

## SECTION 10.0 ADMINISTRATION AND PROCEDURES

### 10.1 ENFORCEMENT

~~§ 190-56. Intent and purpose.~~

~~The intent and purpose of this article is to provide the specific means by which this chapter is administered, enforced, varied and amended.~~

**10.1.1 Building Inspector. Administrative Official.** The duty of administering and enforcing the provisions of this chapter is hereby conferred upon the Building Inspector, who shall have such powers as are conferred upon him or her **by G.L. c. 40A**, this Bylaw, and as reasonably may be implied. He shall be appointed as presently specified by the bylaws of the Town of Wakefield.

**10.1.2 Duties of the Building Inspector.** It shall be the duty of the Building Inspector, or his or her duly authorized agents, to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of provisions of this chapter as provided by G.L. c. 40A, § 7.

1. When the Building Inspector, in the course of his or her duties, determines that any plans, buildings or premises are in violation of the provisions of this chapter, he or she shall order the responsible party, in writing, to remedy such conditions. Said written order shall specify the nature of the violation found to exist, the remedy ordered, the time permitted for such action and the penalties and remedies which may be invoked by the Town and the violator's right of appeal, all as provided for by this chapter.
2. On the serving of notice by the Building Inspector to the owner for any violation of any provisions of this Bylaw, the certificate of occupancy shall be considered null and void, and a new certificate of occupancy shall be required for any further use of such building or premises unless the above written order provides otherwise.

**10.1.3 Records.** The Building Inspector shall maintain a permanent public record of all matters considered and all action taken by him, and such records shall form a part of the records of his office. An individual permanent file for each application by street address for a permit provided for by this Bylaw shall be established at the time the application is made. Said file shall contain one copy of the application and all supporting documents, maps and plans; notations regarding pertinent dates and fees and the like; as appropriate, one copy of the resolution of the special permit granting authority or the Board of Appeals in acting on the application; and the date the permit applied for was issued or denied by the Building Inspector.

1. The Building Inspector shall prepare a monthly report. Said report shall cite all actions taken by the Building Inspector, including all referrals made, all permits and certificates issued and denied, all complaints of violations received, all violations found and the action taken consequent thereon. A copy of this monthly report shall be transmitted by the Building Inspector to the Town Council, the Board of Assessors, the Planning Board and the Board of Appeals.

**10.1.4 Enforcement Requests.** If the Building Inspector is requested, in writing, to enforce this chapter against any person allegedly in violation of the same and the Building Inspector declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefor within 14 days after such receipt.

## **10.2 BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY.**

**10.2.1 Building Permit Required.** It shall be unlawful for any owner or person to erect, construct, reconstruct or alter a structure, including a sign, or change the use or lot coverage, increase the intensity of use or extend or displace the use of any building, other structure or lot without applying for and receiving from the Building Inspector the required building permit therefor. For purposes of administration, such permit and application procedure involving a structure may be made at the same time and combined with the permit required under the Building Code.

**10.2.2 Application.** An application for a permit shall be accompanied by a plan, accurately drawn on a scale of one inch equals 40 feet, prepared and stamped by a registered engineer or land surveyor showing the actual shape and dimensions of the lot to be built upon, the exact location and size of all buildings or structures already on the lot, the location of new buildings or structures to be constructed, together with the lines within which all buildings or structures are to be erected, the existing and intended use of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this chapter.

**10.2.3 Compliance Required.** No permit shall be issued under this section if the building, structure or lot as constructed, altered, relocated or used would be in violation of any provision of this Bylaw or the State Building Code. Whenever such permit or license is refused because of some provisions of this Bylaw, the reason therefor shall be clearly stated in writing. The Building Inspector shall take action on an application for permit, either granting the permit or disapproving the application, within 30 days of receipt of the application.

**10.2.4 Commencement of Construction.** Construction under a building permit shall begin within six months after the date of issuance and shall continue through to completion as continuously and expeditiously as is reasonable.

**10.2.5 Certificate of Occupancy Required.** No building hereafter erected, altered substantially in its use or extent or relocated shall be used or occupied, and no change shall be made of the use of any building or of any parcel of land, unless a certificate of occupancy signed by the Building Inspector has been granted to the owner for occupancy of such land or building. Such certificate shall not be granted unless the proposed use of the land and building and all accessory uses comply in all respects with this chapter and if use shall be made of such land or building that is not authorized by such certificate of occupancy.

## **10.3 VIOLATIONS AND PENALTIES.**

**10.3.1 Notice of Violation.** If the Building Inspector shall be informed in writing or have reason to believe that any provision of this chapter has been, is being or may be violated, he or she shall make or cause to be made an investigation of the facts and inspect the property where the violation may exist. If he or she shall find any such violation, he or she shall serve a notice of violation and order to any owner or person responsible for such violation of any approved plan, information or drawing pertinent thereto or in violation of a permit or certificate issued under the provisions of this chapter, and such order shall direct the discontinuance of the unlawful action, use or condition and the abatement of the violation within a reasonable time to be specified by the Building Inspector. Any owner having been served with a

notice and who ceases any work or other activity shall not leave any structure or lot in such condition as to be a hazard or menace to the public safety, health or general welfare.

**10.3.2 Penalty** If the notice of violation and order is not complied with promptly, the Building Inspector shall institute the appropriate action or proceeding at law or in equity to prevent any unlawful action, use of condition and to restrain, correct or abate such violation. Penalties for violations shall, upon conviction, be affixed in the sum of \$100 **\$300** for each offense. Each day, or portion of a day, that any violation is allowed to continue shall constitute a separate offense.

