

CITY OF GARDNER  
FIRST PRINTING  
OCTOBER 26, 2018

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 675 THEREOF, ENTITLED “ZONING,” BY DELETING AND REPEALING CHAPTER 675 THEREOF, “ZONING,” AND REPLACING IT WITH A NEW CHAPTER 675, TO BE ENTITLED “ZONING.”

The proposed Ordinance provides for the addition of Section 160, Severability Clause, as well as additions and amendments to Section 210 Definitions; amendments to 320 Official Zoning Map, 410 Use Regulations, 510 Flood Plain Overlay District, and 530 Development Overlay District. Further, deleting 550 Industrial and Commercial Heritage Planned Unit Development and 570 Route 140 Corridor Overlay District; amendments to 590 Mill Street Corridor Development Overlay District, 610 Dimensional Requirements, 710 Off-Street Parking, 810 Open Space Residential Development, 820 In law Apartments, 8.30 Home Occupations, 8.40 Senior Residential Development, and 910 Signs. Further, deleting 1010 Scheduled Development and amendments to 1010 Site Plan Review, 1070 Marijuana Establishments, 1160 Amendments, and 1170 Special Permits.

This Ordinance shall become effective upon passage and publication as required by law. Any claims of invalidity by reason of any defect in the procedure of adoption may only be made ninety days after the posting or the second publication.

The complete text of the Ordinance and accompanying Tables and Schedules are available for viewing in the City Clerk’s Office, the Department of Community Development and Planning, and on the City’s website at [www.gardner-ma.gov](http://www.gardner-ma.gov).

A TRUE COPY, ATTEST:  
ALAN L. AGNELLI, CITY CLERK

*Oct 26 (1t)*

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

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# Chapter 675

## Zoning

**[HISTORY: Adopted by the City Council of the City of Gardner 12-9-1970 by Ord. No. 470 (upheld at City election 11-4-1971); as amended 1-6-2006 by Ord. No. 1425. Subsequent amendments noted where applicable.]**

### GENERAL REFERENCES

Building Department — See Ch. **31**.

Community Development and Planning Department — See Ch. **50**.

Historical Commission — See Ch. **106**.

Planning Board — See Ch. **182**.

Mobile homes and trailers — See Ch. **477**.

Seasonal homes — See Ch. **548**.

Temporary storage units — See Ch. **564**.

Watershed lands — See Ch. **632**.

Wetlands protection — See Ch. **650**.

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## Article I

### General Provisions

#### § 675-110 **Purpose.**

These regulations are enacted to promote the general welfare of the City of Gardner, to protect the health and safety, convenience and general welfare of its inhabitants, to encourage the most appropriate use of land throughout the City, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the City, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited to, the provisions of the Zoning Act, MGL c. 40A, as amended, Section 2A of 1975 Massachusetts Acts Chapter 808, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

#### § 675-120 **Authority.**

This chapter is enacted in accordance with the provisions of MGL c. 40A and any and all amendments thereto and Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

#### § 675-130 **Scope.**

For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces (including common open spaces), the density of population, and the location and use of buildings, structures, and land in the City are regulated as hereinafter provided.

#### § 675-140 **Applicability.**

All buildings or structures hereafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the City, shall be in conformity with the provisions of this chapter. No building, structure or

land shall be used for any purpose or in any manner other than as expressly permitted within the district in which such building, structure or land is located. Where the application of this chapter imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this chapter shall control.

**§ 675-150 Amendments.**

This chapter may from time to time be changed by amendment, addition, or repeal by the City Council in the manner provided in MGL c. 40A, § 5, and any amendments thereto.

**§ 675-160 Severability**

If any provision of this Chapter or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Chapter, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Chapter are severable

**Article II  
Definitions**

**§ 675-210 Word usage and definitions.**

- A. In this chapter, the following terms and construction shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of this chapter. Words used in the present tense include the future. The singular includes the plural, and the plural includes the singular. The word "shall" is mandatory, and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot," and the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied." The word "building," "structure," "lot" or "parcel" shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts State Building Code shall have the meaning given therein unless a contrary intention is clearly evident in this chapter.
- B. As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY BUILDING**

A subordinate building located on the same lot as the main or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

**ACCESSORY USE**

A use customarily incidental to that of the main or principal building or use of the land.

**ADULT DAY-CARE SERVICES**

Individualized programs of activities and services provided to adult clients who require daytime supervision at sites other than their homes. Activities include assistance with walking, grooming and eating; provision of one meal and two snacks per day; and planned recreational and social activities suited to the needs of the participants and designed to encourage physical and mental exercise and stimulate social interaction.

**ADULT USE**

Shall be defined in § 675-1020 of this chapter.

**AGRICULTURAL USE, EXEMPT**

Agricultural use of property which is on a parcel of over five acres and which is exempted by c. 40A, § 3.

**AGRICULTURAL USE, NONEXEMPT**

Agricultural use of property which is on a parcel of five acres or less which is not exempted by MGL c. 40A, § 3.

**ALTERATION**

As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending a side or by increasing in height, or the moving from one location or position to another.

**ANIMAL CLINIC or VETERINARY HOSPITAL**

A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the clinic or hospital use.

**ANTENNA**

Any exterior apparatus designed for telephonic, radio, television, personal communications services (PCS), pager network, or any electromagnetic waves of any bandwidth. An antenna can either be attached to a tower or attached to a building

**ASSISTED LIVING RESIDENCE**

An assisted living residence is a long-term senior residential facility that provides personal care support services such as meals, medication management, bathing, dressing, and transportation, principally for people age 55 years and over, and certified by the Massachusetts Office of Elder Affairs. .( 651 CMR 12.02)

**BED-AND-BREAKFAST ESTABLISHMENT**

Accommodations with not more than six bedrooms occupied by bed-and-breakfast guests in which the owner of the establishment resides. Bed-and-breakfasts are intended for guests on intermittent visits and shall not be used as long-term rental units or apartments. All parking for residents and guests shall be off street.

**BOARDING HOUSE**

See definition for Rooming House

**BUILDING**

A structure, enclosed within exterior walls or fire walls, built, erected, and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals, or property. For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.

**BUILDING COVERAGE**

That percentage of the lot area covered by the roof area of a building or buildings.

**BUILDING HEIGHT**

The vertical dimension measured from the average elevation of the finished lot grade at the front of the building at all points surrounding the building to the highest point of ceiling of the top story in the case of a flat roof, to the deck of a mansard roof and to the average height between the plate and ridge of a gable, hip or gambrel roof. Not included are spires, cupolas, antennas, or similar parts of structures which do not enclose potentially habitable floor space.

**BUILDING, PRINCIPAL**

A building in which is conducted the main or principal use of the lot on which said building is

situated.

### **BUSINESS OR PROFESSIONAL OFFICE**

A building or part thereof for the transaction of business or the provision of services, exclusive of the receipt, sale, storage, or processing of merchandise. See "office building" for related definition.

### **CAR WASHING ESTABLISHMENT**

Any commercial facility with one or more bays, its structures, accessory uses, paved areas or grounds used wholly or partly to wash, clean and dry the exterior and/or interior of passenger automobiles, vans, pick-up and/or panel trucks and which is open to the public, including both automatic and/or self-service carwashes.

### **CHILD CARE FACILITY**

A day-care center or school age child care program, as those terms are defined in MGL c. 15D, § 1A.

### **CLUB OR LODGE, PRIVATE**

Buildings, structures and premises used by a nonprofit social or civic organization, or by an organization catering exclusively to members and their guests, for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided that there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

### **COMMERCIAL RECREATION, INDOOR**

A structure for recreational, social or amusement purposes, which may include as an accessory use the consumption of food and drink, including all connected rooms or space with a common means of egress and entrance. Places of assembly shall include theaters, concert halls, dance halls, skating rinks, bowling alleys, health clubs, dance studios, or other commercial recreational centers conducted for or not for profit.

### **COMMERCIAL RECREATION, OUTDOOR**

A drive-in theater, driving range, bathing beach, sports club, horseback riding stable, boathouse, game preserve, marina or other commercial recreation carried on in whole or in part outdoors, except those activities more specifically designated in this chapter.

### **COMMON OPEN SPACE**

Described in § 675-810G of this chapter.

### **CONTINUING CARE SENIOR LIVING COMMUNITY (CCSLC)**

A Senior Residential Development that provides a continuum of senior housing and care services principally for people age 55 years and over, operated or sponsored as a coordinated unit by a corporation or organization, having among its principal purposes the provision of housing and associated services for senior citizens. A CCRC shall include a variety of housing types and may also include semi-institutional facilities such as skilled nursing care or a rehabilitation facility.

### **CONTRACTOR'S YARD**

Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment.

### **CONVENIENCE RETAIL**

A small retail establishment of less than 2,500 gross square feet, usually located within or associated with another use that offers for sale convenience goods such as prepackaged food, tobacco, periodicals, and other household items.

**DRIVE-THROUGH or DRIVE-IN**

A type of business or part of a business designed to accommodate customers in their vehicles. Orders are taken and the customer is served at an appurtenant structure or building without the customer needing to leave his or her vehicle.

**DWELLING**

A building designed and occupied as the living quarters of one or more families on one lot. Single- and two-family dwellings shall be designed for and occupied by not more than one or two families, respectively, on one lot. Three- and four-family dwellings shall be designed for and occupied by not more than three or four families, respectively, on one lot. A multifamily dwelling shall be one designed for and occupied by five or more families on one lot.

**DWELLING UNIT**

One or more rooms providing complete living facilities for one family, including equipment for cooking or provisions for the same, and including a room or rooms for bathrooms, living, sleeping, and eating.

**DWELLING, SINGLE-FAMILY DETACHED**

A dwelling other than a mobile home, singly and apart from any other building, designed or intended or used exclusively as the residence of one family.

**DWELLING, TOWNHOUSE OR SINGLE-FAMILY ATTACHED –**

A residential building of at least three but not more than eight single-family dwelling units sharing at least one common or party or fire wall, and with each building having at least one floor at ground level with a separate entrance.

**DWELLING, TWO-FAMILY**

A detached residential building designed or intended or used exclusively as the residence of two families. A two-family dwelling shall not include a detached single-family dwelling with an accessory apartment.

**DWELLING, MULTI-FAMILY**

A building designed or intended or used as the residence of three or more families, each occupying a separate dwelling unit and living independently of each other, and who may have a common right in halls and stairways; with the number of families in residence not exceeding the number of dwelling units provided.

**EARTHMOVING AND ALTERATION**

Shall be defined as set forth in § 675-1070 herein.

**EDUCATIONAL USE, EXEMPT**

- (1) Use of land or structures for educational purpose exempt from regulation pursuant to MGL c. 40A, § 3.
- (2) Those educational facilities which are located on land owned or leased by the commonwealth, or any of its agencies or subdivisions or body politic, or by a religious sect or denomination, or by a nonprofit educational corporation.

**EDUCATIONAL USE, NONEXEMPT**

Educational facilities not exempted from regulation by MGL c. 40A, § 3.

**ESSENTIAL SERVICES**

Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission systems and



collection, communication, supply, or disposal systems, whether underground or overhead, but not including wireless communications facilities or local distribution to end users.

## **FAMILY**

Any number of individuals living and cooking together as a single housekeeping unit and including necessary domestic help such as nurses or servants.

## **FAMILY DAY-CARE HOME, LARGE**

Any private residence operating a facility as defined in MGL c. 15D, § 1A, as amended, which, on a regular basis, receives for temporary custody and care during part or all of the day children under seven years of age or children under 16 years of age if such children have special needs and receives for temporary custody and care, for a limited number of hours, children of school age in accordance with regulations promulgated by the office; provided, however, that the number of children under the age of 16 in a large family day-care home shall not exceed 10, including participating children living in the residence. "Large family day-care home" shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives or the occasional care of children with or without compensation therefor.

## **FAMILY DAY-CARE HOME, SMALL**

Any private residence operating a facility as defined in MGL c. 15D, § 1A, as amended. Any private residence which, on a regular basis, receives for temporary custody and care during part or all of the day children under seven years of age or children under 16 years of age if such children have special needs; provided, however, in either case, that the total number of children under 16 in a family day-care home shall not exceed six, including participating children living in the residence. "Small family day-care home" shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives or the occasional care of children with or without compensation therefor.

## **FARM STAND, NONEXEMPT**

A facility for the sale of produce, wine and dairy products on property where the majority of such products sold during the months of June, July, August and September, or the harvest season for that particular crop sold, are not produced or raised on the land of the owner or lessee during the aforementioned months or harvest every year, or such parcel upon which the crops or products are produced does not exceed five acres, is not exempt as more fully defined by MGL c. 40A, § 3.

## **FLOOR AREA, GROSS**

The total square feet of floor space within the outside dimensions of a building, including each floor level, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

## **HAZARDOUS MATERIAL**

Any substance which is listed in, but not limited to, the Environmental Protection Agency (EPA) priority pollutants as described in Section 307(a) of the Clean Water Act, as amended. See 33 U.S.C. § 1317.

## **HOME OCCUPATION**

A vocation, trade, small business, craft, art or profession which can be conducted in its entirety within the main (principal) or accessory building of a property by a bona fide resident of that main building and no more than one other person and which, by nature of its limited size and scope, does not cause any outward manifestation (such as traffic generation, parking congestion, noise or air pollution, materials storage, and public service or utility demand) which is uncharacteristic of or an additional disturbance to the residential neighborhood in which said property is located. See § 675-830, Home occupations, for additional regulations related to this use.

**IMPERVIOUS SURFACE**

Any surface which reduces or prevents the absorption of stormwater into previously undeveloped land. Examples are buildings, structures, parking lots, driveways, streets, sidewalks, and areas surfaced with asphalt or concrete.

**INCIDENTAL**

A use or activity that is not primary but which is subordinate and minor in significance.

**INDEPENDENT LIVING UNITS**

Multi-family buildings in a Senior Residential Development that are designed and intended for occupancy principally by people age 55 years and over, with units that may include some basic services such as meals, housekeeping, grounds maintenance, security, and common areas and common facilities for events and activities benefiting residents of the development.

**JUNK**

Any article or material or collection thereof which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which, unaltered or unchanged and without further reconditioning, cannot be used for its original purpose as readily as when new shall be considered junk.

**JUNKYARD or AUTOMOBILE GRAVEYARD**

The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials or the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or parts thereof.

**KENNEL, COMMERCIAL**

A commercial establishment in which four or more dogs or domesticated animals are housed, groomed, bred, boarded, trained or sold.

**LIGHT MANUFACTURING**

Fabrication, assembly, processing, finishing work or packaging that does not cause excessive noise, vibration, electromagnetic disturbance, or noxious odors or emissions.

**LIVE-WORK UNIT**

A live-work unit may be used as both living accommodation, which has a kitchen and washroom, and a business operated by one or more people who live in the unit.

**LOT**

A continuous parcel of land with legally definable boundaries.

**LOT AREA**

The horizontal area of the lot exclusive of any area in a street or recorded way open to public use. At least 80% of the lot area required for zoning compliance shall be land other than that under any water body, bog, swamp, wet meadow, marsh, or other wetland, as defined in MGL c. 131, § 40, as amended.

**LOT, CORNER**

A lot with two adjacent sides abutting upon streets.

**LOT, COVERAGE:**

The percentage of lot area covered by buildings and impervious surfaces.

**LOT, DEPTH OF**

The mean distance from the street line from which frontage is determined of the lot to its opposite rear line measured in the general direction of the side lines of the lot.

### **LOT, FRONTAGE OF**

The continuous portion of the line separating a lot from a street to which the owner of the lot has a legal right of access and to which the owner could provide for vehicular access from the principal building or a required parking space. When a lot is bounded by more than one street, both frontages and setbacks shall meet the minimum frontage and front yard setbacks. However, in the case of a lot bounded by two streets forming an interior angle of more than 135°, their combined frontage between lot lines may be used to satisfy the lot frontage requirement.

### **LOT, FRONTAGE STREET**

A street to which the owner of a lot has a legal right of access and which provides the required lot frontage.

### **LOT LINE**

A line dividing one lot from another or from a street or any public place.

### **LOT WIDTH**

Lot width shall be determined such that the center of a circle having a minimum diameter of at least 80% of the required frontage of the lot can be passed along a continuous line from the front lot line along which the frontage of the lot is measured to all points of the principal structure on the lot without the circumference intersecting any side lot lines.

### **MANUFACTURED HOME**

A single-family structure produced by companies on the commonwealth's list of approved manufactured home builders and certified by the Commonwealth of Massachusetts. Also, a dwelling unit that is factory fabricated and transportable, designed to be permanently located on a permanent foundation. For the purpose of this chapter, a modular unit shall not be deemed a mobile home but shall be regarded as a conventional dwelling, subject to the rules and regulations contained herein.

### **MANUFACTURING**

A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products.

### **MARIJUANA**

All parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94G of the General Laws; provided that "Marijuana" shall not include:

- (1) The mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;
- (2) Hemp; or
- (3) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

### **MARIJUANA CULTIVATOR**

An entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.,

**MARIJUANA ESTABLISHMENT**

A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer, any other type of licensed marijuana-related business, or combination thereof for recreational and/or medical use.

**MARIJUANA PRODUCT MANUFACTURER**

An entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

**MARIJUANA PRODUCTS**

Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

**MARIJUANA RETAILER**

An entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

**MARIJUANA TESTING FACILITY**

An entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

**MARIJUANA TRANSPORTATION OR DISTRIBUTION FACILITY**

An entity with a fixed location that delivers marijuana and marijuana products to marijuana establishments and transfers marijuana and marijuana products to other marijuana establishments, but not to consumers. This shall include the temporary storage of marijuana products on premises associated with their transportation and distribution.

**MEDICAL CLINIC OR OUT PATIENT MEDICAL FACILITY**

A private or public health care clinic or other similar community health care facility providing diagnosis and ambulatory emergency medical care to persons on an exclusively outpatient basis as a principal use. A medical clinic or outpatient medical facility may also be accessory to a hospital.

**MEDICAL OFFICE**

A medical, dental, or psychiatric practice offering medical or dental services on an outpatient basis. A medical or dental office may also contain associated in-house ancillary services such as diagnostic testing facilities, counseling services, chiropractic, physical therapy, message therapy, acupuncture, holistic therapy, and/or similar service

**MIXED USE**

A structure or structures featuring nonresidential uses on the first floor of the building or buildings which front the public way or other frequently trafficked pedestrian travel routes and one or more residential or other permitted uses on any other floor or in any other structure on the same lot. In the case of mixed occupancy, the regulation for each use shall apply to the portion of the building or land so used.

**MOBILE HOME**

A dwelling built upon a chassis, containing complete electrical, plumbing and sanitary facilities, and designed without necessity of a permanent foundation for year-round living, irrespective of whether actually attached to a foundation or otherwise permanently located.

**MOTEL or HOTEL**

A building or buildings intended and designed for transient, overnight or extended occupancy, divided into separate units within the same building, with or without a public dining facility. If such hotel or motel has independent cooking facilities, such unit shall not be occupied by any guest for more than four continuous months, nor may the guest reoccupy any unit within 30 days of a continuous four-month stay, nor may the guest stay more than six months in any calendar year. No occupant of such hotel or motel may claim residency at such location.

**MOTOR VEHICLE BODY REPAIR**

An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage of vehicles for the cannibalization of parts.

**MOTOR VEHICLE GENERAL REPAIRS**

Premises for the servicing and repair of autos, but not to include fuel sales.

**MOTOR VEHICLE LIGHT SERVICE**

Premises for the supplying of fuel, oil, lubrication, detailing or minor repair services, but not to include body work, painting, or general repairs.

**MUNICIPAL USE**

Facilities owned or operated by the City.

**NONCONFORMING STRUCTURE**

Any structure which does not conform to dimensional regulations or to the parking and loading requirements of this chapter for the district in which it is located, provided that such structure was in existence and lawful at the time of the publication of the first notice of the public hearing before the City Council or Planning Board respecting the regulation to which it does not conform.

**NONCONFORMING USE**

A use of a building, structure or lot that does not conform to the use regulations of this chapter for the district in which it is located, provided that such use was in existence and lawful at the time the applicable provisions of this chapter or prior zoning ordinances became effective.

**NURSING OR CONVALESCENT HOME**

Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

**OFFICE BUILDING**

A principal building, not attached to any other building, designed and used for office use.

**OPEN SPACE**

The parts of a lot designed and developed for pleasant appearance in trees, shrubs, ground cover and grass, including other landscaped elements, such as natural features of the site, walks and terraces. Such space shall not include rooftops or areas of a lot used for parking, access drives or other hard-surfaced areas except walks, and terraces as noted above, designed and intended for nonvehicular use. Such hard-surfaced walks and terraces shall not exceed 25% of the total required landscaped open space.

**OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD)**

A residential development in which the building and accessory uses are clustered together, with reduced lot sizes, into one or more groups in order to preserve open space and common open space and protect natural resources. The land not included in the building lots and streets shall be permanently preserved as common open space.

**PARKING STRUCTURE or PARKING AREA**

A structure, building or lot or part of a lot which is accessory to a residential, commercial or industrial establishment and is primarily for the parking and storage of vehicles operated by the occupants, customers, visitors and employees of such an establishment or residence.

**PERSONAL SERVICE ESTABLISHMENT**

A facility providing personal services, such as hair salon, barbershop, tanning beds, dry cleaning, print shop, photography studio, and the like.

**PLANNED UNIT DEVELOPMENT (PUD)**

A mixed residential, business, and institutional development with extensive open space where the uses are integrated with each other.

**RESTAURANT**

A building, or portion thereof, containing tables and/or booths for at least 2/3 of its legal capacity which is designed, intended and used for the indoor sale and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjunct to the main indoor restaurant facility. The term "restaurant" shall not include a fast-food restaurant.

**RESTAURANT, FAST-FOOD**

An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off premises, and usually requires ordering food at a fast-food counter.

**ROOMING HOUSE**

A house for which the principal use is the renting of room(s) to transient persons. This may include shared bathroom facilities.

**SETBACK, FRONT, REAR AND SIDE**

The minimum distance required from the property line to the principal structure in the front, side and rear yards, respectively.

**SIGN**

Any device designed to inform or attract the attention of persons not on the premises on which the device is located. Any building surfaces other than windows which are internally illuminated or decorated with gaseous tube or other lights are considered signs. The following, however, shall not be considered signs within the context of this chapter:

- (1) Flags and insignia of any government.
- (2) Legal notices or informational devices erected or required by public agencies.
- (3) Temporary devices with a display area no larger than three square feet erected, promoting or concerning an event, provided that they are placed no more than 30 days before the event and removed within seven days after the event.
- (4) Temporary displays inside windows, covering not more than 30% of window area, illuminated by building illumination only.
- (5) Standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline.
- (6) Integral decorative or architectural features of a building, except letters, trademarks, moving parts, or parts internally illuminated or decorated with gaseous tube or other lights.

- (7) Devices identifying a building as distinct from one or more of its occupants, such device being carved into or attached in such a way as to be an integral part of the building, not illuminated separate from building illumination, without color contrasting with sign background, and not exceeding four square feet in area.
- (8) Address identification through numerals or letters not exceeding three inches in height.

### **SPECIAL PERMIT**

- (1) The permit process administered by the special permit granting authority as authorized by MGL c. 40A, § 9.
- (2) An authorization given by the special permit granting authority to use property in accordance with the regulations of this chapter.

### **STORY**

The portion of a building which is between one floor level and the next higher floor level or the roof. If a mezzanine floor area exceeds 1/3 of the area of the floor immediately below, it shall be deemed to be a story. A basement shall be deemed to be a story when its ceiling is four or more feet above the finished grade. A cellar shall not be deemed to be a story. An attic shall not be deemed a story if unfinished and without human occupancy.

### **STREET**

An accepted City way, or a way established by or maintained under county, state, or federal authority, or a way established by a subdivision plan approved in accordance with the Subdivision Control Law (MGL Chapter 41, Section 81) built to specifications or construction guaranteed by adequate security, or a way determined by the Planning Board to have sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

### **STREET CENTER**

Center line of a street.

### **STREET LINE**

Edge of right-of-way of a street.

### **STREET RIGHT-OF-WAY**

The property in which a street is built. Also, the property held by the City adjoining the pavement and shoulders of a street.

### **STRUCTURE**

A combination of materials assembled at a fixed location to give support or provide shelter or satisfy other purposes.

### **SUBDIVISION CONTROL LAW**

Massachusetts General Laws Chapter 41 Sections 81 K to 81GG

### **TEMPORARY STORAGE UNIT**

A reusable vessel, container or pod, having interior dimensions of not less than 200 cubic feet, that is designed or used for packing, shipping, storing, moving or transporting freight, articles, goods, personal property, or commodities and is capable of being mounted on or moved by rail car, truck, or trailer. A temporary storage unit shall not consist of any reusable vessel defined above being utilized in connection with an active and valid building permit.

**TEMPORARY STRUCTURE**

A structure, without any foundation or footings, to be removed in accordance with the time set forth in the building permit, but in no event longer than within a twelve-month time period.

**TRAILER**

A highway vehicle designed, constructed and equipped for use as a dwelling and which is capable of being hauled or towed, or is self-propelled, including any such vehicle so converted as would make it immobile.

**TRAILER OR MOBILE HOME COURT**

A parcel of land on which there is located or intended to be located two or more trailers or mobile homes occupied for living purposes where all utility service is supplied.

**TRANSIENT BUSINESS**

A temporary exhibition and sale of goods, wares or merchandise which is carried on in a tent, booth, vehicle, building or other structure.

**TRANSIENT VENDOR**

A person, either principal or agent, who engages in a temporary or transient business in the commonwealth selling goods, wares or merchandise, either in one locality or in traveling from place to place; provided, however, that this shall not include a person operating under a written agreement with a licensed promoter.

**TRANSPORT TERMINAL**

Terminal facilities and/or yard for storage of or servicing trucks and/or freight trains with or without a warehouse for the temporary storage of goods in transit and with or without maintenance facilities.

**USE**

The purpose for which a building or land is designed, arranged, or intended or for which a building or a tract of land is or may be occupied or maintained.

**WAREHOUSE**

A building used primarily for the storage of goods and materials for distribution but not for sale on the premises.

**YARD**

A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

**YARD, FRONT**

A yard extending the full width of the lot and situated between the street line and the nearest point of the building.

**YARD, REAR**

A yard the full width of the lot and situated between the rear line of the lot and the nearest part of the main building projected to the side line of the lot.

**YARD, SIDE**

A yard situated between the nearest point of the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.



Article III  
Use Districts

§ 675-310 **Types of districts.**

For the purpose of this chapter, the City of Gardner is hereby divided into the following types of districts:

<b>Full Title</b>	<b>Abbreviation</b>
Single-Family Residential 1	SFR1
Rural Residential 2	RR2
General Residential 3	GR3
Commercial 1	COM1
Commercial 2	COM2
Industrial 1	IND1
Industrial 2	IND2
Floodplain Districts	FPD
Ground Water Protection Overlay District	GWPOD
Surface Water Protection Overlay District	SWPODW
Development Overlay District 1	DOD1
Mill Street Corridor Development Overlay District	MSCDOD
Large-Scale Ground-Mounted Solar PV Overlay District	SPVOD
Smart Growth PUD	SGPUD

§ 675-320 **Zoning Map; interpretation of district boundaries.**

Said districts are located and bounded as shown on a map titled "Zoning Map of Gardner, Massachusetts," scale one-inch equals 1,000 feet as most recently updated and on file in the office of the City Clerk, City Engineer's office and Department of Community Development and Planning, as amended. The Zoning Map with all explanatory matters thereon is hereby made a part of this chapter. For amendments to the Zoning Map, see the Table of Zoning Map Amendments included at the end of this chapter.

