial review may extend over more than one meeting or session and shall not constitute or require a public hearing. However, members of the public shall be welcome to speak during a required public comment period to be held prior to the selection of a Preferred Plan. The public is also encouraged to

submit comments in writing to the Planning Board with respect to any proposed concept plan or Preferred Plan.

(e) The applicant is encouraged to meet with abutters and neighbors prior to submitting a Preferred Plan to discuss the applicant's intentions and possible alternative configurations. The applicant shall inform the Planning Board of the substance of its meetings with abutters and neighbors.

2. Preferred Plan. At least one concept plan submitted during the initial review shall be amended, refined and conditioned so as to constitute a "Preferred Plan" as described below. Submission during the initial review stage of at least three concept plans showing alternative development configurations is strongly encouraged.

(a) The applicant shall not submit a Preferred Plan until the Planning Board and the applicant have discussed the initial concept plans and alternative development and conservation configurations so that the input of the Planning Board and Conservation Commission can be taken into account in the creation of a Preferred Plan depicting the configuration which best addresses the objectives of this OSRD ordinance.

(b) Preferred Plan shall address the general features and topography of the land, identify major types and the size of vegetation, and give configurations of the lots. The Preferred Plan shall also show roadways, open space, wetlands, water bodies, and their buffer zones and shall include such other information as may be required in the OSRD Site Plan Rules and Regulations.

(c) The applicant must demonstrate that the Preferred Plan incorporates the four-step General Design Process set forth in Section V below, and the Design Standards according to VI.3 below, when determining a proposed design for the development.

3. Yield Plan. Before approval of the Preferred Plan by the Planning Board in the initial review, the applicant shall submit a Yield Plan (as defined in Section IV. below). Approval of a yield plan shall be subject to a public hearing, which shall occur as early in the initial review process as reasonably possible but no later than 45 days after submission of the Initial Review Application. The Planning Board shall, at the applicant's expense, send written notice, at least seven (7) days prior to the public hearing, to each abutter and abutter of an abutter of the tract. The Planning Board shall also, at the applicant's expense, send legal notice of the public hearing for publication in a newspaper of general circulation at least seven (7) days prior to said meeting.

(Ord. No. 24, 7-2-08)

4. Rules and Regulations. The Planning Board shall adopt rules and regulations relative to the size, form, number and contents of the Conceptual plans, Preferred plan, Yield plan and OSRD Site Plan.
(Ord. No. 24, 7-2-08)

5. Approval of Preferred Plan. A Preferred Plan which does not exceed the Basic Maximum Number of dwelling units possible under the Yield Plan shall be approved by the Planning Board subject to such conditions as it deems appropriate to achieve the goals of this OSRD ordinance. When the Planning Board approves the Preferred Plan, the applicant may then file an application for OSRD Site Plan Approval. Approval of a Preferred Plan shall not foreclose further review or amendment of the Yield Plan or Preferred Plan during public hearings on an OSRD Site Plan Application under Section VI below.

IV. Basic Maximum Number (Of Lots/Units)

In order for a Preferred Plan to be approved, the number of lots or dwelling units on the tract shall not exceed the Basic Maximum Number, as defined below.

1. The Basic Maximum Number shall be the maximum number of lots (or, where no subdivision or lot division is involved, number of dwelling units) that could be placed upon the tract under a conventional subdivision or development plan pursuant to then applicable zoning and subdivision requirements (other than this OSRD ordinance), without variances or waivers of any kind, including from other bodies having regulatory authority over the development or any portion thereof (such as the Conservation Commission and Board of Health) unless such variances or waivers have already been obtained from such other authority, and accurately depicted on a "Yield Plan". Waivers from the Planning Board's Rules and Regulations Governing the Subdivision of Land are permitted in determining the Basic Maximum Number. Such waivers must be sought and obtained during the OSRD process, but prior to acceptance of a Yield Plan. The Yield Plan shall display the general features and topography of the land shown on the Preferred Plan, the dimensions, areas, and locations of the lots, open space, roadways, wetlands, water bodies, and their buffer zones and such other information as is required from time to time by the OSRD rules and regulations.
(Ord. No. 24, 7-2-08)

2. The applicant shall have the burden of proof in establishing the Basic Maximum Number of lots (or dwelling units) resulting from the design and engineering specifications shown on the Yield Plan. The Planning Board shall consider at least the following factors in determining if such burden of proof has been met:

   (a) the applicant has demonstrated through title insurance or other acceptable evidence that it is the owner of, or in control of, the entire tract depicted within the OSRD Site Plan;

   (b) the existence of wetlands pursuant to an approved Abbreviated Notice of Resource Area Delineation ("ANRAD") as described in Section V.1. below and other environmental and regulatory constraints upon development has been adequately shown and dealt with; and

   (c) the applicant demonstrates that under then current market conditions the number of dwelling units, and their related improvements and infrastructure, as shown on the Yield Plan could be reasonably and economically constructed.

V. General Design Process

During the OSRD site plan initial review and approval process, but no later than the time of submittal of the Preferred Plan described above, applicants shall demonstrate to the Planning Board that the following steps, in the order indicated, (i) were performed by a licensed Landscape Architect and Registered Professional Engineer and (ii) were followed in determining the layout of proposed streets, buildings, house lots, and open space as shown on the required plans.

1. Step One: Identifying Conservation Areas. Identify preservation land by two steps.

   First, Primary Conservation Areas (such as wetland resource areas, riverfront areas, and floodplains regulated by local, state or federal law) and Additional Conservation Areas (including elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic sites, historic structures, and scenic views) shall be identified and delineated. Wetlands resource areas shall be determined by the Conservation Commission pursuant to the ANRAD process under the Beverly wetlands ordinance and regulations.

   Second, the Potentially Developable Area will be identified and delineated. To the maximum extent feasible, the "Potentially

Developable Area" shall consist of land outside identified Primary and Additional Conservation Areas. The Potentially Developable Area shall not be construed as the final "Buildable Area" as defined by Section VIII.1.(b).
(Ord. No. 24, 7-2-08)

2. Step Two: Locating Housing Sites. Locate the approximate sites of all residential buildings within the Potentially Developable Area.
(Ord. No. 24, 7-2-08)

3. Step Three: Aligning Streets and Ways. Align streets in order to access the house lots and residential buildings. Additionally, new access ways should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, trails and bicycle paths.

4. Step Four: Lot Lines. Draw in new lot lines (where applicable) and include the delineation of private yards, exclusive easement areas, and shared amenities, with a design that seeks to encourage an integrated community within the proposed development and further the goals of the Master Plan and the Open Space and Recreation Action Plan. Shared amenities should be located so as to encourage use by persons inside and outside of the Covered Project.
(Ord. No. 24, 7-2-08)

VI. Site Plan Approval Process

1. OSRD Site Plan. A proposed OSRD Site Plan shall be a fully engineered plan, conforming to the provisions of this OSRD ordinance, all the provisions of the OSRD Site Plan Rules and Regulations, and the City of Beverly Site Plan Zoning Ordinance Section 38-29.C.2, to the extent that Section 38-29.C.2. does not conflict with this ordinance. The proposed OSRD Site Plan shall incorporate the features and comply with the conditions of the approved Preferred Plan and in addition shall also include storm-water management including Best Management Practices, wastewater management, utilities, and all other information as required by subdivision ordinances, rules and regulations.
(Ord. No. 24, 7-2-08)

2. General Procedures.

   (a) When an application for approval of an OSRD Site Plan is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, a copy of the full application, including proposed site plan and other documentation, with each of the Board of Health, Conservation Commission, Building Inspector, Design Review Board, Parking

and Traffic Commission, Department of Public Works, Police Chief, Fire Chief, and City Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board within forty-five (45) days of receipt by the reviewing party of all of the required materials. In the event that the public hearing by the Planning Board is commenced prior to the expiration of the 45 day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that forty-five (45) day period.

(b) The Planning Board shall hold a public hearing within ninety (90) days of receipt of a complete application. The decision of the Planning Board shall be upon a majority of its members. After consideration of the public's concerns, the Planning Board shall make and file its decision with the City Clerk within sixty-five (65) days from the close of the public hearing, and shall notify the applicant of its decision. A copy of the decision, certified by the City Clerk as appropriate, shall be recorded with the Essex South District Registry of Deeds or the Essex South Registry District of the Land Court, as appropriate, by the applicant prior to the commencement of work. The decision shall be binding on the land depicted on the approved Site Plan.

(c) OSRD Site Plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended from time to time in writing by the Planning Board, without public hearing, upon the written request of the applicant.

3. Design Standards. In approving an OSRD Site Plan, the Planning Board may impose conditions to ensure that the site plan furthers the objectives of the Master Plans and complies with the following design standards.

(a) Generic Design Standards

(i) The site plan shall promote more effectively permanent preservation of open space, agricultural land, forestry land, natural resources and historical and archeological resources than would a conventional subdivision (for purposes of this OSRD ordinance a "conventional subdivision" shall mean a subdivision designed in full accordance with applicable subdivision rules and regulations [other than pursuant to this OSRD ordinance] without waivers of any kind).

(ii) The site plan shall consume less undeveloped land and shall conform to existing topography and natural features more than a conventional subdivision.

(iii) The site plan shall have less total amount of disturbance on the site than a conventional subdivision.

(iv) The site plan shall facilitate the construction and maintenance of streets, utilities, and public service in a more economical, safe and efficient manner than a conventional subdivision and all utilities shall be underground within the proposed development.

(v) The landscape within the site plan shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. The orientation of building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be treated as primary determinants of road and lot configuration.

(vi) Streets and other ways within the site plan shall be designed, dimensioned and located, consistent with the needs of public safety, in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and insofar as practicable to preserve and enhance views and vistas on or off the subject parcel.

(vii) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

(viii) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized, whether these exist on the site or on adjacent properties.

(ix) Parking areas shall be screened to the extent required by Section 38-25 of the ordinances of the City of Beverly.

(b) Site Specific Design Standards

(i) Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

(ii) Buffer Areas. A buffer area of at least twenty-five (25) feet shall be provided at the following locations: (a) perimeter of the property; and a buffer area of at least one hundred (100) feet around Primary Conservation Areas (as defined in Section V.1 above). Such buffer areas shall be free of above-ground structures and improvements, except that driveways necessary for access and egress to and from the tract and other access ways may cross such buffer areas. No vegetation in this buffer area will be disturbed, destroyed or removed, except for installation and normal maintenance of structures and landscapes approved as part of the project. The Planning Board may waive, reduce or increase the buffer requirement in those locations where it determines that a smaller or larger buffer (or no buffer) is necessary, or will suffice, to accomplish the objectives set forth herein; provided always that no buffer requirement herein shall be applied so as to render any tract unusable, and any variation from the required buffer area shall be rationally related to accomplishing the objectives of this OSRD ordinance.
(Ord. No. 24, 7-2-08)

(iii) Drainage. The Planning Board shall encourage the use of non-structural storm water management techniques (such as rain gardens and open grass and bio-retention swales) and other drainage techniques that do not create impervious surface and that enable infiltration. Storm water should be treated at the source to limit non-source pollution. Water conservation measures, including but not limited to the use of rainwater retention systems, such as rain barrels and cisterns for water irrigation purposes, are also strongly encouraged.

(iv) Common/Shared Driveways. A common or shared driveway may serve a maximum number of six (6) lots.

(v) Storm Water Management Facilities. All structural surface storm water management facilities shall be accompanied by a conceptual landscape and screening plan.

(vi) On-site Pedestrian and Bicycle Circulation. Walkways and bicycle paths shall be provided to link residences with parking areas, adjacent public transportation, recreation facilities (including parkland and open space) and adjacent land uses, such as trails and open space identified in the Open Space and Recreation Action Plan, where appropriate. The feasibility of a perimeter path shall be considered.

(vii) Undisturbed Areas. At least 50% of the total tract shall be undisturbed, whether by initial or subsequent construction or structures and, except as otherwise provided in Section VIII.1.d, shall be shown on the OSRD Site Plan as "Not To Be Disturbed." An undisturbed area is any land left in its natural vegetated state.

(viii) Disturbed Areas. Within areas to be disturbed, the applicant shall show all trees of ten (10) inches caliper or greater and present justification for their disturbance or removal.

4. Site Visit.

The Planning Board shall conduct a site visit during the site plan approval process. At the site visit, the Planning Board and its agents shall be accompanied by the applicant and its agents. Members of the general public may be included at the discretion of the applicant and the acquiescence of the Board.

5. Other Information.

The submittals and permits of this Section VI shall be in addition to any other requirements of the Subdivision Control Law, the applicable Subdivision Rules and Regulations or any other provisions of this Zoning Ordinance.

VII. Permitted Reduction of Dimensional Requirements

The Planning Board, which shall have the power in its discretion to waive or reduce frontage or other dimensional or subdivision requirements for such purpose, shall encourage applicants to modify lot size, shape, and other dimensional requirements for lots and ways within an OSRD Site Plan, in order to further the goals of this OSRD ordinance, subject to the following limitations:

1. Lots having reduced area or frontage shall not have their legal frontage on a street other than a street created by the OSRD, provided that this limitation shall not apply in the case of lots created by an ANR plan, nor shall it apply to lots created by a subdivision plan if its application would conflict with the purposes or with other provisions of this OSRD; and (Ord. No. 24, 7-2-08)

2. Reduction of otherwise applicable setback requirements shall not be permitted with respect to those setbacks measured from any exterior boundary of the tract.

3. Nothing in this Section VII shall permit, or be deemed to permit, the construction or use of more dwelling units per lot than is otherwise permitted in the applicable zoning district.
(Ord. No. 24, 7-2-08)

4. The dimensional requirements imposed upon any lot created by the OSRD shall not be less than a lot area of six thousand (6000) square feet, a front yard setback of twenty (20) feet, a side yard setback of ten (10) feet on one side (one side yard may have a zero (0) foot side yard setback provided that only a lot line created by the proposed OSRD may have such a zero [0] foot side yard setback), and a rear yard setback of twenty-five (25) feet: nor shall a building height greater than thirty-five (35) feet be permitted. However, a dimensional limitation imposed by this paragraph shall not apply to a lot if a majority of members of the Planning Board entitled to vote, determines that such an application unnecessarily frustrates the purposes of this Ordinance.
(Ord. No. 24, 7-2-08)

5. The subdivision requirements imposed upon any roadway created within the OSRD development shall not be less than a right of way width of forty (40) feet, a roadway width of twenty-four (24) feet, and a maximum roadway grade of eight (8) percent. However, a dimensional limitation imposed by this paragraph shall not apply to an OSRD development if a majority of members of the Planning Board entitled to vote, determines that such an application unnecessarily frustrates the purposes of this Ordinance.
(Ord. No. 24, 7-2-08)

6. The sidewalk requirements for any way created within the OSRD development shall be the following: A sidewalk shall extend the full length of one side of the way and shall be a minimum width of five (5) feet. The Planning Board may allow pedestrian access that is not parallel to the street in lieu of one (1) or more sidewalks as described above. The sidewalk requirement may be eliminated by the Planning Board if it makes a finding that the connecting, existing roadways do not have existing sidewalks, or if alternative pedestrian access is provided within the OSRD development. When it determines that it is appropriate to do so, the Planning Board may waive the sidewalk requirement if it makes a finding that other provisions are made within the tract to safely and adequately lead pedestrians to connecting sidewalks outside of the tract.
(Ord. No. 24, 7-2-08)

VIII. Open Space Requirements

1. Open Space. A minimum of fifty percent (50%) of the Buildable Area (as defined below in Section VIII.1(b)) shown on the OSRD site plan shall be open space meeting the following criteria:

   (a) All proposed open space shall be conveyed to at least one Conservation Entity (as defined below in Section VIII.2) for conservation purposes. The open space shall be perpetually preserved in an open or natural state as described below exclusively for the purposes set forth herein, and shall be maintained in a manner which will ensure its suitability for such intended purposes.

   (b) The Buildable Area shall consist of that portion of the tract that does not consist of either (i) wetlands, (ii) that portion of the wetland buffer zone within twenty five feet (25') of a wetland, or (iii) areas having a slope of more than twenty percent (20%); however, the Planning Board may reduce such open space requirement in any instance where the strict application thereof would render a tract effectively unbuildable. Input from the Conservation Commission concerning the wetland resources shall be requested.

   (c) The open space sufficient to meet the minimum requirements shall be contiguous. Open space shall be considered contiguous if a roadway or an accessory amenity separates it.

   (d) The primary purpose of the open space shall be for wildlife habitat and conservation. The open space can also be used for the following secondary purposes: historic preservation, education, outdoor education, passive recreation, or a combination of these uses, and shall be served by suitable access. The Planning Board may permit up to five percent (5%) of the open space to be paved for the dedicated use of such open space (e.g., pedestrian walks and bike paths). Limited portions of the open space may be reserved for active outdoor recreation when consistent with the goals of the Beverly Open Space and Recreation Plan, provided that such reservation is not materially inconsistent with the wildlife habitat and conservation purposes of this ordinance.

   (e) The open space shall be subject to a management plan to be approved by the Planning Board as part of the OSRD Site Plan approval. The purpose of the management plan is to provide guidance for the maintenance and stewardship of the open space and any facilities accessory thereto. Input from the Conservation Commission and Open Space and Recreation Committee concerning the management plan is encouraged.

(f) Wastewater and storm water management systems serving the OSRD may be located within the open space; however, surface systems, such as retention and detention ponds, shall not qualify toward the minimum open space required.

(g) Open space shall be disturbed to the minimum extent possible during construction upon the tract. The applicant shall show all areas proposed to be disturbed within the tract and shall present justification for the use or disturbance of those areas. A higher level of scrutiny will be applied to areas within the proposed open space that are proposed to be disturbed.

