

# ZONING BYLAW

## TOWN OF NAHANT

## MASSACHUSETTS

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ZONING BY-LAWS  
Town of Nahant

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**ZONING BYLAW**  
**Town of Nahant**

**SECTION 1**

**TITLE, AUTHORITY, AND PURPOSE**

**SECTION 1.01 - TITLE, SHORT TITLE**

- A. **Title**: The title of this bylaw shall be “Zoning Bylaw, Town of Nahant, Massachusetts”.
- B. **Short Title**: This bylaw may be cited as the “Zoning Bylaw of the Town of Nahant”, hereinafter referred to as “this bylaw”.

**SECTION 1.02 – AUTHORITY**

- A. **Adoption**: This bylaw is adopted pursuant to the Authority granted by Chapter 40A of the Massachusetts General Laws (MGL) of the Commonwealth of Massachusetts and amendments thereto, herein called the “Zoning Act”. Where the Zoning Act is amended from time to time after the effective date of this bylaw and where such amendments are mandatory, such amendments shall supersede any regulations of this bylaw which have been set forth on the basis of the Zoning Act in existence on the effective date of this bylaw (see MGL Chapter 40A, Section 5).
- B. **Amendment**: It shall be the duty of the Planning Board, upon petition signed by ten (10) registered voters of the town, or upon its own initiative from time to time, to hold public hearings, fourteen (14) days’ published notice of which shall be given, for the consideration of amendments altering the boundaries of any district established by this bylaw of the regulations applied to the same by this bylaw, and thereupon submit to the Town Meeting for action, its recommendations in regard to the same (see MGL Chapter 40A, Section 5).
- C. **State Regulations**: All construction/development must be in compliance with existing state regulations and CANNOT be waived or in any way modified by any Town body. All appeals MUST be handled by the State of Massachusetts with the appropriate agency, e.g., State Board of Building Regulations and Standards. Some, but not all, of the state regulations are cited herein. All State Regulations and Building Codes MUST be adhered to by any project.

### **SECTION 1.03 – PURPOSE**

- A. **Purpose**: The purpose of this bylaw is to promote health, welfare, safety, and convenience of the inhabitants of the Town of Nahant; to lessen congestion in the streets; to conserve health; to secure safety from fire, flood or panic and other dangers; to provide adequate light and air; to prevent overcrowding of land and to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, sewerage, drainage, schools, parks, open space and other public requirements; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the Town and to preserve and increase amenities; to achieve optimum environmental quality through design review and cooperation; to protect views; to preserve the coastal character of the community; and to encourage an orderly expansion of the tax base by proper utilization and development of land; all in accordance with the provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts.
- B. **Minimum Requirements**: The requirements set forth in this bylaw are declared to be the minimum requirements necessary to achieve the purposes set forth.
- C. **Conflict with Other Laws**: In any case of conflict between the provisions of this and any other law or bylaw, the more restrictive provision shall govern. A person anticipating the construction of a building is advised to review the requirements of the Massachusetts State Building Code as well as this zoning bylaw.

## **SECTION 2**

### **DEFINITIONS**

#### **SECTION 2.01 – GENERAL**

For the purpose of this bylaw and unless the context of usage clearly indicates another meaning, the following terms shall have the meanings indicated herein. Words used in the present tense include the future; the singular number includes the plural, and plural the singular; the words “used” or “occupied” include the words “designed”, “arranged”, “intended”, or “offered”, to be used or occupied; the words “building”, “structure”, “lot”, “land”, or “premises” shall be construed as though followed by the words “or any portion thereof”; and the word “shall” is always mandatory and not merely directory. Terms and words not defined herein but defined in the Commonwealth of Massachusetts State Building Code shall have meanings given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meaning given in the most recent edition of Webster’s Unabridged Dictionary.

#### **SECTION 2.02 – DEFINITIONS**

The defined words and phrases are as follows:

**Abandonment:** The cessation of a use or the discontinuance of a use of a structure or lot; or the removal of the characteristic equipment or furnishings; or the replacement of a nonconforming user or structure by a conforming use or structure.

