

TOWN OF UPTON



SPECIAL PERMIT RULES AND REGULATIONS FOR SENIOR RESIDENTIAL COMMUNITIES

Adopted: January 28, 2003
Last Amended: June 2013

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**UPTON PLANNING BOARD
SENIOR HOUSING COMMUNITIES BYLAW
RULES AND REGULATIONS**

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SECTION I. AUTHORITY

1.0 AUTHORITY

Pursuant to the authority granted by Section 7.4, Senior Housing Communities, of the Zoning Bylaws of the Town of Upton the Planning Board has adopted the following rules and regulations governing Senior Housing Communities (SHC) developments in the Town of Upton.

2.0 PURPOSE

The purpose of these regulations is to guide the planning, design and construction of Senior Housing Communities in a manner consistent with the objectives of the SHC bylaw, which are to provide alternative housing for a maturing population; to provide a type of housing which reduces residents' burdens of property maintenance and which reduces demands on municipal services; and to promote flexibility in land use planning in order to improve site layouts, protect natural features and environmental values and utilize land in harmony with neighboring properties.

3.0 APPLICATION

A development or any phase thereof under Section 7.4, Senior Housing Communities, of the Zoning Bylaw shall comply with these regulations and all requirements for an application contained in that section.

SECTION II. TERMS/FORMS/FEEES

1.0 TERMS

Applicant - the person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of all the land included in the planned development site proposed, or have authority from the owner(s) to act for him or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

Application - A duly submitted, signed and completed request for a special permit under Section 7.4, Senior Housing Communities, of the Zoning Bylaw of the Town of Upton filed with the development plan and all required forms, fees and information in accordance with the Zoning Bylaw and these regulations.

Assisted Living Facility: Includes the provisions of services geared to an aging adult population which may have difficulty functioning independently and may require oversight including, but not limited to the provisions of a full meal plan, transportation services, personal care and assistance with medication.

Attached Dwelling Unit - A dwelling unit that has at least one exterior wall in common with another unit.

Buildable Lot - For the purposes of this bylaw, a buildable lot means an area of land meeting the minimum lot area and frontage requirements, and which contains suitable soils for sub-surface sewerage disposal in accordance with the rules and regulations of the Town of Upton and applicable laws of the Commonwealth of Massachusetts.

Congregate Senior Housing: Means private dwelling units/apartments which may have kitchen facilities within a complex containing central dining and other common areas and is designed for an adult population requiring some supportive services including but not limited to meals, housekeeping, home health and other supportive services.

Common Land: Common land shall be an area of land owned and maintained by a homeowners association and used solely for recreational, conservation, agriculture or forestry purpose by residents of the development and/or the public.

Dwelling Unit: One or more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit with individual or congregate cooking, living, and sanitary facilities, excluding mobile homes and trailers. The intent of this definition is to define a “home” with private sleeping rooms rather than a dormitory arrangement of sleeping quarters.

Impervious Surface: A surface area in which water is not allowed an entrance, which includes but not limited to building footprints, roadways, driveways, and parking lots, etc.

Independent Senior Housing: Means private residential dwelling units, individually equipped with a minimum of a kitchen, bedroom, bathroom and living area. Geared toward independently functioning adults, this housing typically does not offer on-site supportive services but is designed to be barrier free and should include emergency call features complemented by housing management and facility maintenance services.

Open Space: Open space shall be an area of undeveloped land used solely for conservation and is permanently protected from development by a permanent conservation restriction in accordance with M.G.L., Ch.184, §31. Open space shall not contain any common land.

Restorative Care/Skilled Nursing Facility: Includes the provision of service for long term nursing, convalescent or rehabilitative care; supervision and care incident to advanced age, retirement home care for elderly persons.

Senior Housing Community: A multifamily residential land use consisting of a multiple dwelling unit(s) on one single contiguous parcel, with the intent that at least one resident of each dwelling unit be 55 years of age or older. For the purpose of this bylaw, housing units are intended for occupancy by persons fifty-five years of age or older within the meaning of M.G.L., Ch.151B, §4.6 and shall comply with the provisions set forth in 42 U.S.C., §3601.

Shall: Indicates a mandatory requirement.

Should: Indicates a recommendation or that which is advised but not necessarily required.

SPGA: Special Permit Granting Authority.

Stages (or Phases) of Development - The work to be done and the number of structures to be built within any of the time limits approved by the Planning Board in a development schedule, including dates.

2.0 FORMS

Forms to be used in connection with a SHC are attached hereto or are available from the Planning Board agent or the Town Clerk.

3.0 FEES

All costs incurred by the Town of Upton to administer the requirements of the Massachusetts General Laws, the Zoning Bylaw, the Rules and Regulations Governing the Subdivision of Land, these regulation and other applicable rules and regulations of the Planning Board and other boards and commissions or departments of the Town of Upton in connection with an application for a special permit for a SHC shall be borne by the applicant for the special permit.