(h) No provision in this OSRD ordinance shall be deemed to preclude an applicant from providing an endowment to a Conservation Entity for the purpose of securing the maintenance, stewardship, and enforcement of the open space, and applicants are encouraged to provide such an endowment. In the case of a Conservation Entity under subsection VIII.2(c)(i) below, however, any such endowment shall be in addition to, and not in replacement of, the cash bond referred to in subsectionVIII.2(c)(ii).

(i) Each deed conveying open space to a Conservation Entity under subsection VIII.2(a) or VIII.2(b) below shall include a provision expressly stating that the preservation of such open space constitutes a public purpose within the meaning, and subject to the protections of Article 97 of the Massachusetts Constitution, as it may be amended from time to time. Each deed conveying open space to a Conservation Entity under subsection VIII.2(c) below also shall be deemed for the benefit of the owners of the lots within the OSRD Site Plan. Such deed provisions shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

(j) Nothing in this ordinance shall prohibit building within a wetlands resource area (as defined in the City of Beverly Wetlands Ordinance and Regulations) with the permission of the Conservation Commission to the extent such permission is required by law, ordinance, or regulation.

(k) Other than perimeter buffer zones required by this ordinance, required open space shall be provided to the maximum extent possible within wetlands buffer zones.

2. Ownership of the Open Space. The open space and any facilities accessory thereto shall, at the applicant's election, be conveyed to,

and shall be held as Open Space in perpetuity by, one or more of the following (each a "Conservation Entity"):

(a) the City, acting by and through its Conservation Commission or its Parks and Recreation Department or the Commonwealth of Massachusetts as part of a state forest, park, or wildlife management area; provided further that in the case of the City, any endowment provided under subsection VIII.1(h) above shall be administered by the Planning Board in the same manner as a cash bond under subsection VIII.2(c) below, except that all such endowments held by the City may be pooled and administered and applied collectively.

(b) a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

(c) (i) a corporation or trust owned jointly or in common by the owners of lots within the OSRD Site Plan (either an "Association"). If an Association is used an ownership interest in the Association shall pass with conveyance of each of the lots in perpetuity. Physical maintenance and stewardship of the open space and any facilities accessory thereto, and legal enforcement of the provisions of the site plan approval applicable to the open space and accessory facilities, including the management plan (hereinafter the "Association Obligations") shall be permanently guaranteed by, and at the sole expense of, such Association which shall provide for mandatory assessments for such purposes to each lot.

(ii) In addition, the applicant shall post a cash bond to secure the Association Obligations. Such cash bond shall be in the initial amount of up to $25,000 per project, to be held by the City in a segregated fund for such project solely for such purposes, any use thereof to be subject to the prior approval of the Planning Board in each instance. Each Association shall be deemed to have assented to allow the City to perform maintenance of such open space and accessory facilities, if the Association fails to perform the Association Obligations and shall grant the City an easement for this purpose. In such event, the City shall first provide fourteen (14) days written notice to the Association as to the inadequate performance of the Association Obligations, and, if the Association fails to correct in a timely manner its inadequate performance, the City may perform the Association Obligations on its behalf, and the cost thereof may be paid from the cash bond and any interest accrued thereon. The City shall assess the

Association for (i) amounts so used by the City from the cash bond, and (ii) any excess above the cash bond paid or incurred by the City, in exercise of the provisions of this subsection V.2(c), including expenses of enforcing the Association Obligations. Any amounts not paid in a timely manner by the Association shall constitute a lien on each of the lots within the OSRD Site Plan, which may be collected and enforced by the City in the same manner as real estate taxes. Each individual deed, and the deed of trust or articles of incorporation of the Association, shall include provisions designed to effect these provisions. Documents creating such Association shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

(iii) Any open space conveyed to an Association shall not be deemed or required to be dedicated or conveyed for use for a public purpose, and shall be preserved as open space for the benefit of the owners of the lots within the OSRD Site Plan. Nevertheless, an applicant or an Association may elect to dedicate or convey some or all of the open space for use by the public, provided that such a dedication or conveyance shall be subject to Site Plan review and approval by the Planning Board. A second Site Plan Review and Approval shall be necessary if the Association changes the applicant's initial decision after it acquires the lots.

IX. Amendment Or Modification Of Approved OSRD Site Plans

No amendment or modifications of an approved OSRD Site Plan shall be valid unless first approved by the Planning Board, and no approval, special permit or variance with respect to same shall be required from the Zoning Board of Appeals. In its sole discretion, the Planning Board may approve without public hearing those amendments or modifications that are determined by a two-thirds (2/3) majority of the Planning Board members to be minor in nature.

X. Relationship Between The OSRD Site Plan And Definitive Subdivision Plan

1. For projects subject to this OSRD ordinance for which approval under the Subdivision Control Law is necessary, the filing of either a Preliminary or a Definitive Subdivision Plan with the Planning Board shall be deemed the start of the initial review required by Section III, unless such review has already started. Any Site Plan Approval issued by the Planning Board shall specifically state that the Definitive Subdivision Plan shall substantially comply with the approved OSRD Site Plan.

2. Upon written request of the applicant, the Planning Board in its sole discretion, may conduct the public hearings on the applications concurrently, provided:

   (a) by so requesting the applicant shall be irrevocably deemed to have requested extensions from the Planning Board of the timeframes for hearing and final action under the Subdivision Control Law in order to allow Site Plan Approval to proceed as stated in this ORSD ordinance, including the provisions of Section X.3 below,

   (b) that the Planning Board's decision on Site Plan Approval shall be rendered separately from and prior to taking final action on the Definitive Subdivision Plan, and

   (c) that the Planning Board shall take final action with respect to the Definitive Subdivision Plan not later than one hundred thirty-five (135) days after the close of the public hearing on the Site Plan Approval.

3. If such hearings are conducted concurrently, they may at any time be severed by the Planning Board and thereafter conducted separately, provided that in no event shall the public hearing on the Definitive Subdivision Plan be closed before the public hearing on the OSRD Site Plan.

4. A Definitive Subdivision Plan will be considered not to substantially comply with the approved Site Plan if the Planning Board determines that the Definitive Subdivision Plan displays, in comparison to such approved Site Plan:

   (a) an increase in the number of building lots or dwelling units;
   (b) a significant decrease in the open space acreage;
   (c) a significant change in the lot layout;
   (d) a significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
   (e) significant changes to the storm water management facilities; and/or,
   (f) significant changes in the wastewater management systems.

5. If the Planning Board determines that the Definitive Subdivision Plan does not substantially comply with the approved Site Plan, the Board may disapprove the definitive subdivision plan for failure to comply with the conditions of the Site Plan requiring that the Definitive Plan substantially comply with the Site Plan.

6. The Planning Board may conditionally approve a Definitive Subdivision Plan that does not substantially comply with the approved Site Plan. However, such conditional approval must identify where the plan does not substantially comply with the approved Site Plan and shall require that the approved Site Plan be amended to be in compliance with the significant changes identified by the Planning Board. The Planning Board shall also require that the applicant file an application to amend the Site Plan within a specified time period.

7. The public hearing on the application to amend the Site Plan shall be limited to the significant changes identified by the Planning Board in their conditional approval of the Definitive Subdivision Plan. These changes are the only considerations that the Planning Board may take into account in deciding whether to amend the Site Plan.
(Ord. No. 105, 12/29/05)

C Special Provisions for Accessory Apartments

Intent and Objectives.

The requirements and procedures outlined in this section are not intended to encourage the public in acquiring variances to allow for the construction of larger dwellings for the use of accessory apartments, instead they are intended to:

a. Enable homeowners of single-family dwellings larger than required for their present needs to share space and burdens of home ownership with a relative(s).
b. Create feasible housing alternatives for elderly people or other relatives looking to stay in their homes, yet receive help they need for or from other relatives.
c. To encourage a diverse population with a particular focus on senior citizens and young adults through the creation of an accessory apartment in the familial home.

Condition and Requirements.

Notwithstanding provisions in this Chapter to the contrary, the Zoning Board of Appeals may consider the granting of a Special Permit for the alteration of an existing, single-family residence to include an Accessory Apartment in any residential zone, subject to the following provisions:

1. An accessory apartment may be permitted to accommodate a maximum of two people to live in proximity to, but with independence from, a relative.

2. The application shall designate the individual(s) who is to occupy the accessory apartment.

3. The alterations/additions necessary to create the accessory apartment shall be limited to the principal dwelling.

4. There shall be no more than two (2) dwelling units on said property, including an accessory apartment.

5. The owner of record shall reside in one of the two dwelling units, which shall be said owner's principal residence.

6. The size of the accessory apartment is not to exceed the lesser of 900 gross square feet or 30% of the gross floor area of the principal unit. The square footage of the accessory apartment must meet the minimum requirements of the state's sanitary code.

7. The accessory apartment shall be a self-contained dwelling unit that shares a common vertical and/or horizontal wall with the primary dwelling unit. Within the common vertical and/or horizontal wall shall be a doorway so that the accessory unit may be accessed from the primary unit.

8. The principal dwelling unit shall have only one front entrance; any new entrance shall be located on the side or in the rear of the building. Where two or more entrances already exist on the front façade of a dwelling, modifications made to any of the entrances shall result in one entrance appearing to be the principal entrance and other entrances appearing to be secondary. All stairways leading to second or third stories shall be enclosed within the exterior walls of the dwelling.

9. The accessory apartment will have no more than two (2) bedrooms.

10. The Special Permit for an accessory apartment shall terminate:

    1. Upon the death of the designated occupant; or
    2. Upon the change of residence of the designated occupant; or
    3. Upon the transfer of ownership of the premises.

    Following termination of said Special Permit the owner shall remove the kitchen built as a result of the Special Permit within ninety (90) days.

    The house will then revert to a single-family residence. The accessory apartment shall not be held in, or transferred into separate ownership from the principal dwelling under a condominium form of ownership, or otherwise.

11. An affidavit by the record owner, sworn under penalties of perjury, with proper documentation is required with the application to certify that the accessory apartment living area is for a relative(s). The Special Permit shall be issued to the owner of the property.

The Building Inspector shall have the right at a reasonable time to inspect the premises to determine compliance per requirements of this ordinance and the Special Permit. Refusal of this inspection may result in the revocation of the special permit.

12. In granting a Special Permit the Board may impose such conditions, including requirements for off street parking and limitations on other accessory uses of the premises, as it may deem appropriate to avoid detriment to the neighborhood or to nearby persons or property. The Board shall evaluate each Special Permit application that involves exterior changes in the appearance and character of the neighborhood and may require that there be no change or minimal change to any building façade oriented toward a public way or visible from a public way.

(Ord. No. 72, 7-5-12)

Commercial Mobile Radio Service transmission facilities, structures, and/or towers are allowed by Special Permit (Ord. No. 115, 6-11-96).

D Special Provisions for Congregate Housing for Elderly and/or Permanently Disabled

1. A Special Permit may be granted by the Planning Board in any Residential District for "Congregate Housing for Elderly and/or Permanently Disabled" to permit the following:

All residential developments associated with Congregate Housing for Elderly and/or Permanently Disabled,

Commercial uses associated with the functioning of Congregate Housing subject to specific, special requirements listed in Section 38-24.C. below.

2. Building and Area Requirements

a. Minimum lot area:	20 acres
b. Minimum lot frontage:	250 feet
c. Minimum setbacks (front, rear, and side):	125 feet
d. Maximum building height:	35 feet

3. Parking Requirements

One and a quarter (1.25) parking spaces will be provided for each individual unit; loading requirements shall be the same as in Section 38-24.

4. Sign Requirements

All signs showing the location of the project itself shall conform to Section 38-26. No exterior signs advertising on-site commercial uses, and no illuminated interior signs displayed in windows shall be permitted. (D 1. - 4. Rev. 7-20-87 & 7-1-92)

5. Special Requirements

a. Commercial uses as described above shall not occupy more than 5% of the gross floor area of the entire complex, and must be housed within the main building on the site.

b. The Design Review Board shall review all Special Permit requests.

c. Plans submitted for Special Permit requests must include a detailed site and landscaping plan showing architectural renderings, parking and egress plans.

d. A plan shall be prepared by the petitioner which shall, to the extent allowable by law, give a preference for housing within the development first, to Beverly residents, then to immediate family members of Beverly residents, and then to residents of cities or towns which have a reciprocal agreement with the City of Beverly.

e. A plan shall be prepared by the petitioner which shall, to the extent allowable by law, designate at least 10% of the units, or more at the discretion of the permit granting authority, for the purpose of providing affordable housing. For the purpose of this paragraph, the definition of affordable housing shall be based on at least the Massachusetts Housing Finance Agency (MHFA) or its successor's definition of low or moderate income for family and/or individuals. (D 5.a-e. Rev. 7-20-87)

f. The maximum density allowed shall be four dwelling units per acre. (Rev. 3-6-89)

g. Any remaining area of the proposed site not dedicated for buildings, streets, and other public rights-of-way shall be dedicated as open space in perpetuity (Rev. 6-30-88)

h. The provisions of this section are optional. Nothing herein shall require the Planning Board to approve a Special Permit where it finds the granting of this permit shall adversely affect the general area. (Rev. 6-30-88)

E Residential Reuse of Existing and Former Public Buildings
(Ord. No. 1., 4-6-07; Ord. No. 3A, 4-22-10)

1. Purpose - To provide for the productive reuse of existing or former public buildings and the lots on which they are located primarily for residential purposes, and to provide affordable housing opportunities for low/moderate income households.

2. Use Regulation - In any zoning district, the City Council may allow by Special Permit the reuse of an existing or former public building and the lot on which it is located, as hereinafter defined, for residential purposes and for other supporting use(s) the Council may determine are appropriate, provided that twelve percent (12%) of such allowed housing units are set aside for low or moderate income tenants or owners as hereinafter defined. The Special Permit may allow a greater number of residential units than would otherwise be permitted under the building and area requirements applicable to the zoning district in which such building and lot are located.

In the case of units to be owned or occupied by low or moderate income households, such units shall be subject to an affordable housing restriction that contains limitations on use, occupancy, sale, resale and rents, and provides for periodic monitoring to verify compliance with and to enforce said restriction. The affordable housing restriction shall run with the land and be in force in perpetuity or for the maximum period allowed by law, and be enforceable under the provisions of Chapter 184, Section 26 or Sections 31-32 of the Massachusetts General Law.

Each affordable unit created under this Section shall be sold or rented to a household with income at or below 80% of the area median income that applies to subsidized housing in the City of Beverly, as reported annually by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size.

For any special permit issued under this Section, the provisions of Section 38-24.B. (Open Space Residential Design – OSRD) shall be optional.

3. Public Building Defined - For purposes of this section, "public building" shall be defined as any building together with the lot on which it is located that is currently or formerly owned by the City of Beverly or any of its departments, authorities, or agencies.

4. Low or Moderate Income Household - For purposes of this section, "low or moderate income household" shall be defined as those whose annual income falls within the income guidelines for low or moderate income as determined by the US Department of Housing and Urban Development for the Boston-Cambridge-Quincy MA – NH – MSA.

5. Parking – Parking shall be provided as required by Section 38-25. of the Zoning Ordinance.

6. Procedure – A special permit application and twelve (12) copies of a site plan meeting the requirements of Section 38-29.C. of the Zoning Ordinance shall be filed with the Beverly City Council and processed by the City Council in accordance with the provisions of M.G.L. Chapter 40A, Section 9 and, to the extent practical, the rules and regulations of the Planning Board with respect to special permits.

   In reviewing a special permit application under this Section, the City Council shall consider the conditions outlined in Section 38-28.C.2. of the Zoning Ordinance, along with any other considerations it deems advisable and reasonable within the parameters of M.G.L. Chapter 40A, Section 9.

   The City Council shall open a public hearing on the special permit application and provide the applicant with initial feedback regarding the basic elements of the proposed project, including density. Six (6) copies of the site plan (which may be amended to reflect Council feedback) shall then be transmitted by the City Council to the Planning Board, which shall review the proposed site plan and provide recommendations to the City Council for its consideration. The City Council shall not close the public hearing on a special permit application until it has received a recommendation from the Planning Board on the site plan, or until sixty-five (65) days have elapsed since the plans were submitted to the Planning Board without the submission of a recommendation. The Planning Board's review of a site plan submitted to it by the City Council for a project under this Section shall be deemed compliance with Section 38-29.C., and no subsequent site plan review by the Planning Board under Section 38-29.C. shall be necessary.

   The City Council may elect to refer a special permit application or site plan to any other board, commission, or city department for review and comment during the course of the public hearing.

