

## **SECTION 13: ADMINISTRATION, ENFORCEMENT, AND PENALTIES**

### **13.1 BUILDING PERMITS REQUIRED: RULES**

No building or structure shall be erected, altered or moved in LENOX without a written permit issued by the Building Inspector. Such permits shall be applied for in writing to the Building Inspector. The Building Inspector shall not issue any such permit unless the plans for the building and the intended use thereof in all respects fulfill the provisions of the LENOX ZONING BYLAW, except as may have been specifically permitted otherwise by action of the Board of Appeals or the Board of Selectmen, provided a written copy of the decision governing any such permission be attached to the application and to the resulting building permit issued. One copy of each such permit as issued, including any conditions or restrictions attached thereto, shall be kept on file in the office of the Building Inspector.

### **13.2 RULES FOR APPLICATION FOR BUILDING PERMIT**

Each application for a permit to build, alter, or move a building or structure shall be accompanied by a plot plan in such number of copies and drawn to such scale as is required in the State Building Code. Each such plot plan shall show dimensions in feet and areas of lots and structures to be erected, altered or moved, and adjacent streets or ways. Such plot plans shall accurately indicate dimensions and angles of all lot lines shown thereon, also of any streets or ways. Such plot plans shall indicate approved street grades and proposed elevations of the tops of foundations. Also such plot plans shall show the locations of existing sanitary sewers, storm drains, and water pipes in any street shown and the locations of all existing buildings and structures within the application area, as well as the location of any proposed buildings or structures.

#### **13.2.1 SPECIAL PERMIT, SPECIAL PERMIT AND SITE PLAN APPROVAL AND VARIANCE APPLICATIONS; RULES**

An applicant filing for a special permit or for a variance shall at the time of his filing an application with the Board of Appeals or with the Board of Selectmen submit in duplicate a copy of the plot plan together with a sketch of the building or structure or use proposed drawn to scale on a topographical map and showing all relevant data regarding the proposed use, e.g., all existing and proposed buildings, structures, parking areas, driveway openings, driveways, landscape features (walks, planted areas, trees, etc.), and drainage provisions. The Board of Appeals, or the Board of Selectmen shall transmit one copy to the Lenox Planning Board with a copy of the notice of hearing. The Planning Board shall forward its recommendations to the Board of Appeals or the Selectmen no later than the date of the hearing on the applicant's petition. (First two lines amended 5/6/77)

## 13.2.2 APPLICATION FOR SITE PLAN APPROVAL

### 13.2.2.1 APPLICABILITY

This section is enacted under the authority of Chapter 40A of the General Laws to accomplish the purposes set forth in Section 6.4.1 of the Bylaw. In considering a Site Plan, the Zoning Board of Appeals shall assure that all structures and uses are developed in a manner which considers community needs, including protection of abutting properties and visual amenities, convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas, adequacy of methods of disposal for wastes and surface water drainage and protection of environmental features on the site and in adjacent area.

### 13.2.2.2 PROJECTS REQUIRING SITE PLAN REVIEW

Notwithstanding anything contained in the Bylaw to the contrary, no building permit for the construction, exterior alteration, or relocation, occupancy or change in use of any building, structure or premises in the C-1A or C-3A zones shall be issued, nor shall an occupancy certificate for any change of use of a building, structure, or premise be issued, without Site Plan Review and approval by the ZBA.

It is the intent of this section that no individual, corporation or any business entity, regardless of the form chosen, shall occupy any building structure or premises or change the use thereof or the construction or alteration to the exterior of any structure in the C-1A or C-3A zones without first complying with the provisions of Site Plan Review.

Further, if the ZBA determines upon review at a regularly posted meeting that there is no substantive change in use and the proposed use is not more detrimental than its present or immediate prior use and that the external enlargement, if applicable, is less than 2,000 (two thousand) square feet, the Board may waive any or all of the requirements of Site Plan Review.