3.1.0 Application Fees

- 3.1.1. Concept Plan: A design review escrow deposit of \$1,000.00 plus \$50/dwelling unit shall be paid at the time of filing an application for a SHC. A non-refundable filing fee of \$25.00 per proposed dwelling unit shall be paid at the time of filing an application for a SHC. Such deposits shall be submitted in check(s) form only (no cash will be accepted), such check(s) made payable to the Town of Upton. If prior to Planning Board action on the special permit application, the Board finds that the amount on deposit, as prescribed above, is not sufficient to cover the actual costs incurred, the applicant shall be required to submit forthwith the additional amount deemed necessary to cover such costs. Failure to do so shall be deemed reason for disapproval of said application by the Board. The Board shall notify the applicant of such required amount in writing by certified mail. Failure to submit such additional amount as required by the Board within seven (7) days of receipt of said notice shall be deemed reason by the Board to disapprove said application. If the actual costs incurred by the Town for **design** review of said application are less than the amount on deposit as specified above, the Board shall authorize that such excess amount be refunded to the applicant.

- 3.1.2. Development Plan: A design review escrow deposit of \$5,000.00 plus \$100/dwelling unit shall be paid at the time of filing an application for a SHC. A non-refundable filing fee of \$150.00 per proposed dwelling unit shall be paid at the time of filing an application for a SHC. Such deposits shall be submitted in check(s) form only (no cash will be accepted), such check(s) made payable to the Town of Upton. If prior to Planning Board action on the special permit application, the Board finds that the amount on deposit, as prescribed above, is not sufficient to cover the actual costs incurred, the applicant shall be required to submit forthwith the additional amount deemed necessary to cover such costs. Failure to do so shall be deemed reason for disapproval of said application by the Board. The Board shall notify the applicant of such required amount in writing by certified mail. Failure to submit such additional amount as required by the Board within seven (7) days of receipt of said notice shall be deemed reason by the Board to disapprove said application. If the actual costs incurred by the Town for design review of said application are less than the amount on deposit as specified above, the Board shall authorize that such excess amount be refunded to the applicant.

SECTION III. ADMINISTRATION

1.0. SPECIAL PERMIT FINDINGS

The Planning Board shall grant a permit for a SHC only if it shall find that: (i) the SHC complies with the objectives of a SHC as stated in Section 7.4, Senior Housing Communities, of the Zoning Bylaw; (ii) the SHC is in an appropriate location and is not detrimental to the neighborhood and does not significantly alter the character of the zoning district; (iii) adequate and appropriate facilities will be provided for the proper operation of the SHC; (iv) The SHC use would not be detrimental or offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other visual nuisances; (v) the SHC use would not cause undue traffic congestion in the immediate area; (vi) the SHC responds to the recommendations of the Town boards and agencies; and (vii) the granting of the Special Permit would not result in unsuitable development of the land in question.

2.0. COMPLIANCE WITH THE ZONING BYLAW

The Planning Board will not approve or modify and approve any plan unless all buildings, structures and lots shown on said plan comply with the Zoning Bylaw of the Town of Upton, or unless a variance from the terms thereof has been properly granted.

3.0. WAIVER OF COMPLIANCE

Compliance with the requirements of these rules and regulations may be waived when, in the judgment of the Planning Board, such action is in the public interest and not inconsistent with the objectives of these regulations and Section 7.4, Senior Housing Communities, of the Zoning Bylaw. In waiving strict compliance the Planning Board may require such alternative conditions as will serve substantially the same objective as the standards or regulations waive. The applicant in writing to the Planning Board shall request all waivers.

4.0. MODIFICATIONS TO APPROVED DEVELOPMENTS

Any application for modification to an approved development under these regulations shall be reviewed by the Planning Board to determine the extent of modification and its impact on the surrounding neighborhoods, adjacent properties, the environment and any other consideration deemed appropriate, and in its opinion the Planning Board shall determine whether the modification requires a new public hearing or can be decided by a vote of the Board. In all cases, the applicant shall file an Application for Modification with the Board and the request shall be discussed at a regularly scheduled meeting of the Board.

5.0. TITLE CERTIFICATION

Whenever the fee or any lesser interest in land is offered to the Town under these rules and regulations, conveyance of the same shall be by a deed granting good and clear record and marketable title thereto subject only to such exceptions as the Planning Board may approve. Further, at least ten (10) days before such conveyance, the party offered such interest shall, at its expense, deliver to the Planning Board an opinion of counsel certifying that title is of the quality required herein, which opinion shall be updated and confirmed to the time of conveyance.

