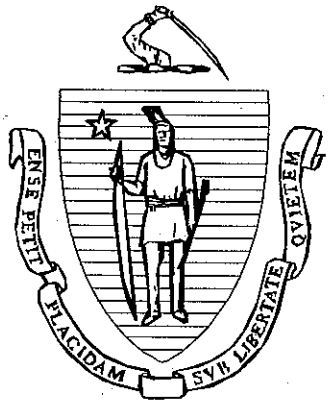

Commonwealth of Massachusetts

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Deval L. Patrick, Governor ◆ Timothy P. Murray, Lt. Governor ◆ Tina Brooks, Undersecretary

THE ZONING ACT

11-08
Massachusetts General Laws
Chapter 40A

Commonwealth of Massachusetts
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
Deval L. Patrick, Governor ◆ Timothy P. Murray, Lt. Governor ◆ Tina Brooks, Undersecretary

Dear Local Official:

I am pleased to provide you with an annotated copy of the Zoning Act booklet. This edition of the Zoning Act will aid planning boards, other municipal officials, and interested residents. The Zoning Enabling Act, Chapter 40A, was enacted by Chapters 368 and 551 of the Acts of 1954 and became effective on August 1, 1954, replacing the previous zoning enabling legislation, Section 25 to 30B, inclusive, of the Chapter 40, General Laws. On December 22, 1975, the Governor signed Chapter 808 of the Acts of 1975, the Zoning Act, which created a new Chapter 40A of the Massachusetts General Laws. The left-hand column of each section of the booklet includes bold-faced annotations which are not part of the law but which have been inserted to facilitate research.

In addition to the publication of this booklet, the Community Assistance Unit within DHCD's Division of Community Services provides a wide range of technical assistance and information to cities and towns. The unit seeks to provide accurate and up-to-date information for local leaders to use in making effective land use decisions.

If you have any questions about the publication, please contact Elaine Wijinja, Principal Land Use Planner, at (617) 573–1360 or elaine.wijinja@state.ma.us.

We trust this booklet and the assistance we provide will be helpful to you in carrying out your responsibilities.

Sincerely,

Tina Brooks

Tina Brooks
Undersecretary

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Commonwealth of Massachusetts

Department of Housing and Community Development

The Zoning Act

Massachusetts General Laws

Chapter 40A

St. 1920, c. 601, s. 1 to 9, inclusive, enacted General Laws, chapter 40, sections 25 to 30 inclusive; St. 1933, c. 269, s. 1 amended chapter 40, by striking out sections 25 to 30A inclusive and inserting in place thereof new sections 25 to 30A inclusive; St. 1954, c. 368, s. 2, repealed chapter 40, sections 25 to 30B inclusive and added General Laws, chapter 40A, sections 1 to 22 inclusive, known as "The Zoning Enabling Act"; St. 1975, c. 808, s. 3, amended chapter 40A, by striking out sections 1 to 22 inclusive and inserting in place thereof sections 1 to 17 inclusive, known as "The Zoning Act".

This publication is a compilation of St. 1975, c. 808, s. 3, and includes any amendments since enactment of the 1975 statute. At the end of each section, an annotation relative to any statute which has amended such section since St. 1975, c. 808, s. 3, is provided.

PLEASE NOTE: The left-hand column of each section provided in this publication includes bold-faced annotations which are not part of the law, but which have been inserted to facilitate research.

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Introduction

"The Zoning Act" was enacted in 1975 to facilitate, encourage and foster the adoption and modernization of zoning ordinances and by-laws by municipal governments; and to establish standardized procedures for the administration and promulgation of municipal zoning laws.

Prior to the 1975 Act, cities and towns were authorized to adopt zoning ordinances and by-laws in accordance with the provisions of the old "Zoning Enabling Act", M.G.L., ch. 40A. The purposes for zoning, as provided in section 2 of this act, were to promote the health, safety, convenience, morals or welfare of the inhabitants of the city or town.

The 1975 Act, commonly referred to as chapter 808, has broadened the purposes for which a municipality might establish zoning regulations. Section 3 of chapter 808, amended M.G.L., ch. 40A, and established "The Zoning Act". Unlike the old zoning act the purposes for zoning are no longer contained within ch. 40A, and have not been incorporated into any general law. However, the purposes and objectives can be found in section 2A of chapter 808, and include, but are not limited to, the following:

- to lessen congestion in the streets;
- to conserve health;
- to secure safety from fire, flood, panic and other dangers;
- to provide adequate light and air;
- to prevent overcrowding of land;
- to avoid undue concentration of population;
- to encourage housing for persons of all income levels;
- to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements;
- to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment;
- to encourage the most appropriate use of land throughout the city or town, including consideration of the recommendations of the master plan, if any, adopted by the planning board and the comprehensive plan, if any, of the regional planning agency; and
- to preserve and increase amenities by the promulgation of regulations to fulfill said objectives.

SECTION 1. Citation

This chapter shall be known and may be cited as "The Zoning Act."

Added by St. 1975, c. 808, s. 3; Amended by St. 1977, c. 829, s. 3A.

SECTION 1A. Definitions

As used in this chapter the following words shall have the following meanings:

Permit Granting Authority — "Permit granting authority", the board of appeals or zoning administrator.

Solar Access — "Solar access", the access of a solar energy system to direct sunlight.

Solar Energy System — "Solar energy system", a device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generating, or water heating.

Special Permit Granting Authority — "Special permit granting authority", shall include the board of selectmen, city council, board of appeals, planning board, or zoning administrators as designated by zoning ordinance or by-law for the issuance of special permits.

Zoning — "Zoning", ordinances and by-laws, adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants.

Zoning Administrator — "Zoning administrator", a person designated by the board of appeals pursuant to section thirteen to assume certain duties of said board.

Added by St. 1977, c. 829, s. 3A; Amended by St. 1985, c. 637, s. 1; St. 1987, c. 685, s.1.

SECTION 2.

Repealed by St. 1987, c. 685, s. 2.

SECTION 3. Exemptions from Zoning Regulations

Materials and Method of Construction Regulated by State Building Code

No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.

Agricultural Exemption for Parcel of 5 Acres or More

Interior Area of Single Family Residential Building

No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or

Religious and Educational Uses Subject to Reasonable Dimensional Regulations

structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. Lands or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and energy shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public; provided however, that if lands or structures used or to be used by a public service corporation are located in more than one municipality such lands or structures may be exempted in particular respects from the operation of any zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and energy shall after notice to all affected communities and public hearing in one of said municipalities, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public.

