

PROTECTIVE BYLAW

TOWN OF HAWLEY, MASSACHUSETTS

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ARTICLE I - PURPOSE

The purpose of the Bylaw is to promote the general welfare of the Town of Hawley, to protect the health and safety of its Inhabitants, to encourage the most appropriate use of land within the Town, to protect the ecology and the rural nature of the Town to increase the amenities of the Town, to reduce the hazard from fire by regulating the location and use of buildings and the areas of open spaces about them, to minimize confusion or congestion, and to protect and conserve the value of property within the Town, including consideration of the recommendations of the Town comprehensive plan, if any, or of the regional planning agency, and to preserve and fulfill said purpose in accordance with the provisions of Chapter 40A of the Massachusetts General Laws.

ARTICLE II - DEFINITIONS

In this Bylaw the following terms shall have the following meanings, unless contrary meaning is required by the context or is specifically prescribed:

Building - A combination of materials having a roof and forming a shelter for persons, animals, or property. A mobile home shall be defined as a building.

Building principal - A non-accessory building in which a principal use of the lot on which it is built is conducted. A mobile home shall be defined as a principal building.

Building, accessory - Any building whose use is incidental and accessory to the use of the principal building on the same lot.

Campsite - A parcel of land intended to be used for occupancy by campers or recreational vehicles.

Dwelling - Any structure, including mobile homes, containing one or two dwelling units.

Dwelling unit - A building or portion of a building providing living quarters for a single household, having a single set of cooking facilities not shared with any other unit.

Multi-family Dwelling - A building or portion thereof used for occupancy by three or more families living independently of each other.

Lot - A continuous parcel of land in a single ownership, with legally definable boundaries. Mobile home. A dwelling built on a chassis, whether on wheels or on a temporary or permanent foundation.

Building height - The vertical distance measured from the main finished grade of the ground adjoining the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip, and gambrel roofs.

Lot frontage - The boundary between a lot and an abutting street between lot lines, or in the case of a corner lot, between a lot line and the intersection of street lines or of street lines extended.

Family - One or more persons related by birth, marriage, or adoption, including minors under the legal guardianship or control of one or more adults, or up to four (4) unrelated individuals, or a combination of these living together on a premise as a single housekeeping unit.

Street - A public way or private way either shown on a plan approved in accordance with the subdivision Control Law, or otherwise qualifying a lot for frontage under Subdivision Control Law.

ARTICLE III - DISTRICTS AND USE REQUIREMENTS

Section 31: Districts

The entire town of Hawley is hereby designated as a Rural District.

Section 32: Use Regulations

Any otherwise lawful activity meeting all requirements of this and other Town bylaws shall be permitted within a Rural District, except the following:

32.1 - Prohibited Use: No building shall be constructed, enlarged, or converted so as to create a multi-family dwelling.

32.2 - Large Activity Centers: New buildings or building additions designed for any use for which ten or more parking spaces are required shall be allowed only on Special Permit from the Board of Appeals, upon their determination that access will not create congestion or hazard; that no sound, noise, vibration, odor or flashing will be perceptible without instruments more than 200 feet from the boundaries of the originating premises, except for warning devices, construction work, maintenance, or other special circumstances; that impact upon surface water, ground water and important natural habitats will not be seriously injurious; and that the designed location of buildings, parking, and egress avoids unnecessary visual disruption of the environs, and that the requirements for erosion control specified in Section 42.3 are complied with.

32.3 - The application shall be filed with the Board of Appeals, a copy of which shall forthwith be given to the Town Clerk by the applicant. The Board of Appeals shall hold a public hearing within 65 days of the submission of application to the Town Clerk and the Board of Appeals shall render a decision within 90 days of the public hearing.

Section 33: Dimensional Requirements

No structure shall be erected or used, premises used, lot changed in size or shape, or building permit or special permit issued, except in conformity with the following requirements:

33.1 - Lot area: The minimum lot area shall be two acres, and not less than two acres for each principal building or campsite.

33.2 - Lot frontage: The minimum lot frontage shall be 250 feet measured along a public way or a way providing legally sufficient frontage for the subdivision of land under the requirements of Section 81L, Ch. 41 G.L., to which the lot has legal and physical access.