**Accessory Building:** A building devoted exclusively to a use subordinate to the principle use and customarily incidental to the principle use. (See Section 4.12)

**Accessory Use:** A use subordinate to the principle use and customarily incidental to the principle use. (See Section 4.12)

**Alteration:** Any construction, reconstruction or other similar action resulting in a change in the structural parts, height, number of stories, exits, size, location, or use of a building or other structure.

**Attached Dwelling:** A one-family dwelling in a row of at least three (3) such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common fire resistant walls. Attached dwellings are also referred to as townhouses, townhouse dwellings or row houses.

**Attached Dwelling Development:** A row of at least three (3) one-family attached dwelling units that's sidewalls are separated from other dwelling units by a firewall or walls. Each unit in the row, or townhouse, may be owned by a separate owner and shall have its own at-grade access.

**Automobile Repair Garage:** Any building in which a business or industry dealing with the repair or servicing of motor vehicles is maintained.

**Average Finished Grade:** The mean grade of the ground at the building foundation. In determining maximum height of a building, mean grade is the mean original grade at the building foundation before any construction is commenced. In determining whether a space is classified as a "basement" or a "cellar", average finished grade is the mean grade within five (5) feet of the building foundation after construction is completed.

**Basement:** A portion of a building, partly below grade, which has more than one-half (1/2) of its height, measured from finished floor to finished ceiling, above the average finished grade of the ground adjoining the building. A basement is not considered a story unless its ceiling is four feet, six inches (4ft 6in) or more above the average finished grade. (See figure 1.)

**Building:** A combination of any materials, whether portable or fixed, having a roof, built to form a structure for the shelter of persons, animals or property. For purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature (Rev. 4-92).

**Building Area:** The aggregate of the maximum horizontal cross sectional area of:

- A. All buildings on a lot, exclusive of cornices, eaves, gutters, chimneys: and
  - B. All unroofed steps, porches, balconies, terraces, patios or decks, which at any point may have a floor height of two (2) feet or more above ground level.
- Rev. 4-92

**Building Coverage:** The building area expressed as a percent of the total lot area.

**Building Detached:** A building having open space on all sides.

**Building Inspector:** Building inspector, Town of Nahant, Massachusetts.

**Building Setback Line:** The line established by this bylaw, beyond which a building shall not extend except as specifically provided by this bylaw.

**Carport:** A roofed structure, unenclosed on two (2) or more sides, which may serve as a shelter for motor vehicles.

**Cellar:** A portion of a building, partly or entirely below grade, which has more than one-half (1/2) of its height, measured from finished floor to finished ceiling, below the average finished grade of the ground adjoining the building. A cellar is not deemed a story. (See figure 1.)

**Commercial Vehicle:** For the purpose of this bylaw, any cart or wagon or any vehicle which is included in the definition of a motor vehicle given in Chapter 90 of the Massachusetts General Laws including but not limited to a passenger car or van on which is permanently affixed any writing to designate the business or professional use or affiliation of said car or van, or any truck or other vehicle which would be classified as other than a passenger vehicle for purposes of registration in the Commonwealth of Massachusetts, but excluding a passenger car, truck, or other vehicle not marked for business use.

**Court:** An open, uncovered, unoccupied space partially or wholly surrounded by the walls of a structure.

**Day Care Center:** Any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or pre-school, or known under any other name, which receives children not of common parentage under seven (7) years of age, or under sixteen (16) years of age if such children have special needs, for non-residential custody and care during part or all of the day separate from their parents. Day Care Center shall not include any part of a public school system; any part of a private organized education system, unless the services of such system is primarily limited to kindergarten, nursery or related pre-school services; a religious education program conducted by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; or the occasional care of children with or without compensation therefore. (See also "Family Day Care Home".) A day care center can also include an elderly day care center or facility.

**Detached Dwelling:** A building which is designed or occupied as a one-family residence on its own lot and is separated by side yards from any other structure or structures, except accessory buildings.

**District:** A zoning district as established by Section 3 of this bylaw.

**Driveway:** An open space, which may be paved, located on a lot, which is not more than twenty (20) feet in width, built for access to a garage, or off-street parking or loading space, and as further regulated by Section 6, hereof.

**Drive-In Retail or Service Establishment:** A business or commercial establishment, which dispenses any food, beverages, goods or services from inside a building to persons standing outside or seated in their automobiles.