Public Service Corporation Exemption

Dept. of Telecommunications and Energy

Finding that Use Reasonably Necessary

Notice to All Affected Communities

Child Care Facility Accessory Use Reasonable Regulations

No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term "child care facility" shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.

Housing Discrimination Against Disabled Persons

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions

of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of Cambridge.

Family Day Care Homes

Family child care home and large family child care home, as defined in section 1A of chapter 15D, shall be an allowable use unless a city or town prohibits or specifically regulates such use in its zoning ordinances or by-laws.

Floating Zone

No provision of a zoning ordinance or by-law shall be valid which sets apart districts by any boundary line which may be changed without adoption of an amendment to the zoning ordinance or by-law.

Temporary Manufactured Home When Residence Destroyed

No zoning ordinance or by-law shall prohibit the owner and occupier of a residence which has been destroyed by fire or other natural holocaust from placing a manufactured home on the site of such residence and residing in such home for a period not to exceed twelve months while the residence is being rebuilt. Any such manufactured home shall be subject to the provisions of the state sanitary code.

Handicapped Access Ramp Exempted

No dimensional lot requirement of a zoning ordinance or by-law, including but not limited to, set back, front yard, side yard, rear yard and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person, as defined in section thirteen A of chapter twenty-two.

Solar Access

No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

Federally Licensed Amateur Radio Operator

No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator. Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna structures for the purposes of health, safety, or aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.

Added by St. 1975, c. 808, s. 3; Amended by St. 1977, c. 860; St. 1982, c. 40; St. 1983, c. 91; St. 1985, c. 637, s. 2; St. 1987, c. 191; St. 1989, c. 106, s. 1; St. 1989, c. 341, s. 117; St. 1989, c. 590; St. 1990, c. 521, s. 2; St. 1991, c481, s6; St. 1993, c.450; St. 1994, c.276; St. 1995, c.225, s. 1; St. 1997, c.164, s. 65 and 66; St. 1999, c.127, s.54; St. 2006, c.123, s.36; St. 2007, c.16, s.4; St. 2008, c.215, s. 46 and 47.

SECTION 4. Zoning Districts

Districts Must be Uniform

Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted.

Zoning Map Required

Districts shall be shown on a zoning map in a manner sufficient for identification. Such maps shall be part of zoning ordinances or by-laws. Assessors' or property plans may be used as the basis for zoning maps. If more than four sheets or plates are used for a zoning map, an index map showing districts in outline shall be part of the zoning map and of the zoning ordinance or by-law.

Added by St. 1975, c. 808, s. 3.

SECTION 5. Adoption and Amendment

Initiated by Submission to City Council or Selectmen

Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

Submission Within 14 Days to Planning Board

Public Hearing by Planning Board and City Council

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting cities and towns. The department of housing and community development, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide

Hearing Within 65 Days After Submission to Planning Board

Contents of Notice

Publication of Notice

Posting of Notice

Notice to be Sent to DHCD, RPA and Planning Boards of Abutting Communities

Waiver of Notice

Ordinance or By-Law may

Provide for Notice to Nonresident Owner

that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law.

Notice to Nonresident Owner for Boundary, Density or Use Change

In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought.

No Defect in Form of Notice Shall Invalidate By-Law Unless Misleading

No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

Notice of Zoning Proposal to Farmland Advisory Board

Prior to adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall no later than seven days prior to the city council's or town meetings public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

Report by Planning Board

No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report.

Failure of City Council to Adopt Within 90 Days or Town Meeting to Adopt Within 6 Months Requires Subsequent Hearing

After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

Two-Third Vote Required for Adoption and Amendment

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a

Protest Vote in Cities and

Towns Applies to Council of Fewer Than 25 Members

Three-Fourths Vote Required

town meeting; provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members.

Repetitive Petition to Council or Town Meeting

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

Town Required to Submit Statement to Attorney General Explaining By-Law or Amendment

When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section thirty-two of chapter forty, he shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

Effective Date is Town Meeting or City Council Vote

The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to section thirty-two of chapter forty, the effective date of such ordinance or amendment shall be the date passed by the city council and signed by the mayor or, as otherwise provided by ordinance or charter; provided, however, that such ordinance or amendment shall subsequently be forwarded by the city clerk to the office of the attorney general.

True Copy on File with Town

A true copy of the zoning ordinance or by-law with any

or City Clerk

amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

Statute of Limitations on Procedural Defects

No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the time period specified in sections thirty-two and thirty-two A of chapter forty and notice specifying the court, parties, invalidity claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after commencement of the action.

Added by St. 1975, c. 808, s. 3; Amended by St. 1977, c. 829, s. 3B and 3C; St. 1984, c. 189, s. 47; St. 1987, c. 685, s. 3; St. 1991, c. 515, s. 1 and 2; St. 1996, c. 258, s. 16; St. 1998, c. 161, s. 255.

SECTION 6. Pre-existing Non-conforming Uses, Structures and Lots

Exemption for Structure and Use Lawfully Begun or in Existence

Exemption for Building or Special Permit Issued Before First Notice of Public Hearing

Except as hereinafter provided, a zoning ordinance or by-law 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 on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing non-conforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to establishments which display live nudity for their patrons, as defined in section nine A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section nine A.

Pre-existing Non-conforming Structures or Uses may be Extended, Changed or Altered After Finding by Granting Authority

Ordinance or By-Law Shall Provide that Building or Special Permit Shall Conform if Not Commenced Within a Period of Not More than 6 Months

A zoning ordinance or by-law shall provide that construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than six 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.

Regulating of Nonconforming Uses After 2 Years

A zoning ordinance or by-law may define and regulate non-conforming uses and structures abandoned or not used for a period of two years or more.

Single Lot Exemption for

Any increase in area, frontage, width, yard, or depth requirements

Single and Two-Family Use

of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet of frontage.