**10.3.3 Noncriminal Disposition.** Any alleged violation of any of the provisions of this Bylaw may, in the sole discretion of the Building Inspector or his designee, be made the subject matter of proceedings initiated by the Building Inspector pursuant to the provisions of MGL c. 40, § 21D, that is noncriminal disposition. If the Building Inspector so elects to proceed under MGL c. 40, § 21D, all the terms and provisions of such chapter and section shall thereafter govern said action.

## ALL TO RULES AND REGULATIONS

### ~~1.4~~ **Filing Fees and Hiring of Outside Consultants**

#### ~~1.4.1~~ **Filing Fees**

~~Any application for a Special Permit, variance, and/or appeal for a commercial project (non-residential) shall be accompanied by a filing fee of \$500.00; for a residential project the filing fee shall be \$300.00, plus any additional expenses as specified in this Bylaw.~~

#### ~~1.4.2~~ **Hiring of Outside Consultants**

- ~~A. Purpose. As provided by G.L. Ch. 44 §53G, the Erving Planning Board may impose reasonable fees for the employment of outside consultants, engaged by the Planning Board, for specific expert services. Such services shall be deemed necessary by the Planning Board to come to a final decision on an application submitted to the Planning Board pursuant to the requirement of: Town of Erving Subdivision Regulations, as they may be amended or enacted from time to time. The Planning Board may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above referenced laws or regulations.~~
- ~~B. Special Account. Funds received pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Planning Board without further appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.~~
- ~~C. Consultant Services. In hiring outside consultants, the Planning Board may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Planning Board and to ensure compliance with all relevant laws, ordinances, bylaws and regulations. Specific consultant services may include but are not limited to analysis of applications, title searches, mapping of lot and/or municipal boundaries and/or right of way, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Planning Board. The consultant shall be chosen by, and report only to, the Planning Board and/or its administrator.~~

## 10.4 ZONING BOARD OF APPEALS.

**10.4.1 Membership.** There shall be a Zoning Board of Appeals (hereafter called "Board of Appeals") consisting of five members and three associate members. All members of said Board of Appeals shall be registered voters in the Town of Wakefield. The Board of Appeals shall annually elect a Chairperson and a Clerk from its membership.

**10.4.2 Appointment.** Members of the Board of Appeals in office at the effective date of this chapter shall continue in office for the duration of their appointed terms. However, as terms expire or vacancies occur, the Town Council shall make appointments pursuant to MGL c. 40A (the Zoning Act) and the bylaws of the Town of Wakefield.

**10.4.3 Powers.** Under this Bylaw, the Board of Appeals shall have the following powers:

1. To hear and decide appeals. In exercising these powers, the Board of Appeals may, in conformity with the provisions of this Bylaw and the Zoning Act, reverse or affirm, in whole or in part, or may modify any order or decision and may make such order or decision as ought to be made 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.
2. To hear and decide applications for certain special permits referred to in this Bylaw.
3. To hear and decide petitions for variances, as provided in § 190-66 hereof.

The Board of appeals may/may not grant a use variance.

4. To hear and make findings allowing the extension, reconstruction or alteration of preexisting nonconforming uses and structures as provided in Section 5.

**10.4.4 Conditions.** In exercising the powers under Subsections (2) and (3), above, the Board of Appeals may impose limitations both of time and use, and a continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time to time thereafter.

**10.4.5 Adoption of Rules.** The Board of Appeals shall adopt rules, pursuant to the Zoning Act<sup>1</sup> and not inconsistent with the provisions of the bylaws of the Town, for conducting its business and otherwise carrying out the purposes of this Bylaw. A copy of such rules shall be filed in the office of the Town Clerk.

DELETED – LET THE STATUTE SPEAK FOR ITSELF.

~~Meetings of the Board of Appeals shall be held at the call of the Chairperson or when called in such other manner as the Board of Appeals shall determine in its rules. The Board of Appeals shall hold a hearing on any appeal, application or petition. The Board of Appeals shall cause notice of such hearing to be published and sent to parties in interest as provided for in MGL c. 40A and shall notify the Planning Board of Wakefield and the Planning Board of adjacent cities and Towns which may forward recommendations with respect to said matter for the consideration of the Board of Appeals. The Chairperson or, in his absence, the Acting Chairperson may administer oaths, summon witnesses and~~

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<sup>1</sup> . Editor's Note: See MGL c. 40A.

call for the production of papers. The vote of at least four members of the Board of Appeals shall be necessary to reverse any order or decision of the Building Inspector or Zoning Administrator, if any, under this chapter. [Amended 5-17-1993 ATM by Art. 37; 4-4-2002 ATM by Art. 19; 11-5-2018 RTM by Art. 17]

~~§ 190-65. Appeals.~~

~~Any person, as defined by MGL c. 40A, § 8, aggrieved by reason of his inability to obtain a permit from the Building Inspector under the provisions of this chapter or by order or decision of the Building Inspector may take an appeal to the Board of Appeals.~~