**Duplex House:** A house containing two (2) dwelling units adjoining side by side; that is, in which no part of one (1) dwelling unit is over any part of the other dwelling unit. A duplex house shall be considered as one principle building occupying one lot for the purpose of determining yard requirements. The term duplex house is synonymous with the term semi-detached dwelling.

**Dwelling:** A privately or publicly owned permanent structure, whether owned by one or more persons in any legal form, which is occupied in whole or part as the home residence or sleeping place of one or more persons. The terms “one-family” or “two-family” dwelling shall not include hotel, lodging house, hospital, membership club, mobile home or dormitory.

**Dwelling Unit:** One or more living and sleeping rooms providing complete living facilities for the use of one or more individuals constitute a single housekeeping unit, with permanent provisions for living, sleeping, eating, cooking and sanitation.

**Environmental Monitoring:** Field collection of samples for laboratory and/or field analysis.

**Erected:** The word “erected” shall include the words “attached”, “built”, “constructed”, “reconstructed”, “altered”, “enlarged” and “moved”.

**Family:** One or more persons occupying a dwelling unit and living and cooking together on the premises as a single, non-profit, housekeeping unit; provided, however, that not more than two (2) individuals not related to each other either by blood or adoption within the second degree of kindred and not married to each other may be deemed to be members of the same family.

**Family Day Care Home:** Any private residence which on a regular basis receives, for temporary custody and care during part or all of the day, children under seven (7) years of age, or children under sixteen (16) years of age if such children have special needs; provided, however, in either case, that any such family day care home be licensed by the Commonwealth of Massachusetts and any other licensing authorities, that the total number of children under sixteen (16) in a family day care home shall not exceed six (6), including participating children living in the residence, or such lesser number as is allowed under the terms of the license, and that the family day care home comply with all other applicable terms of its license and all applicable regulations. Family Day Care Home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefore. An occupancy permit from the officer of the Building Inspector shall be required. (See definition of “Day Care Center” if over six (6) children are served).

**Fast-Order Food Establishment:** An establishment whose primary business is the sale of food for consumption on or off the premises which is (a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals; (b) available upon a

short waiting time; and (c) packaged or presented in such a manner that it can be readily eaten either inside or outside the premises where it is sold.

**Fence:** A hedge, structure, or partition, erected for the purpose of enclosing a parcel of land, dividing a parcel of land into distinct portions, or separating contiguous parcels of land. (Rev. 4-93)

**Floor Area Ratio (FAR):** The ratio of the gross floor area to the total area of the lot.

**Footprint:** The outline of the area on a lot occupied by a building, including the foundation outline and any enclosed porches, but excluding any open porches, balconies, decks, or roof overhangs.

**Frontage:** The front property line of a building or lot abutting on a public or private way approved by the Town.

**Garage, Private:** Any building or portion of a building, accessory to and located upon the same lot as a residential building or upon a lot in the same ownership and adjacent to the lot on which the served residential building is located, which is used for keeping of a motor vehicle or motor vehicles and in which no business or industry dealing with sales, servicing, or repair of such vehicles is carried on.

**Gasoline Station:** A building, facility, or part thereof with at least one and no more than two (2) service bays whose chief activity is the selling of gasoline, oil and related products for motor vehicles and the provisions for lubricating service or auto repair limited to: tire service and repair (but no recapping or regrooving), replacement of miscellaneous parts and minor adjustments to parts of motor no involving removal of head, crankcase or motor. A self-service portion of a gasoline station may be part of a full service station only.

**Grade:** The elevation of a point on the ground above any designated base elevation; used for the purpose of determining the height and slope of various parts of a site compared to other parts, or compared to a designated base elevation.

