

## SECTION 6: USE REGULATIONS

- 6.1 Except as provided by law or in this Bylaw in each district, no building or structure shall be constructed, used or occupied, nor shall land be used or occupied, except for the purposes permitted as set forth in the accompanying TABLE OF USE REGULATIONS, Section 6.6.
- (a) No land within any use district in the TOWN OF LENOX may be used for the collection, treatment, storage, burial, incineration or disposal of radioactive wastes, including but not limited to wastes classified as low-level radioactive waste. (S.T.M. 11/30/81)
- 6.1.1 Before granting a special permit for any use requiring such permit under the provisions of this Bylaw, the Board of Appeals shall find that the proposed use:
- (a) Is in compliance with all provisions and requirements of this Bylaw, and in harmony with its general intent and purpose;
- (b) Is essential or desirable to the public conveniences or welfare at the proposed location;
- (c) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
- (d) Will not create undue traffic congestion, or unduly impair pedestrian safety;
- (e) Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting public health, safety or general welfare. (A.T.M. 5/6/77)
- 6.1.2 Special permits may be issued subject to such conditions, safeguards or limitations as the Zoning Board of Appeals may impose for the protection of neighboring uses or otherwise serving the purposes of this Bylaw. Such conditions, safeguards or limitations may include, but are not limited to, the following:
- (a) Front, side and rear yards greater than the minimum required by this Bylaw; screening buffers or planting strips, fences or walls as specified by the Zoning Board of Appeals;
- (b) Limitations upon the size, number of occupants, method and time of operation, time duration of the permit, or extent of facilities;
- (c) Regulation of number and location of driveways, or other traffic features; and off-street parking or loading, or other special features beyond the minimum required by this Bylaw.
- Any conditions, safeguards or limitations shall be imposed in writing and shall be made a part of the building permit. (A.T.M. 5/6/77)
- 6.2 A use listed in Section 6.6 is permitted as of right in any district under which it is denoted by the letter "X" subject to such restrictions as may be specified elsewhere in this Bylaw.

- 6.3 A use designated in the TABLE by the letters "XA" may be permitted as a special exception only if the Board of Appeals so determines and grants a special permit therefore as provided in Section 11 of this Bylaw subject to such restrictions as are set forth elsewhere in this Bylaw, and such restrictions as said Board may establish (See Sections 9 and 11). See also Sections 6.4.1, 9.21, 10.11 and 13.2.2 for Special Permits and Site Plan Approval.
- 6.3.1 Non-conforming Residences in the C-3A and C-1A Districts - In recognition of the unique hardships accruing to owners of single-family dwellings on non-conforming lots in the 7/20 Corridor, certain special provisions are made for properties in the C-3A and C-1A Districts which meet all of the following conditions as of March 30, 1996:
- (a) Are lots of record;
  - (b) Have a lot size and/or frontage smaller than the minimum required for their district under the Land Space Requirements of this Bylaw;
  - (c) Contain thereon a structure originally built for use as a one- or two-family dwelling.

For ease of reference, the permitted special uses for Non-conforming Residences in the C-3A and C-1A districts are indicated in the TABLE by the letters "NCR". These may be permitted as a special exception only if the Board of Appeals so determines and grants a special permit therefore as provided in Section 11 of this Bylaw subject to such restrictions as are set forth elsewhere in this Bylaw, and such restrictions as said Board may establish (See Sections 9 and 11). If any property which qualifies for these special provisions subsequently fails to meet any of the conditions enumerated above, it shall be ineligible to continue or resume any use permitted under these special provisions and shall be subject to the use regulations applicable to the district. (See also Section 9.23) (S.T.M. 12/16/96)

- 6.4 A use designated in the TABLE by the letters "XS" may be permitted as a special exception only if the Board of Selectmen so determines and grants a special permit therefore, subject to such restrictions as are set forth elsewhere Board may establish. See also Sections 6.4.1, 9.21, 10.11 and 13.2.2 for Special Permits and Site Plan Approval.
- 6.4.1 SITE PLAN APPROVAL FOR DEVELOPMENTS IN THE C-1A AND C-3A ZONES

A use designated in the TABLE by the letters "SPR" may be permitted by right or by special permit with Site Plan Approval. The Board of Appeals shall have the authority to grant Site Plan Approval consistent with Sections 13.2.1 and 13.2.2.