~~Appeals pursuant to MGL c. 40A, § 8 shall be taken within 30 days from the date of the order or decision which is being appealed by filing a notice of appeal, specifying the grounds thereof, with the Town Clerk, who shall forthwith transmit copies thereof to such officer whose order or decision is being appealed and to the Board of Appeals. The Building Inspector shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the area in which the appeal is taken. All hearings of the Board of Appeals shall be open to the public. The decision of the Board shall be made within 75 days after the date of the filing of an appeal, application or petition, except in regard to special permits, when the decision shall be made within 90 days after the public hearing. Failure by the Board to act within said 75 days shall be deemed to be grant of the relief, application or petition sought, subject to an applicable judicial appeal. The Board of Appeals 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 or reasons for its decision and of its official actions, copies of all of which shall be filed within 14 days in the office of the Town Clerk 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 MGL c. 40A, § 11 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 MGL c. 40A, § 17 and shall be filed within 20 days after the date of filing of such notice in the office of the Town Clerk. Further appeals. Any person aggrieved by a decision of the Board of Appeals, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the Superior Court or to the Land Court under MGL c. 240, § 14A for the county in which the land concerned is situated by bringing an action within 20 days after the decision has been filed in the office of the Town Clerk. Notice of the action with a copy of the complaint shall be given to the Town Clerk so as to be received within such 20 days. The complaint shall allege that the decision exceeds the authority of the Board of Appeals, 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 Town Clerk with whom the decision was filed.~~

DELETED - LET THE STATUTE SPEAK FOR ITSELF

~~§ 190-66. Variances.~~

~~The Board of Appeals shall have the power, after giving appropriate public hearing notice as described in § 190-68 hereof and after holding said hearing within 65 days after the Board of Appeals receives the petition from the Town Clerk, to grant upon appeal or upon petition a variance from the terms of this chapter where the Board of Appeals 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 this chapter 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 this chapter.~~

~~A request for a variance from the provisions of this code shall be filed with the Zoning Board of Appeals in accordance with § 190-73D. An appeal of a decision of the Zoning Board of Appeals regarding a variance shall be filed in the same manner as described under § 190-65D hereof. [Amended 4-8-2002 ATM by Art.~~

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~~The decision of the Board of Appeals shall be made within one hundred days of the filing of the petition. The time period for holding of the public hearing is inclusive of the one hundred day period. [Amended 4-4-2002 ATM by Art. 20]~~

~~No variance shall be granted unless there is a concurring vote of at least four members of the Board of Appeals. [Amended 4-4-2002 ATM by Art. 21]~~

~~If the Board of Appeals fails to act within the specified time period, the petition shall be deemed to be granted for the relief sought.~~

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

~~If the rights authorized by a variance are not exercised within one year of the date of grant of such variance they shall lapse and may be reestablished only after notice and a new hearing pursuant to this section. H. The decision regarding the variance shall contain:~~

~~The name and address of the owner.~~

~~An identification of the land and/or structure affected.~~

~~Description of how the variance complies with the statutory requirements for issuing a variance.~~

~~Certification that copies of the decision have been filed with the Planning Board and the Town Clerk.~~

~~Specification that appeals, if any, shall be made pursuant to MGL c. 40A, § 17 and shall be filed within 20 days after the date the notice of decision was filed with the Town Clerk.~~

**10.4.6 Fees.** The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

## **10.5 PLANNING BOARD.**

**10.4.1 Establishment.** The Planning Board shall consist of five (5) elected members and two appointed associate members.

**10.5.2 Powers.** The Planning Board shall have the following powers:

1. To hear and decide applications for special permits, when designated as the SPGA in this Bylaw.

2. To hear and decide applications for site plan approval pursuant to Sections 10.6 and 10.\*\*\*.

**10.5.3 Associate Member.** The Town Council and the Planning Board shall appoint an associate member of the Planning Board for a term of one year. When the Planning Board has been designated as a special permit granting authority by this Bylaw, the Chairperson of the Planning Board may designate the associate member to sit on the Planning Board 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 Planning Board.

**10.5.4 Regulations.** The Planning Board may adopt rules and regulations for the administration of its powers.

**10.5.5 Fees.** The Planning Board may adopt reasonable administrative fees and technical review fees for applications for special permits and site plan review.

## **10.6 SPECIAL PERMITS.**

~~It is the purpose and intent of this article to provide the designation of the board or agency which shall act on the various special permits, the general and specific regulations governing special permits and the procedures by which special permits shall be granted.~~

~~Certain uses, structures or conditions are designated in Article IV, Use Regulations, as requiring a special permit. Upon submission of a written application duly made to the special permit granting authority, the special permit granting authority may, in appropriate cases, subject to the requirements of state law, applicable conditions contained herein and to all other reasonable conditions and safeguards, grant a special permit for such uses, structures or conditions.~~

**10.6.1 Special Permit Granting Authority.** When designated by this Bylaw, the Board of Appeals, the Select Board, and the Planning Board shall act as the Special Permit Granting Authority (SPGA).

