

## **Section 12 – Proposed**

**The Manchester Planning Board has been working for two years to improve the town’s Zoning Bylaws to be clearer and remove redundant sections and update to best practices.**

**A public hearing is scheduled for May 17 at 6:30 via Zoom and will be continued if needed on May 18. Town meeting is scheduled for June 11.**

### **Section 12 Summary:**

- The existing administrative and procedural requirements will be clearly described in this revised section of the zoning bylaw.
- The roles, powers and organizational framework of the Building Inspector, Zoning Board of Appeals and Planning Board would be clarified (There are currently no regulations concerning the Planning Board.).
- The procedures for granting approval and the criteria for reviewing special permits would be simplified and clarified.
- The ZBA would be authorized to grant “special accommodation” for handicapped individuals, as required by State Law.

## **Section 12 Administration**

### **Motion:**

**Amend the Zoning Bylaw by Deleting Section 7 and ADDING “SECTION 12: ADMINISTRATION” as follows:**

### **SECTION 12.0 ADMINISTRATION AND PROCEDURES**

#### **12.1 PERMITS.**

**12.1.1 Inspector of Buildings.** (Change to “Building Inspector” throughout?) The office of the Inspector of Buildings is responsible for the issuance of building permits. He shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of this Bylaw and no permit shall be granted for a new use of a building, structure or land which use would be in violation of

this Bylaw. When a special permit, site plan approval, or variance has been ~~may be~~ granted with conditions, such conditions shall be enforced by the Inspector of Buildings.

**12.1.2 Certificate of Occupancy.** No use or occupation of land for any purpose for which a certificate of occupancy is required shall be made, in whole or in part, until such a certificate has been issued by the Inspector of Buildings stating that the use of land and structure, if any, complies with this Bylaw and other applicable codes in effect at the time of issuance.

## **12.2 ENFORCEMENT.**

**12.2.1 Inspector of Buildings.** The office of the Inspector of Buildings is responsible for the enforcement of this Bylaw. The Inspector of Buildings is also responsible for the enforcement of any conditions set forth in site plan approval, a special permit, or a variance.

**12.1.2 Penalties.** Any person violating any provision of this Bylaw, upon conviction, shall be fined \$300 for each offense, and each day that such violation continues shall constitute a separate offense.

**12.1.3 Noncriminal Disposition.** In addition to the procedures for enforcement as described in the previous paragraph, the provisions of this Bylaw may be enforced by the Inspector of Buildings by noncriminal complaint pursuant to the provisions of M.G.L. c. 40, s. 21D. The penalty for violation of any provision of this Bylaw shall be \$25.00 for the first offense; \$50.00 for the second offense; \$100.00 for the third offense and \$200.00 for the fourth and each subsequent offense.

## **12.3 ZONING BOARD OF APPEALS.**

**12.3.1 Appointment; Organization.** The Zoning Board of Appeals shall consist of five regular members and two associate members appointed by the Board of Selectmen for three year terms. The regular members shall be appointed such that the term of at least one member shall expire each year. Vacancies shall be filled in the same manner as appointments. The Board of Appeals shall elect one of its members as chairman and one of its members as clerk, each to serve for a one year term. The two associate members shall be appointed such that their terms do not expire the same year.

**12.3.2 Removal.** A member may be removed only for cause by the Board of Selectmen and only after a written statement of the facts on which removal for cause is based has been presented to such member and a public hearing has been held at which the member has been afforded the opportunity to be heard.

**12.3.3 Powers.** The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this Bylaw. The Board's powers are as follows:

1. To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority.

2. To hear and decide appeals or petitions for variances from the terms of this Bylaw, with respect to particular land or structures, as set forth in M.G.L. c. 40A, s. 10. The Board of Appeals shall not have the power to grant use variances; provided, however, that a use variance may be granted in the Limited Commercial District upon a written finding by the Board of Appeals that, in addition to the requirements set forth in M.G.L. c. 40A, s. 10, the specific conditions set forth in Section 11.5 of this Bylaw have been considered.

3. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.

4. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

**12.3.4 Regulations.** The Board of Appeals may adopt rules and regulations for the administration of its powers.

**12.3.5 Fees.** The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

## **12.4 PLANNING BOARD.**

**12.4.1 Establishment.** The Planning Board shall consist of seven (7) elected members, elected for three year terms.

**12.4.2 Powers.** The Planning Board shall have the following powers:

1. To hear and decide applications for special permits, when designated as the SPGA in this Bylaw.
2. To hear and decide applications for site plan approval pursuant to Sections 12.5 and 12.8.

**12.4.3 Regulations.** The Planning Board may adopt rules and regulations for the administration of its powers.

**12.4.4 Fees.** The Planning Board may adopt reasonable administrative fees and technical review fees for applications for special permits and site plan review.

## **12.5 SPECIAL PERMITS.**

**12.5.1 Special Permit Granting Authority.** When designated by this Bylaw, the Board of Appeals, the Board of Selectmen, and the Planning Board shall act as the Special Permit Granting Authority (SPGA).

**12.5.2 Criteria.** Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.

**12.5.3 Procedures.** An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.

**12.5.4 Conditions.** Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this Bylaw. Such conditions may include, but are not limited to the following:

1. Setback requirements greater than the minimum required by this Bylaw;
2. Requirements as to installation of screening, fencing or other means of protecting adjacent property;
3. Modification of the exterior features or appearance of any structure;
4. Limitation as to size, number of occupants, or method and time of operation of any proposed use;
5. Regulation of number, design and location of access drives and other traffic features;
6. Requirement of off-street parking and other special features;
7. Installation of mechanical or other devices to limit noise, light, odor or other objectional aspects of use; and
8. Requirement for surety bonds or other security for the performance of any conditions attached to the special permit.

**12.5.5 Referral.** The Board of Appeals, Board of Selectmen and Planning Board, when serving as the SPGA, shall refer a special permit application to the Board of Health, Conservation Commission, and the Department of Public Works for written comments and recommendations before taking final action on said special permit application. The SPGA may refer a special permit application to any other town agency, board, or department for comments and

recommendations if it so desires before taking final action on said special permit application. A public hearing on said referral shall not be required. Any such Board or Agency to which applications are referred for comment shall make its recommendations and send copies thereof to the SPGA and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The SPGA shall not act upon said special permit until either comments from referred board or agencies have been received, or said thirty five (35) days have elapsed, whichever is sooner. Applications referred to more than one board or agency may be reviewed jointly by said boards or agencies.

**12.5.6 Plans.** Unless otherwise provided, the rule or regulation of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 12.5, herein. The provisions of this Section shall not apply to applications for special permits pursuant to Section 5.0 to alter a nonconformity. The Zoning Board of Appeals shall establish procedures governing such applications by regulation.

**12.5.7 Regulations.** The Special Permit Granting Authority may adopt rules and regulations for the administration of this section.

**12.5.8 Fees.** The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

**12.5.9 Lapse.** Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 36 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

## **12.6 SITE PLAN REVIEW.**

**12.6.1 Purpose.** The purpose of site plan review is to ensure the design and layout of certain developments permitted as a matter of right, by special permit, or by variance. Site plan review is intended to promote suitable development that will not result in a detriment to the neighborhood or the environment.

**12.6.2 Applicability.** The following activities shall require site plan approval from the Planning Board:

1. Any new development, expansion, or change of use other than a single-family or two-family residence which would, under the parking schedule "Off-Street Parking Regulations" of Section 6.1, require five (5) or more parking spaces, regardless of the number of parking spaces preexisting on the premises; and
2. Any site development which involves cutting or removal of vegetation, shall be permitted only upon site plan approval from the Planning Board. Site plan approval shall be granted only if the Planning Board finds that such approval is consistent with the purposes set forth in this Section 12.6.

**12.6.3 Procedure.** The Planning Board shall serve as the approval authority for site plan review. All decisions shall be made by a majority of the Board, as constituted. Applications shall be accompanied by at least eleven (11) prints of the plans of the proposal.