7. The provisions of this Section are optional, and nothing herein shall require the City Council to grant a Special Permit where it finds that the proposed project's overall impact on the general area would be adversely affected. (E 1. - 9. Rev. 5-9-88; E 1 – 7 Rev., Ord. No. 1, 4-6-07; E1.-5. Rev. Ord. No. 3A, 4-22-10)

38-25 PARKING AND LOADING REQUIREMENTS

A Off-street Parking Requirements

For any use newly-established; or any change from one use to another; or for any use increased in intensity or physically enlarged by more than twenty-five percent (25%) under this Ordinance, off-street parking and loading space shall be provided in accordance with the following schedule in this Section. Off-street parking and/or loading requirements for uses other than those cited in this Ordinance shall be determined in consultation with the applicant by the Building Inspector on recommendation from the Planning Board. The Building Inspector, on recommendation from the Planning Board, may require additional space if the particular use so warrants. (Rev. 7-1-92)

Any deviation from all or a portion of the requirements for off-street parking must be obtained by a special permit from the Planning Board upon determination that the applicable conditions set forth in Section 38-28.C. will be satisfied. (Rev. 9-21-87; Ord. No. 61, 7-12-11)

USE	MINIMUM OFF-STREET PARKING SPACES REQUIRED
Residential uses in the CC District:	
(i) Residential units of 1 bedroom or smaller	1 space per residential unit
(ii) Residential units with 2 bedrooms located in the Depot Overlay District (as defined in Section 38-17.E.)	1 space per residential unit
(iii) All other residential units with 2 or more bedrooms	2 spaces per residential unit
Residential units in the CG, CN, WD, IG, IR, RHD, RMD, R-6, R-10, R-15, R-22, R-45, and R-90 zoning districts	2 spaces per residential unit
Rooming house, Hotel, Motel	1 space for each rental unit plus 1 space for each eight seats provided for eating and meeting facilities
Bed and Breakfast Establishment	1 space for every room rented, plus 2 spaces
Hospital	1 space for every 2 beds
Clubs, Lodges, and similar uses	1 space per 400 sq. ft. of gross floor area
Auditorium, Theater, General Meeting facilities or place thereof	1 space for every 4 seats, permanent or otherwise
Business and Professional Offices	1 space for every 250 sq. ft. of gross floor area (Ord. No. 169, 8-27-96)
Retail Trade Establishment, Personal service	1 space for every 275 sq. ft. of gross floor area for those establishments under 10,000 sq. ft. in gross floor area; 1 space for every 200 sq. ft. of gross floor area for those establishments over 10,000 sq. ft. in gross floor area

Clinic or medical buildings, including medical offices as an accessory use in a residential dwelling	1 space for every 150 sq. ft. of gross floor area
Restaurant or similar indoor place dispensing food, drink, or refreshment	1 space for every 4 seats, permanent or otherwise.
Schools	1 space for each 500 sq. ft. of floor space, exclusive of basements
Wholesale and storage in enclosed buildings	1 space per 1,000 sq. ft. of gross floor area for the first 20,000 sq. ft.; 1 space for each 2,000 sq. ft. of gross floor area for the second 20,000 sq. ft.; 1 space for each 4,000 sq. ft. of gross floor area for areas in excess of the initial 40,000 sq. ft. of gross floor area
Open storage	1 space for every 1,000 sq. ft. of the lot devoted to the use thereon
Manufacturing, Assembly, Processing, Research, Printing, and publishing	2.5 spaces per 1,000 sq. ft. of gross floor area (Ord. No. 169, 8-27-96)
Congregate Housing for the Elderly and Permanently disabled, including subsidized elderly housing facilities that provide shared living arrangements	.75 space per unit (Ord. No. 169, 8-27-96)
Marina	.5 space per boat moored, docked, stored, or trailered. Between September 15th and May 15th, up to 80% of the required parking spaces may be used for winter storage of boats, floats, runways, and associated equipment. On or before May 16th, 70 percent of the required parking spaces must be clear and available for motor vehicle parking. By June 15th, 100 percent of the required parking spaces must be clear and available for motor vehicle parking.

(Rev. 7-10-89 & 3-19-91) (Ord. No. 169. 8-27-96; Ord. No. 207, 11-6-08; Ord. No. 72, 7-9-09; Ord. No. 61, 7-12-11)

B Off-street Loading Requirements

Off-street loading requirements for commercial and industrial uses, if established or expanded by more than 25 percent under this Ordinance, shall be required to provide adequate off-street loading space for loading and unloading all vehicles incidental to the operation of the establishment. The Building Inspector, on recommendation from the Planning Board, may waive all or a portion of the requirements for loading or may require additional space if the particular use so warrants.

C General Provisions

1. Required off-street parking spaces may be provided on the same lot with the principal use, or on a contiguous lot, or may be provided on

a nearby lot and entrance to the use it serves shall not exceed 500 feet.

2. In the case of two or more uses on one lot, the requirement for the number of parking or loading spaces shall be the sum of the requirements for the various uses computed separately. The parking or loading spaces for one use shall not be considered as providing the required parking or loading spaces for any other use. Required loading space is not to be included as parking space in providing required parking spaces.

3. Where a principal use of a lot is not enclosed in a building, the portion of the lot so used shall be considered as the gross floor area for calculating off-street parking space requirements.

4. No accessory off-street parking space shall be permitted within the required front yard in any "R" District, except that this shall not be construed as applying to parking required for a one or two-family dwelling.

5. No employee parking shall be permitted within the required front yard in any "IR" District. No parking in any "IR" District shall be permitted less than 15 feet from any lot line.

6. Commercial or industrial vehicles with more than two axles not related to a home occupation or home professional office as defined in Section 38-2.B.32. shall not be allowed to be parked or stored on a permanent basis without a Special Permit in a Residential District.

7. "Piggy-back" parking, in which each space does not have independent access to a driveway or street, is not allowed, except when such spaces are permanently assigned to the same residential unit and except for one and two family homes. (Rev. 6-26-87)

8. For bed and breakfast establishments, all parking shall be off-street, not within the required front yard setback and "piggy back" parking shall not be allowed except for those spaces assigned to the permanent resident(s) of the structure. All other requirements of the City's parking requirements will apply as well (size of spaces, surfacing materials, etc.). (Rev. 3-19-91)

D Parking, Loading Space and Design Specifications

All parking or loading areas containing over three (3) spaces including automobile service and drive-in establishments shall be either contained

within buildings or other structures, or be subject to the following, as well as all specifications of the City of Beverly:

1. Parking or loading spaces shall be effectively screened on each side of the parking area which adjoins or faces the side or rear lot line of premises situated in any "R" District. The screening shall be accomplished using one of the following methods:

   (i) a five (5) foot wide and five (5) foot high evergreen landscaping strip;

   (ii) a wall or fence of uniform appearance six (6) feet in height;

   (iii) a landscaped earthen berm at least five (5) feet in height.

   Such screening shall be maintained in good condition. (Rev. 7-10-89)

2. Every parking or loading area and access driveways thereto shall be surfaced with a durable and dustless material which shall meet with the approval of the Building Inspector and shall be graded and drained so as to disperse of all surface water and accumulation.

3. Any fixture used to illuminate any parking or loading shall be so arranged as to direct the light away from street and away from adjoining premises used for residential purposes.

4. Any off-street parking area shall also be subject to the following:

   a. There shall not be any motor vehicle parking within five (5) feet of any side or rear lot line, except that this requirement shall not apply in the WD Zoning District.
   (Ord. No. 207, 11-6-08)

   b. There shall not be any vehicle repair facilities or any repair made to any motor vehicles.

   c. There shall not be any storage of materials, or equipment, except as part of approved building operations.

   d. Off-street parking spaces may be permitted within the required front yard in other than the "R" and "IR" Districts, but such space shall be set back from the street line by a minimum of ten (10) feet, except that this requirement shall not apply in the WD Zoning District.
   (Ord. No. 207, 11-6-08)

E Design Requirements

1. All off-street parking and loading area containing three (3) or more spaces shall be so arranged and marked as to provide for orderly and safe loading, unloading, parking and storage of vehicles with individual parking spaces clearly defined. (Rev. 6-26-87)

2. Such areas shall meet the following requirements:

   a. Each parking space shall be at least nine (9) feet in width and eighteen (18) feet in length. Aisle width shall be a minimum of eighteen (18) feet for one-way traffic and twenty-four (24) feet for two-way traffic. The arrangement of parking spaces shall be approved by the Building Inspector, adhering to the requirements of the State Building Code and shall provide for safe pedestrian access in and around such parking areas as required by 780 CMR 1001 through 780 CMR 1009 inclusive as those regulations may be amended from time to time. (Rev. 7-10-89; Ord. No. 43, 3-14-00).

   b. Each loading space shall not be less than 1,000 square feet, including space for maneuvering and arrangement or layout of off-street loading area shall be approved by the Building Inspector.

   c. Any portion of any entrance or exit driveway shall not be closer than twenty (20) feet to the curb of an intersecting street.

   d. Any two (2) drives leading from a street to a single lot shall not be within thirty (30) feet of each other at a street.

   e. Any entrance or exit driveway shall not exceed twenty-five (25) feet in width at a street.

   f. A maximum of two (2) driveway accesses at a street per lot are allowed, for example: a lot with frontage on two streets may have a maximum of four driveway accesses, two on each street.

F. Shared Parking in Lots Zoned "IR Overlay"

1. In a Mixed Use development on a lot zoned "IR Overlay" on the official City zoning map, the number of required parking spaces shall be as provided above in this Section 38-25, unless in

performing Site Plan Review or in acting on a Special Permit, the Planning Board determines that a lesser number of spaces would be adequate for all parking needs because of special circumstances such as shared parking for uses having peak parking demands at different times or other measures reducing parking demand.

2. When considering shared parking, the following method will be used to determine the appropriate parking requirements. Multiply the minimum parking requirement for each individual use, as set forth in Section 38-25, by the listed percentage, as set forth below in the Schedule of Parking Occupancy Rates, for each of the five designated time periods and then add the resulting sums from each vertical column. The column total having the highest total value is the minimum shared parking space requirement for that combination of land uses.

3. Schedule of Parking Occupancy Rates

	Weekday			Weekend	
	Night Midnight to 7:00 a.m.	Day 7:00 a.m. to 6:00 p.m.	Evening 6:00 p.m. to Midnight	Day 6:00 a.m. to 6:00 p.m.	Evening 6:00 p.m. to Midnight
Residential	100%	60%	90%	80%	90%
Manufacturing, Assembly, Processing	5%	100%	10%	10%	5%
Business and Professional Office	5%	100%	10%	10%	5%
Retail Establishment	5%	80%	90%	100%	70%
Hotel	70%	70%	100%	70%	100%
Restaurant	10%	50%	100%	50%	100%
Eating and meeting facilities associated with Hotel	10%	50%	60%	50%	60%
Auditorium, Theater	10%	40%	100%	80%	100%
School, Day-care facilities	5%	100%	10%	20%	5%
All other	100%	100%	100%	100%	100%

4. Prior to issuance of an Occupancy Permit for shared parking, the owner(s) of a Mixed Use development shall have in their possession and readily available for review by the Building Commissioner a reciprocal agreement executed by the owners and operators of the different sources or uses in the development ensuring the long term

joint use of such shared parking, and defining the terms upon which the parking is shared.

In the event that the conditions (such as a change in use) for shared parking change, or if the shared parking arrangement is discontinued, the owner(s) shall notify the Building Commissioner within 10 days of such change or discontinuance. If the Building Commissioner determines that a modification of the Special Permit is required and the owner(s) fails to apply to the Planning Board for such modification within sixty (60) days of such determination, or if modification of the Special Permit is not granted by the Planning Board within ninety (90) days of application therefore, then the Building Commissioner shall require the owner(s) to comply with all applicable parking requirements.

Noncompliance with this section may result in the revocation of Occupancy Permits for the violating uses.

(Ord. No. 230, 2-19-09)

38-26 SIGNS
(Ord. No. 59, 5-29-03)

A Signs, generally:

Declaration of Policy: It is hereby declared to be the policy of the City of Beverly that the protection of property values, the protection of the character of the various neighborhoods in the City, the encouragement of the sound development of land throughout the City for its most appropriate use, and the protection of the public welfare in general requires strict limitation of all display signs in the City.

It is the general policy of the City that the primary purpose of a sign is for the identification of a business and not for advertisement. The design of the sign must respect and be compatible with the architecture of the building and surrounding buildings for which or upon which it is being erected.

The intent of setting size, design, and location parameters for signs is not to promote the design of nearly identical signs, but to define limits within which applicants can be creative.

Any sign placed on land or on a structure for the purposes of identification or protection of the same or for advertising a use conducted thereon shall be deemed to be accessory and incidental to such land, structure or use. All applications for a building permit to erect or alter any sign shall be reviewed by the Design Review Board. It is the purpose of this Ordinance to place such limitations on display of all such signs in order to achieve a sense of order and aesthetics, to promote attractive commercial areas and entrances to the City of Beverly, to provide for the display of signs which are structurally safe and do not interfere with traffic movement, traffic signals, or traffic signs; and to assure that the signs will be appropriate to the land, building or use to which they are appurtenant and be adequate, but not excessive, for the purpose of identification. With respect to signs identifying business uses, such regulations have been devised after considering, among other matters: shopping habits, extent of trade areas, and means of access to such uses, and are specifically intended among other things, to avoid excessive competition among sign displays in their demand for public attention.

(Paragraph deleted by Ord. No. 206, 12-29-05)

Any exterior design features of a building or structure that are associated with a corporate image or identification of a business shall be considered a sign, or the extension of the area of a sign, and subject to regulation under this Ordinance.

General guidelines: All signs must meet the following general guidelines regardless of zoning district and shall not violate the provisions of Section D:

1. The definitions for signs at Section 38-2.B. numbers 47(a)-(s) shall apply to this section.

2. Sign location: signs must be located so as not to detract from a building's architecture. A sign shall not be placed such that it obscures the architectural elements such as roofs, cornices, columns, arches, windows, details, or other such building features or ornamentation.

3. Style and design of sign: lettering, shape, and color employed in a sign shall be compatible with the form, color, and materials of the building housing the establishment that the sign is identifying. Signs for different businesses within the same building, or for a collection of buildings including but not limited to those which form a shopping center shall be of harmonious style and design.

4. Sign message: given a sign's primary purpose is identification, a sign's message should clearly and simply identify a business. A sign may include lettering and symbols to indicate the name and the kind of primary business, service or facility conducted on the premises, and the year the business was established. The sign may include a street address.

5. Trademark: a sign may incorporate no more than one registered trademark, logo, or identifying symbol provided that the registered trademark, logo, or identifying symbol must be for an establishment only, not for a commodity or product sold by the establishment. The area of the registered trademark, logo, or identifying symbol shall be included in the calculation of the allowable area of the sign.

6. Illumination: Except as otherwise provided, signs may be illuminated either internally through the use of some sort of translucent materials (for example: individual letters, opaque, overhang) with lights behind or with neon tubing or externally through mounting of incandescent or fluorescent lamps directed at the sign on the building. The type of illumination employed shall not distract from the building's architecture. Colored lighting, open flame, or bare bulbs shall not be used.

7. No sign or any portion of any sign, shall be allowed to have changeable messages, except those signs belonging to: theaters, places of worship, non-profit educational entities.

8. In the case of any inconsistencies among the provisions of this Section 38-26, the most restrictive provisions shall apply.

B Specific standards by zoning district:

1. Signs permitted in any CG, CC, IR, or IG district:

a. Wall sign: One (1) permanent wall sign shall be permitted for each ground floor business' primary façade that face(s) a public way. The maximum size of the sign shall be determined as follows:

(i) For businesses with up to 30 feet of primary facade: 20 square feet;

(ii) For businesses with a primary façade between 30 feet and 40 feet: 30 square feet;

(iii) For businesses where the primary façade is greater than 40 feet in length, the allowed size of the sign shall be determined by a formula that, described in general terms, compares the length of the primary façade, expressed as a square footage number, with a distance between the business and a public way. The size is determined as follows:

(a) If the distance of the closest point of the building to the nearest lot line abutting a public way is more than 0 foot but not greater than 20 feet, the maximum sign area shall be the lesser of either 25 s.f. or two times the length of the primary façade (that is, the length of the primary façade expressed as a square footage number);

(b) If the distance of the closest point of the building to the nearest lot line abutting a public way is more than 20 feet, but not greater than 40 feet, the maximum sign area shall be the lesser of either 30 s.f. or two times the length of the primary façade (that is, the length of the primary façade expressed as a square footage number);

(c) If the distance of the closest point of the building to the nearest lot line abutting a public way is more than 40 feet but not greater than 80 feet, the maximum sign area shall be the lesser of either 60 s.f. or two times the length of the primary façade

(that is, the length of the primary façade expressed as a square footage number).

For example, if the primary façade of this building is 50 feet long, then the sign could be no larger than 60 square feet. [60 s.f. is less than 2 x 50 (the length of the primary façade) = 100 s.f.

(d) If the distance of the closest point of the building to the nearest lot line abutting a public way is more than 80 feet, the sign shall be the lesser of either 150 s.f. or two times the length of the primary façade (that is, the length of the primary facade expressed as a square footage number).

For example, if the primary façade of this building is also 50 feet long, then the sign could be no larger than 100 square feet. [100 s.f. (2 x 50, the length of the primary façade) = 100 is less than 150 s.f.]

All signs must be placed in the building's sign band, if one exists and the sign must be placed so it does not obscure architectural detail of the building. If a building does not have a sign band, then the top of any sign shall be no higher than the middle of the sills of the second story windows or fifteen feet above grade, whichever is lower. Wall signs shall project no more than twelve (12) inches out from the building. Mounting hardware shall be placed to minimize its view from the sidewalk.

b. Freestanding sign: No freestanding sign shall be permitted in the CC, CG, IR, & IG districts except in the cases where:

Single Building with a Single Business: A single building has only one business and lacks visibility from the street because the entire building is situated more than 200 feet from the front lot line, or more than 75% of the building is obscured by topography (ledge, hills, valleys). In this case, one (1) freestanding sign up to ten (10) square feet in area is allowed. The top of the sign shall be no higher than fifteen (15) feet above grade, have no more than two (2) faces, shall not overhang any public way, and shall not be more than twelve (12) inches deep.

Single Building with Several Businesses: A single building has two or more businesses and lacks visibility from the street because the entire building is situated more than 200 feet from the front lot line, or more than 75% of the building is obscured by topography (ledge, hills, valleys). In this case, one freestanding

sign up to thirty (30) square feet in area is allowed. The top of the sign shall be no higher than fifteen (15) feet above grade, have no more than two (2) faces, shall not overhang any public way, and shall not be more than twelve (12) inches deep.