### 13.2.2.3 CONTENT OF SITE PLAN

A site plan shall be prepared by a Registered Professional Engineer and/or a Registered Land Surveyor and/or a Registered Landscape Architect at a scale of 1" = 20' or such

scale as may be approved by the ZBA on standard 24" x 36" sheets and continuation on 8 1/2" x 11" sheets as necessary for narrative. The site plan shall include:

- A. Name of the project, locus, boundaries, date and scale of the plan.
- B. Name and address of the record owner, developer, and seal of the engineer or surveyor.
- C. Name and addresses of all record owners within three hundred (300) feet of the property lines.
- D. All existing lot lines, easements, rights-of-way, size in acres or square feet, abutting land uses and location and use of structures within three hundred (300) feet of the site.
- E. The location and use of all existing and proposed buildings and structures within the site plan, including dimensions and height, and showing exterior entrances, exits and all anticipated future additions or alterations, and a rendering of buildings to be constructed. The requirements of this Section do not apply to residential developments.
- F. Location of all present and proposed public and private ways, parking areas, driveways, sidewalks, ramps, curbs, fences, buffers for screening purposes, paths, landscaping, lighting fixtures, planting areas, walls, signs, service areas, refuse and other waste disposal containers.
- G. Location of all present and proposed utility systems including sewage or septic systems, water supply system, existing and proposed surface and subsurface drainage systems, telephone, cable and electric lines. Storm drainage system will include existing and proposed drainlines, culverts, drainage swells, catch basins, headwalls, endwalls, hydrants, manholes, channels, and subdrainage along with soil logs, percolation tests when necessary, and drainage calculations.
- H. The applicant shall submit plans to prevent the pollution of surface or groundwater, erosion of soil, excessive run-off of precipitation, excessive raising or lowering of the water table and flooding of other properties.

- I. Existing and proposed topography at a two (2) foot contour level. Sufficient information to indicate areas in the site and within 50 feet of the site where gravel removal or filling is proposed and the approximate volume in cubic yards. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark.
- J. A landscape plan showing all existing natural land features, forest coverage and water sources, and all proposed changes to these features. Water sources will include ponds, lakes, brooks, streams, wetlands, floodplains and drainage retention areas.
- K. Zoning District boundaries within five hundred (500) feet of the site's perimeter shall be drawn and identified on the plan. Floodplain boundaries and the square feet within this district shall be shown.
- L. Existing and proposed business signs and traffic signs located on the site and within one hundred feet of the site, and the size, dimension, height, color and illumination of all signs.
- M. A traffic study to include:
  - 1. Traffic flow patterns within the site, egresses and entrances, loading and unloading areas, and curb cuts on site and within one hundred feet of the site.
  - 2. Traffic impact - the projected number of motor vehicle trips to enter or depart from the site shall be estimated for daily hour and peak hour traffic levels.
  - 3. A projected traffic flow pattern for both vehicular and pedestrian access shall be described and related to the site plan, including vehicular movements at all major intersections likely to be affected by the proposed use of the site.
  - 4. The impact of this traffic upon existing abutting public and private ways in relation to road capacities. Existing and proposed daily hour and peak hour traffic levels will be given and road capacity levels.
  - 5. As a result of subparagraph items 1-4 above, the ZBA may request a plan to implement the improvements needed to provide for the free flow of traffic in areas surrounding the site and identified by the ZBA as impacted by the proposed uses.

6. With respect to vehicular and pedestrian circulation, including entrances, ramps, walkways, drives, and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls and public transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.
- N. A plan for the control of erosion, dust and silt, both during and after construction. Such plan shall include all existing and proposed slopes, construction sequencing, temporary and permanent erosion control, and protection of water bodies. In addition, applicant must comply with Section 13.2.3 Drainage and Erosion Control Bylaw, if applicable.
- O. For alterations to any existing or new business/commercial/industrial uses a table containing the following information:
1. Maximum area of building to be used for selling, offices, business, industrial or other uses.
  2. Maximum number of employees where applicable.
  3. Maximum seating capacity where applicable.
  4. Number of parking spaces existing or required for the intended use, based on Section 10 of the Bylaw.
- P. The ZBA shall have the right to waive any of the above items under unique site conditions or request any additional data it should need to render its decision. A majority vote of the ZBA would be required to waive any of the site plan items.

#### 13.2.2.4 PROCEDURE

- A. An applicant for Site Plan Review under this section shall file (4) copies each of the application and Site Plan with the Land Use Clerk on the forms provided by the ZBA. A copy of the application shall be given to the Town Clerk by the applicant.