~~The Board of Appeals shall act as the special permit granting authority for all special permits required under this chapter, except where the Planning Board or other agency is specifically designated as the special permit granting authority by this chapter. See § 190-73 for the general submission requirements for applications to the Zoning Board of Appeals and the Planning Board.~~

**10.6.2 Criteria.** Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.

- A. ~~Before granting a special permit, the special permit granting authority, with due regard to the nature and condition of all adjacent structures and uses and the district within which the same is located, shall find all of the following general conditions to be fulfilled:~~



- (1) ~~The use requested is listed in the Table of Use Regulations as requiring a special permit in the district for which application is made.~~
- (2) ~~The requested use is essential and/or desirable to the public convenience or welfare.~~
- (3) ~~The requested use will not create or add to undue traffic congestion or unduly impair pedestrian safety.~~
- (4) ~~The requested use will not overload any public water, drainage or sewer system or any other municipal system for such an extent that the requested use or any developed use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety or the general welfare.~~
- (5) ~~The requested use will not impair the integrity or character of the district or adjoining districts nor be detrimental to the public health, convenience or welfare.~~
- (6) ~~The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.~~

**10.6.3 Procedures.** An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority and G.L. c. 40A, s. 11.

1. Incomplete applications. An application shall not be deemed complete until all copies of the required information and documentation have been filed with the special permit granting authority.
2. The special permit granting authority shall notify applicants by registered mail or in person at a public hearing that an application is incomplete, and the applicant shall have 14 days from the mailing of such notice or the giving of such notice at a public hearing to complete the application. Failure to complete an application within such time or to file plans with the agencies or officials set forth in the Zoning Bylaw and any applicable rules and regulations shall be deemed a nonsubmittal of the application, and the application shall be denied without prejudice.
3. Failure of the special permit granting authority to issue notice of an incomplete application shall not give rise to a presumption that the application is complete.

**10.6.4 Conditions.** Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this Bylaw. Such conditions may include, but are not limited to the following:

1. Setback requirements greater than the minimum required by this Bylaw;
2. Requirements as to installation of screening, fencing or other means of protecting adjacent property;
3. Modification of the exterior features or appearance of any structure;



4. Limitation as to size, number of occupants, or method and time of operation of any proposed use;

5. Regulation of number, design and location of access drives and other traffic features;

6. Requirement of off-street parking and other special features;

7. Installation of mechanical or other devices to limit noise, light, odor or other objectional aspects of use; and

8. Requirement for surety bonds or other security for the performance of any conditions attached to the special permit.

B. ~~The special permit granting authority shall also impose, in addition to any applicable conditions specified in this chapter, such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purpose of this chapter, including but not limited to the following:~~

(1) ~~Front, side or rear yards greater than the minimum required by this chapter.~~

(2) ~~Screening buffers or planting strips, fences or walls.~~

(3) ~~Modification of the exterior appearance of the structures.~~

(4) ~~Limitation upon the size, number of occupants, method and time of operating for the duration of the permit or extent of facilities.~~

(5) ~~Regulation of the number and location of driveways or other traffic features.~~

(6) ~~Off street parking or loading or other special features beyond the minimum required by this chapter.~~

C. ~~Such conditions shall be imposed in writing, and the applicant may be required to post bond or other security for compliance with said conditions in an amount satisfactory to the special permit granting authority. Any special permit granted under this article shall lapse within 12 months if a substantial use thereof has not sooner commenced, except for good cause, or, in the case of a permit for construction, if construction has not begun by such date, except for good cause. Additionally, if construction or operations have not begun within 12 months or if construction is not continuing toward completion in as continuous or expeditious manner as is reasonable during the initial 12 months, then the construction or operations shall conform to any amendment to this chapter. (See MGL c. 40A, § 9.)~~

**10.6.5 Referral.** The Board of Appeals, Board of Selectmen and Planning Board, when serving as the SPGA, shall refer a special permit application to the Board of Health, Conservation Commission, and the Department of Public Works for written comments and recommendations before taking final action on said special permit application. The SPGA may refer a special permit application to any other town agency, board, or department for comments and recommendations if it so desires before taking final action on said special permit application. A public hearing on said referral shall not be required. Any such Board or Agency to which applications are referred for comment shall make its recommendations

and send copies thereof to the SPGA and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The SPGA shall not act upon said special permit until either comments from referred board or agencies have been received, or said thirty five (35) days have elapsed, whichever is sooner. Applications referred to more than one board or agency may be reviewed jointly by said boards or agencies.

**10.6.6 Plans.** Unless otherwise provided by rule or regulation of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 10.7, herein. The provisions of this Section shall not apply to applications for special permits pursuant to Section 5.0 to alter a nonconformity. The Zoning Board of Appeals shall establish procedures governing such applications by regulation.

**10.6.7 Regulations.** Pursuant to G.L. c. 40A, s. 9, the Planning Board may adopt rules relative to the issuance of special permits. These rules and regulations may relate to the size, form, content and style of the plans and procedures for submission and approval of such special permits, and shall not be inconsistent with the General Laws and provisions of this Bylaw. The Planning Board may from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk.

**10.6.8 Fees.** The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

**10.6.9 Lapse.** Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 36 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

## **10.7 SITE PLAN REVIEW.**

**10.7.1 Purpose.** The purpose of site plan review is to ensure the design and layout of certain developments which are located in areas zoned as Neighborhood Business District, Limited Business District, Business District, Limited Industrial District, or Industrial District and which do not require a special permit from the special permit granting authority. Such developments must be approved by the Planning Board through site plan review prior to the issuance of a building permit.

**10.7.2 Applicability.** The following activities shall require site plan approval from the Planning Board:

1. Any new development, expansion, or change of use other than a single-unit or two-unit residence in the Neighborhood Business District, Limited Business District, Business District, Limited Industrial District, or Industrial District, which would, under the parking schedule "Off-Street Parking Regulations" of Section 6.1, require five (5) or more parking spaces, regardless of the number of parking spaces preexisting on the premises; and
2. Any new development expansion, or change of use other than a single-unit or two-unit residence in the Neighborhood Business District, Limited Business District, Business District, Limited Industrial District, or Industrial District, which would involve the construction of alteration of more than \_\_\_\_\_ sf of gross floor area.