**12.6.4 Site Plan Requirements.** Plans subject to site plan review shall be prepared by a Registered Architect, Landscape Architect, or Professional Engineer licensed by the Commonwealth of Massachusetts. The site plan shall be prepared at a scale no greater than 1"=40', and shall show the following:

1. Locus map at a scale not greater than 1'=2,000';
2. All existing and proposed buildings and structures;
3. All existing and proposed contour elevations;
4. All existing and proposed parking spaces, driveway openings, driveways, and service areas;
5. All existing and proposed facilities for sewage, refuse, and other waste disposal;
6. All wetlands, surface water, and areas subject to the 100-year flood;
7. All existing and proposed facilities for surface water drainage;
8. All existing and proposed landscape features such as fences, walls, trees and planting areas, walks, and lighting.
9. All contiguous land owned by the applicant or by the owner of the property.

**12.6.5 Additional Application Requirements.** The applicant shall also submit the following in accordance with Section 6.4:

1. Such material as may be required regarding measures proposed to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level, and flooding.
2. Such material as may be required regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectional features from neighbors.
3. Such material as may be required regarding the projected traffic-flow patterns into and upon the site for both vehicles and pedestrians and an estimation of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.

**12.6.6 Waiver of Technical Compliance.** The Board may, upon written request of the applicant, waive any of the technical or procedural requirements of this Section where the project involves relatively simple development plans.

**12.6.7 Decision; Criteria.** Site plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and

adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. The Planning Board shall use the parking, signage, landscaping and other performance standards prescribed in Section 6.0 of this Bylaw in considering all site plans, in order to promote the following goals:

1. Protection of adjacent areas against detrimental or offensive uses on the site by provisions of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, and the allowance of sun, light, and air;
2. Convenience and safety of vehicular, bicycle, and pedestrian movement within the site and in relation to adjacent areas;
3. Adequacy of facilities of handling and disposal of refuse and other production by-products;
4. Protection of environmental features on the site and in adjacent area;
5. Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood;
6. Coordination with and improvement of systems of vehicular, bicycle, and pedestrian access, drainage, water supply, sewage disposal, lighting, landscaping, wetlands, water courses, buildings and other features that support the neighborhood;
7. Compliance with all applicable sections of this Bylaw.

**12.6.8 Performance Guarantee.** As a condition of site plan approval, the Planning Board may require that construction and site alteration permitted and specified by said approval be secured by one, or in part by one and in part by the other, of the methods set forth in M.G.L. c. 41, s. 81U (except for the statutory covenant).

**-12.6.9 Release of Guarantee.** Performance guarantees may be released in whole or from time to time, in part, when the work has been satisfactorily completed in the opinion of the Planning Board. The Planning Board shall then release the interest of the town in such bond and return any bond or deposit to the person who furnished the same. Request for all releases shall be by certified, return receipt letter to the Planning Board and the Town Clerk and shall outline that portion of the work to be released and shall be accompanied by an engineer's or surveyor's certification that the work has been done in accordance with the requirements of the granted site plan approval. If the Planning Board determines that said construction or site alteration has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the Town Clerk, the details wherein said construction or site alteration fails to comply with the site plan approval and upon failure to do so within forty-five (45) days after the receipt by said Town Clerk of said request by the applicant, all obligations under any bond shall cease and terminate by operation of law, and any deposit shall be returned. In the event that said forty-five day period expires without such specification, or without the release and return of the bond or return of the deposit as aforesaid, the said Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

**12.6.10 Lapse.** Site plan approval shall lapse after two years 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 in writing by the Board upon the written request of the applicant.

**12.6.11 Regulations.** The Board may adopt reasonable regulations for the administration of site plan review.

**12.6.12 Fee.** The Board may adopt reasonable administrative fees and technical review fees for site plan review.

**12.6.13 Appeal.** Any decision of the Planning Board pursuant to this Section shall be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

## **12.7 REQUEST FOR REASONABLE ACCOMMODATION.**

**12.7.1 Purpose.** Under the FHA, it is a discriminatory practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling" 42 U.S.C. § 3604(f)(3)(B). The same standard applies under the ADA, which also addresses nonresidential facilities providing services to persons with disabilities. 42 U.S.C. 12112(b)(5).