Common Lot Exemption for Single and Two-Family Use

Any increase in area, frontage, width, yard or depth requirement of a zoning ordinance or by-law shall not apply for a period of five years from its effective date or for five years after January first, nineteen hundred and seventy-six, whichever is later, to a lot for single and two-family residential use, provided the plan for such lot was recorded or endorsed and such lot was held in common ownership with any adjoining land and conformed to the existing zoning requirements as of January first, nineteen hundred and seventy-six, and had less area, frontage, width, yard or depth requirements than the newly effective zoning requirements but contained at least seven thousand five hundred square feet of area and seventy-five feet of frontage, and provided that said five year period does not commence prior to January first, nineteen hundred and seventy-six, and provided further that the provisions of this sentence shall not apply to more than three of such adjoining lots held in common ownership. The provisions of this paragraph shall not be construed to prohibit a lot being built upon, if at the time of the building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in a city or town.

Definitive Plan Exemption

If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the city or town clerk before the effective date of ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning

Land Governed by Zoning in Effect at Time of Submission

ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval, except in the case where such plan was submitted or submitted and approved before January

Moratorium Affecting Subdivision Plans

first, nineteen hundred and seventy-six, for seven years from the date of the endorsement of such approval. Whether such period is eight years or seven years, it shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the

issuance of permits or utility connections.

Approval Not Required Plan Exemption

When a plan referred to in section eighty-one P of chapter forty-one has been submitted to a planning board and written notice of such submission has been given to the city or town clerk, the use of the land shown on such plan shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of the submission of such plan while such plan is being processed under the subdivision control law including the time required to pursue or await the determination of an appeal referred to in said section, and for a period of three years from the date of endorsement by the planning board that approval under the subdivision control law is not required, or words of similar import.

3 Year Exemption for Use of Land

Exemption Provision for Disapproved Definitive or Approval Not Required Plans

Disapproval of a plan shall not serve to terminate any rights which shall have accrued under the provisions of this section, provided an appeal from the decision disapproving said plan is made under applicable provisions of law. Such appeal shall stay, pending either (1) the conclusion of voluntary mediation proceedings and the filing of a written agreement for judgment or stipulation of dismissal, or (2) the entry of an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted, together with time required to comply with any such agreement or with the terms of any order or decree of the court.

Exemption Provision for Definitive or Approval Not Required Plans During Appeal or Litigation

In the event that any lot shown on a plan endorsed by the planning board is the subject matter of any appeal or any litigation, the exemptive provisions of this section shall be extended for a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication is in favor of the owner of said lot.

Waiver of Exemption by Record Owner of Land

The record owner of the land shall have the right, at any time, by an instrument duly recorded in the registry of deeds for the district in which the land lies, to waive the provisions of this section, in which case the ordinance or by-law then or thereafter in effect shall apply. The submission of an amended plan or of a further subdivision of all or part of the land shall not constitute such a waiver, nor shall it have the effect of further extending the applicability of the ordinance or by-law that was extended by the

original submission, but, if accompanied by the waiver described above, shall have the effect of extending, but only to extent aforesaid, the ordinance or by-law made then applicable by such waiver.

Added by St. 1975, c. 808, s. 3; Amended by St. 1977, c. 829, s. 3D; St. 1979, c. 106; St. 1982, c. 185; St. 1985, c. 494; St. 1986, c. 557, s. 54; St. 1994, c. 60, s. 67; St. 1996, c. 345, s. 1; St. 2000, c. 29; St. 2000, c. 232.

SECTION 7. Enforcement

Zoning Enforcement Officer

The inspector of buildings, building commissioner or local inspector, or if there are none, in a town, the board of selectmen, or person or board designated by local ordinance or by-law, shall be charged with the enforcement of the zoning ordinance or by-law and shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of any zoning ordinance or by-law; and no permit or license shall be granted for a new use of a building, structure or land which use would be in violation of any zoning ordinance or by-law. If the officer or board charged with enforcement of zoning ordinances or by-laws is requested in writing to enforce such ordinances or by-laws against any person allegedly in violation of the same and such officer or board declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen days of receipt of such request.

Withholding of Permit if in Violation of Zoning

Request for Enforcement

Notification of Action Within 14 Days

$300 Maximum Penalty Per Violation

No local zoning law shall provide penalty of more than three hundred dollars per violation; provided, however, that nothing herein shall be construed to prohibit such laws from providing that each day such violation continues shall constitute a separate offense. No action, suit or proceeding shall be maintained in any court, nor any administrative or other action taken to recover a fine or damages or to compel the removal, alteration, or relocation of any structure or part of a structure or alteration of a structure by reason of any violation of any zoning by-law or ordinance except in accordance with the provisions of this section, section eight and section seventeen; provided, further, that if real property has been improved and used in accordance with the terms of the original building permit issued by a person duly authorized to issue such permits, no action, criminal or civil, the effect or purpose of which is to compel the abandonment, limitation or modification of the use allowed by said permit or the removal, alteration or relocation of any structure erected in reliance upon said permit by reason of any alleged violation of the provisions of this chapter, or of any ordinance or by-law adopted thereunder, shall be maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in the registry of deeds for each county or district in which the land lies within six years next after the commencement of the alleged violation of law; and provided, further that no action, criminal or civil, the effect or purpose of which is to compel the removal, alteration, or relocation of any

Limitation on Action, Suit, or Proceeding of Zoning Violation

6 Year Statute of Limitation on Building Permits

10 Year Statute of Limitation on Certain Zoning Violations

structure by reason of any alleged violation of the provisions of this chapter, or any ordinance or by-law adopted thereunder, or the conditions of any variance or special permit, granted by a permit granting authority, shall be maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in the registry of deeds for such county or district in which the land lies within ten years next after the commencement of the alleged violation. Such notice shall include names of one or more of the owners of record, the name of the person initiating the action, and adequate identification of the structure and the alleged violation.

Enforcement by Superior Court or Land Court

The superior court and the land court shall have jurisdiction to enforce the provisions of this chapter, and any ordinances or by-laws adopted thereunder, and may restrain by injunction violations thereof.

Added by St. 1975, c. 808, s. 3; Amended by St. 1984, c. 291; St. 1986, c. 557, s. 55; St. 1987, c. 481, s. 1; St. 1989, c. 341, s. 21; St. 2002, c 393, s. 1.

11/13/89

SECTION 8. Basis for Appeals

Persons Aggrieved

An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder.

Added by St. 1975, c. 808, s. 3.

SECTION 9. Special Permits

Ordinances and By-Laws Must Provide for Special Permits

Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.