33.3 - Front yard: No structure other than a fence or wall, shall be located within 60 feet of a street or front lot line, or within 80 feet of the centerline of the street layout, whichever is greater. No on-premises sign for residential use shall be located within 20 feet of a street.

33.4 - Side and rear yards: No structure other than a sign, fence or wall, shall be located within 30 feet of any lot line other than a street line.

33.5 - Back lot development: A lot with no contiguous land in common ownership may be divided into two parcels, one of which does not meet the above frontage requirements, provided that one of the lots meets all dimensional requirements, and the other has the following:

- a) frontage on a street and a connecting strip, each at least 20 feet wide;
- b) width where the principal building is to be erected at least equal to the normally required lot frontage;
- c) lot area, exclusive of connecting strip, at least equal to that normally required.

Section 34: Exception for Cluster Development

34.1 - Objectives: The objective of Cluster Development is to promote more efficient use of land in harmony with its natural features, including the following: (1) preserving open space for agriculture, conservation and recreation; (2) introducing variety and choice into residential development; (3) facilitating economical and efficient public services.

34.2 – Applicability: The Planning Board, after a public hearing, may grant a special permit for the construction and occupancy of a Cluster Development subject to the following regulations and conditions.

34.3 – Procedures:

a. Pre-application Review: To promote better communication and avoid misunderstandings, applicants are encouraged to submit preliminary materials for informal review by the Planning Board prior to formal application. Preliminary Subdivision Plans, if any, should be submitted to the Planning Board prior to application for a special permit.

b. Application: Applicants for a special permit for a Cluster Development shall submit to the Planning Board five copies of an applications and Overall Development Plan. Such plan shall encompass at least ten acres of land which is contiguous, though not necessarily in one ownership. If the plan involves more than one ownership, each owner of the land included in the plan shall be a party to the application and, upon plan approval, subject to its provisions.

c. Overall Development Plan: The Overall Development Plan shall indicate location and boundaries of the site, proposed land and building uses, location and boundaries of common open space, existing topography, grading plan, location and width of streets and ways, parking, areas of proposed and retained vegetation, distinctions between upland and wetland, drainage, sewerage, water, and use and location of proposed structures. The plan shall have been prepared by a registered landscape architect, architect, civil engineer, or land surveyor.

d. Other Materials: The application material shall indicate each owner's interest in the land to be developed, the form of organization proposed to own and maintain the Common open space, the substance of covenants and grants of easements to be imposed upon the use of land and structures, and a development schedule. Floor plans and architectural elevations of proposed structures requiring special permits or for community use shall be submitted.

e. Review and Decision: Forthwith upon their receipt of the application and required plans, the Planning Board shall transmit one copy each to the Board of Appeals, Board of Health, and Conservation Commission. The Board of Appeals, Board of Health and Conservation Commission shall submit reports to the Planning Board within 45 days of the application date, and the Planning Board shall make no decisions upon the application until receipt of all such reports, or until 45 days have lapsed since date of application without reports.

f. Criteria: Approval of a Cluster Development shall be only upon Planning Board determination that the plan complies with the requirements of Section 34.4, and that the plan is superior to a conventional one in preserving open space for conservation or recreation; in utilizing natural features of the land; in providing more efficient streets, utilities, and other public services, and at least equal to a conventional plan in other respects.

g. Relation of Subdivision Control Act: Planning Board consideration of a special permit hereunder shall not substitute for compliance with the Subdivision Control Act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for Board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Law.