6.0. **MARKETING PLAN / LOCAL PREFERENCE**

Marketing of units in a Senior Housing Communities shall comply with all Fair Housing Laws and shall include, to the extent legally allowable, a strategy for marketing units to Upton residents, their immediate families, Town of Upton employees and their immediate families. The marketing plan shall further demonstrate a strategy for occupying all constructed units within a finite time period.

7.0 **NEED FOR ADDITIONAL COMMUNITY SERVICES**

8.0 **SEVERABILITY / AMENDMENT**

If any section, paragraph, sentence, clause, or provision of these regulations shall be adjudged not valid, the adjuration shall apply only to the material so adjudged and the remainder of these regulations shall be deemed valid and effective. These regulations or any portion thereof may be amended, supplemented or repealed from time to time by the Planning Board by its own motion after a public hearing.

SECTION IV. PROCEDURE FOR SHC APPROVAL

1.0. **PRE-APPLICATION**

1.1.0. Submission

Applicants for a SHC are required to submit a Concept Plan of a SHC to the Planning Board. The purpose of such review is to ensure complete knowledge of applicable rules and regulations, zoning provisions and other laws affecting the SHC to ensure that an adequate plan is submitted, to familiarize the Board and the community with the proposed development, and to save time in preparation of final plans.

Twelve (12) copies of the Concept Plan along with the properly executed application form and fee(s) shall be submitted to the Board during regularly scheduled office hours. The Planning Board shall distribute the extra copies of the plan to other Town Boards and Commissions for their review and comment.

1.2.0. Contents

A Concept Plan shall include the following information and such additional information as the Planning Board may require:

1.2.1. Site Rationale

Statement including how the proposed SHC is compatible with the objectives of Section 7.4, Senior Housing communities, of the Zoning Bylaws. This should include an assessment of the alternatives explored by the applicant and the reasons for proceeding with a SHC.

1.2.2. Site Analysis

Map and description indicating the location of the proposed site; total acreage; estimate of the total acreage of wetlands; topography at 2 foot contour intervals where buildings are proposed and 5 foot contour intervals for open land; flood plain boundaries, flowing streams, drainage ways, ponds, surface water bodies; existing perimeter of trees, significant individual trees and tree masses; description of sensitive environmental areas; general description of soils and percolation capabilities; existing buildings, roads, trails; productive agricultural land; open vistas; sites and structures of historical importance; and other natural features.

1.2.3. Development

A site plan showing the proposed development of the property as a SHC, including buildings, roads, driveways, recreational areas, common land, open space areas, stormwater management areas, wastewater disposal areas and any other construction relative thereto. This plan can be overlaid on the Site Information Plan to illustrate placement of structures in relation to the existing topography and other natural features.

1.2.4. Building Data

Statement of the number of proposed dwelling units; type of construction and construction materials; height of buildings; and length, width and location of roadways.

1.2.5. Site Context

Locus map of the development site showing all proposed streets in the development in relation to existing surrounding streets sufficient to readily orient the development location within the Town. Names and addresses of all property owners (from the most recent tax lists) within 300 feet of the perimeter of the SHC site.

1.2.6 Information on Applicant

Information shall be supplied as to the qualification, experience and financial resources of the applicant sufficient to construct and complete the proposed SHC.

1.3.0 Planning Board Review and Action

1.3.1. Upon receipt of a pre-application for a SHC, the Planning Board shall transmit forthwith a copy of the application and such portions of the accompanying data and plans as the Planning Board deems appropriate to the Board of Selectmen, Board of Health, Conservation Commission, Park and Recreation Commission, Building Inspector, Fire Department, Highway Supervisor, D.P.W. Director, Police Department and the Water and Sewer Board, for their review and comments.

1.3.2. Within 60 days after the close of the discussion with the Planning Board. The Planning Board shall advise the applicant of the Board's approval or disapproval of the proposed concept of the SHC, and shall specify the respects, if any, in which it disapproves.

2.0. APPLICATION

2.1.0 Submission

Each application for a special permit for a SHC shall include a Development Plan comprising all information contained in any Concept Development Plan theretofore submitted and all other requirements enumerated below. Twelve (12) copies of the Development Plan along with the properly executed application form and fee(s) shall be submitted to the Board during regularly scheduled office hours. The extra copies of the plan shall be distributed by the Planning Board to other Town Boards and Commissions for their review.