Bonus Zoning by Special Permit

Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income, traffic or pedestrian improvements, installation of solar energy systems, protection for solar access, or other amenities. Such zoning ordinances or by-laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted, and the maximum increases in density of population or intensity of use which may be authorized by such special permits.

Petitioner Provides Certain Amenities

Ordinance or By-Law Must State Amenities and Maximum Zoning Bonus

Transfer of Development Rights

Zoning ordinances or by-laws may provide for special permits authorizing the transfer of development rights of land within or between districts. These zoning ordinances or by-laws shall include incentives such as increases in density of population, intensity of use, amount of floor space or percentage of lot coverage, that encourage the transfer of development rights in a manner that protect open space, preserve farmland, promote housing for persons of low and moderate income or further other community interests.

Special Permits for Multi-Family Use in Nonresidential Zoning Districts

Zoning ordinances or by-laws may provide that special permits may be granted for multi-family residential use in nonresidentially zoned areas where the public good would be served and after a finding by the special permit granting authority, that such nonresidentially zoned area would not be adversely affected by such a residential use, and that permitted uses in such a zone are not noxious to a multi-family use.

Cluster Development or PUD by Special Permit

Zoning ordinances or by-laws may also provide that cluster developments or planned unit developments shall be permitted upon the issuance of a special permit.

Cluster Development by Right

Notwithstanding any provision of this section to the contrary, zoning ordinances or by-laws may provide that cluster

developments shall be permitted upon review and approval by a planning board pursuant to the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41 and in accordance with its rules and regulations governing subdivision control.

"Cluster Development"

"Cluster development" means a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land. A cluster development shall be permitted only on a plot of land of such minimum size as a zoning ordinance or by-law may specify which is divided into building lots with dimensional control, density and use restrictions of such building lots varying from those otherwise permitted by the ordinance or by-law and open land. Such open land when added to the building lots shall be at least equal in area to the land area required by the ordinance or by-law for the total number of units or buildings contemplated in the development. Such open land may be situated to promote and protect maximum solar access within the development. Such open land shall either be conveyed to the city or town and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the city or town, a restriction enforceable by the city or town shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

Minimum Size Plot of Land Required

Open Land

Ownership of Open Land Area

"PUD"

"Planned unit development" means a mixed use development on a plot of land containing a minimum of the lesser of sixty thousand square feet or five times the minimum lot size of the zoning district, but of such larger size as an ordinance or by-law may specify, in which a mixture of residential, open space, commercial, industrial or other uses and a variety of building types are 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 the ordinance or by-law. Such open space, if any, may be situated to promote and protect maximum solar access within the development.

Minimum Size Plot of Land Required

Mixture of Uses

Shared Elderly Housing

Zoning ordinances or by-laws may also provide for the use of structures as shared elderly housing upon the issuance of a special permit. Such zoning ordinances or by-laws shall specify the maximum number of elderly occupants allowed, not to exceed a

Number of Occupants

total number of six, any age requirements and any other conditions deemed necessary for the special permits to be granted.

Procedural Requirements for Special Permits

Mandatory Rules by Special Permit Granting Authority

Zoning ordinances or by-laws may provide that certain classes of special permits shall be issued by one special permit granting authority and others by another special permit granting authority as provided in the ordinance or by-law. Such special permit granting authority shall adopt and from time to time amend rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the city or town clerk. Such rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits.

Associate Members for Planning Boards When Acting as Special Permit Granting Authority

Zoning ordinances or by-laws may provide for associate members of a planning board when a planning board has been designated as a special permit granting authority. One associate member may be authorized when the planning board consists of five members, and two associate members may be authorized when the planning board consists of more than five members. A city or town which establishes the position of associate member shall determine the procedure for filling such position. If provision for filling the position of associate member has been made, the chairman of the planning board may designate an 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.

Application Filed with Municipal Clerk

Public Hearing Within 65 Days After Filing

Decision Within 90 Days After Hearing

Mutual Extension of Time

Each application for a special permit shall be filed by the petitioner with the city or town clerk and a copy of said application, including the date and time of filing certified by the city or town clerk, shall be filed forthwith by the petitioner with the special permit granting authority. The special permit granting authority shall hold a public hearing, for which notice has been given as provided in section eleven, on any application for a special permit within sixty-five days from the date of filing of such application; provided, however, that a city council having more than five members designated to act upon such application may appoint a committee of such council to hold the public hearing. The decision of the special permit granting authority shall be made within ninety days following the date of such public hearing. The required time limits for a public hearing and said action, may be extended by written agreement between the petitioner and the special permit granting authority. A copy of such agreement shall be filed in the office of the city or town clerk. A special permit issued by a special permit granting authority shall require a two-thirds vote of boards with more than

Vote Required

five members, a vote of at least four members of a five member board, and a unanimous vote of a three member board.

Failure to Take Final Action will be Deemed a Constructive Grant

Failure by the special permit granting authority to take final action within said ninety days or extended time, if applicable, shall be deemed to be a grant of the special permit. The petitioner who seeks such approval by reason of the failure of the special permit granting authority to act within such time prescribed, shall notify the city or town clerk, in writing within fourteen days from the expiration of said ninety days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date the city or town clerk received such written notice from the petitioner that the special permit granting authority failed to act within the time prescribed. After the expiration of twenty days without notice of appeal pursuant to section seventeen, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the special permit granting authority failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The special permit granting authority shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed within fourteen days in the office of the city or town clerk and shall be deemed a public record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section eleven, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date of filing of such notice in the office of the city or town clerk.

Petitioner Must Notify Municipal Clerk and Parties in Interest

Municipal Clerk Must Certify Constructive Grant

Special Permit Granting Authority to Make Detailed Record

Copies of Decisions Filed with City or Town Clerk Within 14 Days

Notice of Decision to Petitioner and Parties in Interest

Ordinance and By-Law Shall Provide that Special Permit Shall Lapse Within 2 Years Unless Substantial Use or Construction has Commenced

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Ordinance and By-Law Shall Provide for Accessory Use for Scientific Research or Development on Separate Lot by Special Permit

Zoning ordinances or by-laws shall also provide that uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.

Ordinance or By-law May Provide for Research and Development Uses in Any Non-Residential Zoning District by Special Permit

In any city or town that accepts this paragraph, zoning ordinances or by-laws may provide that research and development uses, whether or not the uses are currently permitted as a matter of right, may be permitted as a permitted use in any non-residential zoning district which is not a residential, agricultural or open space district upon the issuance of a special permit provided the special permit granting authority finds that the uses do not substantially derogate from the public good.