34.4 - Requirements: A Cluster Development shall conform to the following:

a. The proposed plan shall be in harmony with the purpose and intent of this by-law and shall promote the purposes of this section.

b. The area of the tract of land to be subdivided shall be at least 10 acres.

c. Each principal building shall be on a lot or otherwise defined area of at least 35,000 square feet, without including land designated as "open land." Each lot shall have a minimum frontage of 80 feet on a public or private way, except that a lot on the turning circle of a dead end street may have frontage of not less than 50 feet, provided that the shortest distance between side lot lines shall be at least 80 feet at every point. Frontage requirements may be reduced or eliminated if the Planning Board determines that this would further the objectives of this bylaw. The minimum front yard shall be 40 feet. The minimum side and rear yards shall be 30 feet. The minimum width of the lot at the building shall be 160 feet. The maximum building height within a Cluster Development shall be 35 feet.

d. The basic number of units allowed owed in a Cluster Development shall equal the number of dwellings which could otherwise be constructed under this bylaw by means of a conventional development plan considering the whole parcel, exclusive of water bodies, slopes greater than twenty-five percent (25%), wetlands, floodplain, and land prohibited from development by legally enforceable restrictions, easements or covenants, and other constraints dictated by the Hawley Protective Bylaws, Title V, the Inland Wetlands Protective Act, and any other relevant laws. The basic number which result from the above process may be increased by some density bonus which can be negotiated with the Hawley Planning Board.

e. Provisions shall be made so that at least 40 percent of the land area of the tract, exclusive of land set aside for road area, shall be open land. Open land shall be preserved for recreation, conservation, agricultural, or public use. All such land shall be contiguous, having not less than

40 feet of frontage on a street or interior access drive and of such shape to be usable for the above purposes. Preservation shall be guaranteed through one or more of the following:

(1) Dedication to and acceptance by the Town of Hawley.

(2) Dedication to and acceptance by the Hawley Conservation Commission.

(3) Dedication, by covenant or comparable legal instrument, to the community use of the residents of the development tract, for recreational purposes serving those residents and their non-paying guests only. Building coverage shall not exceed 2 percent in such dedicated areas. Ownership of common open air areas shall be arranged, and maintenance shall be permanently assured, through an incorporated homes association, condominium deed, or other recorded land agreement through which each lot owner is subject to a charge for a share of the maintenance expenses; or through comparable agreement satisfactory to the Planning Board. In addition, the Town shall be granted an easement over such land sufficient to insure its perpetual maintenance as conservation, recreation or park land. In order to ensure that the incorporated homes association referred to above will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Franklin County Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

(a) Mandatory membership in an established home association, as a requirement of ownership of any lot in the parcel.

(b) Provisions for maintenance assessments of all lots in order to ensure that the open land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot.

(c) Provision which, so far as possible under the existing law, will ensure that the restrictions placed on the use of open land will not terminate by operation of law.

(d) Dedication to and acceptance by a Land Trust.

34.5 - Allowable uses: A Cluster Development shall be used for residential purposes only. Multi-family dwellings may be allowed in compliance with the following:

a. All multi-family dwellings within a Cluster Development shall be served at the time of development by both adequate water and adequate sewerage service. Adequate water service shall be provided by an individual water supply approved by the Hawley Board of Health and the Massachusetts Department of Public Health and any other relevant State agency. Adequate sewerage service shall be provided by a sewage treatment system approved by the Massachusetts Division of Water Pollution Control, Massachusetts Department of Public Health, any other relevant State agency, and the Hawley Board of Health.

b. There will be safe access evidenced by direct service to the Cluster Development by a public way laid out not less than 50 feet wide.

c. The site plan for multi-family dwellings shall be so designed that parking areas are screened from public ways and adjacent premises by building location, grading, or screening; lighting of parking areas avoids glare on adjoining properties; egress does not require backing onto any public way; major topographic changes or removal of existing trees are avoided whenever possible; vistas or other scenic views from public ways are preserved; and effective use is made

of topography, landscaping, and building placement to protect, to the degree feasible, the character of the environs.

d. Departure from the visual scale of single-family development shall be minimized through including not more than six dwelling units in a single structure, serving not more than three dwelling units from a single entrance, limiting building length to not more than IOD fee, having unbroken roof area of not more than 1000 square feet, and having parking areas individually contain not more than 15 cars.

34.6 - Improvements: Access, drainage, utilities, and grading shall provide functional service to each structure and paved area in the same manner as required for lots within a subdivision.