- A. Where a boundary is shown as following a street, railroad, or utility, the boundary shall be the center line thereof unless otherwise indicated.
- B. Where a boundary is shown outside a street, railroad, or utility and approximately parallel to the

nearest line thereof, the figure placed on the Zoning Map between the boundary and such line shall be the distance in feet between them, as measured at a right angle from such line unless otherwise indicated.

- C. Where a boundary is shown as following a watercourse, the boundary shall coincide with the center line thereof as said line existed at the date of the Zoning Map.
- D. Where the location of a boundary line is otherwise uncertain, the Building Commissioner shall determine its position in accordance with the distance in feet from other lines as given or as measured from the scale of the map.
- E. Where a district boundary line divides a lot, the regulations applying to the portion of such lot in the less restricted district may be considered as extending not more than 50 feet into the more restricted portion, but only if the lot has frontage on a street in the less restricted district.

## Article IV Use Regulations

### § 675-410 Schedule of Permitted Uses

A. No building or structure shall be erected or used and no premises shall be used except as set forth in the Table of Use Regulations included at the end of this chapter.

B. Permitted uses and uses allowed by special permit from either the Zoning Board of Appeals or Planning Board shall be in conformity with the provisions of § 675-1170, Special Permits, and shall not be detrimental or offensive or injurious to properties in the same or adjoining districts by reason of dirt, dust, glare, odor, fumes, smoke, gas, sewage, refuse, noise, vibration or danger of explosion or fire.

C. See § 675-1020, Site plan review, for applicability of site plan review.

### § 675-420 Nonconforming uses and structures.

A. Applicability. This chapter shall not apply to structures or uses lawfully in existence or lawfully begun or to a building or special permit issued before the first publication of notice of the public hearing required by MGL c. 40A, § 5, at which this chapter, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming use and structures may continue, provided that no modification of the use or structure is accomplished unless authorized hereunder.

B. Nonconforming uses.

(1) The Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

(a) Change or extension of the use not substantially more detrimental than the existing nonconforming use to the neighborhood.

(b) Change from one nonconforming use to another, less detrimental, nonconforming use.

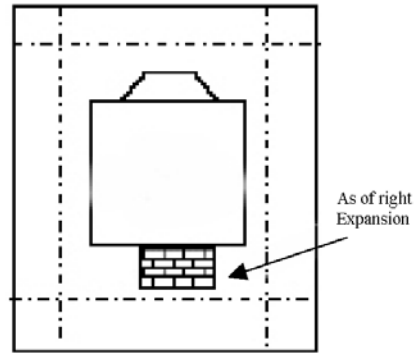
(2) Reversion to nonconformity. No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

C. Nonconforming structures. The Zoning Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it

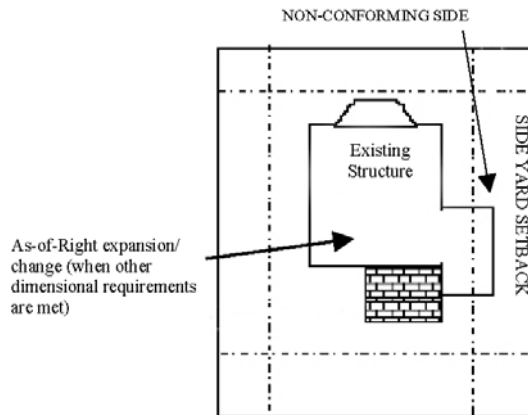
determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

- (1) The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:
  - (a) Reconstructed, extended or structurally changed.
  - (b) Altered to provide for a different purpose or for the same purpose in a different manner that is not substantially more detrimental than the existing nonconforming use or structure to the neighborhood.
- (2) Variance required. Except as provided in Subsection C (4) and (5) below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity or create a new nonconformity shall require the issuance of a Variance from the Zoning Board of Appeals.
- (3) Special permit required. Except as provided in Subsection C (4) and (5) below, the reconstruction, extension or structural change of a nonconforming structure where there is an extension of an exterior wall at or along the same nonconforming distance within a required yard, then the Zoning Board of Appeals may award a special permit.
- (4) Reconstruction after catastrophe or demolition. Except as provided for in Subsection C (5) below, a nonconforming structure may be reconstructed after a catastrophe or after demolition in accordance with the following provisions:
  - (a) Reconstruction of said premises shall commence within two years after such catastrophe or demolition.
  - (b) The building(s) as reconstructed shall be located on the same footprint as the original nonconforming structure, shall be only as great in volume or area as the original nonconforming structure, and shall meet all applicable requirements for yards, setback, and height.
  - (c) If the proposed reconstruction would cause the structure to exceed the volume or area of the original nonconforming structure or exceed applicable requirements for yards, setback, and/or height or cause the structure to be located other than on the original footprint, a special permit shall be required from the Zoning Board of Appeals prior to such demolition.
- (5) Nonconforming single- and two-family residential structures. Nonconforming single- and two-family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure.
  - (a) The following circumstances shall not be deemed to increase the nonconforming nature of said structure:
    - [1] Alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements.

EXPANSION OF CONFORMING STRUCTURE  
& USE ON NON CONFORMING LOT



- [2] Alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.
- [3] Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements.



- (b) If the Building Commissioner determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Zoning Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

D. Abandonment or nonuse. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all the provisions of this chapter.

## Article V Overlay Districts and Planned Unit Developments

### § 675-510 Floodplain Overlay District.

A. Statement of purpose and location.

- (1) The Floodplain Overlay District is herein established as an overlay district.

- (2) The purposes of the Floodplain Overlay District are to:
  - (a) Ensure public safety through reducing the threats to life and personal injury.
  - (b) Eliminate new hazards to emergency response officials.
  - (c) Prevent the occurrence of public emergencies resulting from water quality contamination and pollution due to flooding.
  - (d) Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding.
  - (e) Eliminate costs associated with the response to and cleanup of flooding conditions.
  - (f) Reduce damage to public and private property resulting from flooding waters.
- (3) Location. The district includes all special flood hazard areas designated on the City of Gardner Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP) dated July 2, 1981, as Zone A, AE, AH, AO, A1-30, A99, V, V1-30, and VE and the FEMA Flood Boundary and Floodway Map (Floodway) dated July 2, 1981, both maps which indicate the one-hundred-year regulatory floodplain. The exact boundaries of the district may be defined by the one-hundred-year base flood elevations shown on the FIRM or any Letter of Map Amendment (LOMA) issued by FEMA. The FIRM and Floodway are incorporated herein by reference and are on file with the Building Commissioner, City Clerk, Planning Board, Conservation Commission and City Engineer.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

**AREA OF SPECIAL FLOOD HAZARD**

The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

**BASE FLOOD**

The flood having a one-percent chance of being equaled or exceeded in any given year.

**DEVELOPMENT**

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**DISTRICT**

Floodplain district.

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

Administers the National Flood Insurance Program (NFIP). FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

**FLOOD BOUNDARY AND FLOODWAY MAP**

An official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the one-hundred-year and five-hundred-year floods and the one-hundred-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

**FLOOD HAZARD BOUNDARY MAP (FHBM)**

An official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

**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.

**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.

**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.

**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 area 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 design requirements of NFIP Regulations 60.3.

**MANUFACTURED HOME**

Shall be defined as set forth in Article II herein.

**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 a community. For the purpose of determining insurance rates, "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.

**ONE-HUNDRED-YEAR FLOOD**

See "base flood."

**REGULATORY FLOODWAY**

See "floodway."

**SPECIAL FLOOD HAZARD AREA**

An area having special flood and/or flood-related erosion hazards and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, or VE.

**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. "Structure," for insurance coverage purposes, 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 a 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.

## **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% of the market value of the structure before the damage occurred.

## **SUBSTANTIAL IMPROVEMENT**

Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "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.

## **ZONE A**

The one-hundred-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.

## **ZONE A1-30 and ZONE AE (for new and revised maps)**

The one-hundred-year floodplain where the base flood elevation has been determined.

## **ZONE AH and ZONE AO**

The one-hundred-year floodplain with flood depths of one to three feet.

## **ZONE A99**

Areas to be protected from the one-hundred-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

## **ZONES B, C AND X**

Areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

### **C. Floodplain overlay district boundaries and base flood elevation and floodway data.**

#### **(1) Base flood elevation and floodway data.**

- (a) Floodway data.** In Zones A, A1-30, 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.
- (b) Base flood elevation data.** Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A Zones.

### **D. Notification of watercourse alteration. In a riverine situation, the City Engineer shall notify the following of any alteration or relocation of a watercourse:**

- (1) Adjacent communities.**
- (2) Bordering states (optional).**
- (3) NFIP State Coordinator, Massachusetts Department of Conservation and Recreation, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104.**
- (4) NFIP Program Specialist, Federal Emergency Management Agency, Region I, 99 High Street,**

E. Use regulations.

(1) Compliance with state regulations.

- (a) The Floodplain Overlay District is established as an overlay district to all other districts. All development in the district, including structural and nonstructural activities, whether permitted by right or by special permit, must be in compliance with MGL c. 131, § 40, and with the following:

- [1] Section of the Massachusetts State Building Code which addresses floodplain and coastal high-hazard areas (currently 780 CMR 3107, Food Resistant Construction).
- [2] Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00).
- [3] Inland Wetlands Restriction, DEP (currently 310 CMR 13.00).
- [4] Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5).

- (b) Any variances from the provisions and requirements of the above-referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

(2) Local use regulations.

- (a) 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.
- (b) In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the City of Gardner FIRM or Flood Boundary and Floodway Map Community Panel Numbers 250305 0001 through 0009, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (c) All subdivision proposals must be designed to assure that:
- [1] Such proposals minimize flood damage;
  - [2] All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
  - [3] Adequate drainage is provided to reduce exposure to flood hazards.
- (d) Existing contour intervals of the site and elevations of existing structures must be included on plan proposal.
- (e) There shall be established a routing procedure which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, City Engineer, Building Commissioner and Planning Director for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

(3) Permitted uses.

- (a) The purpose of the Floodplain Overlay District, as noted above, is to preserve and maintain



the groundwater table; to protect the public health and safety, persons and property against the hazards of floodwater inundation, for the protection of the community against the costs which may be incurred when unsuitable development occurs in swamps, in marshes, along watercourses, or in areas subject to floods; and to conserve natural conditions, wildlife, and open spaces for the education, recreation and general welfare of the public.

- (b) Notwithstanding the provisions hereof, nothing herein shall be deemed to permit a building, structure or use which is not permitted in the underlying district.
- (c) Within a Floodplain Overlay District, no dwelling or building shall be erected, altered, or used and no premises shall be used except for one or more of the following uses:
  - [1] Any woodland, grassland, wetland, agricultural, horticultural or recreational use of land or water not requiring filling. Buildings and sheds not accessory to any of the floodplain uses are permitted by special permit from the Planning Board. Notice of each floodplain building permit application shall be given to the City Public Works Department, to the City Board of Health, to the City Engineer and to the City Conservation Commission as well as all other parties as required.
  - (d) The Planning Board, on hearing such application, shall consider, in addition to any factors said Board deems pertinent, the following aspects with respect to flooding and Floodplain District zoning provisions: that any such building or structure shall be designed, placed and constructed to offer a minimum obstruction to the flow of water; that it shall be firmly anchored to prevent floating away; and that it shall be constructed in accordance with the requirements of the State Building Code, Appendix G.
  - (e) Applications for revisions to the FIRM should be submitted to FEMA for review and approval under the letter of map amendment and letter of map revision process.
- (4) Prohibited uses.
  - (a) Notwithstanding Subsection **E (3)** above, the following shall be prohibited in the Floodplain Overlay District:
    - [1] Landfill or dumping.
    - [2] Drainage other than flood control works by an authorized public agency.
    - [3] Damming or relocation of any watercourse except as part of an overall drainage basin plan.
    - [4] Permanent storage of materials or equipment.
  - (b) In any Floodplain Overlay District, after the adoption of this provision, no land, building, or structure shall be used for sustained human occupancy except dwellings theretofore lawfully existing or land, buildings or structures which comply with the provisions of this chapter.
  - (c) All encroachments, including fill, new construction, substantial improvements to existing structure, and other development, are prohibited in the floodway, unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood.

§ 675-520 **Groundwater Protection Overlay District.**

A. Purpose. The purpose of the Groundwater Protection Overlay District is to:

- (1) Promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses;
- (2) Preserve and protect existing and potential sources of drinking water supplies;
- (3) Conserve the natural resources of the City; and
- (4) Prevent temporary and permanent contamination of the environment.

B. Authority. The Groundwater Protection Overlay Districts are adopted pursuant to authority provided by MGL c. 40A and the Home Rule Amendment, Article 89 of the Amendments to the Constitution of the commonwealth.

C. Definitions. For the purposes of this section, the following words and phrases shall be defined as follows. References to statutes and regulations shall be deemed a reference to such law or regulation as of the effective date of this section.

**AQUIFER**

Geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

**AUTOMOBILE GRAVEYARD AND JUNKYARD**

An establishment or place of business which is used, maintained, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts, as defined in MGL c. 140B, § 1.

**CMR**

Code of Massachusetts Regulations.

**COMMERCIAL FERTILIZER**

Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, as defined in MGL c. 128, § 64.

**DEP**

Massachusetts Department of Environmental Protection.

**GROUNDWATER PROTECTION OVERLAY DISTRICT**

Those land areas designated on a map adopted pursuant to this section that provide recharge to an existing or planned public drinking water supply well. The Groundwater Protection District includes all areas designated as Zone II and approved by the DEP.

**HAZARDOUS MATERIAL**

Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, solvents and thinners in quantities greater than normal household use, and all substances defined as hazardous or toxic under MGL c. 21C and 21E and 310 CMR 30.00.

**HAZARDOUS WASTE**

Any waste defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.010. This includes, but is not limited to, waste oil, waste solvents, waste oil-based paint and waste pesticides.

### **IMPERVIOUS SURFACE**

Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

### **LANDFILL**

A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land, pursuant to 310 CMR 19.006.

### **MGL**

Massachusetts General Laws.

### **NONSANITARY WASTEWATER**

Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage, including but not limited to activities specified in the Standard Industrial Classification (SIC) codes set forth in 310 CMR 15.004(6).

### **OPEN DUMP**

A facility operated or maintained in violation of the Resource Conservation and Recovery Act [42 U.S.C. § 4004(a) and (b)], 42 U.S.C. § 6901 et seq., or state regulations and criteria for solid waste disposal.

### **PETROLEUM PRODUCT**

Petroleum or petroleum by-product, including but not limited to fuel oil, gasoline, diesel, kerosene, aviation jet fuel, aviation gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils or other liquid hydrocarbons regardless of specific gravity. "Petroleum product" shall not include liquefied petroleum gas, including but not limited to liquefied natural gas, propane or butane.

### **POTENTIAL DRINKING WATER SOURCES**

Areas that could provide significant potable water in the future.

### **RECHARGE AREAS**

Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas include DEP-approved Zone I, Zone II, or Zone III areas.

### **SEPTAGE**

The liquid, solid, and semisolid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. "Septage" does not include any material that is a hazardous waste as defined by 310 CMR 30.000.

### **SLUDGE**

The solid, semisolid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. "Sludge" does not include grit, screening, or grease and oil which are removed at the headworks of a facility.

### **TREATMENT WORKS**

Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

## **VERY SMALL QUANTITY GENERATOR**

Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

## **WASTE OIL RETENTION FACILITY**

A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with MGL c. 21, § 52A.

## **ZONE I**

The DEP-designated protective radius around a public water system well or well field.

## **ZONE II**

The DEP-approved area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated as defined in 310 CMR 22.00.

- D. Establishment of districts. The Groundwater Protection Overlay Districts are herein established as overlay districts and shall include all lands within the City of Gardner lying within the primary recharge areas of groundwater wells which provide existing and future public water supply. The Groundwater Protection Overlay District is described on a map titled "City of Gardner Water Supply Protection Districts," prepared by the Gardner Engineering Department, dated revised January 5, 2011. The map is on file in the office of the City Engineer. Said map is hereby incorporated as part of the Zoning Map of Gardner, Massachusetts, on file in the City Clerk's office.
- E. Boundary disputes.
- (1) Resolution of boundary disputes. If the location of the Groundwater Protection Overlay District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the Planning Board as special permit granting authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.
  - (2) Burden of proof. The burden of proof shall be upon the owner(s) of the land to demonstrate that the location of the district boundary with respect to a parcel(s) of land is uncertain. At the request of the owner(s), the SPGA may engage a professional engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land and may charge the owner(s) for the cost of the investigation.
  - (3) Lot divided by district line. Where the boundary line of the Groundwater Protection Overlay District divides a lot or parcel, the requirements established by this section shall apply only to the portion of the lot or parcel located within the district.
  - (4) Amendment of map. Amendments to the map of the Groundwater Protection Overlay District require City Council approval.
- F. Use regulations. The Groundwater Protection Overlay Districts are overlay districts superimposed over the underlying districts set forth in this chapter. Within a Groundwater Protection Overlay District, the requirements of the underlying district continue to apply, except where the requirements of the Groundwater Protection Overlay District are more stringent.
- (1) Permitted uses. The following uses are permitted within the Groundwater Protection Overlay District, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:

- (a) Conservation of soil, water, plants, and wildlife.
  - (b) Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted.
  - (c) Foot, bicycle and/or horse paths and bridges.
  - (d) Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices.
  - (e) Maintenance, repair, and enlargement of any existing structure, subject to applicable provisions of this section.
  - (f) Residential development, subject to applicable provisions of this section.
  - (g) Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to applicable provisions of this section.
  - (h) Construction, maintenance, repair, and enlargement of drinking water supply related facilities, such as, but not limited to, wells, pipelines, aqueducts, and tunnels.
    - (1) Any use permitted in the underlying zoning, except for those uses otherwise regulated herein.
- (2) Prohibited uses. The following uses are prohibited within the Groundwater Protection Overlay District:
- (a) Landfills and open dumps, as defined in 310 CMR 19.006.
  - (b) Landfills receiving only wastewater residuals and/or septage (wastewater residuals monofills) approved by the DEP pursuant to MGL c. 21, §§ 26 through 53; MGL c. 111, § 17; MGL c. 83, §§ 6 and 7, and any regulations promulgated thereunder.
  - (c) Automobile graveyards and junkyards as defined in MGL c. 140B, § 1.
  - (d) Stockpiling and disposal of snow or ice removed from highways and streets located outside of Zone II that contains sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
  - (e) Petroleum, fuel oil and heating oil bulk stations and terminals, including but not limited to those listed under Standard Industrial Classification (SIC) Codes 5171 (not including liquefied petroleum gas) and 5983. Standard Industrial Classification codes are established by the United States Office of Management and Budget and may be determined by referring to the publication "Standard Industrial Classification Manual" and any subsequent amendments thereto.
  - (f) Treatment or disposal works subject to 314 CMR 5.00 for wastewater other than sanitary sewage. This prohibition includes, but is not limited to, treatment or disposal works related to activities under the Standard Industrial Classification (SIC) codes set forth in 310 CMR 15.004(6) (Title 5), except the following:
    - [1] The replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);
    - [2] Treatment works approved by the DEP designed for the treatment of contaminated groundwater or surface water and operated in compliance with 314 CMR 5.05(3) or

(13); and

- [3] Publicly owned treatment works or POTWs.
- (g) Facilities that generate, treat, store or dispose of hazardous waste that are subject to MGL c. 21C and 310 CMR 30.000, except for the following:
  - [1] Very small quantity generators, as defined by 310 CMR 30.000;
  - [2] Household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390; and
  - [3] Waste oil retention facilities required by MGL c. 21, § 52A.
- (h) Any floor drainage systems in existing facilities, in industrial or commercial hazardous material and/or hazardous waste process areas or storage areas, which discharge to the ground without a DEP permit or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the State Plumbing Code, 248 CMR 10.00), connect the drain to a municipal sewer system (with all appropriate permits and pretreatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies.
- (3) Uses permitted by special permit. The following uses are permitted within the Groundwater Protection Overlay District by special permit from the Planning Board, when designed in accordance with the performance standards specified below, and provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:
  - (a) Storage of sludge and septage, as defined in 310 CMR 32.05, when such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.
  - (b) Storage of sodium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, when such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
  - (c) Storage of commercial fertilizers, as defined in MGL c. 128, § 64, when such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
  - (d) Storage of animal manures, when such storage is within a structure designed to prevent the generation and escape of contaminated runoff and leachate.
  - (e) Storage of liquid hazardous materials, as defined in MGL c. 21E, and/or liquid petroleum products when such storage is above ground level and on an impervious surface and either in a container(s) or aboveground tank(s) within a building or outdoors in a covered container(s) or aboveground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers or 110% of the largest container's storage capacity, whichever is greater; however, these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline, provided that the replacement is performed in a manner consistent with state and local requirements.
  - (f) The removal of soil, loam, sand, gravel or any other mineral substances within four feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), when the substances removed are redeposited within 45 days of removal on site to achieve a final grading greater than four feet above the historical high-water mark, and except for

excavations for the construction of building foundations or the installation of utility works, or wetland restoration work conducted in accordance with a valid order of condition issued pursuant to MGL c. 131, § 40.

- (g) Land uses that result in the rendering impervious of more than 15% or 2,500 square feet of any lot or parcel, whichever is greater, when a system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality.

G. Special permit procedures.

- (1) Special permit granting authority. The special permit granting authority (SPGA) shall be the Planning Board. A special permit may be granted if the SPGA determines that the intent of this section as well as the specific criteria set forth in Subsection F (3) are met. In making such determination, the SPGA shall consider the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to groundwater quality which would result if the control measures failed.
- (2) Rules and regulations. The Planning Board may adopt and from time to time amend rules and regulations which shall prescribe the size, form, content, and style of the plans and procedures for submission and approval of such special permit. These rules and regulations shall be filed with the City Clerk.
- (3) Review by other boards and officials. Whenever an application for a special permit is filed with the Planning Board under this section, said Board shall transmit, within six working days of the filing of the completed application, copies of the application, accompanying site plan, and other documentation to the Board of Health, Conservation Commission, Building Commissioner, Director of Public Works, Fire Chief, and the City Engineer for their consideration, review, and report. The copies necessary to fulfill this requirement shall be furnished by the applicant. An application shall not be deemed complete until all copies of required information and documentation have been filed with the Planning Board. The Planning Board shall notify applicants by registered mail, within 14 days of submittal, of incomplete application status, and the applicant shall have 14 days from the mailing of such notice to complete an application. Failure to complete an application within such time shall result in a return of all materials to the applicant, without prejudice. Reports from other boards and officials shall be submitted to the Planning Board by the date of the public hearing, but in any case, within 35 days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty-five-day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty-five-day period. The decision/findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.
- (4) Submittals. All applications for a special permit shall contain the information listed below, unless waived or modified by the SPGA, with reasons therefor:
  - (a) A site plan, submitted on twenty-four-inch by thirty-six-inch sheets, on a minimum scale of one-inch equals 40 feet, and prepared by a registered professional engineer and a registered land surveyor. Site plans submitted under this section shall also include the following:
    - [1] All property lines;
    - [2] All adjacent public streets;
    - [3] All existing and proposed buildings, structures, parking areas, and service areas;

- [4] All facilities for sewage, refuse, and other waste disposal;
  - [5] Facilities for surface water drainage, both temporary and permanent;
  - [6] Future expansion areas;
  - [7] Provisions to prevent contamination of groundwater by petroleum products;
  - [8] Drainage recharge features and provisions to prevent loss of recharge;
  - [9] Provisions to prevent soil compaction;
  - [10] Provisions to prevent seepage from sewer pipes;
  - [11] Location of wetlands, streams, water bodies and floodplain;
  - [12] Existing drainage patterns;
  - [13] Existing woodlands;
  - [14] Areas having slopes exceeding 15%;
  - [15] Areas to be disturbed by construction;
  - [16] Areas where earth and other materials subject to erosion will be temporarily stockpiled;
  - [17] Areas to be used for disposal or storage of construction debris, stones, stumps, etc., if within the district;
  - [18] Temporary and permanent erosion control measures planned, such as sediment basins, stormwater basins, diversion, riprap, stabilization seedings, etc.;
  - [19] Temporary work roads to be used during projects;
  - [20] Location and size of septic system; and
  - [21] Method to contain spillage in fuel filling areas.
- (b) A storm drainage plan showing:
- [1] Locations of drains and culverts and names of streams, rivers, ponds or reservoirs in the City into which they flow;
  - [2] Discharge peaks and expected velocities at drain or culvert outlets;
  - [3] Conditions above and below outlets and expected flow velocities;
  - [4] Supporting computations for the above; and
  - [5] A grading plan showing existing topography and planned grade along existing and/or proposed street or highway profiles.
- (c) A siltation and sedimentation control plan, including:
- [1] Sediment and erosion control structures, such as diversions, waterways, slope stabilization structures, sediment basins, etc., in sufficient detail to implement their installation, together with referred standards for soil erosion and sediment as



appropriate, and design calculations as required for each structure;

- [2] Seeding and/or sodding requirements for all exposed areas, including seedbed preparation, seed mixtures, lime, fertilizer and mulching requirements with referenced standards;
  - [3] Schedule or sequence of operation with starting dates for clearing and/or grading, timing for storm drain and culvert installation, duration of exposure of soils and critical area stabilizations, both temporary and permanent. Indicate date when critical areas stabilization, paving, seeding, mulching, or sodding is to be completed; and
  - [4] General notes for sediment control that spell out the procedures for implementing the plan.
- (d) The technical reference to be used to prepare and review site plans is "Guidelines for Soil and Water Conservation in Urbanizing Areas of Massachusetts," United States Department of Agriculture, Soil Conservation Service, Amherst, Massachusetts. Specific guidelines to be used include, but are not limited to:
- [1] Limit grading to only those areas actively undergoing current construction.
  - [2] The smallest practical area of land should be exposed at one time during development.
  - [3] Limit the length of time graded areas are exposed.
  - [4] Provide temporary or permanent stabilization of disturbed areas at the earliest opportunity. Limit exposure to less than 60 days.
  - [5] Retain and protect as much of the natural vegetation as possible.
  - [6] Permanent improvements such as streets, utilities, storm sewers, vegetated waterways, and other features of the development should be scheduled for installation to the greatest extent possible before removing the vegetative cover from an area scheduled for building construction.
  - [7] Protect all fill slopes and cut slopes exceeding five feet in height from storm runoff through the use of diversion berms, drop chutes and other acceptable means.
  - [8] Rough-graded rights-of-way awaiting installation of utilities and/or pavement should be protected by the installation of interceptor berms across the right-of-way to reduce the length of slope between berms to not more than 250 feet.
  - [9] On sites where the above procedures are impractical or not acceptable, where the topography permits, install sediment basins, desilting basins, or silt traps to remove sediment from runoff waters.
- (e) A narrative statement detailing all of the information set forth below, if applicable:
- [1] A complete list of all chemicals, pesticides, fuels, or other potentially hazardous materials, including but not limited to road salt or de-icing chemicals, manure, and fertilizers or soil conditioners, to be used or stored on the premises in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all storage containers from vandalism, corrosion, and leakage and to provide for control of spills.
  - [2] A description of all potentially hazardous wastes to be generated in quantities greater

than associated with normal household use, accompanied by a description of the measures proposed to protect all waste storage containers from vandalism, corrosion, and leakage and to provide for control of spills.

- [3] For underground or aboveground storage of hazardous materials, certification by a registered professional engineer that such storage facilities or containers are:
  - [i] In compliance with all applicable federal or state regulations;
  - [ii] In compliance with design specifications, as prepared by a registered professional engineer; and
  - [iii] Designed with secondary containment adequate to contain a spill the size of the container's total storage capacity.
- [4] For any proposed activity on a lot which will render more than 15% of the total lot area or more than 2,500 square feet impervious, a system for groundwater recharge must be provided that does not degrade groundwater quality, by stormwater infiltration basins or similar system covered with natural vegetation. Dry wells shall be used only where other methods are infeasible. Such basins and wells shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants.
- [5] For stockpiling or disposal of snow from outside the district, earthmoving and alteration, storage of sludge or septage, manure storage, treatment works, and/or discharge of process wastewater, a narrative statement, prepared by a registered professional engineer, assessing the impacts, if any, of the proposed activity on groundwater and surface water quality on the premises, adjacent to the premises, and on any well field(s) down gradient from the proposed activity or use, accompanied by a description of the measures proposed to protect such well fields.