**Gross Floor Area (GFA):** The sum in square feet, of the gross horizontal areas of all the floors of a principle building, and its accessory buildings on the same lot, as measured from the exterior faces of the exterior walls, or centerlines of walls separating two (2) buildings, including:

1. Elevator shafts and stairwells on each floor;
2. Attic space with a structural headroom of seven (7) feet or more, except as hereafter excluded;
3. Interior mezzanines, and penthouses;
4. Basement and cellar areas with a ceiling height of seven (7) feet or more not devoted exclusively to uses accessory to the operation of the building, and

- all basement and cellar areas, regardless of ceiling height, which have finished floors, ceilings and walls, or which are actually used for living purposes;
5. All-weather covered habitable porches and balconies;

But excluding:

1. Areas used for parking garages, accessory parking, or off-street loading purposes;
2. Basement and cellar areas devoted exclusively to uses accessory to the operation of the building, and basement and cellar areas with a ceiling height of less than seven (7) feet, which do not have finished floors, ceilings or walls and are not actually used for living purposes.
3. Open or lattice enclosed exterior fire escapes;
4. Attic space and other areas for elevator machinery or mechanical equipment accessory to the building;
5. Open porches and balconies.

Areas excluded from gross floor area are still subject to all dimensional requirements, including minimum yard setbacks and maximum building coverage. (Rev. 4/92)

**Height of Building:** For the purpose of this bylaw, the height of any building shall be the vertical distance of the highest point of the roof, or any rooftop deck, fence, railing, widows' walk or other rooftop structure or feature, above the mean original grade of the ground undisturbed adjoining the building before any construction is commenced. Chimneys, ventilators, skylights, tanks, bulkheads, and solar panels shall not be considered part of the height of the buildings if they do not extend more than four (4) feet above the specified height limit. Domes, towers or spires which are an integral part of churches or religious buildings shall not be subject to these limitations, provided that such features shall in no way be used for living purposes.

**Home Occupation:** An accessory use, which by custom has been carried on entirely within a dwelling unit, and is incidental and subordinate to the dwelling use. In connection with such use, there shall be no retail sale of merchandise on the premises. Such use shall be carried on by the occupants of the dwelling unit in compliance with the provisions of Section 4, Use Regulations, and shall not in any manner change the residential character of the building.

Home occupations do not include such uses as barbershops, commercial stables or kennels, teaching of more than three (3) pupils simultaneously, and in the case of musical instruction, more than one (1) pupil at a time (See Section 4.07).

**Lodgers:** (See Section 4.06 "Renting of Rooms to Roomers or Lodgers")

**Lot:** An area or parcel of land or any part thereof in individual, joint, or common ownership, or in ownership by the entirety, which is designated on a plan as a separate lot and which has

boundaries identical with those on a plan recorded in the Essex South District Registry of Deeds.

**Lot, Corner:** A lot located at the intersection of two or more streets or ways having an angle of intersection of not more than 135 degrees. (See figure 2.)

**Lot, Interior:** A lot not bound by a street (See figure 2.)

**Lot Line, Front:** The property line dividing a lot from a street or right-of-way.

**Lot Line, Rear:** Any lot line, which is parallel to or within 45 degrees of being parallel to a front lot line. In the case of a corner lot, the two lot lines that are not front lot lines shall be considered side lot lines. In the case of a lot having no street frontage or a lot of odd shape

**Lot Line, Side:** Any lot line not a front or rear lot line.

**Lot, Nonconforming:** A lot lawfully existing at the effective date of this bylaw, or any subsequent amendment thereto, which is not in accordance with all provisions of this bylaw, including but not limited to a lot which does not meet the lot area or street frontage requirements shown on Table 2, Table of Dimensional **Requirements. (Rev. 4/91)**

**Lot, Through:** A lot abutting more than one street (including a corner lot). (See Figure 2.)

**Lot Width:** The shortest distance between opposite sidelines of a lot measured at a point midway between the front lot line and the rear lot line. At no point between the street frontage line and the midway point shall the lot be narrower than 75% of the required lot width.

**Membership Club:** A noncommercial social, sports, or fraternal association or organization, which is used exclusively by members and their guests.

**Meteorological Monitoring:** The collection of data relevant to wind, speed and direction. **(Rev. 4/05)**

**Multi-Family Dwelling:** A building designed or intended or used as the home of three (3) or more families, each in a separate dwelling unit, living independently of each other and who may have common rights in halls and stairways.

**Non-Hazardous Research:** Research activities including, but not limited to, the fields of engineering, physics, social science and other disciplines. Any activity, which may be detrimental to the health, safety or welfare of persons working in or living near the activity, is expressly prohibited. Included in this category would be research involving toxic chemicals,

recombinant DNA, infectious microorganisms, radiation sources, atmospheric and/or noise pollution.