Research and Development Uses Shall Include Investigation, Development, Laboratory, Related Office, Limited Manufacturing.

"Research and development uses" shall include any 1 or more of investigation, development, laboratory and similar research uses and any related office and, subject to the following limitations, limited manufacturing uses and uses accessory to any of the foregoing.

Limited Manufacturing Shall be Subject to a Special Permit and Satisfy Requirements

"Limited manufacturing" shall, subject to the issuance of the special permit, be an allowed use, if the following requirements are satisfied: (1) the manufacturing activity is related to research uses; (2) no manufacturing activity customarily occurs within 50 feet of a residential district; and (3) substantially all manufacturing activity customarily occurs inside of buildings with any manufacturing activities customarily occurring outside of buildings subject to conditions imposed in the special permit.

Hazardous Waste Facility Permitted in Industrial Zones

A hazardous waste facility as defined in section two of chapter twenty-one D shall be permitted to be constructed as of right on any locus presently zoned for industrial use pursuant to the ordinances and by-laws of any city or town provided that all permits and licenses required by law have been issued to the developer and a siting agreement has been established pursuant to sections twelve and thirteen of chapter twenty-one D, provided however, that following the submission of a notice of intent, pursuant to section seven of chapter twenty-one D, a city or town may not adopt any zoning change which would exclude the facility from the locus specified in said notice of intent. This section shall not prevent any city or town from adopting a zoning change relative to the proposed locus for the facility following the final

disapproval and exhaustion of appeals for permits and licenses required by law and by chapter twenty-one D.

Refuse Treatment and Disposal Facilities Permitted in Industrial Zones Unless Specifically Prohibited as of July 1, 1987

A facility, as defined in section one hundred and fifty A of chapter one hundred and eleven, which has received a site assignment pursuant to said section one hundred and fifty A, shall be permitted to be constructed or expanded on any locus zoned for industrial use unless specifically prohibited by the ordinances and by-laws of the city or town in which such facility is proposed to be constructed or expanded, in effect as of July first, nineteen hundred and eighty-seven; provided, however, that all permits and licenses required by law have been issued to the proposed operator.

City or Town May Require Special Permit Review

A city or town shall not adopt an ordinance or by-law prohibiting the siting of such a facility or the expansion of an existing facility on any locus zoned for industrial use, or require a license or permit granted by said city or town, except a special permit imposing reasonable conditions on the construction or operation of the facility, unless such prohibition, license or permit was in effect on or before July first, nineteen hundred and eighty-seven; provided, however, that a city or town may adopt and enforce a zoning or non-zoning ordinance or by-law of general application that has the effect of prohibiting the siting or expansion of a facility in the following areas: recharge areas of surface drinking water supplies as shall be reasonably defined by rules and regulations of the department of environmental protection, areas subject to section forty of chapter one hundred and thirty-one, and the regulations promulgated thereunder; and areas within the zone of contribution of existing or potential public supply wells as defined by said department.

Zoning and Non-Zoning By-Law may Prohibit in certain Areas

Special Permit Granting Authority may Impose Reasonable Conditions

No special permit authorized by this section may be denied for any such facility by any city or town; provided, however, that a special permit granting authority may impose reasonable conditions on the construction or operation of the facility, which shall be enforceable pursuant to the provisions of section seven.

Added by St. 1975, c. 808, s. 3; Amended by St. 1977, c. 829, s. 3E, 3F, and 4A; St. 1980, c. 508, s. 5; St. 1982, c. 344; St. 1985, c. 408; St. 1985, c. 637, s. 3, 4, and 5; St. 1986, c. 471; St. 1987, c. 498, s. 1; St. 1987, c. 584, s. 10; St. 1989, c. 239; St. 1989, c. 341, s. 22; St. 1990, c. 177, s. 109; St. 2000, c. 148; St. 2002, c. 197. St. 2006, c. 205, s. 8.

SECTION 9A. Special Permits for Adult Uses

Special Permits for Adult Bookstores or Theatres

Zoning ordinances or by-laws may provide for special permits authorizing the establishment of adult bookstores or adult motion picture theatres, adult paraphernalia stores, adult video stores or establishments which display live nudity for their patrons as hereinafter defined. Such zoning ordinance or by-law may state the specific improvements, amenities or locations of proposed uses for which such permit may be granted and may provide that the proposed use be a specific distance from any district designated by zoning ordinance or by-law for any residential use or from any other adult bookstore or adult motion picture theatre or from any establishment licensed under the provisions of section twelve of chapter one hundred and thirty-eight. Such zoning ordinance or by-law shall prohibit the issuance of such special permits to any person convicted of violating the provisions of section sixty-three of chapter one hundred and nineteen or section twenty-eight of chapter two hundred and seventy-two.

Regulation of Location

As used in this section, the following words shall have the following meanings:

"Adult Bookstore"

"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 depicting, describing, or relating to sexual conduct or sexual excitement as defined in section thirty-one of chapter two hundred and seventy-two.

"Adult Motion Picture Theatre"

"Adult motion picture theatre", 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 section thirty-one of chapter two hundred and seventy-two.

"Adult Paraphernalia Store"

"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 section thirty-one of chapter two hundred and seventy-two.

"Establishments Which Display Live Nudity"

"Establishment which displays live nudity for its patrons", any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in section thirty-one of chapter two hundred and seventy-two.

"Adult Video Store"

"Adult video store," an establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in said section thirty-one of said chapter two hundred and seventy-two.

Procedural Requirements for Special Permits

Mandatory Hearings Within 65 Days After Filing

Mandatory Rules by Special Permit Granting Authority

Zoning ordinances or by-laws shall provide that special permits shall only be issued following public hearings held within sixty-five days after filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the city or town clerk by the applicant, and may provide that certain classes of special permits shall be issued by one special permit granting authority and others by another special permit granting authority as provided in the ordinance or by-law. Such special permit granting authority shall adopt and from time to time amend rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the city or town clerk. Such rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits.