2.2.0 Plan Contents

A Development Plan shall contain all of the data, documents and plans required for a Concept Development Plan in the preceding paragraph IV.A.2, and also such information as the Planning Board shall deem it necessary to require:

- 2.2.1 The plan or plans shall contain the following: The name of the record owner(s) of the land, the name of the applicant, the name of the registered landscape architect, the name of the registered architectural architect, the name of the registered professional engineer, and the name of the land surveyor who made the plan(s).
- 2.2.2. A “EXISTING CONDITIONS PLAN” [at a scale of not less than 1” = 100’] showing topography, soil types, watercourses, wetlands and 100-year floodplains, existing streets, all known easements, and structures within and on parcels contiguous to the tract.
- 2.2.3. A “OVERALL LAND USE PLAN” [at a scale of not less than 1” = 100’] showing the location, ownership, and use of the proposed common land, the extent of open space, the area of residential use, the maximum number of residential units proposed, and the maximum number of bedrooms, any amenity or recreation area serving the residential uses, and the general layout of all roads and access ways. The “Overall Land Use Plan” shall include a tabulation indicating the total area, upland area, wetlands area, open space area, common land area, all impervious area to be created in the senior housing community and the respective percentage of each area for the entire tract.
- 2.2.4. A “LAYOUT PLAN” for the proposed senior housing community [at a scale of not less than 1” = 100’] showing the intended location of each residential building, accessory structure and facility, the intended location of all roads and access ways, curbcuts, driveways and approximate finished grades, the proposed location of all recreational areas, proposed improvements and structures on the common land, and methods for providing water and sewerage facilities.
- 2.2.5. A plan or plans showing the proposed grading of the tract and the proposed location, dimensions, materials and type of construction of streets, common drives, parking areas, walks, paved areas, utilities, emergency access ways, easements, and the location and outline of all proposed buildings and structures including, but not limited to dwellings, garages, and any accessory structures thereto. If the proposed senior housing community is to be constructed in separate phases, this plan or plans shall clearly indicate the construction phases proposed.
- 2.2.6. A plan or plans showing the proposed use of common land [whether public or private], including all improvements intended to be constructed thereon.

- 2.2.7. A plan or plans showing in a general way existing vegetation [at a scale of 1” = 100’] and detailed landscaping and planting plans [at a scale of 1” = 100’] for all areas to be disturbed and buffer areas.
- 2.2.8. A perspective plan or plans showing the proposed architecture of the buildings / structures by type and such plan(s) shall include a tabulation of proposed buildings / structures by type [i.e. number of units per building, and number of bedrooms per unit].
- 2.2.9. Copies of all instruments to be recorded with the senior housing community special permit, including the proposed deed(s) for the common land, dispositions of open space, the articles of organization and bylaws of any corporation or trust to be organized to own the land and the language of all restrictions to be imposed on the land.
- 2.2.10. A management plan for common land to be incorporated in the deed covenants to be executed with purchases of land or other interests in the senior housing community.

2.3.0 Additional Contents

In addition to the Plan Contents specified above, the applicant shall submit the following in such detail as the Planning Board shall deem it necessary or appropriate to require:

2.3.1. Development Impact Statement

At the discretion of the SPGA, the submittal of a development impact statement [DIS] may be required at the expense of the applicant. The SPGA may deny a special permit where the DIS discloses that the proposed use does not comply with the provisions of this by-law, or would be detrimental to the Town or its citizens. The DIS shall be prepared by an interdisciplinary team including a Registered Landscape Architect or Architect, a Registered Civil Engineer, Registered Surveyor, and a Land Planner, and may include all or some of the following information.

2.3.2. Physical Environment

Describe the general physical conditions of the site, including amounts and varieties of vegetations, general topography, unusual geologic, archeological, scenic and historical features or structures, locations of significant viewpoints, stone walls, trees over 16 inches in diameter, trails and open space links, and indigenous wildlife.

Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.

2.3.3. Surface Water and Subsurface Conditions

1. Describe locations, extent, and types of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the site.
2. Describe any proposed alterations of shorelines or wetlands.
3. Describe any limitations imposed on the project by the site's soil and water conditions.
4. Describe the impact upon ground and surface water quality and recharge, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the site.

2.3.4. Vehicle Circulation System

1. Project the number of motor vehicles to enter or depart the site per average day and during peak hours. Also state the number of motor vehicles to use streets adjacent to the site per average day and during peak hours. Such data shall be sufficient to enable the SPGA to evaluate (i) existing traffic on streets adjacent to or approaching the site, (ii) traffic generated or resulting from the site, and (iii) the impact of such additional traffic on all ways within and providing access to the site.
2. Actual study results, a description of the study methodology, and the name, address, and telephone number of the person responsible for implementing the study, shall be attached to the DIS.

2.3.5. Support Systems

1. Water Distribution: Discuss the water system proposed for the site means of providing water for fire fighting, and any problems unique to the site.
2. Sewage Disposal: Discuss the sewer system to be used, and evaluate impact of sewage disposal on the wastewater treatment facility.
3. Refuse Disposal: Discuss the location and types of facilities, the impact on existing Town refuse disposal capacity, hazardous materials requiring special precautions.
4. Protection Service: Discuss the distance to the fire station, police station, and emergency medical service, and the adequacy of existing equipment and manpower to service the proposed site.
5. Recreation: Discuss the distance to and type of public facilities to be used by the residents of the proposed site, and the type of private recreation facilities to be provided on the site.