See also G.L. c. 40A, s. 3. The purpose of this Section is to facilitate housing and/or services for persons with disabilities and to comply fully with the spirit and the letter of the FHA and, where applicable, the ADA.

**12.7.2 Request.** Any person eligible under the FHA or any provider of housing to persons eligible under the FHA, or any person eligible to operate a nonresidential facility providing services to persons eligible under the ADA, may request a Reasonable Accommodation as provided by the Fair Housing Act and/or the ADA. A Request for a Reasonable Accommodation does not affect a person's or provider's obligations to act in compliance with other applicable laws and regulations not at issue in the requested accommodation.

**12.7.3 Zoning Board of Appeals.** All requests for Reasonable Accommodation under the FHA and/or the ADA shall be submitted to the Zoning Board of Appeals (ZBA).

**12.7.4 Information.** All requests for Reasonable Accommodation shall be in writing and provide, at a minimum, the following information:

1. Name and address of person(s) or entity requesting accommodation;
2. Name and address of property owner;
3. Name and address of dwelling or facility at which accommodation is requested;
4. Description of the requested accommodation and specific regulation or regulations for which accommodation is sought;
5. Reason that the requested accommodation may be necessary for the person or persons with disabilities to use and enjoy the premises; and



6. If the requested accommodation relates to the number of persons allowed to occupy a dwelling, the anticipated number of residents, including facility staff (if any).
7. If necessary to reach a decision on the request for Reasonable Accommodation, the ZBA may request further information from the applicant consistent with the FHA and/or ADA, specifying in detail the information required.

**12.7.5 ZBA Procedures.** The ZBA shall decide a request for reasonable accommodation by majority vote at an open meeting. The ZBA may hold a public hearing using the procedures, including notice, set forth in M.G.L. c. 40A, §§ 11 and 15. The deadlines imposed in M.G.L. c. 40A, s. 11 or s. 15 may be extended upon the request of the applicant and the approval of the ZBA. The ZBA may seek information from other Town agencies in assessing the impact of the requested accommodation on the rules, policies, and procedures of the Town. Upon written notice to the ZBA, an applicant for a reasonable accommodation may withdraw the request without prejudice. The ZBA shall consider the following criteria when deciding whether a request for accommodation is reasonable:

1. Whether the requested accommodation is reasonable;
2. Whether the requested accommodation would require a fundamental alteration of a legitimate City policy; and
3. Whether the requested accommodation would impose undue financial or administrative burdens on the City government.

**12.7.6 Decision.** After conducting an appropriate inquiry into the request for reasonable accommodation, the ZBA may:

1. Grant the request;
2. Grant the request subject to specified conditions; or
3. Deny the request.

The ZBA shall issue a written final decision on the request in accordance with M.G.L. c. 40A, s. 15. If the ZBA fails to render its decision on a request for reasonable accommodation within the time allotted by M.G.L. c. 40A, s. 15, the request shall be deemed granted. The ZBA's decision shall be filed with the Town Clerk and sent to the applicant by certified mail.

**12.7.7 Appeal.** The ZBA's decision pursuant to this Section may be appealed to a court of competent jurisdiction in accordance with M.G.L. c. 40A, s. 17 or otherwise.

**12.7.8 File.** The ZBA shall maintain a file of all requests for reasonable accommodation under the FHA and/or the ADA and a file of all decisions made on such requests. The file(s) may be reviewed in the Office of the ZBA upon request during regular business hours.

**12.7.9 Other Laws.** While a request for a reasonable accommodation is pending, all laws and regulations otherwise applicable to the premises that is the subject of the request shall remain in full force and effect.