#### H. Decision.

- (1) Special permits shall be granted only if the SPGA determines, after reviewing the recommendations of the reviewing parties delineated in Subsection **G (3)**, that:
  - (a) Groundwater quality resulting from on-site wastewater disposal or other operations on site shall not fall below the more restrictive of federal or state standards for drinking water or, if existing groundwater quality is already below those standards, on-site disposal or operations shall result in no further deterioration; and
  - (b) Activities shall be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- (2) Powers of the SPGA. The Planning Board may approve, approve with conditions, or deny an application for a special permit that is governed, in any manner, by the provisions of this section.
- (3) No variance. There shall be no variances granted from the regulations of the Groundwater Protection Overlay District without a written advisory report from the Gardner Board of Health.

#### I. Enforcement.

- (1) Notice. Written notice of any violations of this section shall be given by the Building Commissioner to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the

responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Planning Board, Board of Health, Conservation Commission, City Engineer, Department of Public Works, and the Water Department.

- (2) Costs. The cost of containment, cleanup, or other action of compliance shall be borne by the owner and operator of the premises.

**§ 675-530 Development Overlay District 1.**

A. Purpose. The purpose of this district is to increase redevelopment options consistent with City-wide growth and development policies within economically stressed areas zoned Industrial 1 and/or Commercial 1 by providing for additional uses as a matter of right or special permit and altering dimensional requirements.

B. Scope of authority.

- (1) The Development Overlay District 1 may be applied over some or all existing parcels that are zoned Industrial 1 and/or Commercial 1; it may not be applied over any other zoning district.
- (2) Any use permitted by right or special permit in the underlying districts, as provided for by this chapter, shall continue to be permitted in addition to all other uses permitted by the Development Overlay District 1.

C. Designation of Development Overlay District 1.

- (1) The City Council retains sole authority to designate an area as Development Overlay District 1. Such designation is limited to areas zoned Industrial 1 and Commercial 1 that clearly exhibit the impacts of economic stress. Criteria for measuring economic stress include vacancy rates, incidences of arson, declining property values, Building Code violations, property tax delinquencies and inclusion in ongoing revitalization efforts.
- (2) The Planning Board shall make a recommendation to the City Council on a proposed designation of a Development Overlay District 1 in accordance with the provisions of MGL Chapter 40A, Section 5 only after consultations with relevant agencies and a public hearing. The request for designation shall contain a report of finding.

D. Additional uses.

- (1) Properties zoned Industrial 1 and designated a Development Overlay District 1 shall be permitted the following uses as a matter of right:
  - (a) Library, museum, art gallery or civic center.
  - (b) Country or tennis club, lodge building or other nonprofit social, civic, conservation or recreational use.
  - (c) Professional office and retail store,
  - (d) Indoor amusement or recreation place of assembly, provided that the building is so insulated and maintained as to confine noise to the premises.
  - (e) Commercial clubs and/or recreational establishments such as swimming pools, tennis courts, ski clubs, camping areas, skating rinks or other commercial facilities offering outdoor recreation.

- (2) Properties zoned Industrial 1 and designated a Development Overlay District 1 shall be permitted the following uses under a special permit by the Planning Board as provided in § 675-1170, Special permits:
- (a) Three- or four-family dwelling, multifamily dwelling and mixed use.
  - (b) Eat in restaurant serving food or beverages.
  - (c) Eat in restaurant serving food or beverages with live or mechanical entertainment.

E. Dimensional requirements.

- (1) Any new structure, substantial improvement or alternative to an existing structure involving more than 50% of that structure's gross floor area shall be subject to the following:
- (a) Minimum lot size: 5,000 square feet.
  - (b) Minimum frontage: none. However recorded documentation of legal access to the property shall be required
  - (c) Front yard setback: none.
  - (d) Side yard setback: 10 feet, or none if abuts commercial or industrial use.
  - (e) Rear yard setback: 20 feet.
  - (f) Maximum building height: five stories or 60 feet.
  - (g) Maximum lot coverage shall not exceed 85%.
- (2) Improvements or alterations to an existing structure involving less than 50% of that structure's gross floor area shall not be subject to dimensional requirements, except that the minimum lot size shall not be less than 5,000 square feet and the structure shall not expand in terms of percentage of lot coverage.

F. Parking requirements. Off-street parking shall be provided according to the Schedule of Parking Uses, § 675-750, except as follows:

**Parking Requirements: Development Overlay District 1**

<b>Use</b>	<b>Parking Spaces Required</b>
Retail store	1 space per 250 square feet gross floor area
Business or professional office	1 space per 300 square feet gross floor area
Restaurant, lodge or club, or other place of assembly	1 space per 4 seats
Library, museum, art gallery or civic center	2 spaces per 1,000 square feet gross floor area
Three, four family and multi family dwelling units	1 space per dwelling for units not exceeding one bedroom. 2 paces per dwelling for units with two or more bedrooms

## Parking Requirements: Development Overlay District 1

### Use

### Parking Spaces Required

Mixed use

Sum of various uses computed separately

- G. Site plan review. The site plan review and approval provisions of § **675-1020**, Site plan review, shall apply to the following types of structures and uses in a Development Overlay District 1:
- (1) Any new structure or group of new structures under the same ownership on the same or contiguous lots that consists of 2,500 square feet or more of gross floor area.
  - (2) Any improvement, alteration, or change in use which results in an increase of 2,500 square feet or more of gross floor area.

### § 675-540 Smart Growth Planned Unit Development.

#### A. Purpose.

By special permit, the Planning Board seeks to facilitate an alternative pattern of land development which promotes innovative design with compact, mixed-use development that is convenient to a variety of transportation options, to preserve common open space, and to promote the creation of new housing units that are contained in a variety of building types and laid out in a manner to promote the establishment of a pedestrian-oriented neighborhood(s). This type of development may be determined to be sufficiently advantageous to render it appropriate to grant special permission to depart from the normal requirements of the district to the extent authorized by this chapter.

#### B. Applicability

- (1) Smart Growth Planned Unit Development (SGPUD) is allowed in the RR2, COM2, IND1 and IND2 Zones. Proposed SGPUD development shall be located on a lot or contiguous lots of not less than 60,000 square feet in the RR2 Zone and shall employ public water and sewage. In the COM2 and IND2 Zones, the tract shall contain no less than 60,000 square feet. In the IND1 Zone, the tract shall contain no less than 50,000 square feet. A development plan shall be presented for the entire tract.
- (2) The development shall be subject to all zoning regulations, except those which, through the grant of a special permit, the Planning Board has permitted increased density, parking requirements less than those ordinarily required, and permit uses not otherwise allowed in the underlying zoning district as specified in Section 540.C Allowed Uses.

#### C. Allowed uses. In addition to the uses allowed in the underlying district, the following uses are eligible for consideration:

- (1) Mixed use.
- (2) Single-, two-, three- and four-family dwellings.
- (3) Multifamily dwellings.
- (4) Assisted living facilities.
- (5) Convenience retail.
- (6) Business or professional office.
- (7) Restaurant.

(8) Office building.

D. Density and dimensional requirements.

- (1) The minimum common open space requirement of the overall tract in the RR2 shall be 30%, exclusive of areas located in floodplains and wetlands. In the COM2, IND1 and IND2 the minimum common open space requirement of the overall tract is 20%, exclusive of areas located in floodplains and wetlands.
- (2) Multifamily residential structures shall contain no more than eight units per building and shall be clustered to foster neighborhood connections. Residential density shall not exceed 20 units per acre, to be calculated exclusive of areas located in flood zones and wetlands.
- (3) The area developed for residential use shall not exceed 50% of the overall tract, exclusive of areas located in floodplains and wetlands.
- (4) Setbacks. Industrial uses shall be set back a minimum of 20 feet from commercial uses and 50 feet from residential uses. The Planning Board retains the authority to increase minimum setbacks at its discretion in the interest of safety, circulation, or other factors.
- (5) Maximum building height shall be 65 feet.

E. Parking and other requirements.

- (1) Parking shall be in accordance with those requirements set forth in § 675-750, Schedule of Parking Uses. The Planning Board may allow for shared use parking if the applicant can prove the specified parking demand will occur at different and offsetting times of day. The use of shared parking is encouraged to reduce impervious surfaces and enhance overall design of the development.
- (2) Proposed developments which include over 12 residential units shall require 20% of the overall number of units to be affordable to persons and families earning 80% or less of the area's median income, and these units shall remain affordable for a minimum period of 30 years.

F. Site plan review. All developments proposed for SGPUD shall undergo site plan review. For the convenience of the applicant, site plan review and applications for a special permit pursuant to this section shall be held concurrently. The applicant will be responsible for submitting a request and meeting all submission requirements concurrently in order to streamline notice and hearing requirements.

**§ 675-550 Surface Water Protection Overlay District.**

A. Purpose. The purpose of the Surface Water Protection Overlay District is to:

- (1) Promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses;
- (2) Preserve and protect existing and potential sources of drinking water supplies;
- (3) Conserve the natural resources of the City; and
- (4) Prevent temporary and permanent contamination of the environment.

B. Authority. The Surface Water Protection Overlay Districts are adopted pursuant to authority provided by MGL c. 40A and the Home Rule Amendment, Article 89 of the Amendments to the Constitution of the commonwealth.

- C. Definitions. For the purposes of this section, the following words and phrases shall be defined as follows. References to statutes and regulations shall be deemed a reference to such law or regulation as of the effective date of this section.

**AUTOMOBILE GRAVEYARD AND JUNKYARD**

An establishment or place of business which is used, maintained, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts, as defined in MGL c. 140B, § 1.

**CMR**

Code of Massachusetts Regulations.

**COMMERCIAL FERTILIZER**

Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, as defined in MGL c. 128, § 64.

**DEP**

Massachusetts Department of Environmental Protection.

**HAZARDOUS MATERIAL**

Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, solvents and thinners in quantities greater than normal household use, and all substances defined as hazardous or toxic under MGL c. 21C and 21E and 310 CMR 30.00.

**HAZARDOUS WASTE**

Any waste defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.010. This includes, but is not limited to, waste oil, waste solvents, waste oil-based paint and waste pesticides.

**IMPERVIOUS SURFACE**

Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

**LANDFILL**

A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land, pursuant to 310 CMR 19.006.

**MGL**

Massachusetts General Laws.

**NONSANITARY WASTEWATER**

Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage, including but not limited to activities specified in the Standard Industrial Classification (SIC) codes set forth in 310 CMR 15.004(6).

**OPEN DUMP**

A facility operated or maintained in violation of the Resource Conservation and Recovery Act [42 U.S.C. § 4004(a) and (b)], 42 U.S.C. § 6901 et seq., or state regulations and criteria for solid waste disposal.

**PETROLEUM PRODUCT**

Petroleum or petroleum by-product, including but not limited to fuel oil, gasoline, diesel, kerosene, aviation jet fuel, aviation gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, or other liquid hydrocarbons regardless of specific gravity. "Petroleum product" shall not include liquefied petroleum gas, including but not limited to liquefied natural gas, propane or butane.

**POTENTIAL DRINKING WATER SOURCES**

Areas that could provide significant potable water in the future.

**RECHARGE AREAS**

Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas include DEP-approved Zone I, Zone II, or Zone III areas.

**SEPTAGE**

The liquid, solid, and semisolid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. "Septage" does not include any material that is a hazardous waste as defined by 310 CMR 30.000.

**SLUDGE**

The solid, semisolid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. "Sludge" does not include grit, screening, or grease and oil which are removed at the headworks of a facility.

**SURFACE WATER PROTECTION OVERLAY DISTRICT**

Those land areas designated on a map adopted pursuant to this section that provide recharge to an existing or planned public drinking water supply well. The Surface Water Protection District includes all areas designated as a Zone A and Zone B as approved by the DEP and Zone C+.

**TREATMENT WORKS**

Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

**VERY SMALL QUANTITY GENERATOR**

Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

**WASTE OIL RETENTION FACILITY**

A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with MGL c. 21, § 52A.

**ZONE A**

The land area between the surface water source and the upper boundary of the bank, and the land area within a four-hundred-foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), and the land area within a two-hundred-foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.

**ZONE B**

The land area within 1/2 mile of the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), or edge of watershed, whichever is less. However, Zone B shall



always include the land area within a four-hundred-foot lateral distance from the upper boundary of the bank of the Class A surface water source.

#### **ZONE C+**

The land area not within Zone A and Zone B delineated on a map titled "City of Gardner Water Supply Protection Districts" prepared by the Engineering Department, dated revised January 5, 2011.

- D. Establishment of districts. The Surface Water Protection Overlay Districts, which consist of Zone A, Zone B and Zone C+, are herein established as overlay districts. These districts are described on a map titled "City of Gardner Water Supply Protection Districts," prepared for the Gardner Engineering Department, dated revised January 5, 2011. The map is on file in the office of the City Engineer. Said map is hereby incorporated as part of the Zoning Map of Gardner, Massachusetts, on file in the City Clerk's office.
- E. Boundary disputes.
- (1) Resolution of boundary disputes. If the location of the district boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the Planning Board as special permit granting authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.
  - (2) Burden of proof. The burden of proof shall be upon the owner(s) of the land to demonstrate that the location of the district boundary with respect to a parcel(s) of land is uncertain. At the request of the owner(s), the SPGA may engage a professional engineer or land surveyor or other qualified expert to determine more accurately the boundaries of the district with respect to individual parcels of land and may charge the owner(s) for the cost of the investigation.
  - (3) Lot divided by district line. Where the boundary line of the Surface Water Protection Overlay District divides a lot or parcel, the requirements established by this section shall apply only to the portion of the lot or parcel located within the district.
  - (4) Amendment of map. Amendments to the map of the Surface Water Protection Overlay District require City Council approval.
- F. Use regulations. The Surface Water Protection Overlay Districts are overlay districts superimposed over the underlying districts set forth in this chapter. Within a Surface Water Protection Overlay District, the requirements of the underlying district continue to apply, except where the requirements of the Surface Water Protection Overlay District are more stringent.
- (1) Prohibited uses in Zones A, B and C+. The following uses are prohibited within Zone A, Zone B and Zone C+ of the Surface Water Protection Overlay District:
    - (a) Facilities that, through their acts or processes, generate, treat, store or dispose of hazardous waste that is subject to MGL c. 21C and 310 CMR 30.000, except for the following:
      - [1] Very small quantity generators, as defined by 310 CMR 30.000; and
      - [2] Treatment works approved by the Department designed in accordance with 314 CMR 5.00 for the treatment of contaminated groundwater or surface water.
    - (b) Uncovered or uncontained storage of fertilizers.
    - (c) Uncovered or uncontained storage of road or parking lot de-icing and sanding materials.
    - (d) Storage or disposal of snow or ice, removed from highways and streets, outside of Zone A, that contains de-icing chemicals.

- (e) Uncovered or uncontained storage of manure.
- (f) Junk and salvage operations.
- (g) Aboveground storage of liquid hazardous material, as defined in MGL c. 21E, or liquid propane or liquid petroleum products, except as follows:
  - [1] The storage is incidental to normal household use, outdoor maintenance, or the heating of a structure; use of emergency generators; or a response action conducted or performed in accordance with MGL c. 21E and 310 CMR 40.000 and which is exempt from a groundwater discharge permit pursuant to 314 CMR 5.05(14); and
  - [2] The storage is either in a container(s) or aboveground tank(s) within a building or outdoors in a covered container(s) or aboveground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers or 110% of the largest container's storage capacity, whichever is greater. However, these storage requirements do not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline, provided that the replacement is performed in accordance with applicable state and local requirements.
- (h) Treatment or disposal works subject to 314 CMR 3.00 or 5.00, except the following:
  - [1] The replacement or repair of an existing treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works;
  - [2] Treatment or disposal works for sanitary sewage if necessary to treat existing sanitary sewage discharges in noncompliance with 310 CMR 15.000, The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-Site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage, provided that the facility owner demonstrates to the Department's satisfaction that there are no feasible siting locations outside of Zone A. Any such facility shall be permitted in accordance with 314 CMR 5.00 and shall be required to disinfect the effluent. The Department may also require the facility to provide a higher level of treatment prior to discharge;
  - [3] Treatment works approved by the DEP designed for the treatment of contaminated groundwater or surface water and operated in compliance with 314 CMR 5.05(3) or (13); and
  - [4] Discharge by a public water system of waters incidental to water treatment processes.
- (2) Uses prohibited in Zone A but allowed by special permit in Zone B and C+:
  - (a) Sand and gravel excavation operations;
  - (b) Motor vehicle repair operations;
  - (c) Cemeteries (human and animal) and mausoleums;
  - (d) Solid waste combustion facilities or handling facilities as defined at 310 CMR 16.00;
  - (e) Land uses that result in the rendering impervious of more than 15%, or more than 20% with artificial recharge, or 2,500 square feet of any lot, whichever is greater;

- (f) Commercial outdoor washing of vehicles and commercial car washes; and
- (g) All underground storage tanks.

G. Special permit procedures.

- (1) Special permit granting authority. The special permit granting authority (SPGA) shall be the Planning Board. A special permit may be granted if the SPGA determines that the intent of this section as well as the specific criteria set forth in this Subsection G are met. In making such determination, the SPGA shall consider the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to surface water quality which would result if the control measures failed.
- (2) Rules and regulations. The Planning Board may adopt and from time to time amend rules and regulations which shall prescribe the size, form, content, and style of the plans and procedures for submission and approval of such special permit. These rules and regulations shall be filed with the City Clerk.
- (3) Review by other boards and officials. Whenever an application for a special permit is filed with the Planning Board under this section, said Board shall transmit, within six working days of the filing of the completed application, copies of the application, accompanying site plan, and other documentation to the Board of Health, Conservation Commission, Building Commissioner, Director of Public Works, Fire Chief, and the City Engineer for their consideration, review, and report. The copies necessary to fulfill this requirement shall be furnished by the applicant. An application shall not be deemed complete until all copies of required information and documentation have been filed with the Planning Board. The Planning Board shall notify applicants by registered mail, within 14 days of submittal, of incomplete application status, and the applicant shall have 14 days from the mailing of such notice to complete an application. Failure to complete an application within such time shall result in a return of all materials to the applicant, without prejudice. Reports from other boards and officials shall be submitted to the Planning Board by the date of the public hearing, but in any case, within 35 days of receipt of the reviewing party of all the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. If the public hearing by the Planning Board is held prior to the expiration of the thirty-five-day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty-five-day period. The decision/findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.
- (4) Submittals. All applications for special permits shall contain the information listed below, unless waived or modified by the SPGA, with reasons therefor:
  - (a) A site plan, submitted on twenty-four-inch by thirty-six-inch sheets, on a minimum scale of one-inch equals 40 feet, and prepared by a registered professional engineer and a registered land surveyor. Site plans submitted under this section shall also include the following:
    - [1] All property lines;
    - [2] All adjacent public streets;
    - [3] All existing and proposed buildings, structures, parking areas, and service areas;
    - [4] All facilities for sewage, refuse, and other waste disposal;
    - [5] Facilities for surface water drainage, both temporary and permanent;

- [6] Future expansion areas;
  - [7] Provisions to prevent contamination of surface water by petroleum products;
  - [8] Drainage recharge features and provisions to prevent loss of recharge;
  - [9] Provisions to prevent soil compaction;
  - [10] Provisions to prevent seepage from sewer pipes;
  - [11] Location of wetlands, streams, water bodies and floodplain;
  - [12] Existing drainage patterns;
  - [13] Existing woodlands;
  - [14] Areas having slopes exceeding 15%;
  - [15] Areas to be disturbed by construction;
  - [16] Areas where earth and other materials subject to erosion will be temporarily stockpiled;
  - [17] Areas to be used for disposal or storage of construction debris, stones, stumps, etc., if within the district;
  - [18] Temporary and permanent erosion control measures planned, such as sediment basins, stormwater basins, diversion, riprap, stabilization seeding, etc.;
  - [19] Temporary work roads to be used during projects;
  - [20] Location and size of septic system; and
  - [21] Method to contain spillage in fuel filling areas.
- (b) A storm drainage plan showing:
- [1] Locations of drains and culverts and names of streams, rivers, ponds or reservoirs in the City into which they flow;
  - [2] Discharge peaks and expected velocities at drain or culvert outlets;
  - [3] Conditions above and below outlets and expected flow velocities;
  - [4] Supporting computations for the above; and
  - [5] A grading plan showing existing topography and planned grade along existing and/or proposed street or highway profiles.
- (c) A siltation and sedimentation control plan, including:
- [1] Sediment and erosion control structures such as diversions, waterways, slope stabilization structures, sediment basins, etc., in sufficient detail to implement their installation, together with referred standards for soil erosion and sediment as appropriate, and design calculations as required for each structure;
  - [2] Seeding and/or sodding requirements for all exposed areas, including seedbed preparation, seed mixtures, lime, fertilizer and mulching requirements with referenced

standards;

- [3] Schedule or sequence of operation with starting dates for clearing and/or grading, timing for storm drain and culvert installation, duration of exposure of soils and critical area stabilizations, both temporary and permanent. Indicate date when critical areas stabilization, paving, seeding, mulching, or sodding is to be completed; and
  - [4] General notes for sediment control that spell out the procedures for implementing the plan.
- (d) The technical reference to be used to prepare and review site plans is "Guidelines for Soil and Water Conservation in Urbanizing Areas of Massachusetts," United States Department of Agriculture, Soil Conservation Service, Amherst, Massachusetts. Specific guidelines to be used include, but are not limited to:
- [1] Limit grading to only those areas actively undergoing current construction;
  - [2] The smallest practical area of land should be exposed at one time during development;
  - [3] Limit the length of time graded areas are exposed;
  - [4] Provide temporary or permanent stabilization of disturbed areas at the earliest opportunity. Limit exposure to less than 60 days;
  - [5] Retain and protect as much of the natural vegetation as possible;
  - [6] Permanent improvements such as streets, utilities, storm sewers, vegetated waterways, and other features of the development should be scheduled for installation to the greatest extent possible before removing the vegetative cover from an area scheduled for building construction;
  - [7] Protect all fill slopes and cut slopes exceeding five feet in height from storm runoff through the use of diversion berms, drop chutes and other acceptable means;
  - [8] Rough-graded rights-of-way awaiting installation of utilities and/or pavement should be protected by the installation of interceptor berms across the right-of-way to reduce the length of slope between berms to not more than 250 feet; and
  - [9] On sites where the above procedures are impractical or not acceptable, where the topography permits, install sediment basins, desilting basins, or silt traps to remove sediment from runoff waters.
- (e) A narrative statement detailing all the information set forth below, if applicable:
- [1] A complete list of all chemicals, pesticides, fuels, or other potentially hazardous materials, including but not limited to road salt or de-icing chemicals, manure, and fertilizers or soil conditioners, to be used or stored on the premises in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all storage containers from vandalism, corrosion, and leakage and to provide for control of spills.
  - [2] A description of all potentially hazardous wastes to be generated in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all waste storage containers from vandalism, corrosion, and leakage and to provide for control of spills.

- [3] For underground or aboveground storage of hazardous materials, certification by a registered professional engineer that such storage facilities or containers are:
  - [a] In compliance with all applicable federal or state regulations;
  - [b] In compliance with design specifications, as prepared by a registered professional engineer; and
  - [c] Designed with secondary containment adequate to contain a spill the size of the container's total storage capacity.
- [4] For any proposed activity on a lot which will render more than 15% of the total lot area or more than 2,500 square feet impervious, a system for groundwater recharge must be provided that does not degrade surface water quality, by stormwater infiltration basins or similar system covered with natural vegetation. Dry wells shall be used only where other methods are infeasible. Such basins and wells shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants.
- [5] For stockpiling or disposal of snow from outside the district, earthmoving and alteration, storage of sludge or septage, manure storage, treatment works, and/or discharge of process wastewater, a narrative statement, prepared by a registered professional engineer, assessing the impacts, if any, of the proposed activity on surface water and surface water quality on the premises, adjacent to the premises, and on any well field(s) down gradient from the proposed activity or use, accompanied by a description of the measures proposed to protect such well fields.

#### H. Decision.

- (1) Special permits shall be granted only if the SPGA determines, after reviewing the recommendations of the reviewing parties delineated in Subsection **G (3)**, that:
  - (a) Surface water quality resulting from on-site wastewater disposal or other operations on site shall not fall below the more restrictive of federal or state standards for drinking water or, if existing surface water quality is already below those standards, on-site disposal or operations shall result in no further deterioration; and
  - (b) Activities shall be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- (2) Powers of the SPGA. The Planning Board may approve, approve with conditions, or deny an application for a special permit that is governed, in any manner, by the provisions of this section.
- (3) No variance. There shall be no variances granted from the regulations of the Surface Water Protection Overlay District without a written advisory report from the Gardner Board of Health.

#### I. Miscellaneous provisions.

- (1) Relation to Groundwater Protection Overlay Districts. In those instances where a surface water supply is located near a groundwater well, the Zone A, Zone B and Zone C+ established herein and the Zone II established to protect the wellhead in § **675-520** may overlap one another. In such cases of overlap, the more stringent regulation shall apply.
- (2) Notice of enforcement. Written notice of any violations of this section shall be given by the Building Commissioner to the responsible person as soon as possible after detection of a

violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Planning Board, Board of Health, Conservation Commission, City Engineer, Department of Public Works, and the Water Department.

- (3) Costs. The cost of containment, cleanup, or other action of compliance shall be borne by the owner and operator of the premises.

#### § 675-560 **Large-Scale Ground-Mounted Solar Photovoltaic Overlay District.**

##### A. Purpose and applicability.

- (1) The purpose of this section is to promote the creation of new large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety and minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.
- (2) The provisions set forth in this section shall apply to the construction, operation and/or repair of large-scale ground-mounted solar photovoltaic installations.
- (3) This section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

B. Designation of overlay locations. The overlay locations designated by Gardner City Council, in accordance with MGL c. 40A, § 5, where ground-mounted large-scale solar photovoltaic installations may be sited as of right. Said overlay locations are shown on the Zoning Map of Gardner, Massachusetts, pursuant to MGL c. 40A, § 4. This map is hereby made a part of this chapter and is on file in the office of the City Clerk.

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

#### **AS-OF-RIGHT SITING**

Development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development shall be subject to site plan review to determine conformance with local zoning ordinances. Projects cannot be prohibited but can be reasonably regulated by the Building Commissioner and/or person designated by the Planning Board.

#### **LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION**

A solar photovoltaic system that is structurally mounted on the ground and is not roof mounted and has a minimum nameplate capacity of 250 kW DC.

#### **ON-SITE SOLAR PHOTOVOLTAIC INSTALLATION**

A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

#### **RATED NAMEPLATE CAPACITY**

The maximum rated output of electric power production of the photovoltaic system in direct current (DC).

## **SITE PLAN REVIEW**

Review by the Planning Board pursuant to § **675-1020** of this chapter.

## **SOLAR PHOTOVOLTAIC ARRAY**

An arrangement of solar photovoltaic panels.

