

Article \_\_\_\_\_. To see if the Town will vote to amend Section 10 of the General Bylaws, known as the Zoning Bylaws, by adding the following Subsection \_\_\_\_\_ to Section III:

\_\_\_\_\_. Non-Conforming Business Use Bylaw.

In a residence district on a Lot which has contained either a **pre-existing** non-conforming business use or **uses** or a business use **or uses** that has been allowed by either variance or special permit, **and such business use or uses occupies** at least **51%** of **the square footage on the property of the use(s) on** the Lot within the two (2) years prior to date of application, a development combining a business use **as defined below** with another use (including Open Space) may be permitted by a Special Permit for a Non-Conforming Business Use (NBU) issued by the Planning Board upon satisfaction of all requirements specified in this Subsection and upon other such terms and conditions as the Planning Board shall deem to be necessary, reasonable and appropriate. In the event that a Special Permit for NBU development shall be issued for a Lot, no use of the Lot may be made except as specifically authorized by the Special Permit.

**As used in this subsection \_\_\_\_\_, a pre-existing non-conforming business use shall not include institutional uses or not-for-profit uses.**

As used in this subsection \_\_\_\_\_, a "Lot" shall be deemed to include a lot or **lots existing on December 31, 2015, including** a combination of **abutting** lots in **a common** ownership **on December 31, 2015, containing not more** than **2.0** acres. **Lots subject to Section III.A.10 of this bylaw are expressly excluded from eligibility. Lots less than 40,000 SF may be expanded to include an area which is the lesser of three (3) times its existing up to 40,000 SF total lot size.**

1. Purpose

The purpose of this subsection is to encourage reinvestment and quality development on lots which contain, or have contained, pre-existing non-conforming business uses **for at least 51% of the uses on site** by converting to a new **allowed** business use and combining such use with another use so as to **demonstrably achieve at least five of the following objectives: encourage reinvestment in property(ies); promote the health and wellbeing of residents by encouraging physical activity, walkable neighborhoods, and greater social interaction; provide small-scale office, restaurant and retail destinations within neighborhoods to reduce reliance on automobiles and increase social interaction; provide a greater variety of types of housing; improve business facades and streetscapes; incorporate open space into a mix of commercial and residential uses; and generate new tax revenues for the Town.**

2. Allowable Uses

- (a) Any use allowed in a business district, and parking shall be permitted, in conjunction with another use, by a Special Permit for NBU development, except that converting to or expanding the following uses shall not be permitted: used car lots, motor vehicle dealerships, gasoline stations, car repair businesses, medical marijuana dispensaries, and sexually-oriented businesses.

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- (b) Open Space (as hereinafter defined) so long as it is 35% of a Lot containing the NBU and is accessible to and usable by the public during daylight hours and without undue restriction.
- (c) Dwelling Units (as defined below)

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3. Use and Dimensional Requirements/Operations