Several Buildings with several businesses: Several buildings have, in the aggregate, more than two businesses (e.g. without limitation, retail shopping center, business office park, consisting of wholesale, manufacturing, or service businesses) and lacks visibility from the street because all buildings are situated more than 200 feet from the front lot line, or more than 75% of all buildings are obscured by topography (ledge, hills, valleys). In this case, one freestanding sign up to thirty-five (35) square feet in area is allowed. The top of the sign shall be no higher than 15 feet above grade, have no more than 2 faces, shall not overhang a public way, and shall not be more than twelve (12) inches deep.

Freestanding signs for single buildings with several businesses and for several buildings with several businesses shall employ a sign that gives the place name of the set of businesses as one entity or by one name (e.g. "North Beverly Plaza" or "Cummings Center" and may include the street address within the square foot area allowed for the sign.

c. Window signs:

Upper floor and ground floor uses:

One (1) sign is permitted per business provided it does not cover any more than the lesser of:

1. twenty (20) percent of the window opening in which the sign is located;
2. maximum of ten (10) square feet.

Such signs must be individual letters affixed or painted in a single window opening (see definition).

d. Awning signs: One (1) awning sign is permitted for each ground floor use provided that letters are painted on or integral to awning fabric, are in a maximum of one (1) line and are no larger than six (6) inches in height. No internally illuminated awning signs are allowed.

e. Temporary signs: Temporary exterior signs are allowed as follows:

1. An application must be filed with the Building Inspector;
2. The application must state text and time period when the sign will be displayed;
3. Only one sign is allowed at a time per business;
4. The sign shall be displayed no longer than fourteen (14) consecutive days; and
5. No other temporary sign can be applied for until a 21-day no-sign period has passed since the last temporary sign was displayed.

The provisions of this subsection (e) shall not apply to retail businesses from November 15 to January 15.

f. Gasoline filling station signs:

Gasoline filling stations shall be allowed the following three types of permanent signs: a primary façade sign, a canopy sign, and a gasoline price sign, provided however that such signs shall meet all of the other requirements of Section 38, in addition to those set forth is this subsection.

1. Canopy Signs. Up to two (2) canopy signs are permitted for each gasoline filling station, provided that they are each a maximum of one (1) line, not greater than twelve (12) inches in height and not longer than six (6) feet. Identifying symbols (logo, trademark, etc.), if any, shall be considered part of the canopy sign when calculating the maximum allowed size. No internally illuminated canopy signs are allowed.

2. Gasoline Price Signs. In addition to signs specified in this section and pump signs specifically allowed in Section 38-26.C, gasoline filling stations are also permitted one non-illuminated gasoline price sign not to exceed nine (9) square feet. All letters and numbers shall not exceed 8 inches in height. The bottom of the gasoline price sign shall not exceed 8 feet higher than grade.

   The calculation of the maximum size of a gasoline filling station price sign shall include the gasoline prices, the company name, if any, and all identifying symbols (logo, trademark, etc.) if any. No business establishment that includes a gasoline filling station shall be allowed more than one gasoline price sign. The

gasoline filling station price sign shall have no more than two (2) faces.

All signs for the retail sale of food (whether prepackage or prepared on the premises under a separate business name) and accessory items associated with automobile maintenance and use shall be included in the maximum allowed signage calculations for gasoline filling stations.

See also Gasoline pump signs (see Section 38-26.C.13)

g. Residential Project Signs: Sign may not exceed twenty (20) square feet in area and six (6) feet in height, and may give the place name of a multiple-family dwelling complex or single-family subdivision.

h. Projecting Signs: Projecting signs shall project no more than four (4) feet from the façade of a building. Only one (1) projecting sign no larger than seven (7) square feet may be erected per business. Mounting hardware shall be placed to minimize its view from the sidewalk. Business owners shall be encouraged to mount a projecting sign so the top of the sign is no more than fifteen (15) feet above the sidewalk, and the bottom of the sign is no less than nine (9) feet above the sidewalk. Projecting signs shall not be internally illuminated. (Ord. No. 161, 6-24-04; Ord. No. 206, 12-29-05)

i. Sandwich Board Signs: One (1) sign not exceeding two (2) feet in width and three and one half (3 ½) feet in height may be permitted within the sidewalk/grass strip of a public right of way or on private property provided the following requirements are met:

1. The sign is located in front of, and within twelve (12) feet of the main entrance to the establishment it advertises;

2. Placement of the sign allows a minimum of thirty-six (36) inches of unobstructed sidewalk clearance between it and any building or other obstruction;

3. The sign must be free-standing and shall not be affixed, chained, anchored, or otherwise secured to the ground or to any pole, parking meter, tree, tree grate, fire hydrant, railing, or other structure;

4. The sign must be internally weighted so that it is stable and windproof;

5. The sign is placed within the public right of way only during the hours of the establishment's operation;

6. No sign shall be placed in a public right of way for the duration of a declared snow emergency;

7. The design of the sign (which includes the color, lettering style, symbols and material) shall complement and be compatible with the design of the establishment's primary sign(s), abutting properties, and the general streetscape in the immediate vicinity of the establishment;

8. The City Council issues a permit to allow the sign in accordance with Section 12-273 of the City's Revised Ordinances; and

   a. Adequate liability insurance is provided to the City Clerk and remains in effect for the duration of the permit issued by the City Council.

(Ord. No. 57, 6-20-07)

2. Signs permitted in any CN, HD, or WD district:

a. Wall sign: One (1) permanent wall sign not to exceed a maximum of twenty (20) square feet is permitted for a ground floor use's primary façade.

All signs must be place in the building's sign band if one exists and the sign must be placed so it does not obscure architectural detail of the building. If a building does not have a sign band, then the top of any sign shall be no higher than the bottom of the sills of the second story windows or fifteen feet above grade, whichever is lower. The sign shall project no more than nine (9) inches out from the building. Mounting hardware shall be placed to minimize its view from the sidewalk. Lighted signs may only be externally illuminated.

b. Freestanding sign: No freestanding sign shall be permitted in the CN, HD, or WD districts except in the cases where:

Single Building with a Single Business: (1) A single building has only one business and lacks visibility from the street because the

entire building is situated more than 200 feet from the front lot line, or more than 75% of the building is obscured by topography (ledge, hills, valley). In this case one (1) freestanding sign up to ten (10) square feet in area is allowed. The top of the sign shall be no higher than fifteen (15) feet above grade, have no more than two (2) faces, shall not overhang any public way, and shall not be more than twelve (12) inches deep.

Single Building with Several Businesses: (2) A single building has two or more businesses and lacks visibility from the street because the entire building is situated more than 200 feet from the front lot line, or more than 75% of the building is obscured by topography (ledge, hills, valleys). In this case, one freestanding sign up to twenty (20) square feet in area is allowed. The top of the sign shall be no higher than fifteen (15) feet above grade, have no more than two (2) faces, shall not overhang any public way, and shall not be more than twelve (12) inches deep.

Several Buildings with Several Businesses: (3) Several buildings have, in the aggregate, more than two businesses (e.g. without limitation, retail shopping center, business office park, consisting of wholesale, manufacturing, or service business) and lack visibility from the street because all buildings are situated more than 200 feet from the front lot line, or more than 75% of all buildings are obscured by topography (ledge, hills, valleys). In this case, one freestanding sign up to twenty-five (25) square feet in area is allowed. The top of the sign shall be no higher than 15 feet above grade, have no more than 2 faces, shall not overhang a public way, and shall not be more than twelve (12) inches deep.

Freestanding signs for single buildings with several businesses and for several buildings with several businesses shall employ a sign that identifies the set of businesses as one entity or by one name (e.g. "North Beverly Plaza" or "Cummings Center") and may include the street address within the square foot area allowed for the sign.

c. Window signs:

1. Upper floor uses: One (1) sign (up to 3 sq. ft. in size) is permitted per business. Illuminated signs are not permitted.

2. Ground floor uses: One (1) sign is permitted per business provided it does not cover more than the lesser of:

(a) twenty (20) percent of the window opening in which the sign is located; or
(b) a maximum of six (6) square feet;

Such signs must be individual letters affixed or painted in a single window opening (see definition).

d. Awning signs: One (1) awning sign is permitted for each ground floor use provided that letters are painted on or integral to awning fabric, are a maximum of one (1) line and are no larger than six (6) inches in height. No internally illuminated awning signs are allowed.

e. Temporary signs: Temporary signs are allowed as follows:

1. An application must be filed with the building inspector;
2. The application must state text and time period when the sign will be displayed;
3. Only one sign is allowed at a time per business;
4. The sign shall be displayed no longer than fourteen (14) consecutive days; and
5. No other temporary sign can be applied for until a 21-day no-sign period has passed since the last temporary sign was displayed.

The provisions of this subsection (e) shall not apply to retail businesses from November 15 to January 15.

f. Gasoline filling station signs:

Gasoline filling stations shall be allowed the following three types of permanent signs: a primary façade sign, a canopy sign, and a gasoline price sign, provided however that such signs shall meet all of the other requirements of Section 38, in addition to those set forth is this subsection.

1. Canopy Signs. Up to two (2) canopy signs are permitted for each gasoline filling station, provided that they are each a maximum of one (1) line, not greater than twelve (12) inches in height and not longer than six (6) feet. Identifying symbols (logo, trademark, etc.), if any, shall be considered part of the canopy sign when calculating the maximum allowed size. No internally illuminated canopy signs are allowed.

2. Gasoline Price Signs. In addition to signs specified in this section and pump signs specifically allowed in Section 38-26.C.,

gasoline filling stations are also permitted one non-illuminated gasoline price sign not to exceed nine (9) square feet. All letters and numbers shall not exceed 8 inches in height. The bottom of the gasoline price sign shall not exceed 8 feet higher than grade.

The calculation of the maximum size of a gasoline filling station price sign shall include the gasoline prices, the company name, if any, and all identifying symbols (logo, trademark, etc.) if any. No business establishment that includes a gasoline filling station shall be allowed more than one gasoline price sign. The gasoline filling station price sign shall have no more than two (2) faces.

All signs for the retail sale of food (whether prepackage or prepared on the premises under a separate business name) and accessory items associated with automobile maintenance and use shall be included in the maximum allowed signage calculations for gasoline filling stations.

See also Gasoline pump signs (see section 38-26.C.13).

g. Residential Project Signs:

Signs may not exceed twenty (20) square feet in area and six (6) feet in height, and may give the place name of a multiple-family dwelling complex or single-family subdivision.

h. Projecting Signs: Projecting signs shall project no more than four (4) feet from the façade of a building. Only one (1) projecting sign no larger than seven (7) square feet may be erected per business. Mounting hardware shall be placed to minimize its view from the sidewalk. Business owners shall be encouraged to mount a projecting sign so the top of the sign is no more than fifteen (15) feet above the sidewalk, and the bottom of the sign is no less than nine (9) feet above the sidewalk. Projecting signs shall not be internally illuminated. (Ord. No. 161, 6-24-04; Ord. No. 206; 12-29-05)

i. Sandwich Board Signs. One (1) sign not exceeding two (2) feet in width and three and one half (3 ½) feet in height may be permitted within the sidewalk/grass strip of a public right of way or on private property provided the following requirements are met:

1. The sign is located in front of, and within twelve (12) feet of the main entrance to the establishment it advertises;

2. Placement of the sign allows a minimum of thirty-six (36) inches of unobstructed sidewalk clearance between it and any building or other obstruction;

3. The sign must be free-standing and shall not be affixed, chained, anchored, or otherwise secured to the ground or to any pole, parking meter, tree, tree grate, fire hydrant, railing, or other structure;

4. The sign must be internally weighted so that it is stable and windproof;

5 The sign is placed within the public right of way only during the hours of the establishment's operation;

6. No sign shall be placed in a public right of way for the duration of a declared snow emergency;

7. The design of the sign (which includes the color, lettering style, symbols and material) shall complement and be compatible with the design of the establishment's primary sign(s), abutting properties, and the general streetscape in the immediate vicinity of the establishment;

8. The City Council issues a permit to allow the sign in accordance with Section 12-273 of the City's Revised Ordinances; and

   a. Adequate liability insurance is provided to the City Clerk and remains in effect for the duration of the permit issued by the City Council.

(Ord. No. 57, 6-20-07)

C. Signs Not Requiring Design Review Board Approval

The following signs shall be allowed by right without the necessity of DRB approval provided, however, that they shall conform with the provisions of Paragraph A of this Section 38-26.

1. Signs erected by or on the order of a governmental agency when limited to governmental purposes, and excluding any advertising;

2. Names of building, date of erection, monument citation and commemorative tablets when made a permanent and integral part of a building or site not exceeding five (5) square feet.

3. Banners or flags emblematic of or issued by national, state, or local governments;

4. Holiday decorations and lights when in season;

5. Signs not to exceed two (2) square feet in size which indicate warnings, hazards, or public conveniences such as "trespass," "beware of dog," and restroom signs;

6. Signs not to exceed two (2) square feet in size which are necessary for safety and direction of residents, employees, customers and visitors, whether in a vehicle or on foot provided that such signs do not carry the name or symbol of any product and that the name or symbol of any business does not take up more than 30% of the sign space;

7. Signs whose purpose is to identify a house of worship or a community building, provided that the sign does not exceed 12 square feet in size and is not internally illuminated;

8. Signs not to exceed two (2) square feet in size whose purpose is giving only direction and distance to specified house of worship; community buildings, provided that no such sign shall be illuminated;

9. Home signs, not to exceed two (2) square feet in size which indicate the name and address of the occupant(s) of a dwelling;

10. A sign, not to exceed (2) two square feet, which indicates a permitted accessory use or home occupation;

11. One (1) temporary sign, not to exceed six (6) square feet in all residential districts or twenty-four (24) square feet in all other districts, which announces the prospective sale, rent, lease, or trade of, or contracting work done on, the property. Such sign shall be removed within three (3) days after the sale, rental, lease, trade, or completion of work on such premises. Temporary signs announcing an "open house" event for the prospective sale or lease of a property are allowed, provided such signs are erected no more than three (3) hours prior to commencement of the event and are removed within one (1) hour of the close of the event, and provided that no more than three (3) such signs shall be erected for any one event. "Open House" event signs are allowed off-premises, subject to the provisions of this paragraph;

(Ord. No. 57, 6-20-07)

12. Directory boards attached to buildings shall be allowed for the sole purpose of directing the public to and identifying the location of occupants or tenants within a building(s), provided that the letters in directory boards shall not exceed one (1) inch in height; and the total sign area shall not exceed three (3) square feet;

13. One sign on the gasoline pump indicating the types and prices of gasoline provided the sign shall not exceed one square foot;

14. Temporary window signs on the first floors of nonresidential buildings provided they do not exceed the smaller of six square feet or 20 percent of the area of the window (see definition of sign area) and are up no longer than 14 days.

D. The Following Types of Signs are Prohibited

1. Any sign displaying flashing or intermittent lights, or lights of changing degrees of intensity, except a sign indicating time or temperature, with changes alternating on not less than a five-second cycle when such time or temperature sign does not constitute a public safety or traffic hazard, in the judgment of the Building Inspector and the judgment of the Design Review Board.

2. Any lighting either by exposed tubing or string of lights outlining a part or all of a building or affixed to any ornamental feature thereof, except those items temporarily affixed to a building or other portions of the premises which denote a particular season of the year or universally celebrated holiday.

3. Any sign that obscures a sign displayed by public authority for the purpose of giving traffic instructions or directions or other pubic information.

4. Any sign that uses the word "stop" or "danger" or otherwise presents or implies the need or requirement of stopping or caution or the existence of danger, or which is a copy or imitation of, or which for any reason is likely to be confused with any sign displayed by public authority.

5. Any sign that obstructs light or impedes a person's passage through any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress, or egress for any building, as required by law.

6. Any sign or sign illumination that causes any direct glare into or upon any street, or into or upon any building other than the building to which the sign is affixed.

7. Any portable sign (except a sandwich board sign), with or without self-contained wheels, which is designed and constructed so as not to be permanently affixed to the land (namely, freestanding) and moved from one place or location to another. This includes any removable signs displayed on a vehicle.
(Ord. No. 57, 6-20-07)

8. Any sign that violates any provision of any law of the State relative to outdoor advertising.

9. Signs constructed, erected or maintained above the roofline of any building, except with Design Review Board approval.

10. Any off-premises sign, such as a billboard, which indicates a use or product not available on the property where the sign is located.

11. Any sign which advertises or calls attention to any products, businesses, or activities, which are no longer sold or carried on at the premises where the sign is located. No such sign shall remain for more than thirty (30) days beyond the date the business vacates said premises. Both the landlord and the lessee shall be individually responsible for removing such signs.

12. Any right angle wall sign that project more than four (4) feet from a building face or wall;

13. Any sign, which due to its placement obscures the visibility of motor vehicles thus creating a traffic hazard.

14. Any sign not expressly permitted by this ordinance.

E. Permit Requirements and Design Review Process

Except as provided for in Section 38-26.C. of this Ordinance, no sign shall be erected, or existing sign altered in any way without review and approval by the Design Review Board and without issuance of a building permit as required by the Building Inspector. All such signs shall be subject to the following design review process:

Application: the applicant shall submit to the Design Review Board seven (7) copies of the application form describing the design of the proposed sign along with a colored drawing of the sign to scale, a site plan, if applicable, and a photograph showing the existing building or site, and such other material as may be required by the Design Review Board. The submittal of the application shall be in form and format as specified by the Design Review Board. The Board may revise such application requirements, as necessary, from time to time.

Design Review application fees: the applicant shall submit to the Design Review Board the application form, other required materials and the application fee identified below:

a. For signs and canopies: $2.00 per square foot; and
b. For new building construction: $100.00

1. Design Review Board decision: within sixty (60) days of the receipt of the application including all required materials, the Design Review Board shall either approve or disapprove the application. It is suggested that the applicant be present at the meeting. Should the Board fail to take action within sixty (60) days after receiving application, the requested sign shall be deemed approved by the Design Review Board.