2.3.6. Construction

Statement of hours of construction and information as to means of minimizing construction-related disturbances.

1. Describe the method to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiled. Describe the approximate size and location of portion of the parcel to be cleared at any given time and the length of time of exposure.
2. Describe of any required public improvements, and how such improvements are to be integrated into site development.
3. All construction shall be completed within a two-year period.

2.3.7. All such other documents, information, data and plans as may be required in accordance of Section 7.4of the Zoning Bylaw.

3.0. REVIEW AND ACTION BY THE PLANNING BOARD

3.1. Special Permit Review

3.1.1. Upon receipt of an application for a Special Permit for a SHC, the Planning Board shall transmit forthwith a copy of the application and such portions of the accompanying data and plans as the Planning Board deems appropriate to the Board of Selectmen, Board of Health, Conservation Commission, Park and Recreation Commission, Building Inspector, Fire Department, Police Department, Highway Supervisor, Department of Public Works Director and the Water /Sewer Board. If any such board or agency shall not make a written recommendation or submit a written report to the Planning Board within 35 days of receipt of the application, such board or agency shall be deemed to have no opposition to the issuance of a Special Permit for a SHC.

3.1.2. The Planning Board shall comply with all applicable requirements of Chapter 40A of the General Laws with respect to public hearing and notice. Public hearing on the application shall be held within 65 days after the filing thereof, and the decision of the Planning Board shall be made within 90 days after the close of the public hearing.

3.1.3. In order to implement a special permit for a SHC and to assure compliance therewith, the Planning Board shall in the special permit set forth requirements and conditions that before a building permit is issued for any buildings in any stage or phase of the SHC: (i) the applicant shall have submitted to the Planning Board detailed plans showing the locations, designs and layouts of such buildings and all driveways and accessory structures included in such stage or phase, (ii) the applicant shall have provided security by covenant, cash or other means satisfactory to the Planning Board securing the construction, roadways and installation of driveways, utilities and related services, (iii) the Planning Board shall have determined that the detailed plans are in substantial conformity with the conceptual plans approved in the special permit, and (iv) the Planning Board shall have so notified the Building Inspector; and the Planning Board may in a special permit for a SHC set forth further requirements and conditions as the Board shall deem appropriate to accomplish the purposes of this Bylaw, including requirements of recording of plans and documents and report thereof to the Board.

3.2.0 Approval, Approval with Modifications, or Disapproval

Within 90 days after the close of the public hearing the Planning Board shall take final action thereon. It may approve, modify and approve or disapprove said special permit, as provided by statute.

- 3.2.1. The action of the Board in respect to said special permit shall require a concurring vote of four (4) of the five (5) members of the Board in order to grant said permit. Only those members of the Board who were in attendance at the public hearing may vote on the application in question. The Board shall cause a detailed record to be made of its proceedings, showing the vote and setting forth clearly the reason or reasons for its decision and for its other official actions.
- 3.2.2. The period within which final action shall be taken may be extended for a defined period by mutual written consent of the Board and the applicant to be filed with the Town Clerk. In the event that the Board determines that the plans and evidence included with the application or presented to it at the public hearing are inadequate to permit the Board to make a finding and determination, instead of denying the application, it may (at its discretion) adjourn the hearing to a later date to permit the applicant to submit additional information and further evidence to the Board.
- 3.2.3. The Board shall file a copy of its decision with the Town Clerk and send a copy of its decision to the applicant.
- 3.2.4. The applicant shall be responsible for recording the decision with the Deed to the property, and shall submit to the Board evidence of recording prior to issuance of a Building Permit or the start of any work. The permit is not effective unless recorded with the Worcester Registry of Deeds, Worcester, Massachusetts.

3.3.0 Subsequent Planning Board Action

Prior to notification to the Building Inspector that a building permit may be issued for any stage or phase of a SHC, the Planning Board shall first determine compliance with the following requirements:

- 3.3.1 The applicant has submitted to the Planning Board detailed plans showing the locations, designs and layouts of the roads, buildings, driveways and accessory structures included in such stage or phase.
- 3.3.2. The Planning Board has determined that the detailed plans are in substantial conformity with the conceptual plans approved in the special permit.
- 3.3.3. The applicant has provided security by covenant or cash or other means satisfactory to the Board in form and amount, securing construction and installation of driveways, utilities and related services. The applicant may elect either covenant or bond; however, the use of any other form of security is entirely within the Planning Board's discretion.
- 3.3.4. Recorded copies of all legal documents, including the Plan, Planning Board decision, covenant, Master Deed, Condominium Association documents, deed restrictions and easements have been submitted to the Planning Board.
- 3.3.5. A Marketing Plan, satisfactory to the Board has been submitted complying with the purposes of Section III-6.0 [Marketing Plan / Local Preference] of these regulations.
- 3.3.6. Less than two years has expired since the grant of the Special Permit or grant of a building permit that has previously been granted for said site.