1. An applicant may seek to waive the requirements of this section if applicable under Section 13.2.2.2 by making a written request to the ZBA at least fourteen (14) days prior to the next regularly scheduled ZBA meeting. The ZBA shall consider the request at the next regularly scheduled posted meeting and notify the applicant within seven (7) days of its decision.
- B. The Board shall transmit to the Planning Board, Conservation Commission, Board of Health and Building Inspector or other boards as deemed necessary copies of the application and site plan. The boards shall have up to thirty-five (35) days to make recommendations to the ZBA.
- C. The applicant shall submit a filing fee to cover any expenses connected with the public hearing and review of the plan.
- D. The ZBA shall hold a public hearing within sixty-five (65) days of receipt of an application and shall take final action within ninety (90) days from the time of hearing, as provided in M.G.L., Chapter 40A, Sections 9 and 11, and in Section 11.4 of this Bylaw relating to special permit procedures. Such final action shall consist of either (1) a finding that the proposed project will constitute a suitable development and will not result in detriment to the neighborhood or the environment; or (2) a written denial of the application stating the reasons for such denial. Approval may be made subject to conditions, modifications and restrictions as the Board may deem necessary; and any construction, reconstruction, alteration or addition shall be carried out only in conformity with such conditions, modifications or restrictions and in conformity with the application and site plan. A denied applicant may resubmit his application to comply with the requirements of this Site Plan Review Bylaw and resubmit the plan for review. In no event may the Board deny an application that meets all the standards set forth in this Section of the Bylaw.
- E. The Board may require the posting of a security to assure compliance with the plan and conditions and may suspend any permit or license when work is not performed as required.
- F. The Board may, after a public hearing, adopt and periodically amend or add rules and regulations relating to the procedures and administration of this section and shall file a copy of said rules with the Town Clerk.

### 13.2.2.5 STANDARDS FOR REVIEW

In reviewing site plans, the Board shall consider the following:

- A. Protection of the abutting properties and community to minimize any detrimental use of the site.
- B. Convenience and safety of vehicular and pedestrian movement within the site and the relationship to adjoining ways and properties.
- C. Adequacy of the methods of disposal of sewage and refuse and the drainage of surface and subsurface water.
- D. Adequate means of protecting wetlands, watersheds, aquifers, and well areas.
- E. Provisions for off-street loading and unloading of vehicles incidental to the normal operation of the establishment, parking, lighting and internal traffic control.
- F. Provision of open space consistent with Town Open Space Plan Concepts.
- G. The natural landscape shall be preserved in its existing state insofar as practicable, by minimizing tree cutting, and soil removal or filling of the site. Any grade changes shall be in keeping with the general appearance of neighboring developed areas.
- H. Location and design shall not cause avoidable damage to wildlife habitats or corridors, or to any plant species listed as endangered, threatened or of special concern by the Massachusetts Natural Heritage Program, or to any tree exceeding 24 inches trunk diameter four and a half (4 ½) feet above grade. Applicants must submit documentation to the SPGA of having consulted with the Conservation Commission and the MA NHP regarding these considerations, and that the proposed site either contains no such habitats or materials or that all feasible efforts to avoid, minimize or compensate for damage have been reflected in the proposal.
- I. The layout of design features, such as vegetative buffers, within developments which will integrate into the existing landscape.
- J. Consistency of the proposed development with the Town Master Plan Concepts.

K. Compliance with the provision of Massachusetts General Laws, Chapter 40A and 41A, the rules and regulations of state and federal agencies and the Bylaw of the Town of Lenox.

L. Sewer and Water Capacity

Each development proposal shall demonstrate that it will not adversely affect the existing loads on the public water and public sewer systems of the Town. The Department of Public Works or its agent shall serve to determine the existing load on the public water and public sewer systems of the Town. In the event that the Applicant is unable to demonstrate that there will be no adverse effect or if the Board should find there will be an adverse impact, the Board may require the Applicant to redesign the development proposal to minimize such impact and may require the Applicant to proceed with development in phases as specified by the Board. The Board may specifically require a development density less than that otherwise permitted under this Bylaw. In the alternative, the Applicant may offer to fund any required capital improvements deemed necessary by the Board to handle the increased water and sewer demands of the proposed development and the Board may require bonding in an amount sufficient to provide adequate security to the Town for the completion of said capital improvements. Any such capital improvements will be subject to the approval and continuing review of the Board of Public Works.

M. Stormwater management. All development shall be designed so that resulting stormwater conditions resemble, as nearly as possible, preexisting conditions of volume, velocity, quality and location of runoff.

N. Erosion Control.

1. Stabilizing. Any area of bare earth exposed through nonagricultural building development must be permanently stabilized through replanting, paving, or other means of eliminating wind or water erosion. Such stabilization must be completed prior to building occupancy, or a performance bond must be posted in an amount sufficient to assure completion of such work.
2. Construction Requirements. All construction must comply with the following:
  - (a) Stripping of vegetation, regarding or other development shall be done in a way which will minimize soil erosion.