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- (a) Business Use. In a NBU development, business use shall be the primary first-floor use and shall be located in that portion of the street level of buildings adjacent to and accessible from a street or adjacent to and accessible from the set-back area by which the building is set back from the street. Business use shall include entrances to and exits from buildings for both pedestrians and motor vehicles and space providing public amenities such as meeting space.
- (b) Hours of Operation. In a NBU development, hours of operation shall be limited to the most restrictive of the following: (a) 7AM to 10PM; (b) the opening and closing times of similar business located within 1,000 feet of the property; (c) the hours deemed to be harmonious with the surrounding neighborhood by the Planning Board.
- (c) All business activities, with the exception of parking, loading, and outdoor seating, must be conducted within enclosed buildings unless otherwise expressly permitted.
- (d) All business activities must present a plan for loading and unloading as part of the application that must be approved by the Planning Board. The loading plan must meet the following criteria:
  - a. Public roads and ways shall not be blocked
  - b. Loading vehicles shall not adversely affect the parking required as part of the Special Permit.
  - c. Loading must be restricted to specific hours of operation. The hours of operation must be consistent with Section 3(b) of this bylaw but may differ from the business hours of operation contained within the Special Permit at the discretion of the Planning Board.
  - d. Dedicated loading areas must be kept free of debris and odors and shall be screened from public ways.
- (e) Residential uses shall be condominium or rental dwelling units. In rental units, short-term occupancy (less than 9 months) will not be allowed. Each unit must contain its own kitchen and bathroom facilities. Studio, 1-bedroom, 2-bedroom and 3-bedroom units shall be permitted. The minimum square footage per dwelling unit shall be 500 square feet.
- (f) Affordable Housing Units. Lots containing residential uses with less than ten (10) units shall provide for one additional dwelling unit to be used for an affordable dwelling unit suitably restricted so as to count on the state's Subsidized Housing Inventory (SHI) or its future equivalent, or in lieu thereof the application may provide for a monetary contribution to the Town's Affordable Housing Trust Fund in an amount which is reasonable, as determined by the Planning Board under the relevant circumstances. Lots containing residential uses with more than ten dwelling units, a number of dwelling units equal to 10% of the number of market-rate dwelling units (rounded to the nearest whole number) shall be suitably restricted affordable units so that these units shall count on the SHI or its future equivalent. When application of the 10% requirement, leaves a fractional share of ½ or less, an appropriate monetary contribution to the Affordable Housing Trust Fund determined by the Planning Board shall be required.

#### 4. Site Design Standards

In a NBU development, the site shall be planned and designed in such a way to preserve existing features which add value to the Town, including natural or man-made assets, historic or architecturally significant buildings, vistas, and similar assets through harmonious and thoughtful design. Lighting, landscaping and signage shall complement the site's character.

- (a) "Open Space" may be designed as an integral part of such development and shall enhance the development and the area in which the development is located. If the development is adjacent to a conservation resource area, some Open Space shall enhance public views and access to such resource area. Open Space shall be pervious areas dedicated to vegetation, lawns or public spaces. Insofar as permitted hereunder and subject to the approval of the Planning Board, Open Space may be used to provide access to underground utility services. The Planning Board may permit Open Space to be utilized for the coursing or temporary retention of storm drainage and associated underground drainage structures. As reasonably necessary No other structure may be erected or maintained on Open Land except as may be reasonably necessary for and incidental to the use of the Open Land, such as lamp posts, benches, small sheds, stone walls and fences. The number, characteristics and location of structures in the Open Land, if any, shall be subject to approval by the Planning Board.
- (b) Existing trees shall be incorporated into the development by using planning and construction techniques that will best protect such natural features. Trees with significant negative impact to commercial visibility may be removed with the approval of the Planning Board but shall be replaced onsite with a tree with a minimum caliper of 6" as measured at 4.5 feet from the base of the tree. In no case shall a site be clear cut. All plant materials shall be sized so that the landscaping has an attractive appearance at the time of installation and a mature appearance within three years of planting. At least 75% of new plant materials shall be native species. A landscaping plan shall be approved by the Planning Board prior to construction.
- (c) Bicycle parking shall be provided within 10 feet of the main building entrance in a single-use building and 30 feet from the majority of entrances in a multiple tenant building in a visible and prominent location that is well-lighted and on a separate plane or otherwise separated from automobile parking.
- (d) Setbacks. New buildings and additions shall be in accordance with setbacks established in the underlying district. The Planning Board may allow a waiver of front yard setbacks in conditions where existing structures are within the front yard setback and/or when front yard setbacks are encroached upon on abutting properties. New parking may fall within a side or rear yard setback provided a landscape buffer of at least five feet is preserved or provided. New parking areas shall not be located within a front yard setback. Existing encroachments of underlying setbacks by buildings or parking may remain.
- (e) Lots shall be screened from neighboring properties by fencing, vegetation and/or landscape features.
- (f) Lot Coverage/Floor Area Ratio. In a NBU development, buildings shall not cover in excess of 35% of the lot. Buildings [containing no residential uses] shall not have a floor area ratio in excess of .70 times the area of the lot. Buildings containing residential uses shall not have floor area ratios in excess of 1.0.