- D. General requirements for all large-scale solar power generation installations. The following requirements are common to all solar photovoltaic installations to be sited in designated overlay locations:
- (1) Compliance with laws, ordinances and regulations. The construction and operation of all large-scale solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.
  - (2) Building permit and building inspection. No large-scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.
  - (3) Fees. The application for site plan review for a large-scale solar photovoltaic installation must be accompanied by a fee of \$200 plus \$50 per acre for each acre used to accommodate the solar photovoltaic installation. All costs associated with advertising public hearing(s) for site plan review shall be paid by the applicant.
  - (4) Site plan review. Ground-mounted large-scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review by the Planning Board prior to construction, installation or modification as provided in this section.
    - (a) General. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts.
    - (b) Required documents. Pursuant to the site plan review process, the project proponent shall provide the following documents:
      - [1] A site plan showing:
        - [a] Property lines and physical features, including roads, for the project site;
        - [b] Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
        - [c] Drawings of the solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
        - [d] One- or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
        - [e] Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
        - [f] Name, address, and contact information for proposed system installer;
        - [g] Name, address, phone number and signature of the project proponent, as well as all



co-proponents or property owners, if any; and

- [h] The name, contact information and signature of any agents representing the project proponent;
  - [2] Documentation of actual or prospective access and control of the project site [see also Subsection **D (5)**];
  - [3] An operation and maintenance plan [see also Subsection **D (6)**];
  - [4] Zoning district designation for the parcel(s) of land comprising the project site [submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose];
  - [5] Proof of liability insurance; and
  - [6] Description of financial surety that satisfies Subsection **D (12) (c)**.
- (c) The Planning Board may waive documentary requirements as it deems appropriate.
- (5) Site control. The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.
  - (6) Operation and maintenance plan. The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, stormwater controls, as well as general procedures for operational maintenance of the installation.
  - (7) Utility notification. No large-scale ground-mounted solar photovoltaic installation shall be constructed until written evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner's or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
  - (8) Dimension and density requirements.
    - (a) Setbacks. For large-scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:
      - [1] Front yard. The front yard depth shall be at least 10 feet; provided, however, that where the lot abuts a residential district, the front yard shall not be less than 50 feet.
      - [2] Side yard. Each side yard shall have a depth of at least 15 feet; provided, however, that where the lot abuts a residential district, the side yard shall not be less than 50 feet.
      - [3] Rear yard. The rear yard depth shall be at least 20 feet; provided, however, that where the lot abuts a residential district, the rear yard shall not be less than 50 feet.
    - (b) Appurtenant structures. No appurtenant structures to large-scale ground-mounted solar photovoltaic installations shall be located in the front yard area. No appurtenant structures shall be located in any side yard area nearer than 10 feet to the side lot line, or in a rear yard area nearer than 15 feet. All appurtenant structures shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to

equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

(9) Design standards.

- (a) Lighting. Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cutoff fixtures to reduce light pollution.
- (b) Signage. Signs on large-scale ground-mounted solar photovoltaic installations shall comply with Article **IX**, Signs and Advertising Devices, of this chapter. A sign consistent with Article **IX** shall be required to identify the owner and provide a twenty-four-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.
- (c) Utility connections. Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

(10) Safety and environmental standards.

- (a) Emergency services. The large-scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Gardner Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
- (b) Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and ordinances.

(11) Monitoring and maintenance.

- (a) Solar photovoltaic installation conditions. The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and emergency medical services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way. Landscaping, including vegetation used for screening, shall be maintained in good condition.
- (b) Modifications. All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board.

(12) Abandonment or decommissioning.

- (a) Removal requirements. Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with Subsection

**D (12) (b)** of this section shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board and Building Commissioner by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- [1] Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
  - [2] Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  - [3] Stabilization or revegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations to minimize erosion and disruption to vegetation.
- (b) Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than six months without the written consent of the Planning Board. If the owner or operator of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the City may enter the property and physically remove the installation.
- (c) Financial surety. Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event that the City must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125% of the cost of removal and compliance with the additional requirements set forth herein, as determined by the Planning Board. Such surety will not be required for municipally owned or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation. The Planning Board may request the proponent to provide an update of the fully inclusive estimate of costs associated with removal every five years following the issuance of a building permit. The Planning Board may require the proponent to provide additional surety based on the updated cost estimate.

**§ 675-570 Mill Street Corridor Development Overlay District.**

- A. Purpose: to encourage commercial and industrial development and increase redevelopment options in the Mill Street Corridor Urban Renewal Area (MSCURA), to provide local employment and enhance the tax base while protecting surrounding neighborhoods from land use conflicts. Redevelopment options will be consistent with City-wide growth and development policies within economically stressed areas within the MSCURA by providing for additional uses as a matter of right and altering dimensional requirements.
- B. Scope of authority.
- (1) The Mill Street Corridor Development Overlay District (MSCDOD) shall only be applied over all parcels that are included in the Mill Street Corridor Urban Renewal Area.
  - (2) Any use permitted by right or special permit in the underlying districts, as provided for by this section, shall continue to be permitted in addition to all other uses permitted by the MSCDOD.
  - (3) Site plan review. All developments proposed for MSCDOD shall undergo site plan review in

accordance with § **675-1020**. Site plan review shall apply to any new structure or group of structures under the same ownership on the same or contiguous lots that consist of 2,500 square feet or more of gross floor area; or any improvement, alteration, or change in use which results in an increase of 2,500 square feet or more of gross floor area.

- (4) Waivers. The Planning Board may modify or waive any requirement of the overlay district upon finding that, due to topography, location, or unusual conditions affecting the property, the requirements of this section would unreasonably restrict development of the property. In modifying or waiving these provisions, the Planning Board may impose conditions it deems necessary to protect the public interest and promote the orderly development of the corridor.

C. Designation of Mill Street Corridor Development Overlay District. Designation is limited to parcels that are included in the Mill Street Corridor Urban Renewal Area due to the areas economic stress. Criteria for measuring economic stress include vacancy rates, incidences of arson, declining property values, building code violations, property tax delinquencies and inclusion in ongoing revitalization efforts.

D. Additional uses.

- (1) Properties included in the MSCDOD shall be permitted for the following uses as a matter of right:
  - (a) Library, museum, art gallery or civic center.
  - (b) Country or tennis club, lodge building or other nonprofit social, civic, conservation or recreational use.
  - (c) Professional office and retail store, regardless of square footage.
  - (d) Restaurant, fast food, including appurtenant structures to provide drive-through or drive-in services.
  - (e) Restaurant serving food or beverages with live or mechanical entertainment.
  - (f) Indoor amusement or recreation place of assembly, provided that the building is so insulated and maintained as to confine noise to the premises.
  - (g) Commercial clubs and/or recreational establishments such as swimming pools, tennis courts, ski clubs, camping areas, skating rinks or other commercial facilities offering outdoor recreation.

E. Dimensional requirements.

- (1) Any new structure, substantial improvement or alternative to an existing structure involving more than 50% of that structure's gross floor area shall be subject to the following:
  - (a) Minimum lot size: 60,000 square feet.
  - (b) Minimum frontage: None.
  - (c) Front yard setback: None.
  - (d) Side yard setback: 10 feet, or none if abuts commercial or industrial use.
  - (e) Rear yard setback: 20 feet, or 40 feet if abuts residential zone.
  - (f) Maximum building height: five stories or 60 feet.

(g) Maximum lot coverage shall not exceed 85%.

- (2) Improvements or alterations to an existing structure involving less than 50% of that structure's gross floor area shall not be subject to dimensional requirements, except that the minimum lot size shall not be less than 60,000 square feet and the structure shall not expand in terms of percentage of lot coverage, and side and rear setbacks shall be met.

F. Design and preservation standards.

- (1) The provisions of § **675-750**, Schedule of Parking Uses; loading areas, shall apply unless superseded by the following standards.

**Parking Requirements**

**MSCDOD**

<b>Use</b>	<b>Parking Spaces Required</b>
Retail store	1 space per 250 square feet gross floor area
Business or professional office	1 space per 300 square feet gross floor area
Restaurant, lodge or club, or other place of assembly	1 space per 4 seats plus 1 space per employee, or 1 space per 75 square feet of assembly area
Library, museum, art gallery, civic center, or recreational facilities	2 spaces per 1,000 square feet gross floor area
Outdoor recreation	1 space per 1,000 square feet of recreational land area

- (2) Parking lot design. The provisions of § **675-770**, Design requirements for parking lots, facilities, and drive-throughs, shall apply unless superseded by the following standards.
- (a) Sidewalks and pedestrian paths shall connect the lots to the principal uses they will serve. Facilities and access routes for deliveries, service and maintenance shall be separated, where practical, from public access routes and parking areas. Car stops shall be provided to prevent parked cars from damaging trees and shrubs or disrupting pedestrian walkways.
- (b) The Planning Board may modify the above requirements for any interior landscaped areas or islands that serve as vegetated swales or bioretention cells.
- (3) Lighting and utilities.
- (a) All lighting shall be arranged and shielded to prevent direct glare from the light source into any public street or private way or onto adjacent property. Lighting shall comply with § **675-770B**, Lighting and landscaping requirements, Subsection **B (4)**, and § **675-1020F**, Development impact standards.
- (b) All lights and illuminated signs shall be designed to prevent objectionable light and glare from crossing property lines. Externally lit signs, display, building and aesthetic lighting must be lit from the top and shine downward.
- (c) All electric, telephone, television and other communication lines, both main and service

connections, shall be provided by underground wiring.

- (4) Complete streets: Whenever a development within the MSCDOD fronts a public way, complete streets design principles consistent with the Timpany Boulevard Complete Streets Study, dated June 2015, shall be incorporated into the design.
- (5) Projects shall take into consideration the preservation of sensitive natural features, including streams and water bodies. Development shall preserve the natural features of the site, avoid areas of environmental sensitivity, and minimize alteration of natural features. If appropriate, walking and hiking trails should be incorporated into the development to enhance walkability within the development.
- (6) Bicycle accommodation.
  - (a) Bicycle parking facilities shall be provided for any new building, addition or enlargement of an existing building, or for any change in the occupancy of any building that results in the need for additional vehicular parking facilities. One bicycle space shall be provided for every 10 vehicle parking spaces, up to a maximum of 25 spaces.
  - (b) Parking for bicycles shall include provision for secure storage of bicycles. Such facilities shall provide lockable enclosed lockers, or racks, or equivalent structures in or upon which the user may lock a bicycle.
  - (c) Bicycle parking facilities shall be sufficiently separated from motor vehicle parking areas to protect parked bicycles from damage by motor vehicles. The separation may be accomplished through grade separation, distance or physical barrier, such as curbs, wheel stops, poles or other similar features.
  - (d) Bicycle parking facilities shall be in a clearly designated safe and convenient location. Whenever possible, the bicycle parking shall be placed within 50 feet of building entrances and in well-lit areas.
- (7) Landscaping and screening.
  - (a) A registered landscape architect shall prepare a landscape plan drawn to scale, including dimensions and distances. The plan shall delineate all existing and proposed parking spaces or other vehicle areas, access aisles, driveways, and the location, size and description of all landscaping materials and tree cover.
  - (b) Loading areas and service facilities (dumpsters, storage areas, utility boxes, etc.) shall be placed to the rear of buildings in visually unobtrusive locations. Screening and landscaping shall prevent direct views of such areas from adjacent properties or from public ways. Screening shall be achieved through walls, fences, landscaped berms, evergreen plantings, or combinations thereof. Fences made of wood, stone, or brick are preferred.
  - (c) Heating, ventilating and air-conditioning (HVAC) units, telephone boxes, electrical transformers, etc., shall be screened through use of landscaping, berms, or fences and shall be as unobtrusive as possible. Heating, ventilating and air-conditioning (HVAC) units may be located behind roof ridgelines so they are not visible from the front view of the building.
  - (d) When a proposed development abuts a residential district, whether presently developed or not, landscaped buffers shall be employed to shield the residential property from view of the proposed development and to minimize lighting and noise impacts. Such a buffer shall contain a screen of plantings not less than three feet in width and six feet in height at the time of planting and shall thereafter be maintained by the owner or occupant to provide a dense screen year-round. At least 50% of the plants shall consist of evergreens. A solid wall or

fence, not to exceed six feet in height, complemented by suitable plantings, may be substituted for such landscaped buffers.

(8) Architectural standards.

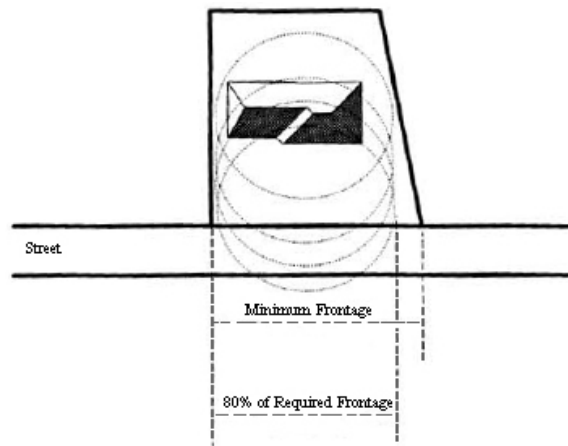
- (a) The site plan application shall contain elevations of all proposed buildings, prepared by a licensed architect.
- (b) Exterior materials for the front facade and any sides of buildings fronting on public streets may include clapboard, wood shingles, stone, brick, textured or coated concrete block, textured or coated precast concrete, or materials of comparable appearance as approved by the Planning Board. Applicants are encouraged to use green building technologies and materials, wherever possible, to limit environmental impacts and carbon emissions.
- (c) Architectural focal points. In any development with 10,000 square feet or more of retail use, the principal building on a lot shall have clearly defined, highly visible customer entrances featuring at least two of the following: canopies or porticos; overhangs; recesses/projections; raised corniced parapets over the door; peaked roof forms; arches; outdoor patios; display windows; and planters or wing walls that incorporate landscaped areas and/or places for sitting.

## Article VI

### Density and Dimensional Regulations

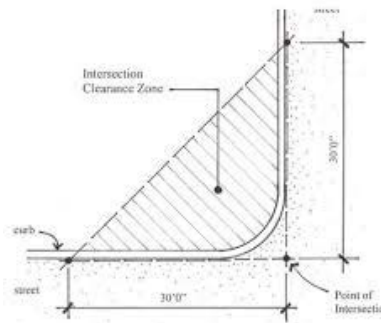
**§ 675-610 General requirements. (See the Table of Lot, Area, Frontage, Yard and Height Requirements included at the end of this chapter)**

- A. A dwelling, building or any structure hereafter erected in any district shall not be located on a lot having less than the minimum requirements.
- B. A lot or parcel of land having an area or a frontage of lesser amounts than required in the following schedule may be considered as coming within the area and frontage requirements of this section, provided that, at the time of building, such lot has an area of more than 5,000 square feet, has a frontage of 50 feet or more and is in a district zoned for residential use, and provided further that such lot or parcel of land was shown on a parcel or described in a deed duly recorded or registered at the time of the adoption of this chapter and did not at the time of such adoption adjoin other land of the same owner available for use in connection with such lot or parcel.
- C. All minimum yard dimensions required in the following schedule are to be measured from the relevant lot line.
- D. The limitation of height of buildings and structures in the following schedule shall not apply in any district to chimneys, ventilators, towers, spires, or other ornamental features of buildings, which features are in no way used for living purposes.
- E. All lots shall have a lot width such that the center of a circle having a minimum diameter of at least 80% of the required frontage of the lot can be passed along a continuous line from the lot line along which the frontage is measured to any and all points of the principal structure or proposed principal structure without the circumference intersecting any side lot line.



F. Corner clearance.

Within an area formed by the side lines of intersecting streets and a line joining points on such lines 15 feet distant from their point of intersection or, in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of 3 1/2 feet and a height of eight feet above the plane through their curb grades.



§ 675-620 **Table of Lot, Area, Frontage, Yard and Height Requirements.**

The Table of Lot, Area, Frontage, Yard and Height Requirements is included at the end of this chapter.

§ 675-630 **Infill development.**

- A. Purpose. In order to maintain the character and streetscapes of Gardner's downtown and older neighborhoods, the Planning Board is authorized to allow increases or reductions in dimensional and parking requirements by special permit for infill developments.
- B. Applicability. Infill developments must be located on a single lot which is bounded on a minimum of two sides with existing buildings. Only lots in the GR3, COM1 and SFR1 Districts shall be considered for infill development. Allowed uses are determined by those allowed in the Table of Uses included as an attachment to this chapter.
- C. Special permit. All applications for infill development shall also be subject to site plan review. In addition to the criteria for special permits generally (§ 675-1170), the Planning Board shall consider the following:
  - (1) Whether and by how much the building height or scale will exceed that of nearby structures;



- (2) Whether and by how much the building will exceed the height of trees in the vicinity;
- (3) Whether any potential intrusiveness has been resolved through increased yards, design or building form, or by other means;
- (4) Whether and by how much shadowing on abutting land or streets will be increased or privacy will be diminished;
- (5) Whether there are fire protection concerns created by the increased density;
- (6) What the traffic consequences are of any increased floor area;
- (7) Whether the increase is needed for the proposal to proceed; and
- (8) What the community benefits are from the proposal, including consideration of taxes, employment, and service.

## Article VII Off-Street Parking, Loading and Drive-Through Standards

### § 675-710 Definitions.

For the purposes of this article, the following terms shall have the following meanings:

#### **ACCESS DRIVEWAY**

The travel lane that allows motor vehicles ingress from the street and egress from the site.

#### **BUILDING SERVICE AREA**

A room or rooms in a building used to house electrical or mechanical equipment necessary to provide central utility service to the building, such as a boiler room.

#### **DRIVE-THROUGH**

Consists of stacking lanes and drive-up window to allow a drive-through facility to provide such products or service(s).

#### **DRIVE-THROUGH FACILITY**

An establishment that provides or dispenses products or services, through an attendant or an automated machine, to persons remaining in vehicles that are in designated stacking lanes. A drive-through may be in combination with other uses, such as a bank, personal service shop, retail store, eating establishment or gas station.

#### **INTERIOR DRIVEWAY**

A travel lane located within the perimeter of a parking lot which is not used to directly enter or leave parking spaces. An interior driveway shall not include any part of the access driveway.

#### **MANEUVERING AISLE**

A travel lane located within the perimeter of a parking lot by which motor vehicles directly enter and leave parking spaces.

#### **NET FLOOR AREA**

The total of all floor areas of a building, not including storage areas, stairways, elevator wells, rest rooms, common hallways and building service areas.

#### **PARKING STALL LENGTH OF LINE**

The longitudinal dimension of the stall measured parallel to the angle of parking.

## **STACKING LANE**

An on-site queuing or pass-through lane for motorized vehicles that is separated from other vehicular traffic and pedestrian circulation by barriers, markings, or signage.

## **WIDTH OF PARKING STALL**

The linear dimensions measured across the stall and parallel to the maneuvering aisle.

### **§ 675-720 General provisions.**

Except as otherwise provided in this article, no building or structure shall be located upon any lot and no activity shall be conducted upon any lot unless the required parking facilities are provided on site in accordance with this article.

- A. Change of use. For all zoning districts, except COM1, a change in use where the existing use (or in the case of a vacancy, the next previous use) did not provide for the number of on-site parking spaces required by this chapter, then the proposed use shall only have to provide an additional number of parking spaces equal to the increase, if any, between the number required under this chapter for the existing use and the number required for the proposed use.
- B. Commercial 1 Districts.
  - (1) For COM1 Districts, no additional parking is required for the following:
    - (a) A change in use or rearrangement of uses in an existing building that does not increase the total floor area within the building.
    - (b) The replacement of an amount of floor area equal to that in existence at the time of enactment of this amendment to this chapter.
    - (c) The addition of a second story to one-story buildings.
    - (d) Federal, state or municipal uses.
  - (2) Having applied Subsection **B(1)(a), (b), (c) and (d)** immediately above, an increase in total floor area that results in a net increase in the number of required parking spaces may be accommodated off site when adequate municipal parking facilities are available to serve the land use. Adequacy of municipal parking facilities shall be determined via the site plan review application and review procedures, § **675-1020**, Site plan review, of this chapter. A major entrance of the land use should be within 500 feet of the municipal parking facility. Shared parking opportunities should be recognized where the same parking space can be utilized by two or more different land uses due to differences in principal hours for the uses involved.
- C. Residential Uses.
  - (1) Each parking area may have one access driveway which shall be a maximum of 24 feet wide.
  - (2) Each parking area may have one additional access driveway for each 200 feet of frontage, provided that all such access driveways shall be at least 200 feet apart on the parking area measured from the center line of each access driveway.
  - (3) No parking space or other paved surface, other than an access driveway(s) shall be located within 5 feet of any lot line.

### **§ 675-730 Undetermined uses.**

Where the use of a building or buildings has not been determined at the time of application for a building permit or special permit, the plan shall demonstrate that the parking requirements applicable to the most intensive use allowed in the district where such undetermined use is to be located can be provided,

however, that the number of parking spaces actually built need not exceed the number required by the actual use or uses of the building.

**§ 675-740 Relief from parking regulations.**

In the following instances, relief from parking regulations may be granted:

- A. By special permit from the Zoning Board of Appeals, pursuant to § **675-1170**, Special Permits:
  - (1) In the case of a change from a nonconforming use to a conforming use, that the benefits of a change to a conforming use outweigh the lack of parking spaces; or
  - (2) In the case of a change from one conforming use to another conforming use, that the lack of parking spaces will not create undue congestion or traffic hazards on or off the site.
- B. By the Planning Board pursuant to § **675-1110**, Site Plan Review or where it is acting as the Special Permit Granting Authority pursuant to § **675-1170**, Special Permits where it determines the grant of a waiver would not be detrimental to the functioning of the site and would not create undue congestion of traffic hazards on or off the site

**§ 675-750 Schedule of Parking Uses; loading areas.**

- A. Comparable use requirements. Where a use is not specifically included in the Schedule of Parking Uses, it is intended that the regulations for the most nearly comparable use specified shall apply.
- B. Schedule of Parking Uses.

<b>Principal Use</b>	<b>Parking Spaces Required</b>
Dwelling	1 per dwelling unit with 1 or fewer bedrooms; 2 per dwelling unit with 2 or more bedrooms
Home occupation	1 per nonresident employee
Motel or hotel	1 per room plus 1 per 400 square feet of public meeting area and restaurant space
Bed-and-breakfast	2 spaces, plus 1 per guest unit
Assisted living; nursing home; group/rest home; rooming house	1 per 2 beds
Educational/schools	
Nursery/child care	3 per 1,000 gross square feet
Elementary/middle/junior	1.2 per employee
High school	0.25 per student
College and university	1.2 per 1,000 gross square feet

**Principal Use****Parking Spaces Required**

Hospital	3 per patient bed
Convenience retail	2 per 1,000 square feet of gross floor area
Retail store	1 per 200 square feet of net floor area for store with gross floor area up to 5,000 square feet of net floor area and 1 per 250 per 1,000 square feet of net floor area greater than 5,000 of net floor area
Bank	1 per 200 square feet of net floor area
Business or professional office and personal service establishment	1 per 300 square feet of net floor area
Libraries, museums and art galleries	2.5 per 1,000 square feet of gross floor area
Medical or dental office	4.2 per 1,000 square feet of gross floor area
Restaurant	1 per 4 seats
Fast-food restaurant	1 per 70 square feet of net floor area
Religious; club or lodge; civic center or other place of assembly	1 per 75 square feet of assembly area or 1 per 4 seats, whichever is greater
Motor vehicle general and body repair	1 per each service bay plus 1 per employee
Motor vehicle light service	2 per service bay plus 1 per employee
Mixed use	Sum of various uses computed separately
Public transit station	1 per 250 square feet devoted to office and public uses plus sum of other uses computed separately
Transportation terminal	1 per 250 square feet devoted to office use plus 1 per company vehicle operating from premises
Veterinary clinic/kennel, commercial	2 per 1,000 square feet plus 1 per

**Principal Use**

**Parking Spaces Required**

Industrial/manufacturing

employee

1 per 2,000 square feet of net floor area for the first 20,000 square feet, plus 1 per each additional 10,000 square feet

- C. Loading areas. One or more off-street loading areas shall be provided for any business that may be regularly serviced by tractor-trailer trucks and other similar delivery vehicles, so that adequate areas shall be provided to accommodate all delivery vehicles expected at the premises at any one time. Loading areas shall be located at either the side or rear of each building and shall be designed to avoid conflicts with vehicles and pedestrians using the site or vehicles and pedestrians using adjacent sites.

**§ 675-760 Standard dimensional regulations for off-street parking facilities.**

Off-street parking facilities shall be laid out and striped in compliance with the following minimum provisions:

<b>Angle of Parking</b>	<b>Width of Parking Stall (feet)</b>	<b>Parking Stall Length of Line (feet)</b>	<b>Width of Maneuvering Aisle (feet)</b>
90° (2-way)	9.0	18	24
60° (1-way)	10.4	22	18
45° (1-way)	12.7	25	14
Parallel (1-way)	8.0	22	14
Parallel (2-way)	8.0	22	18

**§ 675-770 Design requirements for parking lots, facilities and drive-throughs.**

A. Parking location and layout.

- (1) To the extent feasible, parking areas shall not be located to the forward of any building front line on the lot.

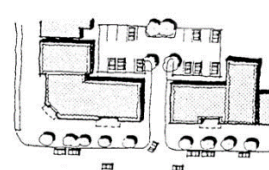
**Not Acceptable:**  
*Parking lots along the full length of the streetfront are generally inappropriate.*



**Acceptable:**  
*In certain situations, limited streetfront parking may be acceptable.*



**Preferred:**  
*Parking lots situated behind shops and offices are preferred.*



- (a) Notwithstanding the above, the Planning Board may grant permission during site plan review to locate not more than eight parking spaces in front of the principal building, where such location promotes a better site layout. As condition of such permission, the Board may require that provisions be made for a common access way linking the property with existing or future adjacent uses.
  - (2) Required parking spaces, loading areas and driveways shall be provided and maintained with suitable grading, paved surfaces and adequate drainage. No parking space or other paved surface, other than an access driveway(s) or walkway(s), shall be located within 10 feet of any lot line, and notwithstanding the foregoing, no parking space or other paved surface other than an access driveway(s) or walkway(s) shall be located within the limits of a landscaped buffer area.
  - (3) Each parking area may have one access driveway which shall be at least 24 feet wide at its narrowest point but not more than 36 feet wide at its widest point. Each parking area may have one additional access driveway for each 200 feet of frontage, provided that all such access driveways shall be at least 200 feet apart on the parking area measured from the center line of each access driveway. In the case of an access driveway which shall be used for one-way traffic only, the minimum width may be reduced to 14 feet at its narrowest point.
  - (4) Interior driveways, other than maneuvering aisles, shall be at least 20 feet wide for two-way traffic and 14 feet for one-way traffic.
  - (5) Adequate provisions for snow removal and/or snow storage must be made and indicated on site plans. Landscaped areas may not be used for snow storage.
- B. Lighting and landscaping requirements. All surface parking areas containing more than eight spaces shall be laid out and enhanced by landscaping in accordance with the following standards:
- (1) Parking areas, loading areas, storage areas, refuse storage and disposal areas, and service areas shall be screened from view, to the extent feasible, from all public ways and from adjacent properties, using planted buffers, berms, natural contours, fences or a combination of the above.
  - (2) Parking areas shall contain 150 square feet of planted areas per 1,000 square feet of parking proposed, appropriately situated throughout the parking area to break up large expanses of pavement.
  - (3) Screening.
    - (a) Parking areas shall be screened along their perimeters from adjacent streets and properties using a combination of the following:
      - [1] A buffer strip of at least 10 feet in width of densely planted shrubs or trees which are at least 2.5 feet high at the time of planting and are of a type that may be expected to form a year-round screen; parking areas containing more than 25 spaces shall require a planted buffer strip of 20 feet in width.
      - [2] A wall, barrier, or fence of uniform appearance. There shall be a landscaped strip with a minimum width of three feet between the base of the wall, barrier, or fence and any street or abutting property. The wall, barrier, or fence is recommended to be three feet in height and shall not be more than six feet in height.
      - [3] A landscaped earth berm at least three feet in height and 18 feet in width.