#### 6.4.2 ACTION BY THE BOARD

The Board of Appeals may approve a site plan 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.

- 6.4.3 The Board of Appeals may condition its approval under 6.1.2 and 6.4.2 as follows:
- (a) in the case of multi-family dwellings, by requiring the provision of up to 25 percent (25%) of the total housing units for persons of low or moderate income pursuant to M.G.L. Ch. 40B and regulations promulgated thereunder;
  - (b) for any development requiring a Special Permit under these provisions, provision of certain vegetated open space, protection for solar access, natural contours and existing vegetation, or limitations on use or hours of operation of such developments; and
  - (c) the improvement of road or utility facilities and on off-site to accommodate increased demand likely to be generated by the proposal.

#### 6.5 FLOOD PLAIN DISTRICT

The purposes of the Flood Plain District are to protect the public health, safety, and general welfare, to protect human life and property from the hazards of periodic flooding, to preserve the natural flood control characteristics and the flood storage capacity of the flood plain, and to preserve and maintain the ground water table and water recharge areas within the flood plain. (A.T.M. 5/7/82)

- 6.5.1 The general boundaries of the Flood Plain District are shown on the Town of Lenox Flood Insurance Rate Map (FIRM), dated 5 July 1982 as Zones A.A 1-30 to indicate the 100 year water surface elevations shown on the FIRM and further defined by the Flood Profiles contained in the Flood Insurance Study, dated 5 July 1982. The floodway boundaries are delineated on the Town of Lenox Flood Boundary Floodway Map (FBFM), dated 5 July 1982, and further defined by the Floodway Data Tables contained in the Flood Insurance Study. These two maps as well as the accompanying Study are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Inspector and Board of Selectmen.

Within Zone A, where the 100 year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Building Inspector. If the data is sufficiently detailed and accurate, it

shall be relied upon to acquire compliance with this Bylaw and the State Building Codes. (A.T.M. 5/7/82)

6.5.2 The Flood Plain District is established as an overlay district to all other districts. All development, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws, and with the requirements of the Massachusetts State Building Code pertaining to construction in the flood plains (currently Section 744).

(a) Permitted uses. The following uses of low flood damage potential and causing no obstruction to flood flows shall be allowed provided they are permitted in the underlying district and they do not require structures, fill, and storage of materials or equipment:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
2. Forestry and nursery uses.
3. Outdoor recreational uses, including fishing, boating, play areas, etc.
4. Conservation of water, plants, wildlife.
5. Wildlife management areas, foot, bicycle, and/or horse paths.
6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
7. Buildings lawfully existing prior to the adoption of these provisions.

(b) Special Permits. No structure or building shall be erected, constructed, substantially improved or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a special permit is granted by the Zoning Board of Appeals. Said Board may issue a special permit hereunder (subject to other applicable provisions of this bylaw) if the application is compliant with the following provisions:

1. The proposed use shall comply in all respects with the provisions of the underlying District, and
2. Within 10 days of receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Building Inspector, and Board of Public Works. Final action shall not be taken until reports have been received from the above Boards or until 35 days have elapsed, and
3. All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless there is certification by a registered professional engineer provided by the applicant demonstrating the such encroachment shall not result in any increase in flood levels during the occurrence of the 100 year flood, and

4. The Board may specify such additional and conditions it finds necessary to protect the health, safety, and welfare of the public and the occupants of the proposed use.  
(A.T.M. 5/7/82)