**Nonprofit Religious or Educational Purposes:** Land or structures for religious purposes or for educational purposes on land owned or leased by the Commonwealth of Massachusetts or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation shall be permitted in any district; provided, however, that such land or structures shall be subject to the regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements as described in Table 2 of Section 4 for each district.

**Occupancy Permit:** A statement signed by the Building Inspector, setting forth either that a building or structure complies with this bylaw or that a building, structure or parcel of land may lawfully be employed for specified uses, or both.

**Office:** A place in which functions such as directing, consulting, recordkeeping, clerical work, and sales (without the presence of merchandise) of a firm are carried on; also, a place in which a professional person conducts his or her professional business.

**One-Family Dwelling:** A detached dwelling designed and used for a single family; a house.

**Open Space Land:** Land on a developed parcel which is unbuilt upon and contains no paved parking, loading, or driveway areas, but which may contain active or passive recreation areas, including incidental paving related thereto.

**Outdoor Storage Area:** A space outside of a building which is used to keep merchandise for use, goods to be processed or machinery for use.

**Owner:** The duly authorized agent, attorney, purchaser, devisee, trustee, lessee, or any person having vested or equitable interest in the use, structure or lot in question.

**Parking Space:** An off-street space inside or outside a structure for exclusive use as a parking stall for one motor vehicle.

**Permanent Open Space:** Land set aside by irrevocable covenant as permanent open space in public, private or cooperative ownership. The form of covenant covering such open space land shall provide for its permanent ownership and maintenance and shall be subject to the approval of the Town Counsel and the Board of Selectmen. With the approval of the Town Meeting, this land may be deeded to the Town.

**Principle Use:** (See “Use, Principle”)

**Repair:** Any maintenance, which affects structure, egress, fire protection systems, fire ratings, energy conservation provisions, use, occupancy or utilities.

**Repair, Ordinary:** Any maintenance which does not affect structure, egress, fire protection systems, fire ratings, energy conservation provisions, plumbing, sanitary, gas, electrical or other utilities.

**Residential Open Space Preservation (ROSP):** Re: Massachusetts General Laws, 40A, 9.1; Section 11 of the by-laws, designed to preserve Nahant's open spaces, woodlands, public lands and scenic vistas, by permitting the most harmonious use of the parcel's natural features and resources via allowing flexibility for the development of single and/or attached dwellings (see definition). A single parcel of land owned by one owner, consisting of no less than three quarters (3/4) of an acre may be developed under the ROSP by-laws as an alternative to the standard single-family house lot. An ROSP may only be granted to the standard single-family house lot. An ROSP may only be granted by special permit, with the Planning Board as the granting agency. (Rev. 4/96)

**Restaurant:** An establishment, other than a Fast Food Establishment, where the principle activity is the service or sale of prepared food or drink for on-premises or off-premises consumption.

**Retaining Wall:** A wall designed to resist the lateral displacement of soil or other material. (Rev. 4-93)

**Roomers:** (See Section 4.06 "Renting of Rooms to Roomers or Lodgers").

**Semi-Detached Dwelling:** (See "Duplex House").

**Setback:** The shortest horizontal distance from any lot line to the nearest building wall or building part.

**Sign:** Any permanent structure, device, letter, word, model, insignia, trade flag, steamer, display, emblem, or representation used as, or which is in the nature of, an advertisement, announcement, or direction, or is designed to attract the eye. This definition shall include signs located within a window. Marquees, canopies, clocks, thermometers and calendars shall be subject to these provisions when used in conjunction with signs as defined above. (See Section 8 for specific regulations relating to signs).

**Sign, Accessory:** Any sign that, with respect to the premises on which it is erected, advertises or indicated one or more of the following: the person occupying the premises, the business

**Sign Area; Area of a Sign; Signage:** Shall mean the area of the smallest horizontally or vertically oriented rectangle which could enclose all the display area of the sign, together with any backing different in color or material from the finish material of the building face, without deduction for open space or other irregularities. Structural members not bearing

advertising matter shall not be included unless internally or decoratively lighted. Only one side of flat, back-to-back signs need to be included in calculating sign area.

**Sign, Facing or Face:** The surface of a sign, board, background area, and structural trim upon, against or through which a message is displayed or illustrated on the sign.