Action Within 90 Days After Hearing or Special Permit Deemed Granted

Vote Required

Ordinance or By-Law Shall Provide that Special Permit Shall Lapse Within 2 Years Unless Substantial Use or Construction has Commenced

Special permit granting authorities shall act within ninety days following a public hearing for which notice has been given by publication or posting as provided in section eleven, and by mailing to all parties in interest; provided, however, that a city council having more than five members designated to act upon such a permit may appoint a committee of such council to hold the public hearing. Failure by a special permit granting authority to take final action upon an application for a special permit within said ninety days following the date of public hearing shall be deemed to be a grant of the permit applied for. Special permits issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board and a unanimous vote of a three member board. Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, and including such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Any existing adult bookstore, adult motion picture theatre, adult paraphernalia store, or adult video store or establishment which displays live nudity for its patrons shall apply for such permit within ninety days following the adoption of said zoning ordinance or by-law by a municipality.

Nothing contained herein shall be construed as limiting the power and authority of cities and towns to regulate the use of land, structures or buildings through by-law or zoning ordinance.

Added by St. 1982, c. 603, s. 1; St. 1994,
c. 60, s. 69, 70 and 71; St. 1996, c. 345, s. 2 to 5.

SECTION 9B. Solar Access

Solar Access Regulations

Zoning ordinances or by-laws adopted or amended pursuant to section five of this chapter may encourage the use of solar energy systems and protect solar access by regulation of the orientation of streets, lots and buildings, maximum building height limits, minimum building set back requirements, limitations on the type, height and placement of vegetation and other provisions. Zoning ordinances or by-laws may also establish buffer zones and additional districts that protect solar access which overlap existing zoning districts. Zoning ordinances or by-laws may further regulate the planting and trimming of vegetation on public property to protect the solar access of private and public solar energy systems and buildings. Solar energy systems may be exempted from set back, building height, and roof and lot coverage restrictions.

Buffer Zones

Exemptions

Special Permits

Zoning ordinances or by-laws may also provide for special permits to protect access to direct sunlight for solar energy systems. Such ordinances or by-laws may provide that such solar access permits would create an easement to sunlight over neighboring property. Such ordinances or by-laws may also specify what constitutes an impermissible interference with the right to direct sunlight granted by a solar access permit and how to regulate growing vegetation that may interfere with such right. Such ordinances or by-laws may further provide standards for the issuance of solar access permits balancing the need of solar energy systems for direct sunlight with the right of neighboring property owners to the reasonable use of their property within other zoning restrictions. Such ordinances or by-laws may also provide a process for issuance of solar access permits including, but not limited to, notification of affected neighboring property owners, opportunity for a hearing, appeal process and recordation of such permits on burdened and benefited property deeds. Such ordinances or by-laws may further provide for establishment of a solar map identifying all local properties burdened or benefited by solar access permits. Such ordinances or by-laws may also require the examination of such solar maps by the appropriate official prior to the issuance of a building permit.

Solar Access Permits

Solar Map

Added by St. 1985, c. 637, s. 6.

SECTION 9C. Child Care Facilities

Child Care Facilities

As used in this section, the term "child care facility" shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.

Accessory Use

When any zoning ordinance or bylaw in any city or town limits the floor of any structure, such floor area shall be measured exclusive of any portion of such structure in which a child care facility is to be operated as an accessory or incidental use, and

Allowable Floor Area

the otherwise allowable floor area of such structure shall be increased by an amount equal to the floor area of such child care facility up to a maximum increase of ten per cent. In any case where the otherwise allowable floor area of a structure has been increased pursuant to the provisions of this section, the portion of such structure in which a child care facility is to be operated as an accessory or incidental use shall not be used for any other purpose unless, following the completion of such structure, the board authorized to grant variances under such zoning ordinance or bylaw shall have determined, with the written concurrence of the office for children, that the public interest and convenience do not require the operation of such facility.

Variance

The procedures governing the granting of variances, including all rights of appeal, shall apply to any such determination.

Allowable Charges

The owner of a building as to which the allowable floor area has been increased pursuant to this section shall be allowed to charge the operator of the child care facility for the following: the cost of utilities used by the child care facility, a reasonable building operating fee for the costs of maintenance, cleaning and security, and real estate taxes for the portion of the building which is the child care facility, if such facility is operated by a for-profit provider. The owner shall not impose a charge for the cost of alterations necessary to meet the requirements of the office for children regarding the physical facility of a day care center. Any person operating a child care facility in a portion of a structure which is to be used only for such purpose pursuant to the provisions of this section shall use best efforts to assure that at least fifty per cent of the children utilizing such facility are from families whose income is not more than one hundred and ten per cent of the median family income of the commonwealth

Added by St. 1990, c. 521, s.3; St. 2008, c. 215, s. 48.

SECTION 10. Variances

Variance Cannot be Granted Unless Permit Granting Authority Specifically Finds that All Conditions have been Met

The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located; provided however, that such variances properly granted prior to January first, nineteen hundred and seventy-six but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date.

Use Variance Must be Expressly Authorized in Ordinance or By-Law

Variance Cannot be Conditioned on Continued Ownership

The permit granting authority may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

Rights Authorized by Variance Must be Exercised Within 1 Year

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the

Extensions

provisions of this section.

Added by St. 1975, c. 808, s. 3; Amended by St. 1977, c. 829, s. 4B; St. 1984, c.195.

SECTION 11. Notice for Public Hearing

Publication of Notice in Newspaper

In all cases where notice of a public hearing is required notice shall be given by publication in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing.

Posting

"Parties in Interest"

In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid. "Parties in interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes.

Waiver of Notice

The permit granting authority or special permit granting authority may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person, giving not less than five nor more than ten additional days to reply.

Contents of Notice for Public Hearing

Publications and notices required by this section shall contain the name of the petitioner, a description of the area or premises, street address, if any, or other adequate identification of the location, of the area or premises which is the subject of the petition, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

Review of Special Permit by Other Boards and Agencies

Zoning ordinances or by-laws may provide that petitions for special permits shall be submitted to and reviewed by one or more of the following and may further provide that such reviews may be held jointly: the board of health, the planning board or department, the city or town engineer, the conservation commission or any other town agency or board. Any such board or agency to which petitions are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the

special permit granting authority and to the applicant; provided, however, that failure of any such board or agency to make recommendations within thirty-five days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.

Consolidated Public Hearing for a Special Permit Applicable to a Subdivision Plan

When a planning board or department is also the special permit granting authority for a special permit applicable to a subdivision plan, the planning board or department may hold the special permit public hearing together with a public hearing required by sections 81K to 81GG inclusive of chapter 41 and allow for the publication of a single advertisement giving notice of the consolidated hearing.