- (b) Whenever practical, natural vegetation shall be retained, protected and supplemented.
- (c) The disturbed area shall be kept to a minimum.
- (d) Where necessary, temporary vegetation and/or mulching shall be used to protect areas exposed during development.
- (e) Sediment basins (debris basins, desilting basins or silt traps) shall be installed and maintained where necessary to remove from runoff water any sediment from land undergoing development.
- (f) The angle of graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or alternative proposed erosion control devices or structures. In any event, slopes left exposed must immediately be planted or otherwise provided with permanent ground cover or other means sufficient to retain erosion.
- (g) The development plan or land-disturbing activity shall be fitted to the topography and soils so as to create the least erosion potential.

O. Design Standards:

1. Any proposed landscape development or alteration should be compatible with the character and appearance of the surrounding area and the proposed project. Landscape and streetscape elements should provide continuity and definition to the street, pedestrian areas and surrounding landscape.
2. The design should give attention to the placement of storage, waste or mechanical equipment so as to screen it from view. Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be subject to setbacks, screen plantings or other screening methods described in this section and in 10.11 to hide their existence and cause them to blend in with the existing or contemplated environment and the surrounding properties.
3. The proposed materials and colors must be compatible with the character of the Town and the intent of the design standards. With respect to Lenox's unique

architectural heritage, removal or alteration of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

4. Where feasible, fire escapes, window mounted air conditioners or other mechanical features should not be located on facades which front major streets, or face residential districts.
5. Architectural details including but not limited to additions, signage, awnings, lighting, pedestrian furniture, planting and paving, shall be compatible with the architecture of the principal building and site landscaping with regards to scale, materials, color, and texture.
6. Buildings and structures shall be designed and arranged so as to relate to open space in a manner compatible with adjacent lots.
7. Relation of buildings to the environment

New development shall be compatible with existing natural and developed environment within the surrounding visual area. New buildings, additions or alterations shall be related to their surroundings with respect to:

- (a) Street façade. All buildings should present high quality and architecturally related front facades to streets.
- (b) Buildings on corner lots. If one street is more heavily used, then the facade of a new or renovated building facing that street may be more highly articulated and/or detailed than the facade which faces the side street.
- (c) Renovations to historic buildings. Historic buildings should be renovated so as to retain historic features with original storefront elements and facade detailing.
- (d) Roof Slopes. Heights of new buildings erected on sites without an existing building shall approximate those of adjacent buildings where feasible. Diverse roof heights are encouraged, however, should be complementary to the surrounding developed environment.

### 13.2.3 DRAINAGE AND EROSION CONTROL

Any religious purpose, educational purpose, special permit or variance which permits the construction of more than ten (10) new dwelling units, or any religious purpose, educational purpose, motel, nursing home, planned unit commercial development, resort, office building, or industrial use which:

- (a) is located on 25 acres or more of land, and/or
- (b) results in more than 20,000 square feet of ground floor area and paved parking area, shall be subject to the following regulations:

The applicant shall submit with its application for a certificate of occupancy, building permit, special permit, or variance, the following:

1. a plan of the tract and adjacent and downstream areas showing proposed drainage facilities together with a statement showing the impact of storm water runoff on adjacent downstream surface water bodies and flood plains. The applicant shall demonstrate that adequate provisions have been made for the provision of surface water according to the following standards; catch basins and culverts shall be built in conformity with specifications of the Superintendent of Public Works on both sides of any roadway on continuous grades at intervals of not more than 400 feet, at low points and sags in any roadway, and near the corners of the roadway at intersecting streets.

The applicant may be required by the Board of Public Works and its Superintendent to carry away by pipe or open ditch any spring or surface water that may exist either previous to or as a result of the development. Such drainage facilities shall be located in the road right-of-way, where feasible, or in perpetual unobstructed easements of appropriate width shown on the plan.

A culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area.

The Board of Public Works and its Superintendent shall approve the design and size of the facility based on anticipated runoff from a "twenty-five year frequency" storm under conditions of total potential development permitted by the zoning bylaw in the watershed. A lesser frequency storm calculation may be allowed where downstream flooding problems are minimal. In any event, the Soil Conservation Service Modified Soil Cover Complex Method will be used to determine runoff.

The applicant's engineer shall also study the effect of the existing downstream drainage facilities outside the area of development. This study shall be reviewed by the Board of

Public Works and the Superintendent of Public Works and where it is anticipated that the additional runoff incident to the development will overload the existing downstream drainage facility. The Zoning Board of Appeals shall not approve the development, nor shall the Building Inspector issue a building permit or certificate of occupancy until provision has been made for the improvement of said conditions.