3.4.0 Withdrawal of Petition

Any application for a permit submitted hereunder may be withdrawn without prejudice by notice in writing to the Board prior to the first publication of notice of a public hearing. Withdrawal of any application thereafter requires Board approval.

3.5.0 Limitation on Approval or Extension

3.5.1. In the case where an application or a permit is granted by the Planning Board, all other permits for the execution of the work shall be obtained and substantial use thereof shall be commenced, except for good cause, or construction begun, except for good cause, within two years from the date of filing of the Board's decision in the Office of the Town Clerk.

3.5.2. The granting of a permit constitutes approval only under the pertinent sections of the Town of Upton Zoning Bylaw. Other permits or approvals required by the Bylaw and other governmental boards, agencies or bodies having jurisdiction, such as the Board of Health, Water/Sewer Permits, and Conservation Commission, shall not be assumed or implied. The Board may condition, as appropriate, any permit hereunder on compliance with the requirements of these other governmental bodies prior to the start of any work on the site, the issuance of a Building Permit or any other appropriate step in the development process.

3.6. Repetitive Petition

Pursuant to M.G.L. Chapter 40, Section 16, no application which has been unfavorably and finally acted upon by the Board shall be acted favorably upon within two years after the date of final unfavorable action unless: 1) the Board finds by a two-thirds vote of specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in the records of its proceeding; and 2) all but one member of the Board consents to the consideration of the matter. Notice to parties in interest shall be given of the time and place of the proceeding at which the questions on consent will be considered.

SECTION V. PERMITS FOR USE AND CONSTRUCTION

1.0 CONSTRUCTION

Prior to initiation of construction, and prior to any site work including clearing of vegetation, grading or earth removal, except that which is necessary for testing for wastewater disposal, the applicant shall be required to provide the Planning Board with the following:

1.1.0 Construction Schedule

The applicant shall submit a schedule of the projected work by major categories of work to the Planning Board for review and approval Eight (8) weeks prior to the start of construction. The schedule shall be by calendar weeks and address each category in Section VI, Design and Construction Standards. The schedule shall be adjusted periodically to reflect the actual work progress and related modifications to the schedule.

1.2.0 Performance Guarantee

Construction and installation of roadways, drainage, water supply, wastewater disposal, landscaping, utilities and other infrastructure associated with the development shall be secured by one, or in part by one and part by the other, of the following methods which may from time to time be varied by the applicant with the written consent of the Board. Said security shall be posted and approved by the Planning Board prior to any construction.

1.2.1. Approval with Covenant

The applicant shall file a duly executed covenant, which provides that no unit in a SHC may be sold until the ways and municipal services necessary to adequately serve such unit have been constructed and installed. Such covenant shall be approved as to form and manner of execution by the Planning Board and shall be recorded in the Registry of Deeds by the owner of record and shall run with the land.

1.2.2. Approval with Surety

A bank passbook, or a deposit of money with an established bank or lending institution in an amount determined by the Board to be sufficient to cover the cost of all the improvements specified in Section VI hereof, or other form of surety acceptable to the Planning Board.

2.0. RELEASE OF COVENANT

Upon completion of the work, or segments thereof servicing units in a SHC, or upon bonding of work remaining to be done, the Planning Board shall release units as appropriate from the Covenant.

3.0. REDUCTION OF SURETY

The Board may from time to time, reduce the amount of any deposit held hereunder and the obligations of the parties thereto released by said Board in whole or in part. However, in no case shall the Town reduce the minimum surety amount to less than \$10,000.00, until completion of all construction, improvements, acceptance and receipt of an “as-built” plan by the Town.

4.0. EVIDENCE OF SATISFACTORY PERFORMANCE

Before the Board will release the interest of the Town in a performance bond or deposit, or issue a release of covenant in the case where no bond is outstanding, the applicant shall file with the Board the following:

- 4.1. An as-built” plan by a Registered Professional Engineer or Registered Land Surveyor indicating all streets, walkways, storm drains, water mains, fire alarm system, gas mains and underground utilities, and their appurtenances have been constructed in accordance with the Plans as approved. Where variations of the approved lines, grades and/or locations have been authorized by the Board or the Planning Board Agent in the course of construction of the improvements, said variations shall be depicted upon the certified plan.
- 4.2. Written evidence from the Director of Public Works that the streets, signs, markers, bounds, monuments and drainage conform to the regulations in accordance with the approved Plan.
- 4.3. Written evidence from the D.P.W Director that the mains and hydrants conform to the District specifications and the Board’s regulations in accordance with the approved Plan.
- 4.4. Written evidence from the Board of Health that the system for wastewater disposal conforms to the Rules and Regulations of that Board and is in accordance with the approved Plan.
- 4.5. Written evidence from the Fire Chief that the Plan conforms to the requirements, standards and specifications of that department.