2. Sign permit: upon notice of approval from the Design Review Board, the applicant may apply for a sign permit for the proposed signage from the Building Inspector.

In keeping with Section 38-5.M. of the City's Zoning Ordinance, and in recognition of the difficulty in regulating the use of all types of signs within the City, the Design Review Board shall also be assigned the following duties:

(a) The Design Review Board shall approve or disapprove all signs proposed now or hereafter within the City of Beverly which are not expressly allowed by right by this Ordinance. In approving or disapproving any particular sign not expressly allowed by this Ordinance, the Design Review Board shall take into consideration the following:

i) the zoning district, the uses existing in the area, and the general character of the area;

ii) the economic and business interests of the party having erected or proposing to erect the sign;

iii) the aesthetic appearance of the sign and its overall effect on the surrounding area, including ensuring that the sign is consistent with the general policy and adheres to the design guidelines as defined in Section 38-26.A. of this Ordinance.

(b) The Design Review Board shall not approve the erection of any sign expressly prohibited by this Ordinance, other City Ordinance, or the building code of the Commonwealth of Massachusetts.

F. Maintenance and Enforcement

All signs and their devices supporting them shall be kept in good repair and safe condition. This shall mean the absence of rust, broken or dangling parts, and cracked, peeling, and flaking paint.

The Building Inspector or a designee is authorized to order the repair or removal of any sign and its supporting structure which in the judgment of the Building Inspector is deemed unsafe, in disrepair, or which is erected or maintained contrary to the provisions of this Ordinance.

With the exception of Section 38-26.C.11., any person, firm or corporation violating any section or provision of this ordinance which pertains to signage shall be issued a warning and be given fourteen (14) days to comply. If a violation continues unabated past such time a citation with a fine of one hundred dollars ($100.00) shall be issued for each day willful violation continues. Violations of Section 38-26.C.11. shall be punishable by a warning for the first offense and a $100 fine for the second and subsequent offenses, with each day of violation constituting a separate offense.
(Ord. No. 57, 6-20-07)

The Building Inspector or a designee shall be responsible for issuing such warnings and citations for such violations of the provisions of this ordinance and for enforcing the provisions of this section. (Ord. No. 59, 5-29-03)

G. The Zoning Board of Appeal, by Special Permit, may allow deviation from the requirements of this Section if it determines that special circumstances or conditions exist with respect to application of the requirements contained herein and that such deviation will be in harmony with the general purpose and intent of this Chapter and the general policy set forth in Paragraph A hereof and will not be injurious to the neighborhood or adversely affect abutting properties. (Ord. No. 61, 7-12-11)

38-27 NON-CONFORMING SITUATIONS
(Ord. No. 57, 7-12-11)

A Definitions

1. *Nonconforming situations*. For the purposes of this Ordinance nonconforming situations are those uses, lots, buildings, structures, parking spaces, loading space, signs, landscaping and other activities that are now subject to the provisions of this Ordinance which were lawful before this Ordinance was adopted, or before amendments to this Ordinance which are applicable to the situation were adopted, and such situations do not now conform to the provisions of this Ordinance.

2. *Noncomplying situations*. Those uses, lots, buildings, structures, parking spaces, loading space, signs, landscaping and other activities that are subject to the provisions of this Ordinance which were not lawfully created after this Ordinance was adopted or after amendments to this Ordinance which are applicable to those situations were adopted are in violation of this Ordinance and may be called noncomplying situations.

3. *Noncomplying structures, 10 years or older*. In accordance with Section 7, Chapter 40A, MGL, a structure which has not been in compliance with this Ordinance, or with the conditions set forth in any special permit or variance affecting the structure, for a period of 10 years or more from the commencement of the violation may not be the subject of an enforcement action by the City to compel the removal, alteration, or relocation of such structure. Structures which qualify under Section 7, Chapter 40A, MGL, are considered to be nonconforming structures and are entitled to treatment as such as provided in this section.

B Objectives and Applicability. The provisions of this section are intended to achieve the following purposes:

1. To allow nonconforming situations to continue until they are discontinued or abandoned.

2. To encourage change in nonconforming situations toward greater compliance with the provisions, objectives, and purpose stated in this Ordinance.

3. To limit expansion of a nonconforming use, as measured either by the amount of floor space or land area used or by the volume of activity in the use; and to encourage the substitution of other uses, which may also be nonconforming, but which are more compatible with, and have fewer adverse impacts on, the surrounding area.

4. To permit some expansion of nonconforming buildings provided there are not demonstrable adverse impacts on adjoining properties.

5. In the event of the partial destruction of a nonconforming situation, to permit the reconstruction of the nonconforming situation so that the owner and tenants, if any, are not subjected to substantial economic loss while, at the same time, seeking to achieve greater conformity with the provisions of this Ordinance and to reduce any adverse impacts on the surrounding area.

6. To permit the treatment of nonconforming situations to be varied by the type of zoning district and the type of nonconformity, i.e. to have a different approach for uses, structures, parking or lots.

C General provisions

1. *Continuation of non-conforming situations.* A use, building, structure, parking space, loading bay, sign, landscaping or any other activity which is nonconforming, but not noncomplying, may be continued but may not be increased or expanded except as may be specifically authorized by this Ordinance. If a nonconforming situation is abandoned or terminated, as set forth below, it may not be resumed except in compliance with this Ordinance.

2. *Lawfully created.* A use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity is considered to be lawfully created, with respect to zoning requirements, if:

   a. It was in existence on February 23, 1939 when the Beverly Zoning Ordinance was originally adopted; or

   b. Subsequent to February 23, 1939, it was permitted by right by the Beverly Zoning Ordinance and was in existence prior to the effective date of any amendment which renders it nonconforming, and, if required at the time of its creation, a building permit or certificate of occupancy was issued.

3. *Evidence of lawful creation.* As the records of the Building/Inspection Department in earlier years are incomplete, the Building Inspector or his designee may accept such evidence of lawful creation for those years as he/she may deem to be adequate in lieu of official City records.

D Special permit, finding, and variance are not nonconforming

1. A use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity which is not otherwise permitted by right and does not comply with this Ordinance, due to the granting of a variance, a finding in accordance with M.G.L. Chapter 40A, Section 6, or a special permit, is not a nonconforming situation, is not entitled to the treatments afforded by this Ordinance and is bound to the conditions of the special permit, finding or variance, as granted.

2. In the case of a special permit, finding, or variance which is not entitled to treatment as a nonconforming situation, the Zoning Board of Appeals may grant an additional special permit, finding, or variance which has the effect of changing, extending or altering said special permit, finding, or variance , provided the Zoning Board of Appeals finds that:

   a. such change, extension, or alteration will not be substantially more detrimental than the existing non-conforming structure or use to the neighborhood; and

   b. the structure or use as changed, altered or extended will not depart further from the intent of this Chapter than the prior use or degrees of use; and

   c. that such structure or use is not increased in either building volume, footprint or area by more than twenty-five percent (25%) after July 12, 2011, unless the Zoning Board of Appeals finds that the proposed increase in volume, footprint or area improves the exterior architectural appearance of the structure, in which event building volume, footprint or area may be increased up to fifty percent (50%) after July 12, 2011.

E Once in conformity, or closer to conformity, cannot revert

Once a use, building, structure, lot, parking space, loading space, sign, landscaping or any other activity which had been nonconforming is brought into conformity with this Ordinance, it shall not be permitted to revert to nonconformity. Once a use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity which is nonconforming is brought into closer conformity with this Ordinance (i.e. the amount or degree of nonconformity is reduced), it shall not be permitted to revert to nonconformity with the provisions of this Ordinance which is greater than the closest amount or degree of conformity which it has achieved.

F Change in lot that results in noncompliance

No lot upon which there is a building or for which a building permit is in force shall be subdivided or otherwise changed in area or shape, except through public acquisition by eminent domain, so as to result in a violation, applicable to either the lot or the building, of the dimensional and other applicable requirements of this Ordinance. A lot already nonconforming shall not be changed in area or shape so as to increase the degree of nonconformity with the requirements of this Ordinance; a nonconforming lot may be changed in area or shape to move closer to conformity with the requirements of this Ordinance. If land is subdivided, conveyed or otherwise transferred in violation hereof, no building permit, special permit, variance, finding, certificate of occupancy or approval of a plan under the Subdivision Control Law shall be issued with reference to said transferred land until both the lot retained and the newly created lot(s) meet the requirements of this Ordinance.

G Nonconformity resulting from public action

If, as a result of public acquisition, a use, building, structure, lot, parking space, loading space, sign, landscaping or any other activity no longer complies with this Ordinance, it shall be considered to be nonconforming and entitled to the treatment afforded by this article provided it was in compliance at the time of the public acquisition.

H Discontinuance or abandonment

1. A nonconforming situation is considered to be discontinued or abandoned whenever:

   a. It is not used for a period of 24 consecutive months; or

   b. There is evidence of discontinuance or abandonment and it is apparent that the owner does not intend to resume the nonconforming situation.

2. In the administration of Subsection H.1.b. above, evidence of discontinuance or abandonment shall be:

   a. Bringing the use, structure or other nonconformity into compliance with this Ordinance; or

   b. Ceasing to be open to the public for the conduct of business for a period of six continuous months, and one or more of the following:

      i. Removal of customary equipment or supplies for the operation of a use.

      ii. Disconnecting electrical, gas or other utility services.

      iii. Failure to provide for operation in colder weather such as ceasing to heat the building at normal levels required by health regulations or failing to provide snow removal.

      iv. Issuance of a notice of an unsafe structure by the Building Commissioner or designee.

3. In the event that the Building Commissioner or designee has evidence of discontinuance or abandonment, he/she shall communicate with the owner of record, by certified mail, inquiring as to the owner's intent and informing the owner of the potential loss in nonconforming status. Such owner shall be allowed a period of 30 days from the transmittal of such communication in which to respond and to take action.

4. Discontinuance or abandonment of a part of a nonconforming use, structure or situation shall not normally be considered to be evidence of discontinuance or abandonment of the whole unless that part which is discontinued or abandoned is the part which causes the nonconformity.

I Change of Ownership, Tenancy, or Management

The rights of a nonconforming use, structure, building, lot, parking space, loading bay, landscaping or other situation are not affected by a change in ownership, tenancy or management unless such ownership, tenancy or management is specifically a condition of the issuance of a permit.

J Nonconforming uses

1. A nonconforming use may be continued to the same degree and for the same purpose but may not be altered, expanded or extended except as permitted by this Section. A nonconforming use shall be considered to be altered, expanded or extended if there is an increase in the net floor area, or an increase in the number of employees, or a substantial increase in the number of automobile or truck traffic trips generated by the use, or an increase in the hours of operation, or a change from seasonal to full-time operation, since the use first became nonconforming.

2. A nonconforming use is limited to the lot on which it is located and cannot be relocated to another lot.

3. *Substitution of nonconforming use.* The Zoning Board of Appeals (ZBA) may issue a special permit to allow a new use, not otherwise permitted by right in the zoning district in which the nonconforming use is located, to be substituted for the existing nonconforming use subject to the condition that the new use is no less compatible with the zoning district in which the nonconforming use is located than the existing nonconforming use it replaces. In this context, "no less compatible" shall mean it complies with the criteria set forth in Section 38-28.C.2. of the Zoning Ordinance.

4. If a new use, not otherwise permitted by right in the zoning district in which it is located, is allowed by a special permit granted under Section J.3.b. above, the new substituted use shall be considered to be the nonconforming use. The previous nonconforming use shall not be reestablished.

K Nonconforming buildings

1. *One-family or two-family dwelling.*

   a. An existing nonconforming one-family or two-family dwelling which is nonconforming with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this Ordinance by up to twenty five percent (25%) in either building volume, footprint or area after July 12, 2011 through the issuance of a building permit as provided in Section 38-29.

   An existing nonconforming one-family or two-family dwelling which is nonconforming with respect to a minimum yard setback

may be enlarged or extended in any other direction in compliance with this Ordinance by more than twenty five percent (25%) in either building volume, footprint or area after July 12, 2011, provided the ZBA grants a special permit in accordance with Section 38-28.C.2.

b. That part of an existing nonconforming dwelling which is nonconforming with respect to a minimum yard setback may be enlarged or extended in that yard, provided the ZBA grants a special permit and provided that the degree of nonconformity is not greater than 50% of the required minimum yard setback.

2. *Other Than One or Two Family Dwelling.*

a. An existing nonconforming building, other than a one-family or two-family dwelling, which is nonconforming with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this Ordinance by the issuance of a building permit, provided that such structure or use is not increased in either building volume, footprint or area by more than twenty-five percent (25%) after July 12, 2011, unless the Zoning Board of Appeals determines that the proposed increase in volume, footprint or area improves the exterior architectural appearance of the structure, in which event building volume, footprint or area may be increased up to fifty percent (50%) after July 12, 2011 provided all other uses, structures and activities on the lot comply fully with the requirements of this Ordinance.

b. An existing nonconforming building, other than a one-family or two-family dwelling which is nonconforming with respect to any zoning provision other than a minimum yard setback, may not be enlarged or extended except by special permit from the ZBA.

3. *Noncomplying building.*

a. If a building, or a part of a building, does not comply with the applicable dimensional standards other than minimum lot area or minimum lot frontage, or those that were in effect when it was constructed, and the building was constructed in accordance with a building permit issued by the City except for such dimensional noncompliance, it shall be considered to be a nonconforming building, and entitled to treatment as such, if the following conditions are met:

i. The noncompliance has existed for at least six years during which time no enforcement action under the provisions of Section 38-29 of this Ordinance has been taken; and

ii. The noncompliance was not created or increased by changes in lot lines after the construction of the building.

b. If a building, or a part of a building, does not comply with the applicable dimensional standards, other than minimum lot area or minimum lot frontage, or those that were in effect when it was constructed but the building was not constructed in accordance with a building permit duly issued or there is no evidence a building permit was issued, the ZBA may grant a special permit for the continued use of the building under the provisions of Section 38-28.C.

L Nonconforming lots

A lot which does not comply with the provisions of this Ordinance with respect to minimum lot area, minimum lot frontage, or minimum lot width or with the requirements then in effect at the time of recording or endorsement of the plan, whichever occurred first, may not be subdivided or otherwise changed in area or shape, except through public action, so as to be in violation of the provisions of this Ordinance. A lot already nonconforming with respect to those provisions shall not be changed in area or shape so as to increase the degree of noncompliance. A lot which is nonconforming with respect to those provisions may be changed to be made closer in compliance, but once brought closer into compliance, i.e. the amount or degree of nonconformity is reduced, it shall not be permitted to revert to a degree of noncompliance which is greater than the closest amount or degree of compliance which it has achieved.

M Nonconforming off-street parking and loading

1. *Existing nonconforming parking spaces or loading space.* Any off-street parking spaces or loading space in existence on the effective date of this Ordinance or thereafter established, which serve a building or use, may not be reduced in number, or changed in location or design contrary to the requirements of Section 38-25 of this Ordinance so as to increase the degree of nonconformity with the requirements of that Section.

a. If the use of an existing structure or lot which does not have sufficient parking or loading (including a use which has no off-street parking or loading) is changed to a different type of use for which a different number of parking spaces or loading space is required as set forth in Section 38-25 of this Ordinance and there is no increase in the net floor area, then the following rules shall apply:

i. If there is a net increase in the number of required parking spaces or loading space resulting from a change to an existing non-conforming situation, that net increase in

required parking spaces or loading space as set forth in Section 38-25 of this Ordinance shall be provided unless the Special Permit Granting Authority for the respective zoning district shall grant a waiver from the requirement to provide additional parking spaces or loading space if it finds that one or more of the following criteria are met:

(a) That the current parking and/or loading supply for the existing use is adequate to serve the expected parking demand of the non-conforming situation, as changed;

(b) That sufficient parking or loading space exists on-street and/or in nearby public parking lots to meet the expected increase in parking supply needed for the non-conforming situation, as changed;

b. If it is proposed to increase the net floor area of a building, whether by addition to the exterior of the building or by internal reconstruction, and the building does not have sufficient off-street parking or loading, full compliance with Section 38-25 of this Ordinance for the entire building shall be a condition of the issuance of a building permit for the construction of the increase of net floor area unless the Special Permit Granting Authority shall grant a waiver in accordance with Section 38-27.M.1.a.i..

c. Parking spaces or loading space in existence as of the date of any zoning or other ordinance change that renders existing parking spaces or loading space non-conforming, which serve existing uses may be counted toward the number needed for the increase in the net floor area of an existing building or the change from one type of use to another, but not for a new building, even if they do not conform to the requirements of Section 38-25, provided they comply to the maximum extent practicable.

An applicant seeking such credit for existing parking spaces or loading space shall first submit an off-street parking and loading plan certified by a registered land surveyor or professional engineer showing the number and dimensions of existing parking spaces and/or loading space, the type of surfacing material as well as documentation as to the spaces' existence prior to the adoption of the ordinance change which rendered the parking situation non-conforming. If the existing paved area is not marked off into parking spaces or loading space, such spaces or loading space, complying with Sections 38-25.D. and 38-25.E. of this Ordinance shall be delineated on the plan. To qualify, an existing parking space or loading space shall be entirely on the same lot as the use it

serves, or on a contiguous lot, or on a nearby lot provided that it is located within 500' of the main entrance to the use it serves.