**10.7.3 Procedure.** The Planning Board shall serve as the approval authority for site plan review. All decisions shall be made by a majority of the Board, as constituted. The Planning Board shall hold a public hearing for consideration of an application of site plan approval. Said hearing shall be conducted in accordance with the procedures set forth in M.G.L. c. 40A, § 11 for special permits. The written decision of the Planning Board shall be filed with the Town Clerk within 90 days of the close of the public hearing. Failure to file the decision within 90 days of the close of the public hearing shall be constructive approval of the site plan application.

**~~§ 190-48. Public hearing and review procedures.~~**

~~The special permit granting authority shall follow the required public hearing and review procedures set forth in MGL c. 40A, § 9 and in § 190-68 hereof. The public hearing shall be held within 65 days of the filing of the petition, and a decision shall be made within 90 days of the public hearing.~~

**1. Pre-Application Review.** A prospective applicant for site plan approval is encouraged to request a pre-application review with the staff of the Planning Board to address any questions regarding the process or the applicability of this Section 10.6.

~~A. Administration. When exercising its powers of site plan review, the Planning Board shall hold a public hearing pursuant to MGL c. 40A, § 11 on any complete site plan review application within 30 days of its submission. The Planning Board shall make a final decision regarding a site plan within 90 days after the date of its public hearing. The required time limits for public hearing and Planning Board action may be extended by written agreement between the applicant and the Planning Board. Failure of the Planning Board to act within said 90 days or extended time, if applicable, shall be deemed an approval of the site plan.~~

**10.7.4 Site Plan Requirements.** Plans subject to site plan review shall be prepared by a Registered Architect, Landscape Architect, or Professional Engineer licensed by the Commonwealth of Massachusetts. The site plan shall be prepared at a scale no greater than 1"=40', and shall show the following:

1. Locus map at a scale not greater than 1'=2,000';
2. All existing and proposed buildings and structures;
3. All existing and proposed contour elevations;
4. All existing and proposed parking spaces, driveway openings, driveways, and service areas;
5. All existing and proposed facilities for sewage, refuse, and other waste disposal;
6. All wetlands, surface water, and areas subject to the 100-flood;
7. All existing and proposed facilities for surface water drainage;

8. All existing and proposed landscape features such as fences, walls trees and planting areas, walks and lighting.

9. All contiguous land owned by the applicant or by the owner of the property.

**10.7.5 Additional Application Requirements.** The applicant shall also submit the following in accordance with Section 6.4:

1. Such material as may be required regarding measures proposed to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level, and flooding.

2. Such material as may be required regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectional features from neighbors.

3. Such material as may be required regarding the projected traffic-flow patterns into and upon the site for both vehicles and pedestrians and an estimation of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.

**10.7.6 Waiver of Technical Compliance.** The Board may, upon written request of the applicant, waive any of the technical or procedural requirements of this Section where the project involves relatively simple development plans.

B. ~~The site plan review regulations which the Planning Board adopts may:~~

- ~~(1) Provide for the safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety or prosperity by reason of:
  - ~~(a) Inadequate drainage or conditions conducive to flooding of the property or that of another.~~
  - ~~(b) Inadequate protection for the quality of groundwater.~~
  - ~~(c) Minimizing elements of pollution, such as noise, smoke, soot, particulates or any other discharge into the environment which might prove harmful to persons, structures or adjacent properties.~~
  - ~~(d) Inadequate provision for firesafety, prevention and control.~~~~
- ~~(2) Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.~~
- ~~(3) Provide for open spaces and green spaces of adequate proportions.~~
- ~~(4) Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the Official Map of Wakefield.~~
- ~~(5) Require suitably located access roads of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air and access for fire fighting apparatus and equipment to buildings and coordinated so as to compose a convenient system.~~

- (6) ~~Require, in proper cases, that plans showing new access roads or narrowing or widening of such access roads be submitted to the Planning Board for approval.~~
- (7) ~~Require that the land indicated on plans submitted to the Planning Board shall be of such character that it can be used for building purposes without danger to health.~~
- (8) ~~Include such provisions as will tend to create conditions favorable for health, safety, convenience and prosperity.~~

**10.7.7 Decision; Criteria.** Site plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. The Planning Board shall use the parking, signage, landscaping and other performance standards prescribed in Section 6.0 of this Bylaw in considering all site plans, in order to promote the following goals:

1. Protection of adjacent areas against detrimental or offensive uses on the site by provisions of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, and the allowance of sun, light, and air;
2. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
3. Adequacy of facilities of handling and disposal of refuse and other production by-products;
4. Protection of environmental features on the site and in adjacent area;
5. Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood;
6. Coordination with and improvement of systems of vehicular and pedestrian access, drainage, water supply, sewage disposal, lighting, landscaping, wetlands, water courses, buildings and other features that support the neighborhood;
7. Compliance with all applicable sections of this Bylaw.