SECTION VI. DESIGN AND CONSTRUCTION STANDARDS

1.0. ROADWAYS

All provisions of the Planning Board Rules and Regulations Governing the Subdivision of Land, Sections IV, Design Standards as the same may be amended from time to time, with respect to roads, driveways, parking spaces, utility services, drainage, lighting, signage, easements, shade trees, walkways, fire protection, water supply and other aspects of development construction shall be applicable to similar features in a SHC, provided that the Planning Board may waive or modify the same to meet the site conditions and design requirements of a SHC. In recognition of the resident age qualifications applicable to SHC and the goal of preserving rural environmental amenities, it is generally anticipated that the Planning Board will approve reduced roadway pavement widths, elimination of curbs, and convenient access to dwelling units and communal and recreational facilities.

2.0. WASTEWATER DISPOSAL

Each dwelling unit in residential districts A & B shall be connected to a municipal wastewater treatment system. Each dwelling unit in residential districts C, D, and A&R shall be connected to a municipal wastewater treatment system, or to an on-site sewage treatment facility.

In every SHC wastewater disposal by means of an on-site subsurface disposal system, shall comply with the requirements of Title 5, 310 CMR 15.000. Wastewater disposal approval in accordance with the Rules and Regulations of the Upton Board of Health shall be required prior to final approval of any phase of a SHC.

If an on-site sewage treatment facility is used, the owner(s) shall have complete responsibility for maintenance and operation of the facility. If individual units are sold, each owner shall, as a condition of purchase, be required to join a homeowner's association or a condominium trust for the purpose of maintaining the treatment plant in a manner prescribed by the Massachusetts Department of Environmental Protection, and approved by the Board of Health.

Commentary: The Town of Upton at the discretion of the DPW Director and the Board of Health may provide testing, maintenance and service work for a fee.

3.0. WATER

Each dwelling unit in residential districts A & B shall be connected to the municipal water system. Each dwelling unit in residential districts C, D, and A&R shall be supplied by a water source approved by the Board of Health and by the Director of Public Works.

4.0. OPEN SPACE & COMMON LAND MANAGEMENT

4.1. Preservation of Natural Features

The Planning Board shall require that the applicant make every reasonable effort consistent with sound planning to preserve natural and historical features of special interest, including hill tops, cliffs, large trees, water bodies, biological habitats of special interest, historically significant regions, views and scenic points and similar community assets, which, if preserved, will add attractiveness and value to the development. Disturbance to existing vegetation and topography shall be minimized by appropriate design of the development and relating proposed buildings harmoniously to the terrain.

The Board strongly encourages applicants to investigate and make use of conservation grants and easements, particularly in environmentally sensitive areas.

4.2. Buffers

A one hundred (100) foot wide vegetative buffer between a SHC and abutting properties is required around the entire SHC perimeter; provided, however, that access roads and pedestrian and bicycle paths may cross the buffer at the discretion of the Planning Board, and the Planning Board may otherwise reduce the width of the buffer at appropriate locations, taking into account the character or open space use of abutting properties or the existence or requirement of buffer thereon. The buffer shall remain in a natural state. If in the opinion of the Planning Board, the vegetation located within the buffer is not adequate to reasonably screen the SHC from abutting properties, additional landscape plantings shall be required within the buffer.

4.3. Ownership and Use of Common Land and Open Space

4.3.1. The common land in a SHC shall be used for conservation, agriculture, forestry, recreation or park purposes and shall be maintained and groomed by the owner or its successor in interest in a manner appropriate for such use. The common land shall be in one or more parcels of a size, shape and location appropriate for its intended use as determined by the Planning Board. Provision shall be made so that the common land shall be accessible to the units in the development, and if granted to the Town, accessible by the general public by means of at least one 20-foot wide access easement leading from a public or private way. Such means of access shall be identified on the development plan submitted with the special permit application.

4.3.2. The ownership of open space shall either be conveyed to the Town of Upton and accepted by it for open space, or be conveyed to a non-profit organization, the principal purpose of which is the conservation of open space, or be conveyed to a corporation or trust, or other entity, owned or to be owned by the owners of units within the development. In all cases of ownership, a perpetual restriction of the type described in M.G.L Chapter 184, section 31-32 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded for all open space. Such restriction shall provide that the open space shall be retained in perpetuity for one or more of the following uses: conservation, outdoor passive recreation or park purposes. Such restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the open space as the Planning Board may deem appropriate.