[4] The screening as required herein shall be located so as not to conflict with any corner visibility requirements or any other City ordinances. Such screening may be interrupted by entrances or exits.

(4) All artificial lighting shall be not more than 11 feet in height in pedestrian areas, and 20 feet in parking areas, and shall be arranged and shielded to prevent direct glare from the light source onto any public way or any other property. All parking areas which are used at night shall be lighted as evenly and fully as possible. The Planning Board shall require that the applicant provide the type, energy efficiency, and intensity (lumens) of all proposed and replacement lighting for the parking areas.

C. Structured parking design guidelines. Placement of off-street parking spaces in structures is encouraged to limit impervious surfaces, promote efficient use of land, and enhance streetscapes. Parking structures are subject to the following performance standards:

- (1) Parking structures shall be no more than 40 feet in height. The height and mass of the structure should be consistent with the urban design fabric within which the structure is to be located.
- (2) The exterior facade should maintain a horizontal line throughout. The sloping nature of the interior structure, necessary in the design of parking structures, should not be repeated on the exterior facade.
- (3) Facades that face public rights-of-way should incorporate a repeating pattern that includes color change, texture change and material change, each of which should be integral parts of the structure, not superficially applied trim, graphics, or paint. In addition, vertical elements should be incorporated into the exterior facade design to create a repeating pattern. This can be accomplished using reveals, projecting ribs, or offsets. All such elements should repeat at intervals of no more than 30 feet.
- (4) A wall or other screening of sufficient height to screen parked vehicles and which exhibits a visually pleasing character should be provided. In commercial districts with an existing or planned urban design fabric, ground-level retail use is encouraged to enhance the streetscape. Where retail is not practical, other amenities, such as an art wall, are encouraged as means of enhancing the streetscape. The ground level of the structure should never consist of a featureless length of a wall.
- (5) Pedestrian entrances should be well defined and attractive.
- (6) Areas of vehicular entry should be located on the side or the rear of the structure wherever possible to attract less attention. The presence and appearance of garage entrances should be minimized so that they do not dominate the street frontage.
- (7) Building should take advantage of site topography to minimize the vehicular entry where possible.
- (8) Interior and exterior lighting shall be arranged to ensure public safety and shielded to prevent direct glare onto any public way or any other property. The Planning Board shall require the applicant to provide the type and intensity (lumens) of all proposed lighting for the parking structure.

D. Drive-through performance and design standards.

- (1) Purpose. The purpose of this section is to protect the health, safety, welfare and convenience of residents, minimize traffic congestion, and maintain the architectural integrity of the surrounding area by requiring performance standards for the construction and operation of drive-through facilities.

(2) Administration.

- (a) Drive-through facilities may be allowed by special permit from the Gardner Planning Board in the Commercial 1, Commercial 2, and in some cases Industrial 1 Zoning Districts, provided the facility meets the requirements of this Article **VII** and the dimensional requirements for the underlying zoning. The Planning Board shall follow the procedural requirements for special permits as set forth in MGL c. 40A, § 9, and Article **XI**, § **675-1170**, of the City of Gardner Zoning Code.
- (b) No special permit for any drive-through facilities shall be issued without site plan approval first having been obtained from the Planning Board, § **675-1020**, Site plan review, of the Zoning Code. In addition to the standard set forth within, the site plan must meet all dimensional, parking, landscaping, and signage requirements within the City of Gardner Zoning Code.

(3) Performance and design standards. Drive-through facilities shall comply with the performance and design standards set forth in this section. The Planning Board may impose additional conditions or alter performance and design standards if it finds that a substantially better design will result from such additional or alternate standards. In so doing, the Planning Board shall consider how such additions or alterations will impact public safety, character of the neighborhood, and the environment.

- (a) Traffic impact study (TIS). The Planning Board shall require that a traffic impact study (TIS) be prepared by a registered professional engineer who is a member of the Institute of Transportation Engineers (ITE). The purpose of a TIS is to document existing traffic conditions in the vicinity of the proposed drive-through facility, to describe the volume and effect of projected traffic generated by the proposed project, and to identify measures to mitigate any adverse impacts on traffic, as stated in the following:

- [1] Existing traffic conditions: average daily and peak-hour volumes, average and peak speeds, sight distances, appropriate and pertinent accident data, levels of service of intersections and streets likely to be affected by the proposed project. Generally, such data shall be presented for all streets and intersections adjacent to or within 500 feet of the project's boundaries. The data will be no more than 24 months old upon submittal unless other data is specifically approved by the Planning Board.
- [2] Projected impact of proposed project: projected peak-hour and daily traffic generated by the drive-through on roads and ways in the vicinity; sight lines at the intersections of the proposed driveways and streets; existing and proposed traffic controls in the vicinity; projected post development traffic volumes and levels of service of intersections and streets likely to be affected by proposed project.

- (b) Site development plan.

- [1] The site development plan, prepared by a registered professional civil engineer and registered land surveyor, shall comply with the development plan requirements identified in § **675-1020** of the City of Gardner Zoning Code and shall accompany the site plan review and special permit applications.
- [2] The proposed site development plan shall incorporate recommendations of the traffic impact study. The following guidelines shall be used to evaluate compliance with the standards herein:
  - [a] Requires a minimum of two stacking lanes: one lane to be used for product or service delivery and one, at a minimum, to be used as an outlet for traffic flow and public



safety vehicle access. No matter how many stacking lanes are used for product or service delivery, a minimum of one stacking lane shall be included in the design as an outlet for traffic flow and public safety vehicle access.

- [b] Entrances to stacking lane(s) shall be clearly marked and shall be a minimum of 40 feet from the intersection with the public street. The distance shall be measured from the property line along the street to the beginning of the entrance.
- [c] Each stacking lane shall be 10 feet in width along all portions of the lane(s).
  - [i] Fast-food restaurants shall have a minimum of 10 spaces for stacking cars accessing the ordering window or speaker. If pickup/payment windows are provided separately, the stacking distance between windows and/or speaker(s) shall be a minimum of two stacking spaces.
  - [ii] Banks, service and retail establishments shall have a minimum of five stacking spaces for cars accessing a drive-through window or speaker.
- [d] Stacking lanes shall be delineated from traffic aisles, other stacking lanes and parking areas with striping, curbing, landscaping and the use of alternative paving materials or raised medians.
- [e] Stacking lanes shall be designed to prevent congestion, both on site and on adjacent streets. Stacking lane layout:
  - [i] Shall be integrated with the on-site circulation pattern;
  - [ii] Shall minimize conflicts between pedestrian and vehicular traffic by providing physical and visual separation between the two;
  - [iii] Shall be located at the side or rear of buildings;
  - [iv] Shall provide an emergency bypass or exit;
  - [v] Shall not impede or impair access into or out of parking spaces;
  - [vi] Shall not impede or impair vehicular or pedestrian traffic movement;
  - [vii] Shall not interfere with required loading and trash storage areas;
  - [viii] Shall not enter or exit directly into a public right-of-way.
- [f] Locate buildings with drive-through along the front lot line closest to the street edge whenever possible.
- [g] Layout of outdoor service equipment, menu signs and speaker boards.
  - [i] There shall be one sign permitted for each stacking lane used for product or service delivery.
  - [ii] Signs shall be a maximum of 40 square feet, with a maximum height of seven feet, and shall follow requirements of Article **IX**, Signs and Advertising Devices. P.O.S. signs placed on a menu sign shall not cause the menu sign to exceed these maximum standards.
  - [iii] Menu signs and speaker boards shall be physically shielded from any public street and residential properties by landscaping or other means.

- [iv] Outdoor speakers shall be directed away from abutting properties.
- [h] Trash receptacles should be placed strategically within the drive-through layout to minimize litter on site.
- [i] Provide sufficient setbacks, buffer, and screening from residential or other abutting properties, including sound- and light-attenuating barriers when appropriate.

## Article VIII Special Residential Regulations

### § 675-810 Open space residential development.

- A. Purpose. The purpose of an open space residential development is to:
- (1) Encourage the preservation of common land for conservation, agriculture, common open space and recreational use;
  - (2) Preserve historical or archaeological resources;
  - (3) Protect existing or potential municipal water supplies;
  - (4) Protect the value of real property by promoting more sensitive siting of buildings and better overall site planning;
  - (5) Promote creative design and better utilization of land in harmony with its natural features and with the greater intent of this chapter through a greater flexibility in design; and
  - (6) Allow more efficient provision of municipal services.
- B. Procedures. The Planning Board may grant a special permit for an open space residential development subject to the following:
- (1) Preapplication conference. The applicant shall request a preapplication review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Development Review Committee and relevant agencies. The purpose of a preapplication review is to minimize the applicant's costs of engineering and other technical experts and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the preapplication review, the applicant may outline the proposed OSRD, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application.
  - (2) Preapplication submittal. To facilitate review of the OSRD at the preapplication stage, applicants are strongly encouraged to submit the following information:
    - (a) Site context map. This map illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.
    - (b) Existing conditions/site analysis map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature undegraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls),

unusual geologic formations and scenic views into and out from the property. By overlaying this plan onto a development plan, the parties involved can clearly see where conservation priorities and desired development overlap/conflict.

- (3) Preapplication site visit. Applicants are encouraged to request a site visit by the Planning Board and/or its agents to facilitate preapplication review of the OSRD. If one is requested, the Planning Board shall invite the Development Review Committee and relevant agencies.
- (4) Preapplication discussion of design criteria. The design process and criteria set forth below should be discussed by the parties at the preapplication conference and site visit.
- (5) Filing of special permit application.
  - (a) Each application for a special permit for an open space residential development shall be filed with the Planning Board, with a copy filed forthwith with the City Clerk, and shall be accompanied by 10 copies of a preliminary plan of the entire parcel under consideration, prepared by a professional architect, engineer and landscape architect.
  - (b) Contents of application. Said application and plan shall be prepared in accordance with requirements for a preliminary subdivision plan in the rules and regulations of the Planning Board governing subdivision of land, whether or not the development constitutes a subdivision, and shall include proposed location, bulk, and height of all proposed buildings. In addition, the applicant shall provide the following information:
    - [1] The number of dwellings which could be constructed under this chapter by means of a conventional development plan, considering the whole parcel, exclusive of water bodies, floodplain, and land prohibited from development by legally enforceable restrictions, easements, or covenants.
    - [2] Applicants are required to demonstrate to the Planning Board that the following design process was performed by a registered landscape architect and considered in determining the layout of proposed streets, house lots, and common open space.
      - [a] Step One: Identifying Conservation Areas. Identify preservation land by two steps. First, primary conservation areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and secondary conservation areas (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archaeological sites and scenic views) shall be identified and delineated. 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 secondary conservation areas.
      - [b] Step Two: Locating House Sites. Locate the approximate sites of individual houses within the potentially developable area and include the delineation of private yards and shared amenities, to reflect an integrated community, with emphasis on consistency with the City's historical development patterns. The number of homes enjoying the amenities of the development should be maximized.
      - [c] Step Three: Aligning the Streets and Trails. Align streets to access the house lots. Additionally, new streets and trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.
      - [d] Step Four: Lot Lines. Draw in the lot lines.
- (6) Review of other boards. Before acting upon the application, the Board shall submit the

application and plan to the following boards, which may review it jointly or separately: the Board of Health, the City Engineer, the Conservation Commission, and the Fire Department. Any such board or agency to which petitions are referred for review shall submit such recommendation as it deems appropriate to the Planning Board and the applicant. Failure to make recommendations within 35 days of receipt shall be deemed lack of opposition.

- (7) Public hearing. After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section, in conformity with the provisions of MGL c. 40A, § 9, and of this chapter and regulations of the Planning Board. The hearing shall be held within 65 days after filing of the application with the Board and the Clerk. Notice shall be given by publication and posted by first-class mailings to parties in interest as defined in MGL c. 40A, § 11. The decision of the Board, and any extension, modification, or renewal thereof, shall be filed with the Board and Clerk within 90 days following the closing of the public hearing. Failure of the Board to act within 90 days shall be deemed a grant of the permit for which applied.
- (8) Relation to Subdivision Control Act. Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for Board consideration under that law. However, to facilitate processing, the Planning Board shall, insofar as practicable under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Planning Board's regulations under the Subdivision Control Act.

C. Findings of the Board. The Board may grant a special permit under this section only if it finds that the applicant has demonstrated the following: that the open space residential development plan will be in harmony with the general purpose of this chapter and the requirements of MGL c. 40A and the long-range plan of the City; that it will not have a detrimental impact on the neighborhood; that it will be designed with due consideration for health and safety; and that it is superior to a conventional plan in preserving common open space, minimizing environmental disruption, allowing for more efficient provision of services, or allowing for greater variety in prices or types of housing.

D. Permitted locations. Open space residential development shall be allowed by special permit in the RR2.

E. Minimum dimensional requirements for lots and buildings. Where the requirements of the OSRD differ from or conflict with the requirements of Article VI of this chapter, the requirements established for OSRDs shall prevail. The following requirements shall be observed in all OSRDs. Where appropriate, the Planning Board may impose additional requirements upon the tract of land or on any parts thereof as a condition to the granting of a special permit.

- (1) Minimum tract area: not less than five acres.
- (2) Maximum density: one dwelling unit per 40,000 square feet.
- (3) Minimum lot area: not less than 8,000 square feet.
- (4) Minimum frontage: not less than 50 feet.
- (5) Minimum lot width: not less than 50 feet.
- (6) Minimum front yard. No buildings or structures shall be located within 45 feet of a preexisting street or within 15 feet of a new street.
- (7) Minimum side and rear yards: not less than 10 feet.

- (8) No buildings or structures shall be located within 30 feet of the boundary line of the tract or the common open space.
- (9) Where a residential building measures more than 3,000 square feet of gross floor area per dwelling unit, including any attached garages, the minimum setback from a new street or way within the OSRD shall be 30 feet, and the minimum setback to the next residential building shall be 40 feet.
- (10) Attached and detached garages are highly encouraged to be located at the side or rear of the residential building or have the garage door not facing the street, so as not to appear part of the front facade.
- (11) The Planning Board may impose other conditions on the locations of buildings and structures as it deems appropriate to enhance the purpose and intent of the OSRD.
- (12) A shared driveway is allowed for two adjoining lots.
- (13) Except as specified in a special permit granted under this section, all requirements of this chapter shall continue to apply.
- (14) The requirements related to the ownership, upkeep, liability, and maintenance of the open land shall be in perpetuity and as such become the responsibility of the owners' heirs and assigns.

F. Required open land.

- (1) At least 50% of the parcel, exclusive of floodplains, wetlands or land set aside for buildings, roads and parking, shall be open land.
- (2) The minimum common open space shall be laid out as one or more large, contiguous parcels that are distinct from parcels dedicated for other purposes and uses. Each common open space parcel shall contain at least one access corridor to a street or way that shall be not less than 40 feet wide.
- (3) If the tract of land of the OSRD abuts adjacent preserved open space, the common open space shall be laid out to abut the adjacent open space lots.

G. Use of the common open space. The common open space shall be dedicated and used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of those uses. No other uses shall be allowed in the common open space, except as provided for herein:

- (1) The proposed use of the common open space shall be specified on a land use plan, and appropriate dedications and restrictions shall be part of the deed to the common open space. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the common open space to enhance the specific purposes of OSRD.
- (2) The common open space shall remain unbuilt upon, provided that an overall maximum of 5% of such land may be subject to pavement and structures accessory to the dedicated use or uses of the common open space, and provided that the common open space may be subject to temporary easements for the construction, maintenance, and repair of roads, utilities, and sewer or drainage facilities serving the open space residential development or adjacent land.
- (3) In addition, a portion of the common open space may also be used for the construction of leaching areas, if associated with septic disposal systems serving the OSRD, and if such use, in the opinion of the Planning Board, enhances the specific purpose of the OSRD to promote better overall site planning. Septic disposal easements shall be no larger than reasonably

necessary. If any portion of the common open space is used for leaching areas, the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the lot owners within the OSRD.

- (4) In addition, a portion of the common open space may also be used for ways serving as pedestrian walks, bicycle paths, and access or egress to the OSRD or adjacent land, if such a use, in the opinion of the Planning Board, enhances the general purpose of this chapter and enhances better site and community planning, and if the Planning Board finds that adequate assurances and covenants exist to ensure proper maintenance of such facilities by the owner of the common open space.
- (5) Portions of the common open space that are more than the minimum common open space total area may be used for stormwater detention and retention facilities serving the lots, streets, and ways in the OSRD, including infrastructure such as pipes, swales, catch basins, and manholes, and parcels and easements associated with such facilities.

#### H. Ownership of the common open space.

- (1) The open land, and such other facilities as may be held in common, shall be conveyed to one of the following, as determined by the Planning Board, subject to the following guidelines:
  - (a) The common open space shall be conveyed in whole or in part to:
    - [1] The City of Gardner and accepted by it; or
    - [2] To a nonprofit organization, the principal purpose of which is the conservation of common open space and/or any of the purposes and uses to which the common open space may be dedicated.
  - (b) The common open space may also be conveyed to a corporation or trust owned or to be owned by the owners of lots within the open space residential development. The developer shall be responsible for the maintenance of the common open space and any other facilities to be held in common until the home association legally assumes said responsibility.
- (2) If the common open space or any portion thereof is not conveyed to the City of Gardner, a perpetual restriction, approved by the Planning Board and enforceable by the City of Gardner, shall be imposed on the use of such land, providing in substance that the land be kept in its open or natural state and that the land shall not be built upon or developed or used except in accordance with the provisions of open space residential development as set forth herein and, if applicable, further specified in the decision of the Planning Board governing the individual open space residential development. The proposed ownership of all common open space shall be shown on the land use plan for the open space residential development. At the time of its conveyance, the common open space shall be free of all encumbrances, mortgages or other claims, except as to easements, restrictions and encumbrances required by this chapter.
- (3) Subject to the above, the common open space may be used for recreational purposes, including golf courses, riding trails, tennis courts, gardens, and swimming pools. The Board may permit open land owned by a home association to be used for individual septic systems or for common septic systems if it, and the Board of Health, is convinced that proper legal safeguards exist for management of a communally owned system.

#### I. Further requirements.

- (1) No use other than residential or recreational shall be permitted.
- (2) No lot shown on a plan for which a permit is granted under this section may be further

subdivided, and a notation to this effect shall be shown upon the plan.

- (3) No certificate of occupancy shall be issued by the Building Commissioner until he has certified to the Planning Board that the premises have been built in accordance with the plan approved by the Board hereunder.
- (4) The Board may impose other conditions, safeguards, or limitations on time and uses, pursuant to its regulations.
- (5) The Board may grant a special permit hereunder for open space residential development even if the proposed development is not subject to the Subdivision Control Law.
- (6) Subsequent to granting of the permit, the Planning Board may permit relocation of lot lines within the open space residential development. However, any change in overall density, street layout, or open space layout will require further hearings.
- (7) Whether or not the open space residential development is a subdivision, all streets and ways, whether public or private, wastewater disposal, drainage facilities, and utilities shall be designed and constructed in compliance with the City of Gardner's Subdivision Rules and Regulations. Special exception(s) to the Subdivision Rules and Regulations may be authorized by the Planning Board in granting a special permit hereunder, provided the Board determines that such exception(s) is in the public interest and is not inconsistent with the purpose of § **675-1170**.

**§ 675-820 In-law apartments.**

It is the intent to provide for the use of a group of rooms in a single family residence as a so-called "in-law apartment" with its own kitchen and bathroom facilities, for the use of a limited number of persons such as in-laws, elderly persons, grown children, or nanny subject to special precautions with respect to privacy, safety, number of occupants, and adequacy of water supply and sewage disposal, where the owner of the apartment is a resident of the premises and where the use of such a group of rooms as an apartment is clearly accessory to the principal use of the premises as a single-family residence. All in-law apartments must comply with the criteria below.

A. The intent of permitting in-law apartments is to:

- (1) Provide homeowners with a means of obtaining rental income, companionship, security and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
- (2) Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to moderate-income households who might otherwise have difficulty finding housing;
- (3) Develop housing units in single-family neighborhoods that are appropriate for households at a variety of stages in their life cycle;
- (4) Provide housing units for persons with disabilities.

B. The Building Commissioner may issue a building permit authorizing the installation and use of an in-law apartment within an existing or new owner-occupied single-family dwelling and the Zoning Board of Appeals may issue a special permit authorizing the installation and use of an in-law apartment in a detached structure on a single-family home lot only when the following conditions are met:

- (1) The apartment will be a complete, separate housekeeping unit containing both kitchen and bath.

- (2) Only one in-law apartment may be created within a single-family house or house lot.
- (3) The owner(s) of the residence in which the accessory unit is created must continue to occupy at least one of the dwelling units as his/her or their primary residence. The building permit or special permit for the accessory apartment automatically lapses if the owner no longer occupies one of the dwelling units.
- (4) Any new outside entrance to serve an in-law apartment shall be located on the side or in the rear of the building.
- (5) The gross floor area of an in-law apartment (including any additions) shall not be greater than 900 square feet.
- (6) An in-law apartment may not be occupied by more than three people.
- (7) Three off-street parking spaces must be available for use by the owner-occupant(s) and tenants.
- (8) The design and room sizes of the apartment must conform to all applicable standards in the health, building, and other codes.
- (9) Building or special permits issued under this section shall specify that the owner must occupy one of the dwelling units. Permits and the notarized letters required in Subsection **B (11)** and **(12)** below must be recorded in the Worcester County Registry of Deeds or Land Court, as appropriate, in the chain of title to the property, with documentation of the recording provided to the Building Commissioner, prior to the occupancy of the in-law apartment.
- (10) Prior to issuance of a building or special permit, the owner(s) must send a notarized letter stating that the owner will occupy one of the dwelling units on the premises as the owner's permanent/primary residence, except for bona fide temporary absences.
- (11) When a structure which has received a building or special permit for an in-law apartment is sold, the new owners, if they wish to continue to exercise the permit, must, within 30 days of the sale, submit a notarized letter to the Building Commissioner stating that they will occupy one of the dwelling units on the premises as their primary residence. This statement shall be listed as a condition on any building and special permits which are issued under this section.
- (12) Prior to issuance of a building permit, a floor plan of 1/4 inch to the foot must be submitted showing the building, including proposed interior and exterior changes to the building.

**§ 675-830 Home occupations.**

A home occupation as defined herein may be established in all residential districts and the Commercial 1 District subject to the following requirements:

- A. Such use shall be clearly secondary to the use of the premises for residential purposes and shall not occupy more than 15% of the total habitable floor area.
- B. Not more than one person other than the residents of the premises shall be engaged in the conduct of the home occupation, whether an employee or otherwise.
- C. No offensive noise, vibration, dust, heat, odors, glare, or unsightliness shall be produced.
- D. There shall be no public display or on-site retail sales of goods or wares.
- E. There shall be no signs except as permitted in Article **IX** of this chapter.
- F. There shall be no exterior storage of material or equipment nor other indication of such use or



variation from the residential character of the premises.

- G. There shall be adequate off-street parking spaces for visitors in connection with the home occupation which do not substantially alter the appearance of the premises as a residence.
- H. Such use does not require the parking of more than three vehicles used by clients, customers, or visitors on a regular basis.
- I. Traffic generated by such use is not inconsistent with traffic usually associated with a single-family residence.

#### **§ 675-840, Senior Residential Development**

##### **A. Purposes.**

The purpose of this article is to provide for a variety of housing types, settings, and residential services to meet the needs of people as they age.

##### **B. Applicability.**

- (1) The Planning Board may grant a Special Permit for a Senior Residential Development in accordance with this Article VIII on any tract of land meeting the following requirements:
  - (a) Two or more acres of land;
  - (b) Minimum of 100 feet of frontage on a public way; and
  - (c) Public water and sewer available at the street frontage, or the ability of developer to extend services to the site as part of project approval.
- (2) A Senior Residential Development is intended for people age 55 or over. As such, buildings and site improvements in a Senior Residential Development shall provide for visibility and universal design in accordance with the provisions of this article.

##### **C. Uses.**

- (1) A Senior Residential Development in the Rural Residence 2, Commercial 2, and Industrial 1 Districts shall include one or more of the following uses:
  - (a) Detached single-family dwellings
  - (b) Two-family dwellings
  - (c) Townhouse dwellings
  - (d) Independent living units
  - (e) Assisted living residence, with or without memory care units
  - (f) Continuing care retirement community, which shall include an assisted living residence and one or more of the other uses listed above, and may include a skilled nursing facility or physical rehabilitation facility with not more than 100 beds.
- (2) A Senior Residential Development in the General Residence 3, Commercial 1, Commercial 2, Industrial 1, and Industrial 2 Districts shall include one or any combination of the following uses:

- (a) Independent living units
  - (b) Assisted living residence, with or without memory care units
  - (c) Skilled nursing facility or physical rehabilitation facility with not more than 100 beds
- (3) An assisted living residence or continuing care retirement community may include the following nonresidential uses, provided that aggregate floor area for the nonresidential uses shall not exceed 10 percent of the total gross floor area of the buildings in the development.
- (a) Retail, up to a maximum of 2,500 sq. ft.
  - (b) Personal services
  - (c) Medical office or clinic
  - (d) Community center or senior center
- (4) A Senior Residential Development may also include the following uses:
- (a) Adult day care center
  - (b) Accessory uses for residents, employees, and guests, such as central or common dining facilities or laundry facilities, or indoor or outdoor recreation facilities
  - (c) Conservation or agricultural uses

D. Basic Requirements.

- (1) A Senior Residential Development shall comply with the following density regulations:

Use	Maximum Density	Max. Building Height (Feet)
Detached single-family dwellings or two-family dwellings	4 units/acre	32
Townhouse dwellings	8 units/acre	32
Independent living units	20 units/acre	55
Assisted living residence	16 units/acre	40

- (2) Maximum building coverage shall not exceed 35 percent of the lot area for new construction or expansion of existing structures.
- (3) For detached single-family dwellings, two-family dwellings, and townhouses, the minimum setback shall be 30 feet from all property lines in the Rural Residence District, and 15 feet in the Commercial 1, Commercial 2, Industrial 1, and Industrial 2 Districts, unless the Planning Board determines that a reduced setback is necessary to achieve the purposes of this section and will not have a detrimental impact on the neighborhood. The minimum setback for an assisted living residence, independent living units, or any buildings in a continuing care retirement community shall be 50 feet in all districts.
- (4) The minimum common open space in the development shall be 30 percent of the lot area, and not more than 15 percent of the required minimum common open space shall consist of wetlands. (5) Minimum off-street parking requirements shall be as follows:

- (a) Detached single-family dwellings, two-family dwellings, or townhouses: 2 spaces per unit
- (b) Independent living units: 1 space per unit
- (c) Assisted living residence: 1 space per two units
- (d) Skilled nursing facility or physical rehabilitation center, if included in a continuing care retirement community: 1 space per two beds
- (e) Guest parking: 1 space per 3 units or 3 beds, as applicable

E. Age-Appropriate Design.

- (1) A Senior Residential Development shall be designed to provide senior housing services in a setting that encourages and supports aging in community they must be “visitable” and age-appropriate by design. At minimum, these terms mean that a Senior Residential Development shall have the following features:
  - (a) At least one zero-step entrance,
  - (b) Doorways with a 36-inch clear passage space,
  - (c) Master bedroom and an accessible bathroom located on the same floor as the kitchen, living room, and dining room, all being on the same floor as the zero-step entrance, and
  - (d) Indoor or structured parking.
- (2) Single-family, two-family, and townhouse units shall provide for:
  - (a) At least one zero-step entrance,
  - (b) Doorways with a 36-inch clear passage space,
  - (c) Master bedroom and an accessible bathroom located on the same floor as the kitchen, living room, and dining room, all being on the same floor as the zero-step entrance, and
  - (d) Indoor or structured parking.
- (3) Independent living units and assisted living facilities shall comply with the accessibility requirements of the Massachusetts Architectural Access Board.
- (4) Outdoor facilities, such as walkways, gardens, and recreation areas, shall be designed for universal access.