C. ~~The site plan review regulations which the Planning Board adopts may:~~

- (1) ~~Provide for the safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety or prosperity by reason of:~~
  - (a) ~~Inadequate drainage or conditions conducive to flooding of the property or that of another.~~
  - (b) ~~Inadequate protection for the quality of groundwater.~~

- (c) ~~Minimizing elements of pollution, such as noise, smoke, soot, particulates or any other discharge into the environment which might prove harmful to persons, structures or adjacent properties.~~
- (d) ~~Inadequate provision for firesafety, prevention and control.~~
- (2) ~~Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.~~
- (3) ~~Provide for open spaces and green spaces of adequate proportions.~~
- (4) ~~Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the Official Map of Wakefield.~~
- (5) ~~Require suitably located access roads of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air and access for fire-fighting apparatus and equipment to buildings and coordinated so as to compose a convenient system.~~
- (6) ~~Require, in proper cases, that plans showing new access roads or narrowing or widening of such access roads be submitted to the Planning Board for approval.~~
- (7) ~~Require that the land indicated on plans submitted to the Planning Board shall be of such character that it can be used for building purposes without danger to health.~~
- (8) ~~Include such provisions as will tend to create conditions favorable for health, safety, convenience and prosperity.~~

**10.7.8 Performance Guarantee.** As a condition of site plan approval, the Planning Board may require that construction and site alteration permitted and specified by said approval be secured by one, or in part by one and in part by the other, of the methods set forth in M.G.L. c. 41, s. 81U (except for the statutory covenant).

**10.7.9 Release of Guarantee.** Performance guarantees may be released in whole or from time to time, in part, when the work has been satisfactorily completed in the opinion of the Planning Board. The Planning Board shall then release the interest of the town in such bond and return any bond or deposit to the person who furnished the same. Request for all releases shall be by certified, return receipt letter to the Planning Board and the Town Clerk and shall outline that portion of the work to be released and shall be accompanied by an engineer's or surveyor's certification that the work has been done in accordance with the requirements of the granted site plan approval. If the Planning Board determines that said construction or site alteration has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the Town Clerk, the details wherein said construction or site alteration fails to comply with the site plan approval and upon failure to do so within forty-five (45) days after the receipt by said Town Clerk of said request by the applicant, all obligations under any bond shall cease and terminate by operation of law, and any deposit shall be returned. In the event that said forty-five day period expires without such specification, or without the release and return of the bond or return of the deposit as aforesaid, the said Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

**10.7.10 Lapse.** Site plan approval shall lapse after three years from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

**10.7.11 Regulations.** The Board may adopt reasonable regulations for the administration of site plan review.

**10.7.12 Fee.** The Board may adopt reasonable administrative fees and technical review fees for site plan review.

~~§ 190-46. Site plan review where special permit is not required. [Added 6-5-1989 ATM by Art. 51]~~

- A. ~~The site plan review regulations which the Planning Board adopts shall:~~
- ~~(1) Provide procedures which the Board shall follow in reviewing site plans.~~
  - ~~(2) Define the purposes of site plan review.~~
  - ~~(3) Specify the general standards and requirements with which the proposed development shall comply, including appropriate reference to accepted codes and standards for construction.~~
  - ~~(4) Include provisions for guaranties of performance, including bonds or other security.~~
  - ~~(5) Include provision for waiver of any portion of the regulations in such cases where, in the opinion of the Planning Board, strict conformity would pose an unnecessary hardship to the applicant, and provided that such waiver would not be contrary to the spirit and intent of the regulations.~~
- B. ~~The site plan review regulations of the Planning Board may stipulate, as a condition precedent to the approval of the plan, the extent to which and the manner in which streets shall be graded and improved and to which water, sewer and other utility mains, piping, connections or other facilities shall be installed. The regulations or practice of the Planning Board:~~
- ~~(1) May provide for the conditional approval of the plat before such improvements and installations have been constructed.~~
  - ~~(2) Shall provide that, in lieu of the completion of street work and utility installations prior to the final approval of a plat, the Planning Board shall accept a performance bond, irrevocable letter of credit or other type or types of security as shall be specified in the site plan review regulations. The Planning Board shall have the discretion to prescribe the type and amount of the bond or other security and specify a period for completion of the improvements and utilities to be expressed in the bond or other security in order to secure the municipality the actual construction and installation of such improvements and utilities. The municipality shall have the power to enforce such bonds or other securities by all appropriate legal and equitable remedies.~~
- C. ~~The Planning Board may, as part of its site plan review regulations, require an applicant to pay all costs for notification of abutters and may provide for the assessment of reasonable fees to cover the Board's administrative expenses and costs of special investigation and the review of documents and other matters which may be required by particular matters.~~



**10.7.13 Appeal.** Any decision of the Planning Board pursuant to this Section shall be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

D. ~~Appeal of decision. Pursuant to MGL c. 40A, § 8, any party aggrieved by a decision by the Wakefield Planning Board to approve, conditionally approve or deny a commercial, industrial or multifamily site plan may appeal said decision by making application for an appeal from the terms of the decision to the Wakefield Zoning Board of Appeals.~~

(1) ~~Any such appeal must be filed within 20 days of the decision and must demonstrate all of the following:~~

(a) ~~A significant diminution of surrounding property values will not occur.~~

(b) ~~Granting the appeal will be of benefit to the public interest.~~

(c) ~~The Planning Board's decision will result in an unnecessary hardship being imposed. (The physical~~

~~or economic condition of an individual or firm is not sufficient grounds for hardship.) (d) — Granting the appeal would do substantial justice.~~

~~(e) The proposed use is not contrary to the spirit of this chapter.~~

(2) ~~The failure of an applicant to demonstrate all of the foregoing shall result in the denial of the appeal by the Wakefield Zoning Board of Appeals.~~

(3) ~~The satisfactory demonstration of all of the foregoing shall result in the approval of the appeal by the Wakefield Zoning Board of Appeals.~~

## **10.8 SITE PLAN REVIEW FOR DOVER AMENDMENT USES.**

**10.8.1 Purpose.** The purpose of this Section is to provide for site plan review of religious uses, educational uses, and child care centers otherwise “exempt” pursuant to G.L. c. 40A, s. 3. These are items B.1, B.2 and B.3 in the Table of Use and Parking Regulations.