2. *Parking and loading requirements for a building destroyed, damaged or demolished.*

   a. If a building, for which sufficient off-street parking or loading is not provided, is destroyed, damaged or demolished by the owner, the building may be reconstructed or replaced if otherwise permitted by this Ordinance, without providing additional parking spaces or loading space provided the new use is the same type and degree of use (see Section 38-25.A.) as the use before the destruction, damage or demolition, or is a type of use that requires the same or fewer parking spaces or loading space. If parking spaces and/or loading space were provided before the destruction, damage or demolition, at least the same number of spaces and/or loading space shall be provided.

   b. If the reconstructed building will be occupied by a different use, for which a greater number of parking spaces or loading space is required full compliance with Section 38-25 of this Ordinance for the entire building shall be a condition of the issuance of any building permit for the reconstruction or replacement of the building.

   c. If the building is reconstructed with more net floor area than previously existed, full compliance with Section 38-25 of this Ordinance will be required unless:

      i. The Special Permit Granting Authority for the zoning district in which the property is located grants a waiver of the parking requirement for the additional net floor area in accordance with Section 38-27.M.1.a.i.; and

      ii. At least the same number of parking spaces and/or loading space that was provided before the destruction, damage, or demolition are provided.

N Repair and reconstruction

1. *Continuance; repairs.* Routine maintenance and repairs are permitted to a nonconforming structure, building, sign, parking space, loading space, landscaping, or other nonconforming situation to maintain it in sound condition and presentable appearance. With respect to signs, the term "routine maintenance and repairs" shall not include any changes to colors, text, lighting mechanism, or location. Such activities must be approved by the Design Review Board and may be subject to the issuance of a permit by the Building Inspector.

2. *Reconstruction after destruction (by right).* Any nonconforming use, structure, building, sign, parking space, loading space, landscaping, or other nonconforming situation which is destroyed or damaged by

explosion, collapse, fire, storm, natural disaster or other catastrophic event which is beyond the control of the owner, to the extent of not more than 50% of its replacement cost, as determined by the Building Commissioner or designee, may be reconstructed through the issuance of a building permit provided that (a) such structure or use is not increased in volume, footprint, or area by more than twenty five percent (25%) in either building volume, footprint, or area and (b) the reconstruction conforms to the current requirements of this Ordinance to the maximum extent practicable in the opinion of the Building Commissioner or designee. In this context, maximum extent practicable shall consider extreme site conditions, such as steep grades, the presence of ledge or other unsuitable soil conditions, or the shape and configuration of the lot.

3. *Reconstruction after destruction (by special permit).* The ZBA may grant a special permit for the reconstruction of a nonconforming use, structure, building, sign, parking space or loading space or other nonconforming situation which is destroyed or damaged by explosion, collapse, fire, storm, natural disaster or other catastrophic event which is beyond the control of the owner, to the extent of more than 50% of its replacement cost, as determined by the Building Commissioner or designee, or by the proposed voluntary action of the owner to demolish, in whole or in part, provided the ZBA determines that:

a. That such structure or use is not increased in either building volume, footprint or area by more than fifty percent (50%).

b. The reconstruction conforms to the current requirements of this Ordinance to the maximum extent practicable as described in Subsection M.2. above.

c. In the case of the reconstruction of a nonconforming use, that it complies with the standards for the substitution of a nonconforming use described in Subsection J.3. above.

O Vesting of rights during adoption of amendments

1. A use, building, structure, sign, parking space, loading space, landscaping, or other situation which would comply with the provisions of this Ordinance at the time at which a building permit is issued or a special permit is granted but would not comply with a proposed amendment to this Ordinance shall be considered to be nonconforming and may be completed, continued or maintained provided:

a. The building permit was issued or special permit was granted before the first publication of notice of public hearing on the proposed amendment (the filing of an application for either a

building permit or a special permit is not sufficient to vest rights); and

b. Substantial physical construction or start of operations is begun within six (6) months of the issuance of a building permit or within two (2) years of the grant of a special permit and is carried through to completion as continuously and expeditiously as is reasonable in the opinion of the Building Commissioner or designee. If the construction is not completed within 18 months of the issuance of the building permit, the rights to nonconforming status shall cease and the construction shall comply with this Ordinance, as amended.

2. In the event of the filing and subsequent approval of a definitive subdivision plan an exemption from an amendment to this Ordinance and a right to be treated under the previously existing provisions of this Ordinance may be vested as set forth in Section 6 of the Zoning Act, Chapter 40A, MGL.

3. In the event of the filing and subsequent endorsement of an "approval not required" plan, referred to in Section 81P of Chapter 41, Sections 81K-81GG, the Subdivision Control Law, an exemption from an amendment to this Ordinance affecting the use of land only and a right to be treated under the previously existing provisions of this Ordinance may be vested as set forth in Section 6 of the Zoning Act, Chapter 40A, MGL. Such exemption shall apply only in the case of the endorsement of a plan showing a division of land, as defined in M.G. L. Chapter 41, Section 81L of the Subdivision Control Law, in which there is a change in lot lines and shall not apply in the case of the endorsement of a plan which confirms existing lot lines without change.

4. In the event that rights have been vested under a previous version of the Zoning Ordinance, an owner may proceed as if that version of the Zoning Ordinance applied to his/her property or he/she may use the most current version of the Zoning Ordinance but must use either version of the Zoning Ordinance fully and cannot select provisions of both versions.

P Certificate of occupancy or registration

The Building Commissioner or designee may issue a certificate of occupancy or certificate of registration of nonconformity that acknowledges the existence of a use, structure, building, lot, sign, parking space, loading space, landscaping or other situation which is believed to be nonconforming. The issuance of either certificate shall not be a final determination by the Building Commissioner or designee, unless so stated, that the apparent nonconformity was lawfully created but is a means of recording the size, characteristics and degree of nonconformity at the time of issuance of the certificate.

38-28 BOARD OF APPEALS
(Ord. No. 35, 6-11-07)

A Continuance and Authority

The Board of Appeals in existence when this amendment shall take effect shall continue subject to its existing rules and procedures, the authorities conferred thereon by Chapter 40A of the Massachusetts General Laws, and the provisions of this Chapter.

1. There shall be a Board of Appeals consisting of five (5) members who shall be appointed by the Mayor and approved by the Board of Aldermen. The terms of the appointed members shall be such that one expires on January 31 of each year. Any vacancy on the Board shall be similarly filled for any unexpired term and such Board shall annually elect a chairman from its own members.

2. There shall be five (5) associate members of the Board of Appeals, who shall be appointed by the Mayor and approved by the Board of Aldermen, and in case of a vacancy, inability to act, or interest on the part of a regular member of the Board, his or her place shall be filled by an associate member, who shall have all powers and duties of the member whose place he or she fills.

3. The Clerk of the Department of the Inspection of Buildings shall act as the Clerk of the Board. Any person whose application has been refused may appeal therefrom within sixty (60) days. Such appeal shall be in writing and shall be filed, together with a fee of ten dollars ($10), with the Building Inspector, who shall transmit the appeal to the Board at once, and deposit the fee with the City Collector.

4. The cost of advertising of the hearings shall be paid for by the petitioner to the Clerk of the Board of Appeals.

5. After such notice to the appellant, to the inspector and to other such parties as the Board may order, and after fourteen (14) days published notice, a hearing shall be had, and the Board may by a four-fifths vote, affirm, annul, or modify the proposal in harmony with the intent and purpose of the Chapter but not otherwise.

6. The Board of Appeals shall keep a detailed record of its proceedings. The record shall indicate: the vote of each member upon each question, including whether the member was absent or failed to vote: the reason or reasons for the Board's decision; and the official action taken.

B Matters of Interpretation

Upon appeal from the decision by an administrative official, the Board of Appeals shall decide any question involving the interpretation of any provision of this Ordinance.

C Special Permit Uses

1. The Board of Appeals may authorize the uses set forth in this Ordinance by Special Permits, subject to the provisions of this Article, except the Planning Board, not the Board of Appeals, will be the Special Permit Granting agency for Special permits in the CC or WD District (except for Bed & Breakfast establishments) and for the special permit concerning Floor Area Ratio (FAR) bonus.

2. Before taking final action on applications for Special Permit uses, the Board of Appeals and Planning Board shall consider if the following and other conditions are met:

   a. That the specific site is an appropriate location for the proposed use, and that the character of adjoining uses will not be adversely affected.

   b. That no factual evidence is found that property values in the district will be adversely affected by such use.

   c. That no undue traffic and no nuisance or unreasonable hazard will result.

   d. That adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.

   e. That there are no valid objections from abutting property owners based on demonstrable fact.

   f. That adequate and appropriate City services are or will be available for the proposed use.

3. Site Plan Review by the Planning Board will be required for any project for which a Special Permit is necessary. See Section 38-29.c. for procedures and filing requirements. (Rev. 7-1-92)

4. In granting approval of an application for a Special Permit use, the Special Permit granting authority may attach all reasonable and necessary conditions to assure that the uses of surrounding properties

are adequately safeguarded and that the intent of the Comprehensive Plan and this Ordinance are maintained.

5. Construction or operations under a Special Permit shall conform to any subsequent amendment of this Ordinance unless the use or construction is commenced within a period of six months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

6. A Special Permit shall lapse after two years, and including such time required to pursue or await the determination of an appeal, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

7. The Special Permit Granting Authority shall adopt rule and regulations relative to the issuance of special permits. A copy of the Rules and Regulations are filed with the City Clerk.

D Variances

1. The Board of Appeals may grant variances, including variances for use in any non-residential district, (but no use variance may be granted in any "R" districts), to the strict application of any of the requirements of this Ordinance only for reasons of practical difficulty and demonstrable and substantial hardship, financial or otherwise, to the appellant, and only where the Board finds that:
(Rev. 6-26-92)

   a. There are special circumstances or conditions applying to the land or building for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness or shape of the property in question, or exceptional topographical conditions) which circumstances or conditions are peculiar to such land or building but not affecting generally the zoning district in which it is located and the application of the standards of this Chapter would deprive the applicant of a reasonable use of the property.

   b. The specific variance as granted by the Board is the minimum variance that will grant reasonable relief to the owner and is necessary for a reasonable use of the land or building.

c. The granting of the variance will be in harmony with the general purpose and intent of this Chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of nearby buildings and land, the Board in determining its finding, shall take into account the number of persons residing or working in such buildings or upon such land and the present and probable future traffic conditions.

2. In acting on any variance, the Board of Appeals shall consider one or more of those factors set forth under Section 38-27.c.2. of this ordinance as appropriate, and shall prescribe any conditions and safeguards that it deems to be necessary or desirable. These conditions cannot require continued ownership of the land or structure by the application, petitioner, or owner.

E Temporary Use Variances

1. The Board of Appeals may grant a Special Permit for the removal of topsoil, sand, gravel, or other natural materials for commercial purposes, as a temporary nonconforming use in an "IR" or "IG" District, provided that the following conditions apply:

a. The Board of Appeals shall hold a public hearing after notifying all interested parties, all as provided by Chapter 40A of the Massachusetts General Laws.

b. The applicant shall furnish a plan showing present and proposed conditions and state a time of completion.

c. The Board of Appeals shall consider the neighborhood and its future development in passing on applications.

d. The applicant shall furnish a performance bond of an amount determined by the Board of Appeals and surety satisfactory to the City Treasurer.

e. The applicant shall authorize the City to use the proceeds of the bond to restore the property to condition not detrimental to the neighborhood or its future development if the work is not completed within two years of the proposed time, or within a granted extension of time. An extension of time may be granted by the Planning Board.

f. Temporary use permits shall be granted for a period not to exceed five (5) years and may be annually at the discretion of the Board.

2. The Board of Appeals may grant a variance for a non-conforming building, structure, or use incidental to the development of a subdivision or other construction project in any "R" District, including such accessory uses as a construction office, real estate sales office, and storage of materials and supplies located on the tract or lot to which such use is accessory. A temporary use permit for such use or building shall be issued only upon written agreement of the owner, or his or her agent to remove such building or structure within 30 days after completion of construction or the issuance of a Certificate of Occupancy for the last house of a subdivision. Such temporary permit shall be issued for a period not to exceed three (3) years and may be renewed annually at -the discretion of the Board.

F Procedures for Special Permits and Variances

Procedural requirements for Special Permits and variances shall be in accordance with Chapter 40A, Massachusetts General Laws on file with the City Clerk. Optional procedural requirements of Chapter 40A are not included in this Ordinance. The Zoning Board of Appeals shall be the authority to grant Special Permits and variances.

G Fees for Appeals and Applications

All appeals and applications filed with the Board of Appeals shall be accompanied by a fee to cover publication of hearing notices and other administrative expenses, such fee to be in accordance with the schedule adopted by the Board of Appeals and approved by the Board of Aldermen and payable to the City of Beverly.

(Ord. No. 35, 6-11-07)

38-29 ADMINISTRATION AND ENFORCEMENT
(Ord. No. 35, 6-11-07)

A Building Inspector

1. It shall be the duty of the Building Inspector and he or she shall have the powers necessary to administer and enforce the provisions of this ordinance.

2. Said official shall keep a record of all applications for permits issued with a notation of any special conditions involved. He shall file and safely keep copies of all plot plans submitted and the same shall be a part of his or her records.

B Permits Required

1. No building or structure shall be erected, added to or altered and no excavation shall be started until a Building Permit therefor shall have been issued by the Building Inspector stating that the building complies with all provisions of this ordinance.

2. No land or building shall be occupied, used, or changed in use until a Certificate of Occupancy shall have been issued by the Building Inspector stating that the proposed use of such land or building complies with all the provisions of this Ordinance.

3. A Certificate of Occupancy shall be applied for at the same time application is made for a building permit and shall be issued following an inspection of the premises by the Building Inspector and his or her finding that all provisions of this ordinance have been met.

4. Applications for Building Permits and Certificates of Occupancy shall be made in duplicate on forms provided by the Building Inspector, each to be accompanied by a plot plan drawn to scale showing all lots and required yard dimensions, the size and location of all buildings and uses, and all other information as may be required by the Building Inspector to process said applications. The proposed handling of water supply and sewerage disposal shall be described on all applications and shown on the plot plan.

5. For purposes of administration, such permit and application procedure involving a structure may be made at the same time and combined with the permits required under the State Building Code.

6. Where applications are denied by the Building Inspector, the specific reasons for so doing shall be stated fully on the filed copies of the application and one copy returned to the applicant.

7. All valid permits must be exercised within twelve (12) months after date of issue. If the valid permit is not exercised, a renewal permit must be applied for.

C Site Plan Review Requirements for Certain Commercial, Industrial and Multi-Family Developments (whole section amended as of 11/21/88)

1. Projects requiring site plan review are listed in Tables I and II below. Table I lists those projects involving new construction which are subject to site plan review. Table II lists those projects involving expansion of existing structures which are subject to site plan review. In addition, any project granted a Special Permit for additional building height by the Planning Board in accordance with Section 38-17.D.2, 3, or 5 shall be subject to site plan review.

TABLE I: NEW CONSTRUCTION

Zoning Classification	Building Size Requiring Site Plan Review
IG	5,000 sq. ft. (Rev. 7-1-92)
IR	25,000 sq. ft. or more than one (1) structure on a lot
CG	Lot coverage over 65%
CC	1,000 sq. ft.
CN	1,000 sq. ft.
WD	1,000 sq. ft. (Rev. 7-1-92)
HD	5,000 sq. ft. (Rev. 7-1-92)
Multi-family	Over ten (10) units; more than two (2) townhouses or similar building type on a single lot

TABLE II: EXPANSION CONSTRUCTION

Zoning Classification	**Percent Increase in Gross Square Footage Requiring Site Plan Review**
IG-zoned buildings over 10,000 sq. ft.	30%
IR-zoned buildings over 25,000 sq. ft. or more than one structure on a lot	30%
CG-zoned buildings with total lot coverage exceeding 65%	1%
CC-zoned buildings over 1,000 sq. ft.	40%

CN-zoned buildings over 1,000 sq. ft.	40%	
WD-zoned buildings over 5,000 sq. ft.		20% (Rev. 7-1-92)
HD-zoned buildings over 5,000 sq. ft.		20% (Rev. 7-1-92)
Multi-family buildings over ten (10) units, or more than two (2) townhouses or similar building type on a lot	20%	

2. Procedure - Applicants shall submit to the Planning Board ten (10) copies of an application for site plan review and ten (10) sets of plans, size 24" x 36". The applicant shall also submit ten (10) sets of plans, size 11" x 17". The applicant shall also file one (1) copy of the site plan review application with the City Clerk.
(Ord. No. 49, 4-9-08)

An application for site plan review shall also be accompanied by the following:

a. A list of the names and addresses of all property owners of record who share a common property line with any portion of the property specified on the site plan review application and plan;

b. A filing fee of $35 per 1,000 s.f. gross floor area (min. of $350, max of $5,000) for site plan review; or $350 for a modification of site plan review; and
(Ord. No. 49, 4-9-08)

c. Written permission from the owner of the property to apply for site plan review, if the applicant is not the owner.

At least seven (7) days prior to the date of the public hearing, the Planning Board shall advertise the public hearing in a newspaper of local circulation and shall send written notice by mail to all abutters.

Final action on the site plan shall be taken by the Planning Board after a public hearing has been held and within sixty-five (65) days of the date of the public hearing.

All applications for site plan review shall be forwarded to both the Parking and Traffic Commission and the Design Review Board for their comments and recommendations. The recommendations of this Board and Commission shall be received by the Planning Board within thirty (30) days of submission to the Board/Commission. Failure to forward comments within thirty (30) days will be deemed conclusion of review by the Design Review Board or the Parking and

Traffic Commission. All applications for site plan review will also be forwarded to the City Engineer for his review and approval.