F. Development Standards. As part of the Planning Board’s special permit review process, the Board shall evaluate the proposed Senior Residential Development for conformance to the following minimum design standards.

- (1) Architectural planning and design shall incorporate energy efficient design techniques, such as natural heating and cooling systems, use of sun and wind energy generation systems, and so forth.
- (2) Structures located near the project property lines shall be designed and located in a manner that reflects consistency and compatibility with neighboring areas, and shall include appropriate use of building density, heights and design to minimize any intrusion on neighbors.
- (3) Outdoor recreation or gathering areas, particularly those that may generate significant noise and/or light and glare, shall be located to minimize intrusion on neighboring properties.
- (4) Structures shall be clustered to reduce site disturbance and protect open spaces, natural and environmentally sensitive areas.
- (5) Building design shall avoid use of long, unbroken facades, and shall include use of balconies, offset walls, trellises and other design features.

(6) Building design, colors, and materials shall generally correspond to the natural setting of the project site, and to any prevalent design styles that may occur in neighborhoods within the general project area.

(7) The development shall be served by public water and sewer.

#### G. Procedures.

(1) The special permit application, public hearing, and decision procedures shall be in accordance with this article, the Planning Board's Rules and Regulations, and Sections 675-1170 (Special Permits) and Section 675-1020 (Site Plan Review) of this Zoning Code.

(2) The Applicant shall submit a Senior Residential Development special permit and site plan review application together with the size, form, number, and contents of the required plans and any supplemental information as required in this Code and the Planning Board's Rules and Regulations.

#### H. Decision.

(1) The Planning Board may grant a Senior Residential Development special permit and a Site Plan Review Decision with any conditions, safeguards, and limitations it deems necessary to mitigate the project's impact on the surrounding area and to ensure compliance with this article, only upon finding that:

(a) the Senior Residential Development meets the purposes, requirements, and development standards of this Section 675-591 and satisfies the requirements of Section 675-1020 Site Plan Review.

(b) the Senior Residential Development is consistent with the goals of the Community Development or Master Plan.

## Article IX

### Signs and Advertising Devices

#### § 675-910 Definitions.

For the purposes of this article, the following terms shall have the following meanings:

#### **DISPLAY AREA**

The total surface area of the sign. The display area of an individual letter sign or irregular-shaped sign shall be the area of the smallest rectangle into which the letters or shape will fit. Where sign faces are placed back to back and face in opposite directions, the display area shall be defined as the area of one face of the design.

#### **ERECTING**

Any constructing, relettering, extending, altering or changing of a sign other than repainting, repairing and maintaining.

#### **SIGN and ADVERTISING DEVICE**

Any symbol, design or device used to identify or advertise any place of business, product, activity, or person.

§ 675-920 **General regulations.**

The following regulations shall apply in all districts:

- A. No exterior sign or advertising device shall be erected except as provided by this chapter.
- B. No sign that requires a sign permit under this chapter shall be erected except in the exact location and manner described in the permit.
- C. No sign shall be erected that in any way creates a traffic hazard or obscures or confuses traffic control.
- D. Signs shall not be illuminated between the hours of 11:00 p.m. and 7:00 a.m. unless related to an establishment operating during those hours.
- E. The illumination from any sign shall be shaded, shielded, directed, and maintained at a sufficiently low intensity and brightness that it shall not affect the safe vision of operators of vehicles moving within the premises or on any adjacent public or private way.
- F. Any sign that advertises or identifies products, businesses, services or activities that are no longer sold, located, or carried on at the premises shall be removed within 60 days after written notice by the Building Commissioner.
- G. No sign shall be erected with any part closer than 10 feet to the traveled roadway or side or rear yard lot lines.

§ 675-930 **Sign permits.**

No signs that require a sign permit shall hereafter be constructed except in conformity with a sign permit from the Building Commissioner.

- A. Applicability. All signs shall require a sign permit, except as provided in § **675-950**.
- B. Application.
  - (1) All applications for signs requiring a sign permit shall be obtained from the Building Commissioner and shall include at least:
    - (a) The location, by street number, of the proposed sign;
    - (b) The name and address of the sign owner and the owner of the premises where the sign is to be located, if other than the sign owner;
    - (c) A scale drawing showing the proposed construction, method of installation or support, materials, colors, dimensions, location of sign on the site, and the method of illumination; and
    - (d) Such other pertinent information as the Building Commissioner may require to ensure compliance with this chapter and other applicable law.
  - (2) The application must be signed by the owner and the owner of the premises where the sign is to be located.
  - (3) The Building Commissioner shall have the authority to reject any sign permit application that is not completed when submitted.
- C. Time limitations. The Building Commissioner shall approve or disapprove any application for a sign permit within 30 days of receipt of the application. If the Building Commissioner should fail to

approve or disapprove an application for a sign permit within the thirty-day period, the application shall be deemed to be approved.

- D. Fees. The City Council shall establish, and from time to time review, a sign permit fee, which shall be published as part of the sign permit application.

**§ 675-940 Signs prohibited in all districts.**

- A. Except as provided in § **675-960**, the following are prohibited:

- (1) All billboards, signs on utility poles, trees, or fences, and all signs not located on the same premises as the advertised activity, business, product, or person.
- (2) All signs consisting of pennants, ribbons, streamers, spinners, revolving beacons or animated skies.
- (3) Mobile signs. Signs that are placed on a chassis or that are designed to be taken from site to site are not allowed.
- (4) Portable signs. Signs on sidewalks that swing freely.

- B. No sign shall flash, rotate, or make noise. No sign shall move or give the illusion of moving, except for indications of time and temperature or barber poles.

- C. No roof signs shall be erected except those roof signs placed at least one foot below the top of the lower slope of a mansard roof.

**§ 675-950 Signs not requiring sign permit.**

The following do not require a sign permit:

- A. Resident identification sign. For single- and two-family dwellings in any district, one identification sign upon a lot identifying the occupants shall not require a sign permit. In the residential districts, one sign identifying any other use which is conducted on the premises and is permitted in the residential districts. All such signs shall not exceed two square feet of display area and, if lit, shall use indirect white light only.
- B. Government signs. Signs erected and maintained by the City of Gardner, the Commonwealth of Massachusetts, or the federal government on any land, building, or structure used by such agencies.
- C. Temporary construction signs. One temporary construction sign for a new project identifying the building, the owner or intended occupant and the contractor, architect and engineers, which shall not be illuminated nor more than 32 square feet of display area. Such signs shall not be erected prior to the issuance of a building permit and shall be removed within seven days of completion of the construction or issuance of the occupancy permit, whichever comes first.
- D. Fuel pump signs. Fuel pump signs on service station fuel pumps identifying the name or type of fuel and price thereof.
- E. Window signs. Window signs in commercial or industrial districts shall not require a sign permit, provided that the aggregate display surface of all signs covers no more than 30% of the window or door on which they are placed. Such signs shall not be illuminated other than by lighting fixtures on the building.
- F. Political signs and posters. Political signs and posters are allowed on private property.
- G. Real estate signs. Real estate signs are allowed for a period up to 30 days beyond the closing of a sale. Signs shall be no more than 3 square feet in area in single family residential districts and 12

square feet in area in multi-family, commercial and industrial districts.

- H. Product display. Displaying products sold on the premises in commercial or industrial districts shall not require a sign permit; provided, however, that all other promotional and pricing information is centrally located on permitted signs and not affixed to the displayed products. No displayed product shall be located on publicly owned land, sidewalks, parking areas or traveled ways.
- I. Public service signs. A sign not exceeding two square feet to recognize an entity performing a service at no cost to the public, such as beautification of a public way or public building. Public service signs shall only identify the name of the entity performing the service and shall not advertise, identify or promote any product, person, premises, or activity. No public service sign shall be located more than six feet above ground level if mounted on a wall of a building or more than 3 1/2 feet above the ground if freestanding. Such sign shall be removed within seven days after termination of service.
- J. Temporary handwritten signs. Signs of this type may not cover more than 20% of window and door areas and are not allowed to remain in place for a period longer than 30 days.
- K. Standing signs. One standing sign ("sandwich board"), announcement board, or public information sign, not exceeding 12 square feet, shall be allowed for notices and announcements of services and events. Such signs must be located within the required front yard. No standing sign shall be located on publicly owned land, sidewalks, parking areas or traveled ways unless a license or other form of written permission is granted by the City of Gardner and does not impede public access and circulation. Said signs shall be removed daily and not left on public land overnight.

**§ 675-960 Temporary sign permit.**

The following signs and advertising devices shall require a no-charge temporary sign permit. The life of this permit shall be 30 days. One reissuance of a temporary sign permit will be allowed at the discretion of the Building Commissioner.

- A. Public event signs for an event sponsored by an organization and open to the public. Such signs shall be removed within five days after the event.
- B. Changeable letter signs. A mobile sign, with or without wheels, upon which the letters and/or lighting can be changed. These shall be allowed only to announce the opening of an event, establishment, or promotional activity.
- C. Pennants, banners, balloons, flags, and searchlights. Such advertising devices shall be allowed only to announce the opening of an event, establishment, or promotional activity.

**§ 675-970 Signs permitted in commercial or industrial districts.**

Any principal use permitted in the commercial or industrial districts may erect a sign or signs subject to the following:

- A. Wall sign or individual letter sign. A wall sign or individual letter sign shall not exceed four feet in height. A wall sign or individual letter sign on the exterior wall of the first floor of a building shall not exceed in area two square feet for each linear foot of the wall or 80 square feet, whichever is less. The length of signs of establishments occupying other than the first floor of a building shall not exceed six feet. No portion of a wall sign or individual letter sign shall project more than one foot from the face of the wall or above the wall of any building. In no case shall a sign project above a parapet wall. An establishment may divide the entire display area permitted herein into separate wall signs or individual letter signs, provided that the maximum height of each separate sign does not exceed the maximum height permitted herein and the sum of the aggregate width and area of each separate sign does not exceed the maximum permitted herein.

- B. Secondary signs. If an establishment has a direct entrance into the establishment in a wall other than the front wall, there may be a secondary sign affixed to such wall, and if an establishment has a wall, other than the front wall, that faces upon a street or parking area, there may be a secondary sign affixed to such a wall; provided, however, that no establishment shall have more than two secondary signs in any event. This display area of all secondary signs shall not exceed one square foot for each linear foot of the walls or 40 square feet, whichever is less.
- C. Directory signs. One exterior directory sign listing the name and location of the occupants of the premises may be erected on the exterior wall or pole of a building at each entrance or other appropriate location, provided that the display area shall not exceed one square foot for each occupant identified on the directory sign.
- D. Directional signs. Directional signs may be erected near a street, driveway, or parking area if necessary for the safety and direction of vehicular or pedestrian traffic. The display area of each directional sign shall not exceed two square feet, and no directional sign shall be located more than six feet above the ground level if mounted on a wall of a building or more than 3 1/2 feet above the ground if freestanding. Directional signs shall not advertise, identify, or promote any product, person, premises, or activity but may identify the street name/number and provide directions.
- E. Freestanding establishment signs. One freestanding establishment sign which identifies only the name of an establishment center or an establishment may be erected on a lot. The display area of a freestanding establishment sign shall not exceed 50 square feet and the height shall not exceed 15 feet, with a maximum seven feet six inches clearance above the grade.
- F. Awning signs. Awning signs are permitted, if sign lettering does not occupy more than 30% of the awning area. Awnings must be placed at a minimum of seven feet six inches from the surface of the sidewalk.
- G. Perpendicular signs. One projecting, or perpendicular, sign may be erected within five feet of the establishment's entrance and must be erected no less than 10 feet from the ground level, at the base of the building above a sidewalk to the bottom of the sign, so long as public safety is not endangered, and no more than 20 feet from the ground level to the top of the sign. Such sign shall not extend above the building, nor be more than eight square feet in area and, when combined with any existing alternative signage, shall not exceed a total of 80 square feet. All perpendicular signs must be externally lit from the top and shine downward.

**§ 675-980 Special regulations for signs in historic areas.**

Signs erected in duly authorized historic districts and signs erected on sites listed on the National Historic Register or the State Register of Historic Places shall comply with the following requirements:

- A. Signs shall be designed to complement the historic character of the district or site. No sign shall obscure contributing architectural features of historic structures, including but not limited to cornices, lintels, transoms, windows, and doors.
- B. Wall sign or individual letter sign. A wall sign or individual letter sign shall not exceed four feet in height. A wall sign or individual letter sign on the exterior wall of the first floor of a building shall not exceed in area one square foot for each linear foot of the wall or 40 square feet, whichever is less. The length of signs of establishments occupying other than the first floor of a building shall not exceed six feet. No portion of a wall sign or individual letter sign shall project more than one foot from the face of the wall or above the wall of any building. In no case shall a sign project above a parapet wall. An establishment may divide the entire display area permitted herein into separate wall signs or individual letter signs, provided that the maximum height of each separate sign does not exceed the maximum height permitted herein and the sum of the aggregate width and area of each separate sign does not exceed the maximum permitted herein.



- C. Secondary signs. If an establishment has a direct entrance into the establishment in a wall other than the front wall, there may be a secondary sign affixed to such wall, and if an establishment has a wall, other than the front wall, that faces upon a street or parking area, there may be a secondary sign affixed to such a wall; provided, however, that no establishment shall have more than two secondary signs in any event. The display area of all secondary signs shall not exceed one square foot for each two linear feet of walls or 30 square feet, whichever is less.
- D. Awnings. Awning signs are permitted, if sign lettering does not occupy more than 20% of the awning area. Awnings must be placed a minimum seven feet six inches from the surface of the sidewalk.
- E. Commodity/trademark signs. Such signs are prohibited in historic districts and on historic structures.
- F. Freestanding establishment sign. One freestanding establishment sign which identifies only the name of an establishment center or an establishment may be erected on a lot, provided that no other sign(s) permitted under this chapter other than directory or directional signs shall be on the same lot. The display area of a freestanding establishment sign shall not exceed 20 square feet and the height shall not exceed six feet six inches, with a maximum three feet six inches clearance above the grade.
- G. Perpendicular signs. One projecting, or perpendicular, sign may be erected within five feet of the establishment's entrance and must be erected no less than 10 feet from the ground level at the base of the building above a sidewalk to the bottom of the sign, so long as public safety is not endangered, and no more than 20 feet from the ground level to the top of the sign. Such sign shall not extend above the building, nor be more than eight square feet in area and, when combined with any existing alternative signage, shall not exceed a total of 40 square feet. All perpendicular signs must be externally lit from the top and shine downward.

§ 675-990 **Nonconforming signs.**

- A. Continuance. A nonconforming sign, lawfully existing at the time of adoption of or subsequent amendment to this chapter, may continue its nonconforming use although such sign does not conform to the provisions of this article; provided, however, that if such nonconforming sign is expanded, extended, enlarged or relocated in any manner, it must then conform to the provisions of this article, provided further that the exemption provided in this section shall terminate in the event that such nonconforming sign:
  - (1) Shall not have been refaced by a new or subsequent establishment occupying the premises for a period of one year; or
  - (2) Shall not have been repaired or made safe within the time frame of a written notice to that effect from the Building Commissioner.
- B. Maintenance. Any lawfully existing sign may be maintained, repaired, or repainted. No lawfully existing sign shall be expanded, extended, or enlarged in dimension or use unless it conforms to the provisions of this article or the owner of such sign has obtained a lawful variance therefrom.
- C. Replacement. The face of any legally existing nonconforming sign, pursuant to the exemption provided by Subsection A of this section, may be replaced with a new face; provided, however, that such replacement shall not expand, extend or enlarge the dimensions of use of such sign or change the location of the existing nonconforming sign. Any sign that replaces a nonconforming sign not exempted by Subsection A of this section shall conform to the provisions of this article, and such nonconforming sign shall not be displayed on the premises. If a legally existing nonconforming sign exempted under Subsection A of this section is destroyed by vandalism or other reason beyond the control of the owner or subsequent owner, it may be replaced with a sign of the same dimensions and use or restored to its original condition within one year.

## Article X Supplemental Regulations

### § 675-1010 **Site plan review.**

- A. Purpose. The purpose of this section is to protect the health, safety, convenience and general welfare of the inhabitants of the City of Gardner by providing for a review of plans for uses and structures which may have significant impacts on traffic, municipal buildings and public services and utilities, environmental and design quality, community economics and community values in the City.
- B. Applicability. The site plan review and approval provisions of this section shall apply to the following types of structures and uses (excluding detached single-family and two-family dwellings):
- (1) Any new structure or group of new structures that consists of 2,500 square feet or more of gross floor area under the same ownership on the same or contiguous lots.
  - (2) Any improvement, alteration or change in use which results in an increase of 2,500 square feet or more of gross floor area.
  - (3) Requires an addition of 15 or more new parking spaces under the requirements of this chapter.
  - (4) Any improvement, alteration, change in use or new structure or group of new structures under the same ownership on the same lot or contiguous lots which is expected to generate, in the opinion of the Planning Board, 500 or more vehicle trips per weekday.
  - (5) All adult uses.
  - (6) All development in the Development Overlay District over 2,500 square feet.
  - (7) All development proposed under the Smart Growth PUD.
  - (8) All developments proposed under the Industrial and Commercial Heritage PUD.
  - (9) All marijuana establishments
  - (10) Any use or structure proposed that includes a drive thru window component where patrons can conduct business or transactions.
- C. Basic requirements.
- (1) Notwithstanding anything contained in this chapter to the contrary, no person shall undertake any use or improvement subject to this section unless a site plan review approval has been issued by the Planning Board for the proposed development in accordance with requirements of this section.
  - (2) The Building Commissioner shall have the authority to enforce compliance with this provision and with the site plan resulting from this process.
  - (3) The Planning Board may waive specific submission requirements of a site plan review upon demonstration by the applicant that a requirement is not necessary or inapplicable to the applicant's project.
  - (4) If the proposed development is on property that was subject to a Zoning map amendment accompanied by a sketch or concept plan pursuant to Section 675-1160. B., the site plan submission should include a statement as to the development's consistency with said sketch or concept plan and an explanation as to the reasons for any variation, if any,

- D. Application and review procedure. The following describes the process through which a site plan review will be undertaken. In all cases, an application shall not be accepted nor considered officially submitted until all requirements of the application have been met. For a definitive plan, a written determination of completeness of the application shall be made by the Department of Community Development and Planning (DCDP) within five working days of the time the application is presented to the Department. The date of determination of completeness shall be the formal date of submission.
- (1) Step One: Preparation of Preliminary Development Plan. The applicant shall first submit 10 copies of a preliminary plan to the Director of Community Development and Planning. The intent of this submittal is to permit a full understanding of the plan and implementation approaches before detailed design and planning occur. The applicant is required to submit 10 copies of the following to the Director of Community Development and Planning (DCDP):
    - (a) A graphic and written description of the conceptual plan for site and building use improvements and functional/visual character.
    - (b) A tentative diagrammatic plan of property subdivision, to include identification of public/private access ways and services and common open spaces.
    - (c) A description of the potential impacts upon the environment and the neighborhood and, as appropriate, identification of mitigating solutions.
    - (d) A summary of proposed uses and phasing parameters.
  - (2) Step Two: Preliminary Plan Conference. The information submitted to the DCDP will be distributed to the Development Review Committee, relevant agencies, and consultants for review. Within 15 working days, a preliminary plan conference will be held with both the applicant's representative and public staff present. Additional meetings, as required, may be called. The purpose of the meeting will be to obtain an explanation of the proposed project, to gain substantive reactions from the public representatives, and to determine agreement on detailed approaches and submittal requirements for the definitive development plan. A report of the findings of the conference will be prepared by the public representatives and submitted to the applicant. This report will confirm the specific requirements for the project application and will normally occur within 10 working days.
  - (3) Step Three: Definitive Development Plan.
    - (a) The approved product of this phase is 10 copies of a final subdivision plan and/or comprehensive design master plan, implementation strategy and program. The subdivision plan aspect will be satisfied by formal submittal of drawings and data in accordance with rules specified in the current Subdivision Rules and Regulations.
      - [1] The design master plan description must be in sufficient detail that construction could be completed without major adjustments. Schematic design and engineering drawings of professional quality will be submitted; narrative and outlined specifications of design and construction standards will usually be required. Depending on the environmental and contextual significance of the site and project, landscaping and exterior architectural treatments may be required for presentation in rendered site plans, building elevations, and site/building cross sections.
      - [2] If required by the DCDP, submittals concerning environmental, traffic, fiscal and neighborhood impacts will be presented (as per Subsection E), as well as final summary of project implementation and phasing strategy.
      - [3] Immediately after receipt of this submittal, portions will be circulated to relevant agencies (and consultants), followed by a review conference. To the extent that

individual portions must be modified to achieve staff endorsement, additional applicant work time and smaller review meetings may be called.

[4] Upon achieving staff approval and agreement, an acceptable performance guarantee will be posted to secure the applicant's completion of proposed site improvements.

[5] Responsible staff heads will then prepare a summary of departmental comments/endorsements and assist the applicant to route all related materials to the Planning Board via the City Clerk.

[6] The Planning Board shall schedule a public hearing and initiate internal Board review at the earliest convenient date.

(b) The Planning Board shall hold a public review meeting on any properly completed application within 35 days after the date of submission of the definitive plan. Said meeting shall be advertised by at least one printing in a local newspaper.

(c) In reviewing the impacts of a proposed development, the Planning Board shall consider the information presented in the application for site plan review; all reports of City departments submitted to the Planning Board; and any additional information available to the Planning Board, submitted to the Planning Board by any person, official or agency or acquired by the Planning Board on its own initiative or research.

(d) The Planning Board shall have 90 days from the date of definitive plan submission in which to approve or not approve the site plan. Additional review time may be established at the request of the developer.

E. Contents and scope of applications. An application for a site plan review under this section shall be prepared by qualified professionals, including a registered professional engineer, a registered architect and/or registered landscape architect, and shall include the following items and information:

(1) A site plan at a scale of one-inch equals 20 feet or such other scale as may be approved by the planning staff, indicating water service, sewer, waste disposal, and other public utilities on and adjacent to the site. For convenience and clarity, this information may be shown on one or more separate drawings.

(2) A landscape plan at the same scale as the site plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements, including planning areas.

(3) An isometric line drawing (projection), at the same scale as the site plan, showing the entire project and its relation to existing areas, buildings and roads for 100 feet from the project boundaries.

(4) A locus plan at a scale of one-inch equals 100 feet showing the entire project and its relation to existing areas, buildings and roads for a distance of 1,000 feet from the project boundaries, or such other distance as may be approved or required by the Planning Board.

(5) Building elevation plans at a scale of 1/4-inch equals one foot or 1/2-inch equals one foot showing all elevations of all proposed buildings and structures and indicating the type and color of materials to be used on all facades.

(6) A City-wide location map at one-inch equals 1,000 feet showing the property lines of the project, City boundaries, major streets, or other factors as may be deemed relevant for the Planning Board to analyze the project within the scope of the Master Plan.

- (7) In cases where the DCDP or Planning Board determines there is significant impact upon the community, a development impact statement is required. This statement shall describe potential impacts of the proposed development, compare them to the impacts of uses which are or can be made of the site without a requirement for site plan review, identify all significant positive or adverse impacts, and propose an acceptable program to prevent or mitigate adverse impacts. The DCDP, at its discretion and based on a preliminary assessment of the scale and type of development proposed, may waive or modify the requirements for submission of any of the elements of the development impact assessment listed in this Subsection **E (7)**. Such waiver shall be issued in writing with supporting reasons. The development impact statement may consist of any and all of the following four elements:
- (8) In cases where the DCDP or Planning Board determines there is significant impact upon the community, a Development Impact Statement is required the applicant may be required to post a deposit of sufficient funds for the Planning Board to engage outside consultant(s) to perform peer review of the plans, reports, and other material submitted in support of the application.
- (a) Traffic impact assessment.
- [1] Purpose. To document existing traffic conditions near the proposed project, to describe the volume and effect of projected traffic generated by the proposed project, and to identify measures proposed to mitigate any adverse impacts on traffic.
- [2] Format and scope.
- [a] Existing traffic conditions. Average daily and peak hour volumes, average and peak speeds, sight distances, accident data, and levels of service (LOS) of intersections and streets likely to be affected by the proposed development. Generally, such data shall be presented for all streets and intersections adjacent to or within 1,000 feet of the projected boundaries.
- [b] Projected traffic conditions for design year of occupancy. Statement of design year of occupancy, background traffic growth on an annual average basis, and impacts of proposed developments which have already been approved in part or in whole by the City.
- [c] Projected impact of proposed development. Projected peak hour and daily traffic generated by the development of roads and ways in the vicinity of the development; sight lines at the intersections of the proposed driveways and streets; existing and proposed traffic controls in the vicinity of the proposed development; and projected post-development traffic volumes and levels of service of intersections and streets likely to be affected by the proposed development, as defined in Subsection E(7)(a)[2][a].
- (b) Environmental impact assessment.
- [1] Purpose. To describe the impacts of the proposed development with respect to on-site environmental quality.
- [2] Format and scope.
- [a] Identification of potential impacts. Description of evaluation of potential impacts on the quality of air, surface water, and groundwater adjacent to or directly affected by the proposed development; on-site or off-site flooding, erosion and/or sedimentation resulting from alterations to the project site, including grading changes and increases in impervious areas; on-site or off-site hazards from radiological emissions or other hazardous materials; adverse impacts on temperature and wind conditions on the site

and adjacent properties; impacts on solar access of adjacent properties; and off-site noise or light impacts.

- [b] Systems capacity. Evaluation of the adequacy of existing or proposed systems and services for water supply, sewage, storm drainage and solid waste disposal.
- [c] Proposed mitigation measures. Description of proposed measures for mitigation of any potential adverse impacts identified above.

(c) Fiscal impact assessment.

- [1] Purpose. To evaluate the fiscal and economic impacts of the proposed development on the City.
- [2] Format and scope.
  - [a] Projections of costs arising from increased demands for public services and infrastructure.
  - [b] Projections of benefits from increased tax revenues, employment (construction and permanent), and value of public infrastructure to be provided.
  - [c] Projections of the impacts of the proposed development on the values of adjoining properties.
  - [d] Five-, seven- and ten-year projections of increased City revenues and costs resulting from the proposed development.

(d) Community impact assessment.

- [1] Purpose. To evaluate the impact of the proposed development with respect to the City's visual and historic character and development goals.
- [2] Format and scope.
  - [a] Site design and neighborhood impact. Evaluation of the relationship of the proposed new structures or alterations to nearby preexisting structures in terms of character and intensity of use (e.g., scale, materials, color, door and window size and locations, setbacks, roof and cornice lines, and other major design elements) and of the location and configuration of proposed structures, parking areas, and open spaces with respect to neighboring properties.
  - [b] Historic impact. Identification of impacts on significant historic properties, districts or areas or archaeological resources (if any) in the vicinity of the proposed development.

F. Development impact standards. The following standards shall be used in evaluating projected impacts of all major projects and for small projects when relevant. "Required" standards must be met by all developments subject to this section. "Recommended" standards are set forth as guidelines to both the Planning Board and applicants and are not intended to be inflexible requirements nor to discourage creativity and innovation.

(1) Traffic impact standards.