**10.8.2 Site Plan Review Required.** Prior to the issuance of any building permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of uses B.1, B.2, or B.3, as set forth in the Table of Use and Parking Regulations, shall require site plan approval from the Planning Board pursuant to this Section.

**10.8.3 Scope of Site Plan Review.** Under this Section, Site Plan Review shall be limited to two inquiries:

1. Whether the use qualifies for protection under G.L. c. 40A, s. 3; and, if so,

2. What reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements, if any, should be imposed on the use.

**10.8.4 Required Information.** All applications for Site Plan Review shall be in writing and provide, at a minimum, the following information:

1. Name and address of applicant person or entity;
2. Name and address of property owner;
3. Description of the proposed use and any documents necessary to establish threshold compliance with G.L. c. 40A, s. 3; and
4. Reason that relief is requested from otherwise applicable zoning requirements.
5. If necessary to reach a decision on the application, the Planning Board may request further information from the applicant consistent with G.L. c. 40A, s. 3, specifying in detail the information required.

**10.8.5 Required Information.** All applications for Site Plan Review shall be in writing and provide the information required by Section 10.6 determined by the Planning Board to be reasonably necessary to determine the scope of regulations that shall be applied to the Dover Amendment Use.

**10.8.6 Decision.** The Planning Board may approve, approve with conditions, or deny an application for site plan approval. In making its decision, the Board shall be guided exclusively by G.L. c. 40A, s. 3. Denial of an application shall be based solely on lack of qualifications under G.L. c. 40A, s. 3, or an incomplete application. The Board shall file a written decision with the Town Clerk within 90 days of receipt of the application. Failure to file a decision within ninety (90) days shall constitute approval of the site plan.

**10.8.7 Appeal.** Any appeal of the Planning Board's decision shall be made pursuant to G.L. c. 40A, s. 17, to a court of competent jurisdiction.

## **10.9 REQUEST FOR REASONABLE ACCOMMODATION.**

**10.9.1 Purpose.** Under the FHA, it is a discriminatory practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling" 42 U.S.C. Section 3604(f)(3)(B). The same standard applies under the ADA, which also addresses nonresidential facilities providing services to persons with disabilities. 42 U.S.C. 12102(b)(5). See also G.L. c. 40A, s. 3. The purpose of this Section is to facilitate housing and/or services for persons with disabilities and to comply fully with the spirit and the letter of the FHA and, where applicable, the ADA.

**10.9.2 Request.** Any person eligible under the FHA or any provider of housing to persons eligible under the FHA, or any person eligible to operate a nonresidential facility providing services to persons eligible under the ADA, may request a Reasonable Accommodation as provided by the Fair Housing

Act and/or the ADA. A Request for a Reasonable Accommodation does not affect a person's or provider's obligations to act in compliance with other applicable laws and regulations not at issue in the requested accommodation.

**10.9.3 Zoning Board of Appeals.** All requests for Reasonable Accommodation under the FHA and/or the ADA shall be submitted to the Zoning Board of Appeals (ZBA).

**10.9.4 Information.** All requests for Reasonable Accommodation shall be in writing and provide, at a minimum, the following information:

1. Name and address of person(s) or entity requesting accommodation;
2. Name and address of property owner;
3. Name and address of dwelling or facility at which accommodation is requested;
4. Description of the requested accommodation and specific regulation or regulations for which accommodation is sought;
5. Reason that the requested accommodation may be necessary for the person or persons with disabilities to use and enjoy the premises; and
6. If the requested accommodation relates to the number of persons allowed to occupy a dwelling, the anticipated number of residents, including facility staff (if any).
7. If necessary to reach a decision on the request for Reasonable Accommodation, the ZBA may request further information from the applicant consistent with the FHA and/or ADA, specifying in detail the information required.

**10.9.5 ZBA Procedures.** The ZBA shall decide a request for reasonable accommodation by majority vote at an open meeting. The ZBA may seek information from other Town agencies in assessing the impact of the requested accommodation on the rules, policies, and procedures of the Town. Upon written notice to the ZBA, an applicant for a reasonable accommodation may withdraw the request without prejudice. The ZBA shall consider the following criteria when deciding whether a request for accommodation is reasonable:

1. Whether the requested accommodation is reasonable;
2. Whether the requested accommodation would require a fundamental alteration of a legitimate Town policy; and
3. Whether the requested accommodation would impose undue financial or administrative burdens on the Town government.

**10.9.6 Decision.** After conducting an appropriate inquiry into the request for reasonable accommodation, the ZBA may:

1. Grant the request;

2. Grant the request subject to specified conditions; or

3. Deny the request.

The ZBA shall issue a written final decision on the request in accordance with G.L. c. 40A, s. 15. If the ZBA fails to render its decision on a request for reasonable accommodation within the time allotted by G.L. c. 40A, s. 15, the request shall be deemed granted. The ZBA's decision shall be filed with the Town Clerk and sent to the applicant by certified mail.