Notice of Decision to Owners and Applicant

Contents of Notice

Upon the granting of a variance or special permit, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such variance or permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk.

No Variance or Constructive Grant of a Variance Takes Effect Until Recorded in the Registry of Deeds

No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the city or town clerk stating the fact that the permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

No Special Permit or Constructive Grant of a

A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the

Special Permit Takes Effect Until Recorded in the Registry of Deeds

certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.

A Person Who Exercises Rights Under an Appealed Special Permit Does So At Risk

Added by St. 1975, c. 808, s. 3; Amended by St. 1977, c. 829, s. 4C, 4D, 4E, and 4F; St. 1979, c. 117; St. 1987, c. 498, s. 2. St. 2006, c. 205, s. 9; St. 2008, c.239, s. 1.

SECTION 12. Board of Appeals

Zoning ordinances or by-laws shall provide for a zoning board of appeals, according to the provisions of this section, unless otherwise provided by charter. The mayor subject to confirmation of the city council, or board of selectmen shall appoint members of the board of appeals within three months of the adoption of the ordinance or by-law. Pending appointment of the members of the board of appeals, the city council or board of selectmen shall act as the board of appeals. Any board of appeals established hereunder shall consist of three or five members who, unless otherwise provided by charter, shall be appointed by the mayor, subject to the confirmation by the city council, or by the selectmen, for terms of such length and so arranged that the term of one member shall expire each year. Each zoning board of appeals shall elect annually a chairman from its own number and a clerk, and may, subject to appropriation, employ experts and clerical and other assistants. Any member may be removed for cause by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. Zoning ordinances or by-laws may provide for the appointments in like manner of associate members of the board of appeals; and if provision for associate members has been made the chairman of the board may designate any such associate member to sit on the board in case of absence, inability to act or conflict of interest on the part of any member thereof, or in the event of a vacancy on the board until said vacancy is filled in the manner provided in this section.

Membership

Terms of Office

Vacancies

Associate Members

Board Shall Adopt Rules

The board of appeals shall adopt rules, not inconsistent with the provisions of the zoning ordinance or by-law for the conduct of its business and for purposes of this chapter and shall file a copy of said rules with the city or town clerk. In the event that a board of appeals has appointed a zoning administrator in accordance with section thirteen said rules shall set forth the fact of such appointment, the identity of the persons from time to time appointed to such position, the powers and duties delegated to such individual and any limitations thereon.

Rules Shall Identify and Delegate Duties of Zoning Administrator (If One is Authorized)

Added by St. 1975, c. 808, s. 3.

SECTION 13. Zoning Administrator

Serves at Pleasure of the Board

Board Delegates Powers and Duties

Appeal of Zoning Administrator's Decision

30 Day Appeal Period

Failure of Zoning Administrator to Act Within 35 Days Deemed Denied

A zoning ordinance or by-law may authorize the appointment of a zoning administrator, who, unless otherwise provided by charter, shall be appointed by the board of appeals, subject to confirmation by the city council or board of selectmen, to serve at the pleasure of the board of appeals pursuant to such qualifications as may be established by the city council or board of selectmen. The board of appeals may delegate to said zoning administrator some of its powers and duties by a concurring vote of all members of the board of appeals consisting of three members, and a concurring vote of all except one member of a board consisting of five members. Any person aggrieved by a decision or order of the zoning administrator, whether or not previously a party to the proceeding, or any municipal office or board, may appeal to the board of appeals, as provided in section fourteen, within thirty days after the decision of the zoning administrator has been filed in the office of the city or town clerk. Any appeal, application or petition filed with said zoning administrator as to which no decision has issued within thirty-five days from the date of filing shall be deemed denied and shall be subject to appeal to the board of appeals as provided in section eight.

Added by St. 1975, c. 808, s. 3.

SECTION 14. Powers of Board of Appeals

Powers

A board of appeals shall have the following powers:

(1) To hear and decide appeals in accordance with section eight.
(2) To hear and decide applications for special permits upon which the board is empowered to act under said ordinance or by-laws.
(3) To hear and decide petitions for variances as set forth in section ten.
(4) To hear and decide appeals from decisions of a zoning administrator, if any, in accordance with section thirteen and this section.

Authority of Board

In exercising the powers granted by this section, a board of appeals may, in conformity with the provisions of this chapter, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

Added by St. 1975, c. 808, s. 3.

SECTION 15. Appeals Procedure

Section 8 Appeal

Any appeal under section eight to a permit granting authority shall be taken within thirty days from the date of the order or decision which is being appealed. The petitioner shall file a notice of appeal specifying the grounds thereof, with the city or town clerk, and a copy of said notice, including the date and time of filing certified by the town clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the permit granting authority, specifying in the notice grounds for such appeal. Such officer or board shall forthwith transmit to the board of appeals or zoning administrator all documents and papers constituting the record of the case in which the appeal is taken.

Appeal from Zoning Administrator's Decision

Any appeal to a board of appeals from the order or decision of a zoning administrator, if any, appointed in accordance with section thirteen shall be taken within thirty days of the date of such order or decision or within thirty days from the date on which the appeal, application or petition in question shall have been deemed denied in accordance with said section thirteen, as the case may be, by having the petitioner file a notice of appeal, specifying the grounds thereof with the city or town clerk and a copy of said notice including the date and time of filing certified by the city or town clerk shall be filed forthwith in the office of the zoning administrator and in the case of an appeal under section eight with the officer whose decision was the subject of the initial appeal to said zoning administrator. The zoning administrator shall forthwith transmit to the board of appeals all documents and papers constituting the record of the case in which the appeal is taken.

Applications for Special Permits and Petitions for Variances Filed with Municipal Clerk

An application for a special permit or petition for variance over which the board of appeals or the zoning administrator as the case may be, exercise original jurisdiction shall be filed by the petitioner with the city or town clerk, and a copy of said appeal, application or petition, including the date and time of filing, certified by the city or town clerk, shall be transmitted forthwith by the petitioner to the board of appeals or to said zoning administrator.

Board of Appeals Hearing Within 65 Days

Meetings of the board shall be held at the call of the chairman or when called in such other manner as the board shall determine in its rules. The board of appeals shall hold a hearing on any appeal, application or petition within sixty-five days from the receipt of notice by the board of such appeal, application or petition. The board shall cause notice of such hearing to be published and sent to

parties in interest as provided in section eleven. The chairman, or in his absence the acting chairman, may administer oaths, summon witnesses, and call for the production of papers.