2. a plan for control of erosion and sedimentation both temporary and permanent measure prepared by a professional engineer, which shall include the following:
  - (a) a plan map showing property lines, wetlands, stream courses, water bodies, location of areas to be stripped of vegetation, location of areas to be regraded, the contour data including existing and proposed grades.
  - (b) a schedule of operations, to show the sequence and timing of major improvement phases such as clearing, grading, paving, installation of drainage features, and the like.
  - (c) seeding, sodding, or revegetation plans and specifications for all unprotected or unvegetated areas.
  - (d) a map showing the location, design and timing of structural sediment-control measures, such as diversions, waterways, grade stabilization structures, debris basins, and the like.
  - (e) the calculations used in designing erosion-control structures.
  - (f) a description of procedures to be followed to maintain sediment-control measures, including the manner in which sediment removed from control structures will be disposed of.

A completion bond or covenant shall be required for improvements in the proposed development. A bond shall be sufficient to cover the costs of accomplishing the erosion and sedimentation control measures.

Performance standards shall conform to those described in the "Guidelines for Soil and Water Conservation in Urbanizing Areas of Massachusetts", (USDA, Soil Conservation Service, 1975) (A.T.M. 6/8/84)

### 13.3 CONSTRUCTION AFTER NOTICE OF HEARING

Construction or operation under a building or special permit shall conform to any subsequent amendment of this Bylaw unless the permit is issued before the first publication of the required notice of public hearing by the Planning Board on such amendment and the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. (A.T.M. 5/6/77)

#### 13.4 CONSTRUCTION TO CONFORM TO PLANS

Special permits or building permits issued on the basis of plans and applications approved by the Board of Selectmen, Board of Health, Planning Board or the Board of Appeals authorize only the use, arrangement and construction as set forth in such approved plans and applications.

Use, arrangement or construction at variance with that authorized shall be deemed a violation of this Bylaw and punishable as provided herein. (A.T.M. 5/6/77)

#### 13.5 CERTIFICATE OF OCCUPANCY

No building or structure hereafter erected or altered so as to require a building permit shall be occupied or used, in whole or in part, until a certificate of occupancy shall have been issued by the Building Inspector certifying that such building conforms to the conditions of the building permit and the provisions of the building code. Upon the request of the holder of a permit, the Building Inspector may issue a temporary certificate of occupancy for part of a building, provided that such temporary occupancy or use would not jeopardize life or property. No change of occupancy or use shall be made in a building hereafter erected or altered that is not consistent with the last certificate issued for such building unless a permit is secured. A certificate of occupancy shall be issued within seven days after receipt of written application therefor, if the building at the time of such application shall be entitled thereto.

#### 13.6 BUILDING INSPECTOR ALSO ZONING ENFORCEMENT OFFICER

The LENOX ZONING BYLAW shall be enforced by the Lenox Building Inspector. The Building Inspector, upon being informed in writing of a possible violation of the Bylaw or on his own initiative shall make or cause to be made an investigation of facts and an inspection of the premises where such violation may exist. The Building Inspector, on evidence of any violation, after investigation and inspection, shall give written notice of such violation to the owner and to the occupant of such premises. The Building Inspector shall demand in such notice that such violation be abated within a reasonable time, designated therein by the Building Inspector. Such notice and demand may be given by mail addressed to the owner at the address appearing for him on the most recent real estate tax records of the TOWN OF LENOX and to the occupant at the address of the premises of such seeming violation.

#### 13.7 BOARD OF SELECTMEN - ACTION IF VIOLATIONS NOT ABATED

If, after such notice and demand, such violation has not been abated within the time specified, the Building Inspector shall notify the Board of Selectmen of the TOWN OF

LENOX who shall take such action or initiate such proceedings in the name of the TOWN OF LENOX as they shall deem appropriate and necessary to prevent, correct, restrain, or abate any violation of this Bylaw.

#### 13.8 PENALTIES FOR VIOLATION

Any violation of any provision of this Bylaw or of any regulation by the Town Health Officer pursuant to this bylaw shall be punishable by a fine of not more than Three Hundred Dollars (\$300.00). Each violation and each day of violation shall constitute a separate offense, punishable by fine as aforesaid. (A.T.M. 5/7/76)

Non criminal disposition - in addition to the procedures for enforcement as described above, the provisions of this zoning bylaw may also be enforced, by the Building Inspector, by non-criminal complaint pursuant to the provisions of MGL c. 40, section 21D. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for violation of any provision of this bylaw shall be \$25.00 for the first offense; \$50.00 for the second offense; \$100.00 for the third offense and \$200.00 for the fourth and each subsequent offense. (A.T.M. 5/8/93)