(g) Dumpsters and Deliveries. There may be one or more dumpsters as necessary to handle trash and refuse from the businesses **and residences** but in any case not more than one dumpster for trash and one dumpster for recycling. Dumpsters shall be screened from neighboring residential properties with fencing and/or other landscaped features and shall emit no noxious odors. To the extent feasible, truck deliveries and the movement of and emptying of dumpsters shall be scheduled to occur between the hours of 8:00 AM and 3:00 PM, **and shall not be scheduled to occur between 10:00 PM and 7:00 AM.**

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(h) Sewer. All disposal of sanitary waste shall be to the municipal sanitary sewer to which suitable connection can be made subject to any relevant impact fees.

(i) All utility connections to the property must be brought onto and distributed throughout the Lot underground from the connection point at the perimeter of the property.

(j) Applicants must demonstrate **compliance with Chapter 21 ("Stormwater Management Bylaw") but in any case must at least achieve** a reduction of storm water runoff from the site off at least 10 percent for any existing impermeable areas. All storm water associated with all new impermeable areas shall be retained onsite. Applicants shall implement Low Impact Development (LID) strategies whenever possible.

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## 5. Building Design Standards

In a NBU development, each building shall be designed to be architecturally coherent, well sited on its lot, visually attractive, and compatible with and complementary to its neighborhood surroundings. New construction shall complement the character of existing historic resources in terms of style, materials, scale and massing as applicable.

(a) Building Height. In a NBU development, new buildings [containing no residential uses] shall not contain in excess of two (2) stories, not including any basement level, and shall not exceed a height of thirty-five (35) feet above the average elevation of grade at the building footprint after construction as determined by the Planning Board. Buildings containing residential uses shall not contain in excess of three (3) stories, not including any basement level, and shall not exceed a height of **thirty five (35)** feet above the average elevation of grade at the building footprint after construction as determined by the Planning Board. In new construction, the clear height of the first floor shall be a minimum of twelve (12) feet to encourage and facilitate the use of the space for business use. The Planning Board may permit protrusions **on up to 10% of the roof area** of up to eight (8) feet above the roofline, such as elevator shaft housings or chimneys, so long as the appearance of the building remains architecturally coherent, visually attractive and appropriate to its setting. The Planning Board may allow a cupola or clock tower at a reasonable height above the roofline so long as it has been shown to add significant merit to the building design.

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(b) A single unit for a business use on the ground floor of a mixed-use building must contain at least 800 square feet

(c) The usable **footprint** of a single **building** shall not be more than 12,500 square feet.

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(d) Non-residential uses shall not be located above the second floor.

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(e) Building mass shall be varied to create a logical hierarchy of forms, to break up long unadorned expanses of façade, and to create visual interest through shade and shadow. Box-shaped structures without visual interest shall not be used.