Vote

The concurring vote of all members of the board of appeals consisting of three members, and a concurring vote of four members of a board consisting of five members, shall be necessary to reverse any order or decision of any administrative official under this chapter or to effect any variance in the application of any ordinance or by-law.

Decision of Board on Variances and Appeals Within 100 Days After Date of Filing

Mutual Extension of Time

Failure to Act will be Deemed a Constructive Grant of the Variance or Appeal

Petitioner Must Notify Municipal Clerk and Parties in Interest

Municipal Clerk Must Certify Constructive Grant

Board to Make Detailed Record

Copies of Decisions Filed with Municipal Clerk Within 14 Days

All hearings of the board of appeals shall be open to the public. The decision of the board shall be made within one hundred days after the date of the filing of an appeal, application or petition, except in regard to special permits, as provided for in section nine. The required time limits for a public hearing and said action, may be extended by written agreement between the applicant and the board of appeals. A copy of such agreement shall be filed in the office of the city or town clerk. Failure by the board to act within said one hundred days or extended time, if applicable, shall be deemed to be the grant of the appeal, application or petition. The petitioner who seeks such approval by reason of the failure of the board to act within the time prescribed shall notify the city or town clerk, in writing, within fourteen days from the expiration of said one hundred days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest, by mail and each notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date the city or town clerk received such written notice from the petitioner that the board failed to act within the time prescribed. After the expiration of twenty days without notice of appeal pursuant to section seventeen, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the board failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The board shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed within fourteen days in the office of the city or town clerk

Notice of Decision to Petitioner and Parties in Interest

and shall be a public record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section eleven, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date of filing of such notice in the office of the city or town clerk.

Added by St. 1975, c. 808, s. 3; Amended by St. 1987, c. 498, s. 3; St. 1989, c. 341, s. 23.

SECTION 16. Repetitive Petitions

Two Year Time Period

No appeal, application or petition which has been unfavorably and finally acted upon by the special permit granting or permit granting authority shall be acted favorably upon within two years after the date of final unfavorable action unless said special permit granting authority or permit granting authority finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members or two-thirds vote of a board of more than five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the planning board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

Finding by Granting Authority

Planning Board Consent

Petition may be Withdrawn Without Prejudice Prior to Notice of Hearing

Any petition for a variance or application for a special permit which has been transmitted to the permit granting authority or special permit granting authority may be withdrawn, without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter be withdrawn without prejudice only with the approval of the special permit granting authority or permit granting authority.

Added by St. 1975, c. 808, s. 3.

SECTION 17. Appeal

Any person aggrieved by a decision of the board of appeals or any special permit granting authority or by the failure of the board of appeals to take final action concerning any appeal, application or petition within the required time or by the failure of any special permit granting authority to take final action concerning any application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the land court department, the superior court department in which the land concerned is situated or, if the land is situated in Hampden county, either to said land court or superior court department or to the division of the housing court department for said county, or if the land is situated in a county, region or area served by a division of the housing court department either to said land court or superior court department or to the division of said housing court department for said county, region or area, or to the division of the district court department within whose jurisdiction the land is situated except in Hampden county, by bringing an action within twenty days after the decision has been filed in the office of the city or town clerk. If said appeal is made to said division of the district court department, any party shall have the right to file a claim for trial of said appeal in the superior court department within twenty-five days after service on the appeal is completed, subject to such rules as the supreme judicial court may prescribe. Notice of the action with a copy of the complaint shall be given to such city or town clerk so as to be received within such twenty days. The complaint shall allege that the decision exceeds the authority of the board or authority, and any facts pertinent to the issue, and shall contain a prayer that the decision be annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing the date of filing thereof, certified by the city or town clerk with whom the decision was filed.

20 Day Appeal Period

Complaint

If the complaint is filed by someone other than the original applicant, appellant or petitioner, such original applicant, appellant, or petitioner and all members of the board of appeals or special permit granting authority shall be named as parties defendant with their addresses. To avoid delay in the proceedings, instead of the usual service of process, the plaintiff shall within fourteen days after the filing of the complaint, send written notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants, including the members of the board of appeals or

special permit granting authority and shall within twenty-one days after the entry of the complaint file with the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within such time the complaint shall be dismissed. No answer shall be required but an answer may be filed and notice of such filing with a copy of the answer and an affidavit of such notice given to all parties as provided above within seven days after the filing of the answer. Other persons may be permitted to intervene, upon motion. The clerk of the court shall give notice of the hearing as in other cases without jury, to all parties whether or not they have appeared. The court shall hear all evidence pertinent to the authority of the board or special permit granting authority and determine the facts, and, upon the facts as so determined, annul such decision if found to exceed the authority of such board or special permit granting authority or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of notice other than notice by publication, mailing or posting as required by this chapter, and the validity of any action shall not be questioned for matters relating to defects in procedure or of notice in any other proceedings except with respect to such publication, mailing or posting and then only by a proceeding commenced within ninety days after the decision has been filed in the office of the city or town clerk, but the parties shall have all rights of appeal and exception as in other equity cases.

90 Day Statute of Limitation on Procedural Defects

Legal Counsel for Officer or Board

A city or town may provide any officer or board of such city or town with independent legal counsel for appealing, as provided in this section, a decision of a board of appeals or special permit granting authority and for taking such other subsequent action as parties are authorized to take.

Costs Against Board

Costs shall not be allowed against the board or special permit granting authority unless it shall appear to the court that the board or special permit granting authority in making the decision appealed from acted with gross negligence, in bad faith or with malice.

Costs Against Appellant

Costs shall not be allowed against the party appealing from the decision of the board or special permit granting authority unless it shall appear to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.

Posting Surety or Cash Bond

The court shall require nonmunicipal plaintiffs to post a surety or cash bond in a sum of not less than two thousand nor more than fifteen thousand dollars to secure the payment of such costs in appeals of decisions approving subdivision plans. All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.

Added by St. 1975, c. 808, s. 3; Amended by St. 1978, c. 478, s. 32; St. 1982, c. 533, s. 1; St. 1985, c. 492, s. 1; St. 1987, c. 498, s. 4; St. 1989, c. 649, s. 2; St. 2002, c 393, s. 2.