Failure of the Planning Board to act within sixty-five (65) days of the public hearing shall be deemed as conclusion of review and it shall forthwith make its endorsement on said plan and, on its failure to do so, the City Clerk shall issue a certificate to the same effect. The Planning Board shall communicate to the appropriate municipal officials and to applicant the results of its review.

The Planning Board may waive any of the requirements of this Section if deemed in the best interest of the City to do so.

3. Contents of plan - A plan accompanying an application for site plan review shall be drawn to whatever scale necessary to show clearly all site features, and shall include or be accompanied by the following:

a. A locus map drawn at a scale of 1" = 800';

b. The location and name of all streets in the immediate vicinity of the proposed project with a notation as to whether the street is a public or private right-of-way;

c. Zoning and Historic District boundary lines;

d. Existing and proposed contour lines at one (1) or two (2) foot intervals;

e. The location and dimensions of all existing and proposed buildings on the site, and on abutting properties; elevation and facade treatment plans of all proposed-buildings and signs;

f. Information on the location, size, and capacity of existing and proposed utilities which will service the project (water, sewer, electric, etc.) as well as hydrant location(s), and design plans and specifications/information for HVAC equipment and other noise emitting equipment proposed on the roof of the building(s) or elsewhere on site;

g. Information on the method of surface and subsurface drainage disposal; location, type, and intensity of lighting; location, size, type, and number of existing and proposed landscape features; location and dimensions of signage; location of waste and refuse disposal facilities, and snow

removal plans for the property post construction, and adequacy of same;

h. Calculations of amount of parking required, and the location, size, and type of parking, loading and unloading, and service areas;

i. Information sufficient to demonstrate that satisfactory arrangements will be made to facilitate traffic movement to, from, and within the site, such arrangements to be subject to the review and approval of-the Parking and Traffic Commission ("sufficient information" may require the submission of a traffic study); and

j. Any additional data (including but not limited to drainage studies, demographic studies, shadow studies, etc.) which the Planning Board may deem necessary to evaluate the proposed project as it relates to surrounding areas, anticipated traffic and public safety and the intent of the Comprehensive Plan and this Ordinance.

4. Modification to Approved Site Plan – Subsequent to a site plan granted by the Planning Board pursuant to this section, minor modifications to the site plan may be made from time to time in accordance with applicable City ordinances and regulations. The development approved under such site plan shall otherwise be in accordance with the approved plans and such conditions, as may be included, in the decision of the Planning Board. The developer shall notify the Planning Board in writing well in advance of any such modification, which shall not be effective until approved by vote of the Planning Board. The developer shall also submit a plan depicting such modification. Should the Planning Board determine that such revisions are not minor, it shall order that an application for a modification of site plan be filed and a public hearing be held in the same manner as set forth in Section 38-29.C.
(Ord. No. 49, 4-9-08)

D Violations and Penalties

1. If at any time the Building Inspector finds that any construction or use has been commenced in violation of this Ordinance, he or she shall immediately notify the owner or agent of the nature of the violation in writing and order the abatement of such violation.

2. Failure to comply with any provisions of the Ordinance or with any specific conditions and safeguards imposed by the Board of Appeals

or the Planning Board in granting a variance, Special Permit, or site plan review, or any plan(s) specifically cited in either Board's approval(s), shall cause the violator to be liable for a fine not to exceed $50.00 for each day such violation continues unabated after the remedy of same is ordered by the Building Inspector. In addition, the Building Inspector may elect to withhold occupancy permits until any such failure is remedied to the respective board's satisfaction.

3. Wherever any violation of this ordinance occurs, any person may file a complaint in regard thereto in writing to the Building Inspector. The Building Inspector shall immediately investigate said complaint and, finding a violation to exist, shall act according to Section 38-29.D.l. of this Ordinance.

(Ord. No. 35, 6-11-07)

38-30 AMENDMENT

A Proposed amendments to the Zoning Ordinance shall be made in accordance with the procedures provided by Chapter 40A of the Massachusetts General Laws on file with the City Clerk. Optional provisions of Chapter 40A concerning the amendment process are not included in this Ordinance.

38-31 OVERLAY DISTRICT(S)

A FOD - Floodplain Overlay District

1. Purpose

The purposes of the Floodplain Overlay District are to protect the health and safety of residents of lands subject to seasonal or periodic flooding and to minimize future flood damage by providing for the maintenance of existing waterways, water bodies, and wetlands through a floodplain management program.

2. Definitions

For purposes of this subsection, the following terms shall have the following meanings:

a. Area of Special Flood Hazard: Land in a floodplain that is subject to a one percent or greater chance of flooding in any given year and which is designated on a FIRM as Zone A, AO, AH, AE, A99, VE, or V.

b. Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year.

c. Coastal High Hazard Area: An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources and designated on a FIRM as Zone V or VE.

d. Development: Any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

e. Federal Emergency Management Agency (FEMA): The federal agency which administers the National Flood Insurance Program and provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

f. Five Hundred Year Flood: A general and temporary condition of partial or complete inundation of two or more

acres of normally dry land areas or of two or more properties that have a two tenths of one percent (0.2) annual chance of flooding and which are located outside of special flood hazard areas.

g. Flood (or flooding): A general and temporary condition of partial or complete inundation of normally dry land areas or of two or more lots. This inundation can result from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source, or from mudflow.

h. Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

i. Flood Insurance Rate Map (FIRM): An official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

j. Flood Insurance Study: An examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

k. Lowest Floor: The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement or cellar is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

l. New Construction: For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the City of Beverly. For the purpose of determining insurance rates, the term "new construction" means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

m. One Hundred Year Flood: see Base Flood.

n. Regulatory Floodway: see Floodway.

o. Special Flood Hazard Area: An area having special flood and/or flood related erosion hazards, and shown on a FIRM as Zone A, AO, AE, A99, AH, V, or VE.

p. Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank,that is principally above ground, as well as a manufactured home. For insurance coverage purposes, the term "structure" means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

q. Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

r. Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this subsection, the term "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

s. Zone A: The 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

t. Zone AE (for new and revised maps): That portion of the 100-year floodplain where the base flood elevation has been

determined. (Note that Zone AE replaces Zones A1-30 on maps created in and prior to 1987).

u. Zone AH and Zone AO: That portion of the 100-year floodplain with flood depths of 1 to 3 feet.

v. Zone X: Areas in Beverly identified by a FEMA-conducted Flood Insurance Study as those of moderate or minimal flood hazard. (Note that Zone X replaces Zones B and C on maps created in and prior to 1987).

w. Zone VE: Areas in Beverly identified by a FEMA-conducted Flood Insurance Study as special flood hazard areas along a coast subject to inundation by a 100-year flood with additional hazards due to velocity (wave action) for which base flood elevations have been determined.

3. Use Regulations

The Floodplain Overlay District is herein established as an overlay district and includes all special flood hazard areas within the City of Beverly currently designated as Zone A, AE, AH, AO, A99, V or VE on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the City of Beverly are panel numbers 25009C0408F, 25009C0409F, 25009C0416F, 25009C0417F, 25009C0428F, 25009C0429F, 25009C0433F, 25009C0436F, 25009C0437F, and 25009C0441F. The exact boundaries of the Floodplain Overlay District may be defined by the 100-year base flood elevations shown on the FIRM and by Flood Insurance Study (FIS) report(s) for Essex County prepared by FEMA dated July 3, 2012. The aforementioned FIRM panels and FIS report are incorporated herein by reference and are on file with the City Engineer.

The Floodplain Overlay District is established as an overlay district to all other districts. All development in the overlay district, including structural and non-structural activities, whether permitted by right or by special permit, must comply with all other applicable local, State and Federal laws. These laws include (but are not limited to) the City of Beverly Zoning Ordinance, M.G.L. Chapter 131, Section 40 and the City of Beverly Wetlands Protection Ordinance, sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal high hazard areas, and DEP regulations,

restrictions and requirements for wetlands protection, inland and coastal wetlands and requirements for sanitary sewage subsurface disposal.

Additionally, permitted uses are subject to the following requirements:

a. All encroachments, including fill, new construction, substantial improvements to existing structures, and other developments are prohibited in the floodway as designated on the Flood Insurance Rate Map for Beverly.

b. In zone VE, (areas of 100-year coastal flood with wave action), all new construction or substantial improvements must be located landward of the reach of mean high tide.

c. A floodplain development permit shall be obtained before any construction or development begins within any area of special flood hazard as determined by Beverly's Flood Insurance Rate Maps.

4. Application Requirements

Application for a development permit shall be made on forms furnished by the Municipal Inspections Department. The form must be accompanied by the following:

a. A narrative that describes the extent to which any water course will be altered or relocated as a result of the proposed development. Note that no encroachments may be proposed within a designated floodway (see Section 38-31.A.3.a.). In a riverine situation where alteration or relocation of a watercourse is proposed, the applicant shall notify by certified mail, return receipt requested, all adjacent communities, the NFIP State Coordinator for the MA Department of Conservation and Recreation and the NFIP Program Specialist for the Federal Emergency Management Agency Region 1. Proof of notification shall be submitted with the floodplain development permit application.

b. Plans, drawn to scale showing the nature, location, dimensions, and elevations of the area in question with detail of existing or proposed structures, fills, and drainage facilities shall be included with the floodplain development permit application. Specifically, the following information is required on the plan:

i Certification by a registered professional engineer that any construction, improvements, or development meet the requirements of the rules and regulations stipulated in 44 CFR 60.3 (known as the Federal Emergency Management Agency's National Flood Insurance program, and known more specifically as Flood Plain Management Criteria for Flood-Prone Areas). Copies of these regulations are available at the Municipal Inspections Department and City Engineer's office.

ii In Zone A where flood base elevation data is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by a registered professional engineer for its reasonable utilization toward meeting the requirements of the floodplain overlay district ordinance.

iii Information as to the elevation in relation to mean sea level of the lowest floor of all structures (including basements).

c. All permits for construction in the Floodplain Overlay District shall be subject to administrative review by the City's Health Department, Municipal Inspections Department, Engineering division of the Public Services Department and Conservation Commission.

d. In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

e. Base flood elevation data is required for subdivision proposals or other developments greater than ten (10) lots or two (2) acres, whichever is the lesser, within unnumbered A zones.

f. Within Zones AH and AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

g. Man-made alteration of sand dunes within Zone VE which would increase potential flood damage is prohibited.

h. All subdivision proposals must be designed to assure that:

i. Such proposals minimize flood damage;
ii. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
iii. Adequate drainage is provided to reduce exposure to flood hazards.

(Ord. No. 102, 7-5-12)

B LHD - LOCAL HISTORIC DISTRICT

No building in the Fish Flake Hill Local Historic District (Front Street) shall be altered or constructed until a Certificate of Appropriateness is received from the Beverly Historic District Commission.

C WATERSHED PROTECTION OVERLAY DISTRICT

1. Authority

This Zoning Ordinance amendment is adopted by the City of Beverly under its home rule powers, its police powers to protect the public health, safety and welfare, and under the powers authorized by Massachusetts General Laws Chapter 41A as amended.

2. Purpose

The purpose of this amendment is to protect the public health from contamination of existing and potential public and private water supplies and to protect the general welfare by preserving limited water supplies for present and future use.

3. Delineation of Watershed Protection Overlay District

The Watershed Conservation Overlay District shall be considered as superimposed over other districts, established by the Zoning Ordinance. The following land area will be covered by the overlay district: Beginning at the intersection of the Beverly/Wenham/Danvers city-town limits thence running in a southerly direction along the Beverly/Danvers line to the southwest corner of the Beverly Airport property thence in a meandering southeasterly direction along the southern boundary of the Beverly Airport to the southeast corner of lot 13, Assessors' map 65 thence running in a northeasterly direction for 600.2 feet to the southeast corner of the Airport boundary thence running in a northwesterly direction 1765.5 feet along the Airport boundary to the northwest corner of lot 13, Assessors' Map 65 thence running in a westerly direction for 1350 feet along a line N. 73,51',36" E. to its intersection with the IR/R-45 zoning district boundary line,

then following said zoning district boundary line in a meandering southeasterly direction along said zoning district boundary line to a point of intersection with the northwest corner of lot 58, Assessors' map 66, thence continuing in a southeasterly direction along the western boundary of said lot for 265 feet to a point of intersection with the centerline of Conant Street, thence in a meandering easterly direction along said centerline to the southwest corner of lot 36, Assessors' Map 67 thence running in a northwesterly direction along the southern boundary of lots 36, 37, 38, 39, 40, 41, 42, 43, Assessors map 67 to the northwest corner of lot 44, Assessors' Map 67 thence running in a meandering northeasterly direction along the northern boundary of lots 44, 45, and 58, Assessors' map 67 and lots 12A,13,14, and 15, Assessors' Map 80, thence in a meandering northerly direction along the western or rear border of lots 19, 20, and 21, Assessors' Map 80, to the R-45/R-10 zoning district boundary line then following said zoning district boundary line in a northeasterly direction to the intersection of the R-45/R-10/CG zoning district boundary lines thence in an easterly direction along the CG/R-10 zoning boundary line to the centerline of Enon Street thence in a meandering northerly direction along said centerline to the Beverly/Wenham city-town line thence running along said city-town line in a westerly direction to the point of beginning...

Beginning at the point where the Longham Brook intersects the Beverly/Wenham corporate boundary, then running in a straight line through lots 5 and 14 on Assessors' Map 94, then following the westerly boundary of lot 15, Map 94 for 1,184.7 +/-; then running in an easterly direction through lot 1A on Assessors' Map 83 and lots 34 and 1 on Assessors' Map 95 to the centerline of Grover Street; then running down the centerline of Grover Street in a south-southeasterly direction to the intersection of Grover and Essex Streets; then running from the intersection in a southeasterly direction through lot 57 on Map 71 for approximately 725 feet; then running due east 475 +/- feet through the same lot to the centerline of Wood Lane; then running in a southeasterly direction down the centerline of Wood Lane, under Route 128, to the intersection of Wood Lane and Boulder Lane; then running in an easterly and northerly direction along the centerline of the right-of-way of Boulder Lane through lots 18,10, and part of lot 9 on Assessors' Map 73; then running along the boundary line of Assessors' Map 73 through lot 9 to the centerline of Route 128; then running in an east-northeasterly direction to the Wenham/Beverly town line; then running along the Wenham/Beverly corporate boundary to the point of beginning... (Rev. 3-27-90)

4. Uses Permitted by Right

Within the Watershed Protection Overlay District, the following uses are permitted, subject to the provisions of Section VI below, and subject to the provisions of the underlying zoning, provided that all necessary permits, orders, and approvals required by local, state, and federal law are also obtained:

a. Conservation of soil, water, plants, and wildlife;

b. outdoor recreation, not involving the use of motor vehicles or motor boats, including boating, fishing, nature study and hunting where otherwise legally permitted;

c. foot, bicycle, and horse paths and bridges;

d. rehabilitation, repair, and maintenance of any existing (prior to adoption of this amendment) structure, provided there is no increase in impervious pavement (other than that material which is used in the construction of the structure itself) and provided that all appropriate permits (if any) have been obtained;

e. expansion of any existing residential structure provided that such expansion meets with any and all requirements of this zoning ordinance for the underlying district and further provided that all appropriate permits are obtained and that there is no increase in impervious pavement (other than that material used in the construction of the structure itself);

f. new single-family residential development, as permitted in the underlying district, provided that such (individual) development is not in excess of two house lots;

g. farming, gardening, nursery, conservation, forestry, harvesting and grazing uses, provided that fertilizers, herbicides, pesticides, manure and other leachable materials are not stored outdoors;

h. operation, maintenance, and public service-related additions to public water supply facilities and associated uses including, but not limited to, chemical and fuel storage.

5. Uses Permitted by Special Permit

a. Within the Watershed Protection Overlay District, the following uses, unless prohibited by a specific provision of

Section 6, may be permitted by a Special Permit from the Planning Board:

1. commercial and industrial uses permitted in the underlying district;

2. two-family and multi-family developments permitted in the underlying district.

3. new single-family residential development in excess of two house lots, as permitted in the underlying district. (Rev. 3-5-90)

b. Special Permit applications shall be made, reviewed, and acted upon in accordance with the following procedures:

1. The Special Permit application must first be filed with the Beverly Planning Board. The Board may forward the application to the Salem/Beverly Water Board for their review. The Salem/Beverly Water Board shall forward a recommendation to the Planning Board within 30 days of submittal. The Salem/Beverly Water Board may request an additional 30 day extension of time;

2. The Planning Board and/or the Salem/Beverly Water Board may require submission of reasonable drawings, plans, or other descriptions of the proposed project, along with a filing fee which shall be established by the Board of Aldermen;

3. The Planning Board shall hold a public hearing on the Special Permit application following procedures required by Massachusetts General Laws Chapter 40A;

4. The Planning Board may deny a proposed project or activity if it finds that such project or activity violates the intentions of this Overlay District, has an adverse environmental impact on the aquifer or recharge area, or adversely affects the existing or potential water supply. Appeals of the Board's decision may be taken to the Board of Appeals for further public hearing.

(A decision by the Planning Board approving a Special Permit - as described above - will not constitute final approval of that proposal

when additional permits or procedures (subdivision approval, Form "A" submittal, use and/or dimensional variance appeal, or additional Special Permit application) are necessary.)

6. Prohibited Uses

Within the Watershed Protection Overlay District, the following uses are expressly prohibited:

a. storage of chemical or petroleum products of any kind except for:

   1. products stored in a free-standing container of less than 15 gallons capacity; and

   2. heating fuel product stored in the building where that fuel is to be utilized.