34.7 - Future Change:

a. Any special permit granted by the Planning Board for a Cluster Development under the provisions of this Section shall incorporate by reference the Overall Development Plan, and development schedule submitted by the developer with the application. Minor amendments to such special permit may be granted by the Planning Board, upon application and for good cause shown, but without necessity of public hearing; provided, however, that any of the following shall be considered a major amendment, and shall be acted upon only under the procedures applicable to the Initial approval for a Cluster Development:

- (1) Reduction in the amount of open land, or any change in the location of the open land as provided in the Permit; or,
- (2) Any change in the layout of the ways as provided in the Permit; or,
- (3) Any increase in the number of lots or dwelling units as provided in the Permit; or,
- (4) Altering the location of any building or structure by more than ten feet.

b. No lot shown on a plan for which a Permit is granted for a Cluster Development may be further subdivided so as to increase the number of lots unless approved as a major amendment, and a notation to this effect shall be shown on any Definitive Plan of a subdivision based upon this section.

c. Prior to the development or sale of any lot within a Cluster Development, all lots to be so developed shall be shown on a plan recorded in the Registry of Deeds or registered with the Land Court, and a covenant or other instrument satisfactory to the Planning Board shall have been executed assuring the Open Land or recreational uses of lands so designated in the application.

Section 35: Common Driveways

35.1 - At most four (4) lots may be connected, served by, or otherwise share a common driveway. A common driveway shall lie entirely within the lots being served. Common Driveways are a use which is allowed by special permit only, and this special permit is issued by the Board of Appeals, at the discretion of the Board of Appeals. The applicant(s) must provide all of the following:

- a. Evidence of deeded covenants for all affected lots which include provisions for continued maintenance, which are adequate in the opinion of the Board of Appeals;
- b. Guarantees including but not limited to financial security as provided by the Hawley Regulation entitled "Regulations Governing the Subdivision of Land", that the Common Driveway will be constructed if the permit is issued;

- c. A plan signed by a registered professional engineer for the Common Driveway showing grades, subsurface preparation, drainage and surface materials.

35.2 - The Common Driveway must be designed to safely handle the proposed traffic, and must meet at least the regulations for driveways in this bylaw, and additionally, the Board of Appeals may require certain standards of subsurface preparation, drainage and surfacing as it sees fit, but will not exceed the requirements for a "Minor Street" as defined in the Hawley Regulations entitled "Regulations Governing the Subdivision of Land".

35.3 - A Common Driveway shall in no way exempt the applicant(s) from meeting frontage requirements for each individual building lot.

ARTICLE IV - GENERAL REGULATIONS

Section 41: Presently Existing Uses, Structures and Lots

41.1 - Continuation and restoration: Any use or structure, whether conforming to this Bylaw or not, may be continued if that use or structure was lawfully existing at the time that it became nonconforming, and may be restored if destroyed by fire or other accidental or natural cause, but if abandoned or not used for more than 24 months, subsequent use shall comply with this Bylaw.

41.2 - Change, extension, or alteration: Legally nonconforming structures or uses may be changed, extended, or altered to another nonconforming use only upon the grant of a Special Permit by the Board of Appeals, upon their determination that the extension or change of use will neither be substantially more detrimental than the existing nonconforming use to the neighborhood, nor depart from the purpose of the Bylaw.

41.3 - Nonconforming lots: Any recorded or registered lot not meeting the frontage or area requirements of this Bylaw, if having an area of 5,000 square feet or more and at least 50 feet of frontage on a street, and if also owned separate from any adjoining land at the effective date of this Bylaw, may be built upon for any otherwise permitted use if involving not more than a single-family dwelling unit or two-family dwelling unit or campsite even though not meeting frontage and area requirements. (See also Section 6 of Chapter 40A, G.L.)

41.4 - Conformance: Construction must begin within 6 months after a building or special permit has been issued under this section. If not, said pre-existing nonconforming use shall be brought into conformance with the provisions of the protective Bylaw.

Section 42: Environmental Controls

42.1 - Screening: Open storage and loading or service areas shall be screened from any adjacent residence or public way by plantings. Junk, trash, or debris shall be confined out of sight.

42.2 - Hazard: No use shall be allowed which would create hazard due to explosion, fire, or other causes. Potentially hazardous conditions shall be fenced, covered, or otherwise rendered safe.