- (a) Required. The level of service (LOS) of all impacted intersections and streets shall be adequate following project development. For purposes of this standard:
  - [1] Level of service (LOS) shall be determined according to criteria set forth by the

Transportation Research Board of the National Research Council;

- [2] "Impacted" means located within 1,000 feet of the closest boundary of the project to receive at least 5% of the anticipated average daily or peak hour traffic generated by the proposed development;
  - [3] "Adequate" shall mean a level of service of "B" or better for rural, scenic and residential streets and for all new streets and intersections to be created in connection with the project and "D" or better for all other streets and intersections to the extent feasible; and
  - [4] The Planning Board shall not deny a project if the LOS of "D" or worse is not caused by the proposed development but shall apply conditions that lessen the impact of the project on the LOS to the extent feasible.
- (b) Recommended. The proposed site plan shall minimize points of traffic conflict, both pedestrian and vehicular. The following guidelines shall be used to achieve this standard:
- [1] Entrance and exit driveways shall be so located and designed as to achieve maximum practicable distance from existing and proposed access connections from adjacent properties.
  - [2] Where possible, driveways shall be located opposite similar driveways.
  - [3] Sharing of access driveways by adjoining properties and uses is encouraged.
  - [4] Left-hand turns and other turning movements shall be minimized.
  - [5] Driveways shall be so located and designed as to discourage the routing of vehicular traffic to and through residential streets.
  - [6] Pedestrian and bicycle circulation shall be separated from motor vehicle circulation as far as practicable.
- (2) Environmental impact standards.
- (a) Required.
- [1] The proposed development shall not create any significant emission of noise, dust, fumes, noxious gases, radiation, or water pollutants, or any other similar significant adverse environmental impact.
  - [2] The proposed development shall not increase the potential for erosion, flooding, or sedimentation, either on site or on neighboring properties, and shall not increase rates of runoff from the site, to the satisfaction of the City Engineer and Department of Public Works. Provision for attenuation of runoff pollutants and for groundwater recharge shall be included in the proposal.
  - [3] The design of the proposed development shall minimize the destruction of unique natural features.
  - [4] The location and configuration of proposed structures, parking areas and open space shall be designed to minimize any adverse impact on temperature levels or wind velocities on the site or adjoining properties.

- [5] Outdoor lighting, including lighting on the exterior of a building or lighting in parking areas, shall be arranged to minimize glare and light spillover to neighboring properties.
- [6] An unbroken yard space not less than 10 feet in depth shall be established all along the entire perimeter of the lot on which a multifamily dwelling is located. Such yard space shall be planted and maintained by the multifamily dwelling owner. In such yard space, there shall be no off-street parking or driveway except a driveway crossing that part of such yard space as is bordered by a street.
- [7] Any multifamily dwelling constructed near a municipal boundary must be protected by a buffer zone from an incompatible use in adjacent land in the neighboring municipality. A one-hundred-foot natural or landscaped buffer zone shall be constructed and maintained by the multifamily dwelling owner if the land in the neighboring municipality is used or zoned for commercial or industrial purposes. The buffer zone must function as a physical barrier to suitably minimize noise and to provide a visual screen adjacent commercial and/or industrial zones. It may consist of existing or natural vegetation, selective planting, earth berms, fences, or a combination of these arranged in a manner to enhance the aesthetic value of the area.

(b) Recommended.

- [1] Proposed structures and existing structures adjoining the project shall be free from shadows created by the proposed development from 9:00 a.m. to 3:00 p.m. on December 21. Proposed development within the Central Business District shall be exempt from this standard.
- [2] All outdoor lighting shall be designed and located so that a line drawn from the height of the luminary along the angle of cutoff intersects the ground at a point within a development site, except that this requirement shall not apply to:
  - [a] Low-level intensity pedestrian lighting with a height of less than 10 feet; or
  - [b] Security lighting directed off the wall of a principal structure.

(3) Fiscal impact standards.

- (a) Required: none.
- (b) Recommended. Projected positive net fiscal flow of first five years after design year of occupancy.

(4) Community impact standards.

- (a) Required.
  - [1] Design elements shall be compatible with the character and scale of neighboring properties and structures. Buildings should have human scale architectural features and patterns. The elements should be integral parts of the building fabric and not superficially applied trim or graphics or paint. Facades visible from a public way should be articulated or use other techniques to reduce the massive scale and the uniform appearances of large retail buildings.
  - [2] Variations in rooflines and roof features should be used to add variety to, and reduce the massive scale of, large buildings.



- [3] Exterior building materials and colors should complement materials and colors used in adjoining neighborhoods.
  - [4] Large retail buildings should feature multiple entrances. Multiple building entrances break up large walls, reduce walking distances from cars, facilitate pedestrian and bicycle access from public sidewalks, and provide convenience where certain entrances offer access to individual stores or identified departments of a store. Entryway design elements and variations should give orientation and definition to the building.
  - [5] The design of the development shall minimize the visibility of visually degrading elements such as trash collectors, loading docks, etc.
  - [6] The design of the development shall be consistent or compatible with existing local plans, including plan elements adopted by the Planning Board, Conservation Commission, and other City bodies having such jurisdiction.
  - [7] The design of the development shall minimize the area over which existing vegetation is to be removed. The removal shall be minimized and, if established trees are to be removed, special attention shall be given to the planting of replacement trees.
- (b) Recommended.
- [1] Facades and exterior walls and details.
    - [a] Building facades must include a repeating pattern that shall include color change, texture change, and materials change. At least one of these elements shall repeat horizontally. All elements shall repeat at intervals of no more than 30 feet, either horizontally or vertically. Patterns can include architectural or structural bays through a change in plane no less than 12 inches in width, such as an offset, reveal, or projecting rib.
    - [b] Facades visible from a public way greater than 100 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least 3% of the length of the facade, so that no uninterrupted facade shall exceed 100 horizontal feet, or incorporate other types of articulation, facades, displays, or texture which meets the above standard without forcing structural changes to the core "big box."
    - [c] Ground floor facades that face public streets shall have arcades, display windows, entry areas, awnings, or other such features along no less than 60% of their horizontal length.
  - [2] Roofs shall have no fewer than two of the following features:
    - [a] Parapets concealing flat roofs and rooftop equipment such as HVAC units from public view. The average height of such parapets shall not exceed 15% of the height of the supporting wall, and such parapets shall not at any point exceed 1/3 of the height of the supporting wall. Such parapets shall feature three-dimensional cornice treatments.
    - [b] Overhanging eaves extending no less than three feet past the supporting walls.
  - [3] Materials and colors. Predominant exterior building materials shall be high-quality materials and include, but not be limited to, brick, wood, sandstone, native stone, and tinted, textured, and concrete masonry units. Facade colors shall be low reflectance,

neutral or earth-tone colors. Building trim and accent areas may feature brighter colors, including primary colors.

- [4] Entrances and entryways. The sides of a principal building that face an abutting public street or large parking lot should have at least one customer entrance or a pedestrian arcade that brings pedestrians around the building to the entrance. Each principal building and each store within a building must have at least one clearly defined, highly visible customer entrance, featuring no fewer than three of the following: canopies or porticos, overhangs, recesses/projections, arcades, raised corniced parapets over the door, peaked roof forms, arches, outdoor patios, display windows, architectural details which are integrated into the building structure (such as tile work and moldings), or integral planters or wing walls that incorporate landscaped areas and/or places for sitting.
- [5] Outdoor storage, trash collection, and loading areas. Appropriate locations for loading and outdoor storage areas include areas between buildings, where more than one building is located on a site and such buildings are not more than 40 feet apart, or on those sides of buildings that do not have customer entrances. Areas for outdoor storage, truck parking, trash collection or compaction, loading, or other such uses shall not be visible from abutting streets. No areas for outdoor storage, trash collection or compaction, loading, or other such uses shall be located within 20 feet of any public street, public sidewalk, or internal pedestrian way. Loading docks, truck parking, outdoor storage, utility meters, HVAC equipment, trash collection, trash compaction, and other service functions shall be incorporated into the overall design of the building and the landscaping so that the visual and acoustic impacts of these functions are fully contained and out of view from adjacent properties and public streets, and no attention is attracted to the functions, by the use of screening materials that are different from or inferior to the principal materials of the building and landscape. Non-enclosed areas for the storage and sale of seasonal inventory shall be permanently defined and screened with walls and/or fences.
- [6] Pedestrian flows. Standard: sidewalks and internal pedestrian circulation systems should provide user-friendly pedestrian access as well as pedestrian safety, shelter, and convenience. Sidewalks at least five feet in width shall be provided along all sides of the lot that abut a public street. Continuous internal pedestrian walkways, no less than five feet in width, shall be provided from the public sidewalk or right-of-way to the principal customer entrance of all principal buildings on the site. At a minimum, walkways shall connect focal points of pedestrian activity, such as, but not limited to, transit stops, street crossings, and building and store entry points, and shall feature adjoining landscaped areas that include trees, shrubs, benches, flowerbeds, ground covers, or other such materials for no less than 50% of their length. All internal pedestrian walkways shall be distinguished from driving surfaces using durable, low-maintenance surface materials such as pavers, bricks, or scored concrete to enhance pedestrian safety and comfort as well as the attractiveness of the walkways.
- [7] Delivery/loading. Delivery and loading operations should not disturb adjoining neighborhoods or other uses. No delivery, loading, trash removal or compaction, or other such operations shall be permitted between the hours of 10:00 p.m. and 7:00 a.m. unless the applicant submits evidence that sound barriers between all areas for such operations effectively reduce noise emissions to that which will not disturb adjoining residential uses or residentially zoned areas.

G. Specific findings required. Prior to granting approval or disapproval of the site plan review application, the Planning Board shall make written findings with supporting documentation as

specified below.

(1) Approval.

- (a) The Planning Board may recommend approval of an application, based on its review of the projected development impacts and the proposed methods of mitigating such impacts, if it finds that the proposed development is in conformance with this chapter and that:
  - [1] The traffic-carrying capacity of the intersections and streets likely to be affected by the proposed development will meet the standards set forth in Subsection **F (1)**.
  - [2] The proposed development will comply with the environmental impact standards set forth in Subsection **F (2)**.
  - [3] The planned capacities of public facilities, such as water supply, sewage and drainage systems, are adequate near the site to serve the proposed development.
  - [4] The proposed development will comply with the community impact standards set forth in Subsection **F (4)**.
- (b) Such findings shall pertain to the entire proposed development, including any site plan or design modifications requested by the Planning Board as a condition of its approval, and any off-site improvements proposed by the applicant or required by the Planning Board as a condition of its approval.

(2) Disapproval.

- (a) The Planning Board may disapprove an application where it determines that the site plan fails to furnish adequate information on various considerations imposed by this section as conditions of approval of the plan.
- (b) Notwithstanding the above, the Planning Board may approve an application if the adverse impacts of the proposed development are not significantly greater than the impacts of uses which are or can be made of the site under existing laws and regulations without a requirement for a site plan review.

H. Conditions, limitations and safeguards. In granting approval of an application, the Planning Board may impose conditions, limitations and safeguards which shall be in writing and shall be part of such approval. Such conditions may include, among other matters and subjects:

- (1) Conditions on the location and type of access to the site.
- (2) Conditions on the number of vehicles that arrive or depart during the morning and/or evening peak hours (including controls on the maximum number of vehicles which may use the off-street parking areas during said periods).
- (3) Conditions for off-site improvements to improve the capacity and safety of roads, intersections, pedestrian ways, water and sewer, drainage and other public facilities which are likely to be affected by the proposed development.
- (4) Conditions that may require donation and/or dedication of land for right-of-way to provide for future roadway and/or intersection widening or improvements.
- (5) Conditions for securing and performance of all proposed work, including proposed improvements, by either or both of the following methods:

- (a) A performance bond, a deposit of money, letter of credit acceptable to the City Treasurer, or bank passbook in an amount determined by the Planning Board to be sufficient to cover the cost of all or any part of the improvements required as conditions of approval. In all such cases, the Planning Board will not accept any form of security that has an expiration date, unless provisions are made to guarantee the City's performance security beyond the date of expiration.
  - (b) A covenant running with the land, executed and duly recorded by the owner of record, whereby the required improvements shall be completed before the property may be conveyed by other than a mortgage deed.
- (6) Conditions to minimize off-site impacts on traffic and environmental quality during construction.

I. Administration.

- (1) The Planning Board shall establish and may periodically amend rules and regulations relating to the administration of this section, including additional regulations relating to the scope and format of reports required hereunder and provisions for the payment of outside consultant to perform peer review.
- (2) The Planning Board shall establish and may periodically amend a schedule of fees for all applications under this section. No application shall be considered completed unless accompanied by the required fees.
- (3) The Planning Board shall be responsible for deciding the meaning or intent of any provision of this section which may be unclear or in dispute.

§ 675-1020 **Adult uses.**

- A. Purpose and intent. In the development and execution of this section, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized within this section. The primary control or regulation is for preventing a concentration of these uses in any one area (i.e., not more than two such uses within 750 feet of each other which would create such adverse effects).
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

**ADULT USE**

An establishment, a building or portion thereof, or a use of land having as a substantial or significant portion of its business activity stock-in-trade or other matter or materials for sale, rental, distribution, or exhibition which are distinguished or characterized by their emphasis on depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31, including but not limited to the following:

- (1) **ADULT BOOKSTORE** An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, and other matter which are distinguished or characterized by their emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.
- (2) **ADULT CLUB** An establishment having as a substantial or significant portion of its activities or entertainment a person or persons performing in a state of nudity or distinguished by an

emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement, as defined in MGL c. 272, § 31.

- (3) **ADULT ENTERTAINMENT ESTABLISHMENT** An establishment offering activities or goods or providing services where employees, entertainers or patrons are engaging in nudity, sexual conduct or sexual excitement as defined in MGL c. 272, § 31.
- (4) **ADULT MOTION-PICTURE THEATER** An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.
- (5) **ADULT PARAPHERNALIA STORE** An establishment having as a substantial or significant portion of its stock devices, objects, tools or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272, § 31.
- (6) **ADULT VIDEO STORE** An establishment having as a substantial or significant portion of its stock-in-trade videos, movies or other film materials which are distinguished or characterized by their emphasis on depicting, describing, or relating to sexual conduct or sexual excitement, as defined in MGL c. 272, § 31.
- (7) **BODY ART ESTABLISHMENT** Any location, place or business where the practice of tattooing is performed.

#### **SUBSTANTIAL OR SIGNIFICANT PORTION**

Any of the following:

- (1) Twenty percent or more of the business inventory or stock of merchandise for sale, rental, distribution, or exhibition during any period of time.
  - (2) Twenty percent or more of the annual number of gross sales, rentals, or other business transactions.
  - (3) Twenty percent or more of the annual gross business revenue.
  - (4) Twenty percent or more of the hours during which the establishment is open.
- C. Special permit. Adult uses shall be permitted only in Industrial 2 Districts with a special permit granted by the Zoning Board of Appeals (ZBA) as set forth herein.
- (1) Conditions. No adult use establishment shall be within 750 feet of:
    - (a) A boundary line of a residential zoning district.
    - (b) A lot line of any lot containing a nonconforming residential dwelling that has not been abandoned or unoccupied for a period of two years.
    - (c) A lot line of any lot containing a church, any public school, private kindergarten or school, licensed day-care facility, or any school or college serving a student population where any of the student population is less than 18 years of age.
    - (d) A lot line of any lot containing a park, playground, library, cultural facility, museum, elderly housing, assisted living facility, nursing home, or adult day-care facility.
    - (e) A lot line of any lot containing an establishment licensed under the provisions of MGL c. 138, § 12.

- (f) Any other presently existing or permitted adult use.
- (2) Additional special permit requirements.
- (a) If the adult use allows for the showing of films or videos within the premises, the booths in which the films or videos are viewed shall not be closed off by curtains, doors, screens, or other view-inhibiting devices. All booths must be able to be clearly seen from the center of the establishment.
  - (b) The application for a special permit for an adult use must include the following information:
    - [1] Name and address of the legal owner of the proposed adult use establishment;
    - [2] Name and address of all persons having any lawful, equitable or secured interest in the adult use establishment;
    - [3] An affidavit must be provided stating that neither the applicant nor any person having a lawful, equitable or secured interest in the adult use establishment has been convicted of violating the provisions of MGL c. 119, § 63, or MGL c. 272, § 28;
    - [4] Name and address of the manager of the adult use establishment;
    - [5] Proposed provisions for security within and without the adult use establishment;
    - [6] The number of employees; and
    - [7] The present and proposed physical layout of the interior of the adult use establishment.
  - (c) No special permit for an adult use shall be issued to any person convicted of violating MGL c. 119, § 63, or MGL c. 272, § 28.
  - (d) An adult use special permit shall only be issued following a public hearing held within 65 days after the filing of an application with the ZBA.
  - (e) Any adult use special permit granted under this section, pursuant to the provisions of MGL c. 40A, § 9A, shall lapse within six months of issuance, including the time required to pursue or await the determination of an appeal as allowed under MGL c. 40A, § 17, if a substantial use thereof has not sooner commenced, except for good cause.
  - (f) Any adult use special permit issued under this section shall require that the owner of such adult use supply, in writing to the Building Commissioner, any change in the name of the record owner or address or any change in manager within 10 business days. Failure to comply with this provision shall result in the immediate revocation of such special permit. If anyone so identified is or is found to be convicted of violating MGL c. 119, § 63, or MGL c. 272, § 28, such special permit shall immediately be null and void.
- (3) Site development standards; site plan review. No special permit for any adult use shall be issued without site plan approval first having been obtained from the Planning Board, § **675-1020** (Site plan review) of this chapter. In addition to the standards set forth therein, the site plan must include the following:
- (a) Dimensional requirements. Any building or structure containing an adult use shall meet the setback requirements and other dimensional controls of the appropriate district as specified in this chapter. For any property proposed to contain an adult use, the applicant for a special permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.

- (b) **Parking.** On-site parking and loading shall be provided in accordance with the requirements set forth in Article **VII** (Off-Street Parking and Loading Standards) of this chapter as pertains to retail stores, clubs, or places of assembly. For any property proposed to contain an adult use, the applicant for a special permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
- (c) **Landscaping.** At a minimum, the property on which an adult use is proposed to be located shall contain a landscaped buffer strip along its entire perimeter, except that portion directly abutting a public street, that screens parking areas and other parts of the premises from adjoining properties by walls, fences, plantings or other devices.
- (d) **Signs.** All signs for any adult use must meet the requirements of Article **IX** (Signs and Advertising Devices) of this chapter. In addition, no advertisement, display, or other promotional material which contains sexually explicit graphics or sexually explicit text shall be visible to the public from any public way, including but not limited to sidewalks, pedestrian walkways, highways, or railways.

D. **Body art establishments; conditions.** No body art establishment shall be within:

- (1) Seven hundred fifty feet of another presently existing or permitted body art establishment.
- (2) Seven hundred fifty feet of a boundary line of a residential zoning district.
- (3) Seven hundred fifty feet of a lot line of any lot containing a church, any public school, private kindergarten or school, licensed day-care facility, or any school or college serving a student population where any of the student population is less than 18 years of age.
- (4) Seven hundred fifty feet of a lot line of any lot containing a park, playground, library, cultural facility, museum, elderly housing, assisted living facility, nursing home, or adult day-care facility.
- (5) Seven hundred fifty feet of a lot line of any lot containing an establishment licensed under the provisions of MGL c. 138, § 12 (this is an establishment that is licensed to sell alcohol).
- (6) Seven hundred fifty feet of any presently existing or permitted adult use.

**§ 675-1030 Wireless communications facilities.**

In addition to the general conditions and procedures established in this chapter for all special permits, the following additional requirements and procedures shall apply:

- A. **Purpose.** The purpose of this section is to establish an ordinance by which wireless communication may be provided with minimal harm to the public health, safety, and general welfare. Specifically, this section has been created to protect the general public from hazards of structural failure associated with wireless communications facilities and minimize visual impacts from wireless communications facilities on residential districts within the City of Gardner. This section does not apply to satellite dishes and antennas for residential use.
- B. **Definitions.** As used in this section, the following terms shall have the meanings indicated:

**CAMOUFLAGED**

A wireless communications facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

**CARRIER**

A company that provides wireless services.

**CO-LOCATION**

The use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.

**EQUIPMENT SHELTER**

An enclosed structure, cabinet, shed, or box at the base of the mount within which are housed batteries and electrical equipment.

**FALL ZONE**

The area on the ground within a prescribed radius from the base of a wireless communications facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

**GUYED TOWER**

A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

**LATTICE TOWER**

A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

**LICENSED CARRIER**

A company authorized by the FCC to construct and operate a commercial mobile radio services system.

**MONOPOLE**

The type of mount that is self-supporting with a single shaft of wood, steel, or concrete and a platform (or racks) for panel antennas arrayed at the top.

**MOUNT**

The structure or surface upon which antennas are mounted, including the following five types of mounts:

- (1) Roof-mounted: mounted on the roof of a building.
- (2) Side-mounted: mounted on the side of a building.
- (3) Ground-mounted: mounted on the ground.
- (4) Structure-mounted: mounted on a structure other than a building.
- (5) Interior-mounted: mounted within a building/structure such that the wireless communications facility is not visible from the exterior of the building/structure.

**PANEL ANTENNA**

A flat surface antenna usually developed in multiples.

**RADIOFREQUENCY ENGINEER**

An engineer specializing in electrical or microwave engineering, especially in the study of radiofrequencies.

**SECURITY BARRIER**

A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

**SEPARATION**

The distance between one carrier's array of antennas and another carrier's array.



## **WIRELESS COMMUNICATIONS**

- (1) Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services [47 U.S.C. § 332(c)(7)(C)(i)]. Functionally equivalent services are cellular, personal communications services (PCS), enhanced specialized mobile radio, specialized mobile radio and paging.
  - (2) Facility for the provision of wireless communications services.
- C. Use restrictions. When properly camouflaged, side-mounted, roof-mounted, structure-mounted and interior-mounted wireless communications facilities shall require only a building permit. The co-location of a new wireless communications facility on any existing guyed tower, lattice tower, or monopole shall require only a building permit, provided that the installation of the new wireless communications facility does not increase the height of the existing structure nor the size of the existing secured area at the base of the facility where the equipment cabinet/shelters are located.
- (1) Location.
    - (a) The applicant shall submit documentation of the legal right to install and/or use the proposed wireless communications facility mount at the time of application for a building permit and/or special permit.
    - (b) If feasible, wireless communications facilities shall be located on existing structures, including but not limited to buildings, water towers, existing wireless communications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. Applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more wireless communications facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.
    - (c) If the applicant demonstrates that it is not feasible to locate on an existing structure, wireless communications facilities shall be designed to be camouflaged to the greatest extent possible, including but not limited to disguising the facilities to look like other structures (i.e., flagpoles, trees, etc.), the use of compatible building materials and colors, screening, landscaping, and placement within clusters of trees.
  - (2) Dimensional requirements. Wireless communications facilities shall comply with the following requirements:
    - (a) Height of roof-mounted facilities. Roof-mounted wireless communications facilities shall not project more than 10 feet above the height of the existing building upon which the wireless communications facilities are proposed to be located. Said wireless communications facilities may locate on a building that is legally nonconforming with respect to height, provided that the wireless communications facilities do not project more than 10 feet above the existing building height.
    - (b) Height of structure-mounted facilities. Structure-mounted wireless communications facilities shall not project more than 10 feet above the height of the existing structure upon which the wireless communications facilities are proposed to be located. Said wireless communications facilities may locate on a structure that is legally nonconforming with respect to height, provided that the wireless communications facilities do not project more than 10 feet above the existing structure height.
    - (c) Height of side-mounted facilities. Side-mounted wireless communications facilities shall not project above the height of the existing building or structure upon which the wireless communications facilities are proposed to be located. Said wireless communications facilities

may locate on a building or structure that is legally nonconforming with respect to height, provided that the wireless communications facilities do not project more than 10 feet above the existing building or structure height.

- (d) Height of interior-mounted facilities. Interior-mounted wireless communications facilities shall not exceed the height of the building or structure upon which the wireless communications facilities are proposed to be located and shall be completely camouflaged, such as within a flagpole, steeple, chimney or similar structure.
- (e) Height of ground-mounted facilities. Ground-mounted wireless communications facilities shall not exceed the height of 190 feet. The Zoning Board of Appeals shall have the authority to reduce the height of proposed ground-mounted wireless communications facilities.
- (f) Setbacks. All wireless communications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the wireless communications facilities are located.
- (g) Fall zone. To ensure public safety, the minimum distance from the base of any ground-mounted wireless communications facility to any property line, road, habitable dwelling, business or institutional use, or public recreational area shall be the height of the wireless communications facility, including any antennas or other appurtenances.

D. Special permit regulations. All wireless communications facilities shall comply with the following performance standards set forth in this subsection:

(1) Design standards; visibility/camouflage. Wireless communications facilities shall be camouflaged as follows:

(a) Camouflage by existing buildings.

[1] When a wireless communications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the wireless communications facilities within or behind existing architectural features to limit their visibility from adjoining ways. Wireless communications facilities mounted on a roof shall be stepped back from the front facade to limit their impact on the building's silhouette.

[2] Wireless communications facilities that are side-mounted shall blend with the architecture of the existing building and shall be painted or shielded with material that is consistent with the design features and materials of the building.

(b) Camouflage by vegetation. All ground-mounted wireless communications facilities and equipment shelters shall be surrounded by buffers of tree growth and understory vegetation in all directions to create an effective visual buffer at the street level. Ground-mounted wireless communications facilities shall provide a vegetated buffer of sufficient height and depth to effectively screen the wireless communications facilities at the street level. Trees and vegetation may exist on the subject property or be installed as part of the proposed wireless communications facilities or a combination of both. The Zoning Board of Appeals shall determine the types of trees and plant materials, depth, and overall appropriate design of the needed buffer on site conditions.

(c) Color.

[1] Wireless communications facilities that are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

- [2] To the extent that any wireless communications facility extends above the height of the vegetation immediately surrounding it, it shall be appropriately camouflaged.
- (2) Equipment shelters. Equipment shelters for wireless communications facilities shall be designed consistent with one of the following design standards:
- (a) Equipment shelters shall be located in underground vaults;
  - (b) Equipment shelters shall be designed in accordance with architectural styles and materials reflective of the uses within a three-hundred-foot radius of the location acceptable to the Zoning Board of Appeals; or
  - (c) Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, cabinets, or wooden fence. The Zoning Board of Appeals shall determine the style of the fencing and/or landscape buffer that is compatible with the neighborhood.
- (3) Lighting and signage.
- (a) Wireless communications facilities shall be lit only if required by the Federal Aviation Administration. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties.
  - (b) Signs shall be limited to a sign identifying the facility, the owner and operator and an emergency telephone number where the owner can be reached on a twenty-four-hour basis, a "No Trespassing" sign, a sign displaying the FCC registration number and any signs required to warn of danger. All signs shall comply with the requirements of this chapter.
  - (c) All ground-mounted wireless communications facilities shall be surrounded by a security barrier of a design and material acceptable to the Zoning Board of Appeals.
- (4) Historic buildings and districts.
- (a) All wireless communications facilities proposed to be located within an historic district or on an historic structure shall be reviewed by the Gardner Historical Commission (GHC). Upon receipt of an application, the Zoning Board of Appeals shall transmit one copy of the application to the GHC. Final action shall not be taken until a report has been received from the GHC or until 35 days have elapsed.
  - (b) Any wireless communications facilities located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
  - (c) Any alteration made to an historic structure to accommodate a wireless communications facility shall be fully reversible.
  - (d) Wireless communications facilities within an historic district shall be concealed within or behind existing architectural features or shall be located so that they are not visible from adjoining ways and viewing areas within the district.
- (5) Environmental standards.
- (a) Wireless communications facilities shall be set back from designated wetlands and water bodies. Conservation Commission review and approval may be necessary.
  - (b) No hazardous waste shall be discharged on the site of any wireless communications facility.

(c) Stormwater runoff shall be contained on site or adequately disposed of off-site via connection to an existing stormwater drainage system.