- (f) In a development with more than one building, the buildings shall be designed and situated so that they work in harmony with each other. The back and sides of each building shall be given as much architectural care as the front. Each building, whether observed from the front, rear or sides shall present an attractive appearance and be an architectural whole.
- (g) Buildings shall have no blank facades and shall not present unrelieved flat surfaces. Building facades shall include in their detailing some form of repeating pattern that includes window and door arrangement, and color, texture and material changes. Retail buildings containing ground floor facades must display at least 75% transparency on facades facing public ways and parking areas and are encouraged to incorporate some combination of façade recesses, projecting or recessed display windows, overhangs, canopies or porticos, arcades or colonnades, peaked roof forms, arches or decorative details. Entrances should create architectural focal points and break up large facades. Multiple entrances may be appropriate to facilitate pedestrian access to individual businesses. Windows shall generally be recessed into the wall and have detailing around the openings such as sills and trim boards.
- (h) Building entrances shall be level with the public sidewalk or the onsite pedestrian walkways.
- (i) Roof lines shall be visibly coherent and architecturally well-defined. For all roof lines that exceed 30 feet in length there shall be at least one change in roof edge treatment. There shall be one additional change in roof edge treatment for each additional 30 feet in length. Roof edge treatments shall be coordinated with façade designs to provide emphasis to the building's primary entrances.
- (j) Exterior building materials and colors shall be selected to contribute to a harmonious design that is appropriate to the use(s) and surrounding context.
- (k) Exterior lighting fixtures shall be appropriate to the site and building design, be approved by the International Dark Sky Association, or, if such an association is no longer active, by a similar organization designated by the Planning Board, and be appropriately shielded to prevent any significant lighting over-spill into adjoining residential areas. Building equipment such as air handling units, condensers, transformers and the like shall be placed on the roof or at grade in locations screened by building or landscape elements. Acoustic barriers shall be incorporated to protect abutting properties as applicable.
- (l) Outdoor seating is encouraged where it is deemed appropriate for the use by the Planning Board.
- (m) All **lighted** signage shall be externally lit **or back lit (also referred to as "halo" lit)** with a shielded, downward pointing light. Building signage shall be displayed within a consistent building sign band and shall not obscure any architectural features of the building. A single blade sign shall be allowed for each first floor business, shall be placed at the primary entrance of the business and shall be no lower than 10 feet from the ground. No business may have more than two identifying signs on the building.
- (n) Pylon signs are not allowed.
- (o) A directory sign for a building with multiple businesses may be allowed at the primary entrance to the building.

## 6. Parking

In a NBU development, parking for business use shall be dependent on the type of business use. The number of parking spaces shall be determined by Sections VII.C and VII.D and VII.E or a lesser number of spaces determined to be adequate for the particular use by the Planning Board considering all relevant circumstances. Residential Uses shall require 1 space per bedroom but not to exceed 1.5 spaces per unit. Applicant shall designate an area for employee parking in the most remote section of the lot and shall enforce employee parking in this area. Employee parking areas may utilize tandem (stacked) parking spaces.

Parking standards for the number of ground-floor commercial uses may be reduced/waived at the discretion of the Planning Board where there is public parking provided within 1000 feet of the Lot or where parking may be provided on a different private lot within 1,000 feet with proof of ownership or long-term control of the lot through lease or easement.

Parking design shall generally comply with Section VII except as specifically stated herein. The Planning Board may grant, at its discretion, design waivers when site conditions make compliance with Section VII infeasible. **There shall be no underground or structured parking allowed.**

#### 7. Neighborhood Involvement

Prior to submission of an application for a NBU development, the applicant shall meet with legal abutters and others from the surrounding neighborhood, including the neighborhood association, if any, to present and discuss the plan and to address concerns raised regarding potential impacts and benefits of the proposed development. An application shall include a description of issues raised at such neighborhood meetings and the means by which the application responds to such concerns if any.

#### 8. Site Plan

A site plan for a NBU shall be part of the Special Permit application. The site plan may contain one or more plans prepared in a form suitable for recording by a Registered Professional Engineer or a Registered Land Surveyor, and in accompanying text and materials. Applicants are encouraged to secure the assistance of a Registered Architect or Landscape Architect in preparation of a Site Plan. A Site Plan approved by the Planning Board is a prerequisite of a Special Permit for a NBU granted under this subsection, and construction of the NBU shall be in accordance with the approved Site Plan. The Site Plan shall show:

- a. An existing condition plan showing:
  - 1.) The existing topography of the land showing two foot contours.
  - 2.) A mapping of all wetlands, a description of all wetlands and any proposed alteration of wetlands.