**10.9.7 Appeal.** The ZBA's decision pursuant to this Section may be appealed to a court of competent jurisdiction in accordance with G.L. c. 40A, s. 17 or otherwise.

**10.9.8 File.** The ZBA shall maintain a file of all requests for reasonable accommodation under the FHA and/or the ADA and a file of all decisions made on such requests. The file(s) may be reviewed in the Office of the ZBA upon request during regular business hours.

**10.9.9 Other Laws.** While a request for a reasonable accommodation is pending, all laws and regulations otherwise applicable to the premises that is the subject of the request shall remain in full force and effect.

## **10.10 DESIGN REVIEW BOARD**

**10.10.1 Purpose of the Design Review Board.** The Design Review Board shall review and make recommendations concerning all sign applications.

**10.10.2 Composition of the Design Review Board.** The Design Review Board shall be appointed by the Town Council and consist of three residents of Wakefield, one of whom shall be a member or associate member of the Zoning Board of Appeals, and the other two of whom shall preferably have the following qualifications: training and experience in the art or design professions, or qualified by training and experience in architecture. The Town Council may appoint up to two alternate members of the Design Review Board. In the absence of a member, the Chairperson of the Design Review Board may designate an alternate member to serve in the place of the absent member. An alternate member so designated may discuss, vote, and otherwise participate as a Design Review Board member in matters that come before the Design Review Board. Until such time as the Design Review Board has been appointed and the Chairperson of the Design Review Board provides written notification to the Zoning Board of Appeals and the Town Council that the Design Review Board has been sufficiently organized and ready to receive and review applications, the Zoning Board of Appeals shall act as the Design Review Board.

**10.10.3 Authority and Powers.** Recommendations of the Design Review Board are advisory. The Design Review Board shall evaluate sign applications based on the design criteria set forth in \*\*\* below. The Design Review Board shall review applications for sign permits, meet with applicants for sign permits and provide recommendations to modify a sign's design to meet the design criteria in § 190-102E. The Design Review Board's findings, along with any recommended restrictions and conditions, shall be forwarded either to the Building Inspector and, if a special permit is required, to the Zoning

Board of Appeals also. Sign permit applicants who meet all applicable criteria set forth in this article and who do not require a special permit are entitled to sign permits as of right from the Building Inspector, notwithstanding any negative recommendation by the Design Review Board; however, the Building Inspector shall endeavor to convince such an applicant to conform his sign to the reasonable suggestions of the Design Review Board.

**10.10.4 Pre-application Review.** Applicants for multiple signs and larger projects are very strongly encouraged to request a pre-application review at a regular business meeting of the Design Review Board. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence dialogue at the earliest possible stage in the project's development.

**10.10.5 Design Criteria.** The Design Review Board shall review requests for sign permits and special permits under this article based on the following standards:

1. To the greatest extent practicable, signs shall be designed to preserve and enhance the Town's New England character.
2. Signs shall harmoniously relate to the streetscape and other surroundings, the building's architectural character, use, scale, and architectural detail. Signs shall be related to their host building with respect to: Height; Street facade; Rhythm of solids and voids; Spacing of buildings or signs; Materials, textures, and color; Roof slopes; and Scale.
3. Signs should contribute to a functional and vibrant downtown that serves the modern needs of the residents of the Town. Without limiting the generality of the foregoing, signs should be functional and visually related to the use and design of the building to which they will be attached, and such attachment should be effected by the least destructive feasible method.
4. The work of the Design Review Board should lead over time to the removal of incongruous signage that is visually disruptive to historic structures and the architectural character of the neighborhood.

**10.10.6 Design Guidelines.** The Design Review Board may either publish guidelines based on the design criteria set forth and cited above and/or provide references to resource materials that facilitate an applicant's understanding of the purposes of this Section.

**10.10.7 Responsibility to Maintain File System.** Permits and application files are to remain in the Building Inspector's office. Electronic files provided by the applicant are to be stored on the Town's computer system using a street address filing system cross-referenced with tax map numbers.

## LET THE STATUTE SPEAK FOR ITSELF

### ~~Repetitive petitions; withdrawal.~~

- A. ~~No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals or by another Town agency or board shall be acted favorably upon within two years after the date of final unfavorable action unless the acting board or agency finds, by a unanimous vote, specific and material changes in the conditions upon which 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 consent thereto and after notice is given to parties in interest (as defined in § 190-68B hereof) of the time and place of the proceedings when the question of such consent will be considered.~~

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

## LET THE STATUTE SPEAK FOR ITSELF

### **§ 190-68. Public hearings.**

- A. ~~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 Town once in each of two successive weeks, the first publication to be not less than 14 days (not including the date of the hearing) before the day of the hearing, and by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of such hearing (not including the date of the hearing). In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid.~~

- B. ~~"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 owners of land within 300 feet of the property line, all 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; and the Planning Board of the Town and the Planning Board of every abutting city or Town. The Assessors maintaining any applicable tax list shall certify to the Board of Appeals the names and addresses of parties in interest, and such certification shall be conclusive for all purposes. The Board of Appeals 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 no less than five nor more than 10 additional days to reply.~~

- C. ~~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 and place of the public hearing, the subject matter of the hearing and the nature of the section 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 Wakefield.~~