5.0. LANDSCAPING STANDARDS

A landscape plan shall be submitted as part of any SHC. Said plan shall indicate areas proposed for retention of natural vegetation, including individual trees to remain within the development, and landscaped areas. Any additional screening required within the buffer shall be shown on the landscape plan. Type, size, and quantity of species shall be indicated.

Off-street parking, garbage disposal areas and utility transformers shall be shielded from view with vegetative plantings.

6.0. BUILDING DESIGN AND CONSTRUCTION

- 6.1. Architectural review by the Planning Board shall be required for all buildings to be constructed in a SHC. Construction materials, color samples, exterior renderings and other information necessary to review the external appearance of units in a SHC shall be submitted to the Upton Planning Board. Architectural design shall incorporate mechanisms to minimize the scale and mass of buildings, blend the buildings in with the natural environment, assure privacy and reflect the character of the community in appearance. A written recommendation shall be made to the Planning Board prior to final approval for construction of any units.
- 6.2. Building length shall be minimized and shall not exceed 200 feet in length along its longest side without the permission of the Planning Board.

7.0. STREET AND BUILDING NUMBERS

- 7.1. Street signs shall be provided at each intersection and shall include a sign for each street at that intersection. Street signs shall meet or exceed the requirements of the Department of Public Works and be installed in accordance with the latest edition of the manual on Uniform Traffic Control Devices.
- 7.2. The developer is required to obtain a list of prospective street names from Upton Historical Commission.
- 7.3. Street names shall be approved by the Planning Board to prevent duplication and to provide names in keeping with the character of the Town.
- 7.4. The Town Clerk prior to approval of building permits shall issue Building numbers.

8.0. UNDERGROUND UTILITIES

All utilities in a SHC shall be installed underground in accordance with the rules and regulations governing subdivisions.

9.0. ENTRANCE SIGNS, MONUMENTS AND STRUCTURES

9.1. Street signs of a type approved by the Director of Public Works shall be erected at all street intersections prior to the issuance by the Building Inspector of a building permit for any unit on that street. Such signs shall bear the names of the streets as shown on the approved Plan.

9.2. Development signs, decorative monuments, gate houses or other visual displays within 25 feet of a public right-of-way shall be shown on the Plan and shall require approval from the Planning Board during application review.

10. INSPECTION

An agent of the Planning Board, or as appropriate, by an agent of the Board of Health or the Building Inspector, may conduct inspection of a SHC with respect to approval, construction, administration and maintenance.

SECTION VII. ENFORCEMENT

1.0. PROJECT MAINTENANCE

In every Congregate or Independent Senior Housing there shall be an organization of the owners of the dwelling units established pursuant to M.G.L. Chapter 183A, or equivalent legal entity, which shall be responsible for the maintenance and repair of roads and driveways, snow plowing, wastewater disposal, landscape maintenance, trash removal, utility services and maintenance and repair of other common elements and facilities serving the residents.

The bylaws of the organization shall prohibit the dissolution of the organization without adequate replacement, or changes to any provisions required by the Town of Upton in any permit issued for a Congregate or Independent Senior Housing development, or changes to any provisions or requirements of the Zoning Bylaw and these rules and regulations, without the written consent of the Planning Board of the Town of Upton.

2.0. AGE RESTRICTION/OCCUPANCY

All dwelling units in Congregate or Independent Senior Housing must be occupied with at least one occupant aged 55 or over. The occupant shall reside in the dwelling unit, and shall not vacate the premises and rent or lease to an unauthorized occupant without express written permission of the development organization and the Planning Board. There shall be no further limitation on the size or membership of the household provided the qualifying owner-occupant resides in the unit, except as specified in the Upton Zoning Bylaws.

The organization of homeowners established for the development shall annually report to the Planning Board on the residency of all occupied units, including the names and ages of owners and occupants, and any other information necessary to enforce the conditions of approval.

3.0. DEATH OR FORECLOSURE EXEMPTION PERIOD AND CRITERIA

In the event of the death of the qualifying occupant(s) of a dwelling unit, or foreclosure or other involuntary transfer of a unit in Congregate or Independent Senior Housing, a two-year exemption period shall be allowed for the transfer of the unit to another eligible household. During this two-year period, household members who resided in the unit prior to the death of the qualifying occupant may remain in the unit. Persons who are not qualified occupants may not move into the unit.

4.0. ENFORCEMENT OF REGULATIONS

Any homeowner or other occupant of a unit in Congregate or Independent Senior Housing who does not abide by the regulations set forth herein, or the conditions set forth in the approval document for the development, and which causes the Town of Upton to enforce these regulations in a court of legal jurisdiction shall be liable for the costs to uphold the regulations, including but not limited to attorney fees. This regulation shall be incorporated into the condominium association Master Deed.