- 3.) Major site features such as large trees, wooded areas, rock-ridges and outcroppings, water bodies, meadows and stone walls.
- 4.) Buildings, structures, curb cuts, driveways, parking areas and dumpster locations.
- 5.) A description of any proposed removal or changes in these existing conditions.
- 6.) Abutting parcels with building footprints indicated.
- b. Photographs of existing conditions and adjacent parcels
- c. Context map.
- d. A proposed site plan layout and detailed landscaping plan indicating:
  - 1.) The siting, grading, and landscaping plan for all proposed streets, Open Land, parking areas, paths, walkways, patios, courtyards, driveways, dumpsters, lighting and structures.
  - 2.) A written description of the landscape characteristics of the site and its contiguous neighborhood and of the effects of the NBU on such characteristics, including the passage of water through the site and to and from contiguous property.
  - 3.) A written description of the site's current uses, such as watershed, wildlife habitat, woodland or meadowland and of the effect of the NBU on such uses and a written description of all measures proposed to deal with these impacts.
  - 4.) A statement of all significant impacts which the NBU is likely to cause and a description of all measures proposed to deal with these impacts.
  - 5.) The design of all structures. The plans shall include floor plans, roof plan, building elevations, site/building sections, and three-dimensional images/renderings.
- e. Storm water and drainage calculations and the design and location of adequate storm water and drainage systems.
- f. Utility Plan including designs for and locations of water, electric, gas, telephone and cable systems.
- g. Traffic analysis **as deemed appropriate by the Planning Board.**

#### 9. Submission of Permit Application to Other Boards

Every application for a special permit for a NBU under this subsection shall be referred to the Conservation Commission, the Historical Commission, the Board of Health, the Milton Fire Department, the Milton Police Department, and the Milton Traffic Commission. The Conservation Commission and Board of Health shall act upon the referral in the same manner as upon an application for subdivision approval under the Subdivision Control Law. The Historical Commission shall advise regarding buildings and any site features as specified herein. Comments from all departments shall be

submitted to the Planning Board and considered by the board in the creation of conditions within the Special Permit if issued.

#### 10. Application Filing, Hearing and Decision

Every application for a special permit for a NBU shall be filed with the Town Clerk and ten copies of the application (including the date and time of filing with the Town Clerk) shall be filed forthwith with the Planning Board. The Planning Department shall review the application within two (2) weeks of receipt of the application and shall determine if it has met the requirements of this bylaw. Once the Planning Department determines the application is complete, the department shall forthwith transmit a copy of the application to the boards referenced in Section 9 above and shall specify the date of the public hearing. After due publication and notice, the Planning Board shall hold a public hearing within 65 days of filing of the application or within such further time as may be permitted by G.L. c. 40A, Section 9 (or a successor statutory provision) or within such further time specified by written agreement between the applicant and the Planning Board filed with the Town Clerk. After hearing, the Planning Board, subject to whatever terms and conditions which it deems necessary or appropriate, shall grant a special permit for a NBU pursuant to the authority of and subject to the standards set out in Section IX.C if it finds that those standards and all the requirements of this subsection have been met.

#### 11. Permit Amendment

After a special permit for a NBU has been granted, the development may be altered or amended only upon an application for such alteration or amendment complying with the pertinent requirements of this subsection and after notice and public hearing and a finding by the Planning board that the alteration or amendment:

- (a) meets the requirements and purposes of this subsection;
- (b) is financially practical and in reasonable probability will be completed; and
- (c) is desirable or reasonably necessary.

In permitting an alteration or amendment, the Planning Board may impose such conditions or restrictions which it deems to be reasonably necessary to accomplish the purpose or satisfy the requirements of this subsection.

#### 12. Expiration of Permit

In the event no substantial use of a special permit granted under this subsection is made and no substantial construction has commenced within two years of the Planning Board's decision (excluding any time involved in judicial review of the decision), the special permit shall expire, except for good cause. The Planning Board may set reasonable limits

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for completion of parts or of the whole of the development and may determine the order of construction.

13. Severability Clause

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14. Recording of Permit

The Special Permit issued by the Planning Board shall be recorded with the Registry of Deeds by the Applicant at the Applicant's expense within thirty days after the Town Clerk has certified that the time for appealing the special permit has expired. A copy of the recorded document with the recording information shall be provided to the Town Planner promptly after recording;

and to act on anything related thereto.

Submitted by the Planning Board.