(6) Safety standards. All equipment proposed for a wireless communications facility shall comply with the Federal Communications Commission Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines) and shall be maintained to remain in compliance with such guidelines as they may be amended.

E. Application procedures.

(1) The special permit granting authority for wireless communications facilities shall be the Zoning Board of Appeals.

(2) The Zoning Board of Appeals shall have the authority to hire a consultant to review any proposed wireless communications facilities submission at the expense of the applicant.

(3) Application filing requirements. In accordance with this section, the location of a wireless communications facility will require a special permit from the Zoning Board of Appeals. An application for a special permit shall be filed in accordance with § **675-1170** and shall be accompanied by seven copies of the following information:

(a) Details of the wireless communications facility, guy wires and anchors (if any), lighting, and all structures located within 300 feet of the wireless communications facility.

(b) Location of alternate sites, if any.

(c) Color photographs, computer simulation or renditions illustrating the proposed wireless communications facility with its antenna and/or panels or dishes and its location. The Zoning Board of Appeals may require additional visual analysis, such as, among other items, enhanced landscaping plans and line-of-sight drawings.

(d) A certification that the applicant possesses all necessary licenses to operate such a facility and has complied with all federal and state requirements to provide the proposed service.

(e) Reports prepared by one or more registered professional engineers which shall:

[1] Demonstrate that the wireless communications facility complies with all applicable standards of the federal and state governments;

[2] Describe the capacity of the wireless communications facility, including the number and type of transmitting and receiving antennas that it can accommodate and the basis for the calculation of capacity;

[3] Demonstrate that the wireless communications facility and site comply with this regulation; and

[4] Describe the auxiliary power source, if any.

(f) A copy of the FCC registration, FCC license, and FAA opinion letter or registration for the proposed wireless communications facility and applicant.

(4) Applicants proposing to erect facilities on municipally owned land or structures shall provide evidence of contractual authorization from the City of Gardner to conduct wireless communications on municipally owned property.

(5) At the time of the application filing, the applicant shall file an approval letter from the

Massachusetts Department of Public Health confirming that the proposed filing meets the requirements of Massachusetts Department of Public Health regulation 105 CMR 122.000 for wireless communications facilities with respect to emissions.

- (6) Before any new wireless communications facility is approved, the applicant must demonstrate that it is not feasible to locate its antenna and facilities on an existing wireless communications facility, structure, or building. Before a new wireless communications facility is proposed in a residential district, the applicant must also demonstrate that it is not feasible to locate its antenna and facilities in other districts or on municipal facilities. Such demonstration studies shall include a summary of propagation studies and a plan for any network of facilities.
- (7) Within 30 days after filing the application for any new wireless communications facility or extension in height thereto, if requested by the Zoning Board of Appeals, the applicant shall arrange to fly a balloon at the site at the maximum height of the proposed installation. The balloon shall be of size and color that can be seen from every direction for a distance of one mile.

F. Approval. A special permit shall be granted by the Zoning Board of Appeals in accordance with the Massachusetts General Laws and § **675-1170** of this chapter. Any extension of height or replacement of a wireless communications facility shall be subject to a new application or an amendment to the special permit.

G. Conditions of use.

- (1) The wireless communications facility and its transmissions shall comply in all respects with the current standards of the American National Standards Institute (ANSI) and the National Council for Radiation Protection (NCRP), whichever are stricter.
- (2) All wireless communications facilities shall be operated only at Federal Communications Commission (FCC) designated frequencies and power levels, and the applicant shall provide certification that the allowable frequencies are not deviated from, and power levels will not be exceeded. Certification shall include technical specifications, an explanation of those specifications, and, if necessary, field verification.
- (3) All unused wireless communications facilities or parts thereof or accessory facilities and structures which have not been used for one year shall be dismantled and removed at the owner's expense.
- (4) All wireless communications facilities shall be maintained in good order and repair. Any paint and finish must be annually maintained and repaired when the blemishes are visible from the property line. Annual inspection and maintenance reports for the wireless communications facilities and site shall be filed with the Building Commissioner and the Zoning Board of Appeals.

H. Performance guarantees.

- (1) Insurance in a reasonable amount determined and approved by the Zoning Board of Appeals after consultation at the expense of the applicant with one or more insurance companies shall be in force to cover damage from the structure and other site liabilities. Annual proof of said insurance shall be filed with the Zoning Board of Appeals.
- (2) An initial bond shall be posted for annual maintenance for any access road, site, and wireless communications facility in an amount approved by the Zoning Board of Appeals.
- (3) The Zoning Board of Appeals may require an additional financial performance guarantee to insure that to ensure that facilities which have not been used for one year are removed.

- (4) Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission, Federal Aviation Administration, and the American National Standards Institute shall be filed with the Building Commissioner and the Zoning Board of Appeals by the special permit holder at the operator's expense.

§ 675-1040 **Wind energy conversion systems.**

A. Definition. "Wind energy conversion system" shall mean a combination of:

- (1) Some form of surface area for capturing the wind;
- (2) A shaft or gearing (or the like) assembly for converting the rotational power of the attached surface area to an electrically or mechanically utilizable form;
- (3) A generator or alternator to convert rotational energy into electrical energy (for systems designed for producing electrical power); water; and
- (4) Some form of tower or other structure upon which the first three elements are mounted.

B. Construction.

- (1) Tower construction shall comply in all respects with the Massachusetts Building Code and with any and all federal or state requirements pertaining to the erection of towers in the vicinity of airports. Towers will meet all code requirements as to load factor, construction, foundation, grounding and the placement of guy wire. All towers shall have adequate anti-climb devices.
- (2) In addition, towers shall be subject to regular, biennial inspections by the Building Commissioner, who shall order the dismantling of any tower that fails to meet existing structural safety standards as enumerated in the Massachusetts Building Code.

C. Setbacks.

- (1) The placement of wind machine towers on a given parcel of land shall comply in all respects with the Massachusetts Building Code.
- (2) The wind machine tower shall be set back from every property line by a distance equal to its height as measured to the highest tip of the blades (hereinafter "fall area"), except when a fall area easement has been obtained from the appropriate abutters, not including any private or public ways or other areas open to public use.
- (3) In all cases, the installation shall not be erected nearer to any public way or public utility wires (excluding service wires to the windmill owner's dwelling and accessory building) than the total height of the structure.
- (4) Wind machine owners shall be required to have insurance coverage for their wind machines to cover the liability claims of other parties and shall furnish proof of such annually to the City Solicitor.

D. Minimum blade height. The minimum distance between the ground and any protruding blades utilized shall be 15 feet, as measured at the lowest point of arc of the blades.

E. Electrical regulations. The installation of wind turbine electrical generators or the like must conform to the following requirements:

- (1) All installation must conform to the Massachusetts Electrical Code FPR No. 11.
- (2) An electrical permit must be obtained from the City prior to a building permit being issued.

- (3) The City Wire Commissioner must be contacted upon completion of installation for final inspection before the device is put to use.

§ 675-1050 **Fences and hedgerows.**

Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corners, no fence or hedgerow shall be allowed to block vision over 2 1/2 feet above the street grade within an area formed by the intersecting street lines and a straight line joining the points of said street line 20 feet back from their points of intersection. Fencing and hedgerows running perpendicular to sidewalks shall not be allowed to block vision over 2 1/2 feet above the sidewalk grade for a distance of 15 feet along driveways immediate in location.

§ 675-1060 **Earthmoving and earth alteration.**

A. General. No person shall remove earth or conduct earth alteration as hereinafter defined from any land not in public use in any part of the City without first obtaining a special permit from the Zoning Board of Appeals after a public hearing, except as provided herein.

B. Definition.

(1) Earthmoving and earth alteration. The term shall include, without limitation, the following activities:

(a) Removal, excavation, processing or dredging of soil, sand, gravel or aggregate materials of any kind.

(b) Changing of preexisting drainage characteristics, sedimentation patterns, flow patterns or flood-retention characteristics.

(c) Dumping, discharging or filling with any material which would degrade water quality.

(d) Placing of fill or removal of material which would alter elevation.

(e) Driving of piles, erection of additions to buildings or structures of any kind.

(f) Placing of obstructions or objects in water.

(g) Removal of vegetation from combined total area exceeding 10,000 square feet on a single or adjacent lots.

(h) Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water; but specifically excluding the use of de-icing materials and chemicals for roadway maintenance during the winter months.

(i) Any activities, changes or work which may cause or tend to contribute to the pollution of any body of water or groundwater.

(2) For the purpose of this section, more than one contiguous lot under development constitutes a single project.

C. Regulation.

(1) Filling or dumping.

(a) The placing, filling, or dumping of snow and ice or earth, including soil, loam, sand, gravel, clay, stone, quarried rock, or other subsurface products, except water, is permitted in all districts if such placing, filling or dumping is entirely incidental to:

- [1] The construction of any structure for which a building permit has been issued.
  - [2] Utility construction in public and private ways and private property.
  - [3] The routine landscaping (not including significant changes in topography) of a lot with a one- or two-family dwelling thereon by the owner thereof so long as the topography of the parcel in no location exceeds a fifteen-percent grade.
- (b) Notwithstanding anything herein to the contrary, a special permit hereunder shall be obtained in relation to the construction of any subdivision which alters 40 or more acres of land or constructs new streets two or more miles in length.
  - (c) During construction or any of the activities noted above, all disturbed areas of land shall have erosion control in place to prevent damage to adjacent properties. Erosion control methods shall be approved by the Building Commissioner and shall be installed prior to construction. The Building Commissioner or Department of Public Works Director, where applicable, may require certification by a registered professional engineer of erosion control methods prior to the issuance of a building permit.
  - (d) All earth placing, filling or dumping incidental to the activities in Subsection **C(1)(a)** above shall have finished slopes at no greater than 2.5:1 without providing some form of slope protection or retaining walls. Any slope protection method or retaining wall shall receive approval of the Building Commissioner prior to its installation. The Building Commissioner may require certification by a registered professional engineer of erosion control methods prior to the issuance of a building permit.
- (2) Earth excavation.
    - (a) The removal of earth, including soil, loam, sand, gravel, clay, stone, quarried rock or other subsurface products, except water, is permitted in all districts if such material is entirely incidental to:
      - [1] The construction of any structure for which a building permit has been issued.
      - [2] Utility construction in public and private ways and private property.
      - [3] The routine landscaping (not including significant changes in topography) of a lot with a one- or two-family dwelling thereon by the owner thereof, so long as the existing topography of the parcel in no location exceeds a fifteen-percent grade.
      - [4] The construction of parking lots as approved under Article **VII**.
    - (b) Notwithstanding anything herein to the contrary, a special permit hereunder shall be obtained in relation to the construction of any subdivision which alters 40 or more acres of land or constructs new streets two or more miles in length.
    - (c) During construction or any of the activities in Subsection **C(2)(a)** above, all disturbed areas of land shall have erosion control in place to prevent damage to adjacent properties. Erosion control methods shall be approved by the Building Commissioner or Public Works Director and shall be installed prior to construction. The Building Commissioner or Public Works Director may require certification by a registered professional engineer of erosion control methods prior to the issuance of a building permit.
    - (d) All earth placing, filling or dumping incidental to the activities in Subsection **C(2)(a)** above shall have finished slopes at no greater than 2.5:1 without providing some form of slope protection or retaining walls. Any slope protection method or retaining wall shall receive



approval of the Building Commissioner prior to its installation. The Building Commissioner may require certification by a registered professional engineer of erosion control methods prior to the issuance of a building permit.

- (3) Stripping, stockpiling or transporting. On-site stripping, stockpiling or transporting of topsoil, loam, sand, aggregate, gravel, and other forms of earth is not allowed unless it is incidental to the activities listed in Subsection C(1)(a) and (2)(a) or as provided for in a special permit.

D. Criteria. Before granting any such permit, the Zoning Board of Appeals shall give due consideration to:

- (1) The location of the place from which it is proposed to remove soil, loam, sand or gravel.
- (2) The general character of the neighborhood surrounding such location.
- (3) The effect of the proposed removal or fill in such neighborhoods; for example, the amount of noise, dust and vibration likely to result from the proposed removal, excavation or filling; the extent, depth, height and contour of the location and surrounding neighborhood from which such removal is proposed or to which such fill is proposed; the general safety of the public on the public ways giving access to and in the immediate vicinity of such location; and the use to which such location has been put prior to the application for a permit and to which it may be put after the expiration of the permit.

E. Conditions.

- (1) As a part of and as set forth in any such permit, the Zoning Board of Appeals may impose such reasonable restrictions and conditions on the exercise of the permit as it deems to be in the public interest, including but not limited to the following:
  - (a) The duration of time from which the permit may be exercised.
  - (b) The extent, depth, height and contour of the area of removal or fill.
  - (c) The grade of the slope of the banks of the area of removal or fill and the specification of showing and reinforcement of the banks of any excavation or fill.
  - (d) The proximity of such removal or fill to any public way.
  - (e) The hours of the day during which such removal or fill may be permitted.
  - (f) The hours of the day during which the material may be trucked away from the location of removal or to the location of fill.
  - (g) The conditions under which the removal or fill trucks may be operated.
  - (h) The replacement of topsoil and the replanting of the area of removal and screening the same from public view.
- (2) In any event the conditions at a minimum must include the following:
  - (a) For earth filling and placing or dumping, the conditions shall include but not be limited to:
    - [1] Establishment of a time period to complete the filling operations, but not more than one year.
    - [2] Not more than two entrances/exits shall be allowed onto any one street.

- [3] At all stages of operation, proper drainage shall be provided to prevent the collection and stagnation of water to prevent harmful effects upon surrounding properties. During construction or filling operations on sites adjacent to or where drainage and runoff will enter any natural stream, pond or culvert connected thereto, a berm will be constructed between the stream or pond and the construction site, with drainage channeled through a settling pool or catch basin to trap silt prior to entering the water body. If, when complete, the site is to be paved, all drainage shall be channeled through an approved catch basin before entering the water body.
- [4] During the period of placing, filling, or dumping, all necessary precautions shall be taken as deemed necessary to the Zoning Board of Appeals for the protection of pedestrians and vehicles.
- [5] When the placing, filling, or dumping of earth is completed, the area is to be graded so that no finish grade shall be steeper than a slope of 2 1/2 horizontal to one vertical.
- [6] A layer of arable topsoil of a quality approved by the Building Commissioner shall be spread over the clean fill to a minimum of four inches in accordance with the approved contour plan. The area shall be seeded with a suitable cover crop and maintained until the area is stabilized and approved by the Building Commissioner.
- [7] All necessary precautions shall be taken to protect against any damage being done to surrounding land and to ensure that no dangerous conditions are created after completion.
- [8] Prior to placing, filling, or dumping of earth, site plans shall be submitted to the Zoning Board of Appeals containing the following:
  - [a] Existing and proposed contours at intervals of two feet.
  - [b] Estimated volume of earth to be dumped.
  - [c] Proposed truck access to the excavation.
  - [d] Names of the abutters.
  - [e] Details of regrading and revegetation of the site at conclusion of operations.
- (b) For earth removal, the conditions shall include but not be limited to:
  - [1] Establishment of a time period to complete the removal operations, but not more than one year.
  - [2] Existing topsoil is not to be removed from the site until the area from which it was removed has been restored.
  - [3] Not more than two entrances/exits shall be allowed onto any one street.
  - [4] At all states of operation, proper drainage shall be provided to prevent the collection and stagnation of water to prevent harmful effects upon surrounding properties. During construction or soil removal, on sites adjacent to or where drainage and runoff will enter any natural stream, pond or culvert connected thereto, a berm will be constructed between the stream or pond and the construction site with drainage channeled through a settling pool or catch basin to trap silt prior to entering the water body. If, when complete, the site is paved, all drainage shall be channeled through an approved catch basin before entering the water body.

- [5] During excavation and removal, barricades and/or fences shall be erected as are deemed necessary by the Zoning Board of Appeals for the protection of pedestrians or vehicles.
- [6] When excavations and removal operations or either of them are completed, the excavated area shall be graded so that no gradients in disturbed earth shall be steeper than a slope 2 1/2 horizontal to one vertical.
- [7] In restoring the excavated areas, topsoil shall be spread to a depth of four inches and shall be seeded with a suitable cover crop and maintained until the area is stabilized and approved by the Building Commissioner.
- [8] Prior to any earth excavation, site plans shall be submitted to the Zoning Board of Appeals containing the following:
  - [a] Existing and proposed contours at intervals of two feet.
  - [b] Estimated volume of earth to be removed.
  - [c] Proposed truck access to the excavation.
  - [d] Names of the abutters.
  - [e] Groundwater levels shall be indicated.
  - [f] Details of regrading and revegetation of the site at conclusion of operations.

F. Time limit. No permit for removal of material granted by the Zoning Board of Appeals shall be valid for a period more than one year from its date of issue, unless an extension thereof has been granted by the Zoning Board of Appeals, which extension shall not be granted in intervals greater than one year. Any application for extension granted hereunder shall meet all the requirements of this section.

**§ 675-1070 Marijuana Establishments.**

A. Purpose

- (1) To provide for the placement of marijuana establishment in appropriate places and under conditions in accordance with the provisions of Massachusetts General Law Chapter 94G
- (2) To minimize the adverse impacts of marijuana establishments on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other sensitive land uses potentially incompatible with said establishments.
- (3) To regulate the siting, design, placement, security, safety, monitoring, modification, and discontinuance of marijuana establishments.

B. Applicability

- (1) No marijuana establishment shall be established except in compliance with the provisions of **§ 675-410 (Schedule of Use Regulations)** and this **§ 675-1070 (Marijuana Establishments)**
- (2) Nothing in this section shall be construed to supersede federal and state laws governing the sale and distribution of Class 1 Controlled Substances.
- (3) If any provision of this section or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this section are severable.

C. General requirements and conditions for all marijuana establishments.

- (1) All marijuana establishments shall be contained within a building or structure.
- (2) The hours of operation of marijuana establishments shall be set by the special permit granting authority
- (3) No marijuana establishment property line shall be located within 500 linear feet of a lot line where the following districts, activity, or uses occur:
  - (a) A nonconforming residential dwelling that has not been abandoned or unoccupied for a period of two years;
  - (b) Any church, public or private school or child-care facility; or place where minors frequent (e.g., a library, ball field, park, sports or family recreation facility, religious facility or the like);
  - (c) Any other marijuana establishment;
  - (d) Any drug or alcohol rehabilitation facility; or
  - (e) Any correctional facility, half-way house or similar facility.
- (5) No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of a marijuana establishment.
- (6) No marijuana establishment shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck.
- (7) Marijuana establishments shall provide the Gardner Police and Fire Departments, Building Commissioner, Board of Health, and the special permit granting authority with the names, phone numbers and e-mail addresses of all management staff and key holders to whom one can provide notice if there are operating problems associated with the establishment.
- (8) The City shall have access at any time to inspect the premises of the marijuana establishment to ensure compliance with local and state regulations, excluding client health information protected under the Health Insurance Portability and Accountability Act of 1996.
- (9) Pursuant to Massachusetts General Laws Chapter 94G, Section 3(a) (2)(i)-(iii) the maximum number of Licensed Marijuana Establishments in the City shall be consistent with the following provisions:
  - a) Shall not prohibit one or more types of Marijuana Establishment;
  - b) The number of marijuana retail establishments, shall not exceed 20% of liquor licenses issued for retail sale of alcohol not consumed on the premises in the City of Gardner. Said number to be rounded up to the next whole number;
  - c) The number of Marijuana Establishments shall not exceed the number of registered medical marijuana treatment centers in Gardner engaged in the same type of activity and shall not prevent the conversion of a medical marijuana treatment center licensed or registered no later than July 1, 2017 to a marijuana establishment engaged in the same type of activity.

D. Special permit requirements.

Special Permit Requirements

- (1) No special permit for any marijuana establishment shall be issued without site plan approval

first having been obtained from the Planning Board, § 675-1020, Site plan review, of this chapter. In addition to the standards set forth within, the site plan must meet all dimensional, parking, landscaping, and signage requirements within this chapter.

- (2) A marijuana establishment shall only be allowed by special permit from the Gardner Planning Board in accordance with MGL c. 40A, § 9, subject to the following statements, regulations, requirements, conditions and limitations.
- (3) A special permit for a marijuana establishment shall be limited to one or more of the following uses that shall be specified by the special permit granting authority:
  - (a) Marijuana cultivator;
  - (b) Marijuana product manufacturer;
  - (c) Marijuana retailer;
  - (d) Marijuana testing facility;
  - (e) Marijuana transportation or distribution facility; and
  - (f) Any other type of licensed marijuana-related business
- (4) In addition to the application requirements set forth above, a special permit application for a marijuana establishment shall include the following:
  - (a) The name and address of each owner of the establishment;
  - (b) Copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts Cannabis Control Commission and any of its other agencies for the establishment;
  - (c) Evidence of the applicant's right to use the site of the establishment for the establishment, such as a purchase and sale agreement, deed, owner's authorization, or lease;
  - (d) Proposed security measures for the marijuana establishment, including lighting, fencing, gates and alarms, etc., to ensure the safety of persons and to protect the premises from theft. A letter from the City of Gardner Police Chief, or designee, acknowledging review and approval of the marijuana establishment security plan is required. To the extent allowed by law, all such documents shall be confidential.
- (5) Mandatory findings. The special permit granting authority shall not issue a special permit for a marijuana establishment unless it finds that:
  - (a) The establishment is designed to minimize any adverse impacts on abutters and other parties in interest, as defined in MGL c. 40A, § 11.
  - (b) The establishment demonstrates that it will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will comply with all applicable state laws and regulations; and
  - (c) The applicant has satisfied all the conditions and requirements set forth herein.
- (6) A special permit granted under this section shall have a term limited to the duration of the

applicant's ownership or leasehold of the premises as a marijuana establishment. A special permit may be transferred only with the approval of the special permit granting authority in the form of an amendment to the special permit with all information required in this § **675-1070**.

E. Abandonment or discontinuance of use.

- (1) A special permit shall lapse if not exercised within one year of issuance.
- (2) A marijuana establishment shall be required to remove all personal property including but not limited to all material, plants, equipment, accessories, paraphernalia, and any other property no later than the earliest of: a) prior to surrendering its state issued licenses or permits; or b) within six months of ceasing operations..

## Article XI **Administration and Enforcement**

### § 675-1110 **Enforcement.**

The Building Commissioner shall institute and take all such action as may be necessary to enforce full compliance with all the provisions of this chapter and of permits, variances, and Zoning Board of Appeals decisions issued thereunder, including notification of noncompliance and request for legal action through the Mayor to the City Solicitor.

### § 675-1120 **Repetitive petitions.**

No proposed change in this chapter which has been unfavorably acted upon by the City shall be considered on its merits by the City Council within two years after the date of such unfavorable action, unless adoption of the proposed change is recommended in the final report of the Planning Board.

### § 675-1130 **Administration.**

This chapter shall be administered by the Building Commissioner. Pursuant to the State Building Code, the Building Commissioner may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the commonwealth. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed in principal use unless in compliance with then-applicable zoning and after all necessary permits have been received under federal, state, or local law.

### § 675-1140 **Violations and penalties.**

The penalty for violation of any provision of this chapter, of any of the conditions under which a permit is issued, or of any decision rendered by the Zoning Board of Appeals and/or special permit granting authority shall be \$300 for each offense. Each day that each violation continues shall constitute a separate offense.

### § 675-1150 **Zoning Board of Appeals.**

- A. Establishment. There is hereby established a Zoning Board of Appeals of three members to be appointed by the Mayor and confirmed by the City Council, as provided in MGL c. 40A. Two associate members shall be appointed in like manner to serve, upon designation by the Chairperson of the Board, in case of vacancy, inability to act, or conflict of interest on the part of a member of said Board.
- B. Powers. The Zoning Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the Massachusetts General Laws and by this chapter. The Board's powers are as follows:
  - (1) To hear and decide applications for special permits. Unless otherwise specified herein, the

Zoning 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 chapter, with respect to particular land or structures, as set forth in MGL c. 40A, § 10. The Zoning Board of Appeals may hear and decide petitions for use variances from the terms of this chapter, with respect to certain uses, in accordance with the standards for variances as set forth in MGL c. 40A, § 10.
  - (3) To hear and decide appeals taken by any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of MGL c. 40A, §§ 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 MGL c. 40B, §§ 20 to 23.
- C. Regulations. The Zoning Board of Appeals may adopt rules and regulations for the administration of its powers.
- D. Fees. The Zoning Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

**§ 675-1160 Amendments.**

This chapter may be amended from time to time in accordance with the provisions of MGL c. 40A.

- A. Text Amendments. It is recommended that private petitions to amend the text of the Zoning Ordinance consult with the Director (Department) of Community Development and Planning relative to the placement of the proposed text amendment within the appropriate section of the Zoning Ordinance and to review technical, procedural and legal considerations.
- B. Map Amendments. It is recommended that private petitions for Zoning Map amendments be accompanied by sketch or concept plan depicting the intended use/development contemplated with the proposed map amendment. There are no specific plan content requirements, however it is suggested the plan address areas of potential concern to address uncertainties or issues such as building location, size, height, design, parking, access, drainage, landscaping and other features that may reasonable be expected to be raised before the Planning Board and City Council as part of their respective deliberations.

**§ 675-1170 Special permits.**

- A. Special permit granting authority (SPGA). Unless specifically designated otherwise, the Zoning Board of Appeals shall act as the SPGA. The Planning Board is the SPGA for infill development, the Smart Growth PUD, Development Overlay District 1, Open Space Residential Developments, Groundwater Protection Overlay District, Surface Water Protection Overlay District, Large Scale Ground-Mounted Solar Photovoltaic Overlay District, Marijuana Establishments, Senior Residential Development, Drive Through or Drive in Businesses, and the Mill Street Corridor Development Overlay District. One associate member may be appointed to the Planning Board by the Mayor, subject to the confirmation by the City Council. The Chairperson of the Planning Board may designate the associate member to sit on the Board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board.
- B. Criteria. Special permits shall be granted by the SPGA, 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 City 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 chapter, the determination shall include consideration of each of the following:

- (1) The proposal shall be suitably located in the neighborhood in which it is proposed and/or the entire City and shall be compatible with neighborhood character, existing uses and other uses permitted by right in the same district;
  - (2) The proposal shall provide convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets, property and improvements;
  - (3) The proposal shall provide adequate space for off-street parking, loading and unloading of vehicles, and goods, products, materials and equipment incidental to the normal operation of the establishment or use;
  - (4) The proposal shall provide adequate and appropriate facilities and utilities for the proper operation of the proposed use and disposal of sewage, refuse or other waste products and methods of drainage of surface water;
  - (5) The proposal shall not constitute a nuisance due to air and water pollution, erosion, flood, noise, odor, dust, vibrations, lights or visually offensive structures or site features;
  - (6) The proposal shall not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians, as determined by the SPGA;
  - (7) The proposal shall be in harmony with the general purpose and intent of this chapter;
  - (8) The proposal shall not have a significant detrimental impact on City services, tax base, and employment opportunities; and
  - (9) The proposal is consistent with the City's Community Development Plan or Master Plan.
  - (10) If the proposal is on property that was subject to a Zoning map amendment accompanied by a sketch or concept plan pursuant to Section 675-1160. B., a statement as to the development's consistency with said sketch or concept plan and an explanation as to the reasons justifying variation, if any.
- C. Procedures. An application for a special permit shall be filed in accordance with the rules and regulations of the SPGA.
- D. Conditions. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the SPGA may deem necessary to serve the purposes of this chapter.
- E. Regulations. The SPGA may adopt rules and regulations for the administration of this section.
- F. Fees. The SPGA may adopt reasonable administrative fees and technical review fees for applications for special permits.
- G. Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 12 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 MGL c. 40A, § 17, from the grant thereof) with the City Clerk.

### **Attachments:**

675a Table of Uses

675b Lot Area Yard Table

675c Table of Zoning Map Amendments