## **12.8 SITE PLAN REVIEW FOR DOVER AMENDMENT USES.**

**12.8.1 Purpose.** The purpose of this Section is to provide for site plan review of religious uses, educational uses, and child care centers otherwise “exempt” pursuant to G.L. c. 40A, s. 3. These are items B.1, B.2 and B.3 in the Table of Use and Parking Regulations.

**12.8.2 Site Plan Review Required.** Prior to the issuance of any building permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of uses B.1, B.2, or B.3, as set forth in the Table of Use and Parking Regulations, shall require site plan approval from the Planning Board pursuant to this Section.

**12.8.3 Scope of Site Plan Review.** Under this Section, Site Plan Review shall be limited to two inquiries:

1. Whether the use qualifies for protection under G.L. c. 40A, s. 3; and, if so,
2. What reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements, if any, should be imposed on the use.

**12.8.4 Required Information.** All applications for Site Plan Review shall be in writing and provide, at a minimum, the following information:

1. Name and address of applicant person or entity;
2. Name and address of property owner;
3. Description of the proposed use and any documents necessary to establish threshold compliance with G.L. c. 40A, s. 3;
4. Reason that relief is requested from otherwise applicable zoning requirements;
5. If necessary to reach a decision on the application, the Planning Board may request further information from the applicant consistent with G.L. c. 40A, s. 3, specifying in detail the information required.

**12.8.5 Site Plan; Contents.** In addition, the applicant shall submit a site plan with the following information:

1. Legend depicting all pertinent existing and proposed site features.
2. The date and north arrow shall be shown on the plans.
3. All site plans must be stamped by a Registered Professional Civil Engineer and a Professional Land Surveyor. The land surveyor shall perform an instrument boundary survey and shall certify the accuracy of the locations of the buildings, setbacks, and all other required dimensions to property lines.

4. Zoning Chart depicting "Required" vs. "Provided" for all applicable Zoning Criteria including Lot Size, Frontage, Setbacks, Building Height, Lot Coverage, Parking Spaces, Landscaping Requirements.
5. Locus map, at a scale of 1" = 600' or suitable scale to accurately locate the site in Town, oriented on the plan in the same way as the large-scale plan.
6. The location, width, status (public or private), and name of all streets within 100' of the project.
7. On-site and abutting lot lines. On-site lot lines shall be described by bearings and distance. Abutting lot lines shall be shown in a general way.
8. Zoning District lines, including overlay districts if applicable.
9. The location of existing or proposed building(s) on the lot shall be shown with total square footage and dimensions of all buildings.
10. Any streams, brooks, or wetland resource area boundaries within 100' of the property lines.
11. Information on the location, size and type and number of existing and proposed landscape features. Provide Diameter at Breast Height (DBH) for all existing site trees => 6" DBH --within the project site disturbance limits.
12. Information on the location, size and capacity of existing and proposed on-site and abutting utilities, (water, sewer, drainage, natural gas, electrical cable, etc.) including utilities in abutting side streets, if applicable.
13. Detailed locations and dimensions of all existing and proposed buildings and uses on site and on abutting properties, including exterior details relating to the building footprint. All existing and proposed setbacks from property lines. Any minimum, or below minimum, setback distances shall be clearly noted as such on the plan.
14. Information and details for all site and directional on-site signage shall be submitted.
15. Elevation and facade treatment plans of all proposed structures. Color renderings are required for new construction.
16. Information on the location, size and type of parking, loading, storage and service areas. A parking calculation schedule noting existing, required and proposed spaces for the entire site shall be provided.
17. Details and specifications (if applicable) for proposed site amenities, including, but not limited to fences, recreation facilities, walls or other barrier materials; and special paving materials.

**12.8.6 Decision.** The Planning Board may approve, approve with conditions, or deny an application for site plan approval. In making its decision, the Board shall be guided exclusively by G.L. c. 40A, s. 3. The Board shall file a written decision with the Town Clerk within 90 days

of receipt of the application. Failure to file a decision within ninety (90) days shall constitute approval of the site plan.

**12.8.7 Appeal.** Any appeal of the Planning Board's decision shall be made pursuant to G.L. c. 40A, s. 17, to a court of competent jurisdiction.

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