   3. propane gas, stored above ground, to be used for residential home heating purposes (Ord. No.11, 1-17-95); and

   4. propane gas, stored above ground, to be used for retail resale; provided, however, that the containers being filled for resale shall be no larger than forty (40) pounds capacity. (Ord. No. 11, 1-17-95)

b. disposal of hazardous materials;

c. disposal of solid wastes, as defined in Massachusetts General Laws Chapter 21C, as may be amended;

d. disposal of solid wastes other than brush or stumps;

e. disposal of leachable wastes;

f. storage of road salt or other de-icing materials;

g. disposal of snow that contains de-icing chemicals and that has been brought in from outside the Overlay District;

h. industrial uses that discharge process wastewater on site;

i. outdoor storage of fertilizers, herbicides, and pesticides, and outdoor uncovered storage of manure;

j. animal feedlots;

k. dry cleaning establishments;

l. boat and motor vehicle service, washing and repair establishments;

m. junk and salvage yards;

n. septic sewerage system(s) for any development other than single-family residential house lots; (Rev. 3-27-90)

o. natural resource mining or commercial sand and gravel operation.

D. IR OVERLAY DISTRICT

The IR Overlay district is established to provide principally for mixed use commercial development within the IR district. See Section 38-19. (Ord. No. 230, 2-19-09)

E DEPOT PARKING OVERLAY DISTRICT

The Depot Parking Overlay District addresses parking requirements for certain residential units within walking distance of the Beverly MBTA Depot. See Section 38-17. (Ord. No. 61, 7-12-11)

38-32 VALIDITY

If any section, paragraph, subdivision, clause, phrase, or provision of this Ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of provisions thereof other than the part so decided to be invalid or unconstitutional.

The fact that the present zoning regulations are inadequate to properly safeguard the general public welfare, health, peace, and safety, creates an urgency and an emergency, and requires that this Ordinance become effective immediately upon its passage.

38-33 MUNICIPAL OPEN SPACE AND RECREATION DISTRICT
(Ord. No. 109, 6-28-99)

1. Purpose - The Municipal Open Space and Recreation District is established in accordance with the boundaries as shown on the Zoning District Map. The primary purposes of the Municipal Open Space and Recreation District are to encourage the preservation of large, contiguous wetland areas and open space for park land, active and passive recreation, reservations, community gardens, rivers and streams, and similar uses. It is intended that the Municipal Open Space and Recreation District will permanently protect these open space resources so as to enhance the quality of life for residents and visitors to the area. The Municipal Open Space and Recreation District may also encompass wetland resource areas, open space, and recreational areas where there are important public health, safety, and welfare interest in watershed and flood potential protection, preservation of wildlife habitat, and conservation of recreational land for resident use and enjoyment.

2. Permitted Uses Within the Municipal Open Space and Recreation District:

   a. conservation of soil, water, plants and wildlife;

   b. outdoor recreation, not involving the use of motor vehicles or motor boats, including boating, fishing, and nature study where otherwise legally permitted;

   c. active recreation including playing fields and other athletic purposes;

   d. foot, bicycle, and horse paths and bridges;

   e. community gardens;

   f. fences, parking, landing piers, small structures for non-commercial uses, and public restroom facilities;

3. Uses Permitted by Special Permit within the Municipal Open Space and Recreation District - Upon the issuance of a Special Permit for an exception by the Zoning Board of Appeals, and subject to such other special conditions and safeguards as the Zoning Board of Appeals deems necessary to fulfill the purposes set forth in Section 1, the following uses, structures and actions are permitted:

a. Dams, excavations or grading, consistent with the purposes of this section to create ponds, pools or other changes in water courses, for swimming, fishing or other recreational uses, agricultural uses, scenic feature, or drainage improvements.

4. Within the Municipal Open Space and Recreation District the following uses are expressly prohibited:

   a. land filling or dumping;
   b. storage or disposal of hazardous materials;
   c. storage or disposal of solid wastes as defined in M.G.L. Ch. 21C, as may be amended.
   d. storage of materials or equipment, except when necessary to permitted activities above. (Ord. No. 109, 6-28-99)

38-34 INCLUSION OF AFFORDABLE HOUSING
(Ord. No. 103, 7-17-07)

A. Purposes and Intent

1. To provide affordable housing choices throughout the City, in furtherance of the housing goals of the City of Beverly Master Plan and the City of Beverly Affordable Housing Plan.

2. To provide for a diverse, balanced and inclusive community, with housing for persons of all income levels as a matter of basic fairness and social responsibility.

3. To assure that affordable housing is made available on an equal basis to all eligible households without regard to race, religion, age, sex or other class status as defined in the federal Fair Housing Act of 1968, as amended.

4. To encourage the inclusion of affordable housing in all new residential and mixed-use developments.

B. Applicability

1. This Section applies to any development that results in or contains ten (10) or more residential dwelling units. The types of development subject to the provisions of this Section include, without limitation, the following:

   a. A division of land resulting in the creation of ten or more residential lots. Developments shall not be segmented to avoid compliance with this Section. "Segmentation" shall mean divisions of land that would cumulatively result in an increase of ten (10) or more residential lots above the number existing on a parcel of land or contiguous parcels in common ownership or control twenty-four months prior to the application. Where such segmentation occurs, it shall be subject to Section 38-34.1. A subdivision or division of land shall mean any subdivision as defined in the Subdivision Control Law, Chapter 41, Sections 81K-81GG of the Massachusetts General Laws, or any division of land under Chapter 41, Section 81P of the Massachusetts General Laws, when such division of land results in lots for residential use.

   b. New residential construction or new mixed-use construction that includes ten (10) or more dwelling units.

   c. A development of 10 (10) or more new dwelling units that involves the redevelopment, reconstruction or rehabilitation of an existing multi-family building or structure, if such development results in an increase of ten or more units in the number of dwelling units in the original structure.

d. A development that will change the use of an existing building from non-residential to residential use.

2. This Section does not apply to nursing homes, projects meeting the definition of subsidized elderly housing or congregate elderly housing, nor to the rehabilitation of any building or structure wholly or substantially destroyed or damaged by fire or other casualty; provided, however, that no rehabilitation nor repair shall increase the number of dwelling units on the lot as existed prior to the damage or destruction thereof, except in conformance with this Section. (Ord. No. 72, 7-9-09)

3. Any other development with dwelling units to which this Section does not otherwise apply may elect to be subject to this Section, provided the development meets all applicable requirements herein. Special permits authorized under this Section for developments with ten (10) or more dwelling units may also be granted to any other development with dwelling units, in the discretion of the Planning Board.

C. Housing Affordability

1. Except as provided below, each affordable unit created under this Section shall be sold or rented to a household with income at or below 80% of the area median income that applies to subsidized housing in the City of Beverly, as reported annually by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size.

2. When an applicant provides at least one-half of the required affordable units for households with income at or below 50% of area median income, the remaining affordable units may be sold or rented to households with incomes up to 100% of area median income, adjusted for household size, subject to approval by the Planning Board.

D. Planning Board Regulations

The Planning Board shall adopt Affordable Housing Regulations to administer this Section and may from time to time revise said regulations, following a public hearing for which notice has been given in accordance with Chapter 40A, Section 11 of the Massachusetts General Laws.

E. Minimum Percentage of Affordable Units

In any development subject to this Section, at least twelve percent (12%) of the dwelling units shall be affordable housing. In the instance of a fraction, a fraction of a lot or dwelling unit shall be rounded up to the nearest whole number. Nothing in this section shall preclude a developer from providing more affordable housing units than required hereunder.

F. Location and Comparability of Affordable Units

1. Affordable units shall be dispersed throughout a development and be comparable to market-rate units in exterior building materials and finishes; overall construction quality; and energy efficiency. Interior finishes shall be in accordance with the Planning Board's Affordable Housing Regulations.

2. Affordable units in two-family, semi-detached and multi-family dwellings shall generally be similar in size (in gross floor area) to market-rate units of the same type; provided, however, that the gross floor area of the affordable units shall not be less than the minimum floor area required by the Department of Housing and Community Development (DHCD) for units eligible for the Subsidized Housing Inventory as Local Initiative Program (LIP) units.

3. For a development of detached one-family dwellings in a zoning district in which said dwellings are permitted as of right, the following shall apply:

   a. Affordable detached one-family dwellings may be smaller than market-rate dwellings, but in no event shall the gross floor area of any affordable unit be less than the minimum floor area required under the regulations or guidelines of the Local Initiative Program except by Special Permit from the Planning Board.

   b. Alternatively, up to 20% of the units may be in two-family, semi-detached or multi-family dwellings of not more than three units, and all or a majority of the required affordable units may be located in said dwellings; provided, however, that the units shall conform to the Planning Board's Affordable Housing Regulations and shall not be concentrated in one part of the development.

4. In a development of multi-family units, affordable units shall be dispersed throughout the buildings and the floors of each building, such that no single building or floor therein has a disproportionate percentage of affordable units.

5. In a development of homeownership units, the affordable units may be restricted for occupancy by eligible homebuyers or renters, or sold to non-profit organizations or public agencies that provide and manage rental housing to low- or moderate-income households.

G. Methods of Providing Affordable Units

1. Construction of affordable units on the locus of the development ("on-site units") shall be permitted as of right in any development, and is the preferred method of providing affordable units under this Section.

2. The Planning Board may grant a Special Permit for one or more of the following alternative methods, including any combination thereof. In granting a Special Permit hereunder, the Planning Board may impose any conditions it deems necessary to assure compliance with this Section:

a. "Off-site units," or the provision of comparable affordable units on another site in the City of Beverly, subject to Site Plan Review under Section 38-29(C) or Subsection I of this Section, as applicable. Off-site units need not be located in the same zoning district as the development.

b. Payment of a fee in lieu of affordable units to the City of Beverly Affordable Housing Trust Fund. This provision shall apply only to developments of homeownership units. The fee per affordable unit shall be determined by Planning Board regulation in accordance with Subsection D above.

c. Donation of developable land in the City of Beverly to the Beverly Housing Authority, the Beverly Affordable Housing Coalition, Inc. or a comparable entity determined at the discretion of the Planning Board, provided the receiving organization agrees in writing to accept the land and the applicant demonstrates to the Planning Board's satisfaction that said land is developable for an equivalent number of affordable units in conformance with the Beverly Zoning Ordinance. This provision shall apply only to developments of homeownership units. Donated land need not be located in the same zoning district as the development, and shall be subject to a deed restriction limiting its use to mixed-income or affordable housing.

3. In the R6, RMD, RHD, RSD, CN, CC or CG district, if the developer provides a greater number of affordable units <u>on site</u> than the minimum required to comply with Subsection E above, the Planning Board may grant a Special Permit for "credit units" to reduce the number of affordable units that must be provided under this Section in another development in a different location, whether in the same zoning district or a different zoning district. The developer may apply the credit units to a future project or transfer the credits in writing to another developer, provided that the credit units are used within ten (10) years from the effective date of the Special Permit.

H. <u>Dimensional and Density Regulations for On-Site Units</u>

1. The following dimensional and density regulations shall apply to any development that provides <u>all</u> of the required affordable units as on-site units; provided, however, that for purposes of determining a development's base maximum density and required percentage of affordable units under Subsection E above, the Building and Area Requirements set forth in Section 38-7(D) through Section 38-16(D) shall apply.

a. In the R-90, R-45, R-22, R-15 or R-10 district, for each on-site affordable unit, the applicant may propose <u>one</u> additional dwelling unit over that which would otherwise be permitted in the district. The minimum lot area for any lot in the development shall be not

less than 85% of the minimum lot area in Section 38-7(D) through Section 38-11(D), as applicable.

b. In the R-6 district, for each on-site affordable unit, the applicant may propose one additional dwelling unit over that which would otherwise be permitted, except that if the development includes two-family or semi-detached units and the required percentage of affordable units results in an odd number, the applicant may propose an additional unit in order to build an even number of units. The minimum lot area shall be not less than 85% of the minimum lot area for a detached one-family dwelling, nor less than 80% of the minimum lot area for a two-family or semi-detached dwelling, as set forth in Section 38-12(D).

c. In the RMD, RHD and RSD districts, for each on-site affordable unit, the applicant may propose two additional dwelling units over the number of units that would otherwise be permitted in the district. The minimum lot area shall be not less than 85% of the minimum lot area for a detached one-family dwelling, nor less than 80% of the minimum lot area per unit for a two-family or semi-detached dwelling, nor less than 70% of the minimum lot area per unit for a multi-family unit, as set forth in Section 38-13(D) through Section 38-15(D), as applicable.

d. In the CN district, for each on-site affordable unit, the applicant may propose two additional dwelling units over the number of units that would otherwise be permitted in the least restrictive adjacent residential district. The minimum lot area shall be in accordance with (a) through (c) above, as applicable.

2. The Planning Board may grant a Special Permit to increase the total number of units for any development that provides at least fifty percent (50%) of the required affordable housing units on site and the balance of such units off site, or to waive any other dimensional or density requirements in the applicable zoning district(s) when doing so furthers the purposes of this Section and is not inconsistent with the City of Beverly Master Plan; provided that no Special Permit granted hereunder shall result in a total number of dwelling units exceeding the maximum number allowable under Subsection H(1) above, and provided further that neither the maximum building height nor the number of required off-street parking spaces may be varied or waived by the Planning Board.

3. The applicability of Site Plan Review under Section 38-29(C) shall be based on the maximum number of dwelling units allowable in accordance with Building and Area Requirements for the applicable zoning district. When a development of multi-family or townhouse units would not be subject to said Section 38-29(C) except for the provision of on-site affordable units under Subsection H(1) above, Site

Plan Review shall be conducted in accordance with Subsection I(3) below.

I. Submission Requirements and Procedures for On-Site and Off-Site Units

1. No building permit shall be issued until the Planning Board has reviewed and acted upon a site plan submitted by the applicant in accordance with this Section.

2. A development that is subject to Site Plan Review under Section 38-29(C) or 38-24(B) of this Ordinance shall be reviewed in accordance with the provisions of said Sections. The Planning Board may request information in addition to the required site plan contents in Section 38-29(C)(3) or 38-24(B), and impose conditions on its approval of the site plan to assure that the development complies with Subsections E, F, G and H above.

3. For a development that is not subject to Section 38-29(C) or 38-24(B), the applicant shall submit a site plan that conforms to the application requirements set forth in Section 38-29(C)(3) and the Planning Board's Affordable Housing Regulations.

   a. The Planning Board shall conduct an administrative review of the site plan at a posted open meeting, and may refer the plan to the Design Review Board for comments and recommendations.

   b. The Planning Board shall take final action on the site plan within 35 days of the date of the open meeting, and may impose conditions on its approval of the site plan to assure that the development complies with Subsections C, D, E and F above. Failure of the Planning Board to act within 35 days of the open meeting shall be deemed as conclusion of review and it shall forthwith make its endorsement on said plan and, on its failure to do so, the City Clerk shall issue a certificate to the same effect.

   c. For a development that constitutes a subdivision under Chapter 41, Section 81K-81GG of the Massachusetts General Laws, site plan review may be extended by written agreement of the applicant and Planning Board for purposes of coordinating the review and decision periods of this Section and the Subdivision Control Law.

J. Submission Requirements and Procedures for Special Permit

For any development that requires a Special Permit under this Section, the Planning Board shall be the Special Permit Granting Authority. Application, review and decision procedures shall be in accordance with Section 38-28(C) and the Planning Board's Affordable Housing Regulations.

K. Phased Construction

Affordable units shall be constructed or otherwise provided in proportion to market-rate units. Proportionality shall be determined by the number of

building or occupancy permits issued for affordable and market-rate units, or lot releases, as applicable. Affordable units shall not be the last units to be built in any development covered by this Section.

L. Selection of Affordable Unit Purchasers or Renters

The selection of purchasers or renters for affordable units shall be carried out under an affirmative marketing plan approved by the City Planning Director prior to the issuance of any building permits for the development.

M. Preservation of Affordability

1. Affordable units provided under this Section shall be subject to an affordable housing restriction that contains limitations on use, occupancy, resale and rents, and provides for periodic monitoring to verify compliance with and enforce said restriction. The affordable housing restriction shall run with the land and be in force in perpetuity or for the maximum period allowed by law, and be enforceable under the provisions of Chapter 184, Section 26 or Sections 31-32 of the Massachusetts General Laws.

2. The applicant shall be responsible for preparing and complying with any documentation that may be required by DHCD to qualify affordable units for listing on the Chapter 40B Subsidized Housing Inventory as LIP units.

3. For a development that provides on-site or off-site affordable units:

   a. No building permit shall be issued until the applicant executes an enforceable agreement with the City and provides evidence acceptable to the Planning Director that the agreement has been recorded at the Essex County Registry of Deeds.

   b. For an affordable homeownership unit, no certificate of occupancy shall be issued until the applicant submits documentation acceptable to the Planning Director that an affordable housing deed rider has been signed by the homebuyer and recorded at the Essex County Registry of Deeds.

4. For a development that provides affordable units through a fee in lieu of units, no building permit shall be issued until the applicant pays at least five percent (5%) of the total required fee to the Beverly Affordable Housing Trust Fund. Additionally, no more than fifty percent (50%) of the certificates of occupancy shall be issued until the applicant pays at least 50% of the total required fee to the Beverly Affordable Housing Trust Fund. 10% of the total number of certificates of occupancy shall be withheld until the applicant submits evidence acceptable to the Planning Director that the remaining balance has been paid to the Affordable Housing Trust Fund. The

Planning Board may modify the schedule for fee payment for projects covered by a single occupancy permit.

5. For a development that provides affordable units through a land donation, no building permits shall be issued until the applicant submits evidence acceptable to the Planning Director that the land has been conveyed to the receiving organization identified in the Planning Board's Special Permit and an affordable housing restriction has been recorded at the Essex County Registry of Deeds.

N. Severability

If any portion of this Ordinance is declared to be invalid, the remainder shall continue to be in full force and effect.

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