42.3 - Erosion Control: The Board of Appeals may review any proposed development to ensure that site design, building design, and construction process is suitable to protect soil from erosion or excessively uncontrolled surface water runoff. No grading or construction shall take place on slopes in excess of .25

percent grade, except under Special Permit from the Board of Appeals, which shall be granted only upon demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled surface water runoff, or other environmental degradation. To ensure compliance with these requirements, the Board of Appeals may require topographic data prior to acting upon an application for a permit.

42.4 - Radioactive waste disposal: No land within the Town of Hawley may be used for the collection, treatment, storage, burial, incineration, or disposal of radioactive waste, including but not limited to wastes classified as low-level radioactive wastes.

42.5 - Hazardous waste disposal: No land within the Town of Hawley may be used for the collection, treatment, storage, burial, incineration, or disposal of hazardous waste, as may be defined in "Hazardous Waste Management Regulations for Massachusetts, Phase I Discussion Draft," and such revisions of said definition as may be enacted.

Section 43: Parking and Loading Requirements

43.1 - Parking requirements: All parking demand created by new structures or uses, additions to existing structures or uses, and changes of use in existing structures shall be accommodated on the premises entirely off the street. Two parking spaces shall be provided per dwelling unit, one parking space per motel guest unit, and one space per 150 square feet of commercial or industrial floor space which is not part of a dwelling unit or of a motel guest unit.

43.2 - No off-street parking area shall be maintained within ten feet of a street line. For parking areas of 10 cars or more the following shall apply:

43.2.1 - Their use shall not require backing onto a public way.

43.2.2 - There shall be not more than one entrance and one exit from such lots per 300 feet of street frontage or fraction thereof. If necessary to meet this requirement, user shall arrange for shared egress.

43.2.3 - Such lots shall be screened from any abutting residential use and from the road by densely planted shrubs.

43.3 Loading requirements: Adequate off-street loading facilities and space must be provided to service all needs created by new construction, whether through new structure or additions to old ones, and by change of use of existing structures. Facilities shall be so sized and arranged that no trucks need back onto or of a public way, or be parked on a public way while loading, unloading, or waiting to do so.

Section 44: Sign Regulations

44.1 - On-premise signs: Any dwelling or its accessory uses may have a single sign of not more than two square feet. Any non-residential premises may have a single on-premises sign of not more than nine square feet, either freestanding or attached, with the largest single dimension of five feet.

44.2 - Off-premises signs: Off-premises signs (signs with content not related exclusively to the premises they are on) are allowed only to provide directions to businesses located in Hawley. Off-premises signs shall be not more than six square feet in size, with the largest single dimension of four feet.

44.3 - General sign regulations: No sign shall flash or display movement. Signs may be illuminated only during the normal business hours.

ARTICLE V - ADMINISTRATION

Section 51: Enforcement

51.1 - This Bylaw shall be enforced by the Building Inspector. No building shall be erected or externally altered so as to change its outside dimension, and no use of land or building shall be changed, without a permit having been issued by the Building Inspector. Any person violating any of the provisions of the Bylaw may be fined not more than \$50 for each offense. Each day that such violation continues shall constitute a separate offense.

Section 52: Board of Appeals

There is hereby established a Board of Appeals of three members and two associate members, to be appointed by the Selectmen, which Board of Appeals shall act on all matters within its jurisdiction under this Bylaw and Chapter 40A of the General Laws in the manner prescribed by the said law and by this Bylaw.

Section 53: Special Permits

The special permit granting authority (SPGA) for large activity centers and for erosion control shall be the Board of Appeals. Special permits shall only be issued after a public hearing which must be held within 65 days after the date of filing of a special permit application.

The date of filing is the date the application is filed by the applicant with the Town Clerk.

A special permit shall lapse after two years if substantial use of an existing building has not commenced, except for good cause, or if construction of any new building or modification of an existing building has not begun except for good cause.

Section 54: Amendment

This Bylaw may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of Section 6 of Chapter 40A, G.L.

Section 55: Validity

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.

Section 56: Applicability

Where the application of this Bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Bylaw shall control.