**Sign, Freestanding:** A sign not a part or attached to any building but generally located elsewhere on a lot. Such sign shall not exceed a height of 20 feet and shall have 10 feet of clearance under the sign.

**Sign, Ground:** A freestanding sign located on or close to the ground, the top of which shall not be higher than four (4) feet about the ground.

**Sign, Permanent:** Any sign as defined above, intended to be erected and maintained for more than 90 days.

**Sign, Portable:** A freestanding sign not permanently affixed, anchored, or secured to the ground or a structure on the lot it occupies, including trailered signs but excluding signs affixed to or painted on a vehicle.

**Sign, Projecting:** Any sign, which is attached to a building or other structure any part of which projects more than 18 inches from the wall surface of that portion of the building or structure in front of which the sign is positioned.

**Sign, Roof:** Any sign erected, constructed and maintained upon or over the roof of any building.

**Sign, Temporary:** Any sign, including its supporting structure, intended to be maintained for a continuous period not to exceed 90 days.

**Sign, Wall:** A sign not exceeding four (4) feet in height securely affixed to a wall projecting not more than 12 inches from and parallel to the face of such wall, not projecting beyond the building face fronting on a street or parking lot nor above the highest line of the wall to which it is attached. A wall sign shall be no higher than the lowest of the following: (a) 25 feet above grade; (b) the bottom of the sills of the first level of windows above the first story; or (c) the cornice line of the building at the building line. If attached to a parapet, a sign shall not exceed the height of the parapet.

**Sign, Primary Wall:** A sign on the building face fronting on a street or parking lot frontage.

**Sign, Secondary Wall:** A sign located on any building face fronting on a street or parking lot frontage other than that of the primary wall sign. The cumulative area of all secondary wall signs shall not exceed 50 percent of the maximum possible area of the primary wall sign.

**Signs, Window:** Signed painted or posted on an interior translucent surface including windows and doors, such coverage not to exceed 25 percent of the area visible from the exterior of the building.

**Special Permit Use:** A use of a structure or lot or any action upon a premises which may be permitted under this bylaw only upon application to, and with the approval of, the Special Permit Granting Authority in accordance with Section 9 hereof.

**Story:** The portion of a building, which is between one floor level and the next higher floor level, or the roof. If a mezzanine floor area exceeds one-third ( $1/3$ ) of the area of the floor immediately below, it shall be deemed to be a story. A basement shall be deemed to be a story when its ceiling is four feet, six inches or more above the average finished grade. A cellar shall not be deemed to be a story. An attic shall not be deemed a story if unfinished and not used for human occupancy.

**Story, Half:** A story which is under a gable, hipped, or gambrel roof, where less than one-half ( $1/2$ ) the floor area has a clear height of seven (7) feet or more. (See Figure 3)

**Street:** A public or private way, which is accepted or devoted to public use by legal mapping or by other lawful procedure. It shall be synonymous with the words “street”, “right-of-way”, “road”, “avenue”, “highway”, “parkway”, and other similar designations. Prior to issuance of a building permit, the Building Inspector shall determine that the street will be passable for automobiles and emergency vehicles during all seasons of the year. (See Figure 3.)

**Street Line:** (See “Lot Line, Front”)

**Structure:** A combination of materials for permanent or temporary occupancy or use, such as a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, swimming pool, shelter, pier, wharf, bin, fence, sign, antenna, carport, court, deck or the like.

**Structure, Nonconforming:** A structure, lawfully existing at the time of adoption of this bylaw, or any subsequent amendment thereto, which does not conform to one or more of the applicable use, dimensional, or density regulations for the district in which the structure is located; or a structure on a nonconforming lot.

**Two-Family Dwelling:** A house on a single lot containing two dwelling units. This definition includes duplex houses.

**Use:** The purpose for which a structure or lot is arranged, designed, or intended to be used, occupied or maintained.

**Use, Accessory:** (See “Accessory Use”)

**Use, Nonconforming:** A use lawfully existing at the time of adoption of this bylaw or any subsequent amendment thereto which does not conform to one or more provisions of this bylaw (See Section 7).

**Use, Principle:** The main or primary purpose for which a structure or lot is designed, arranged or intended, or for which it may be used, occupied or maintained under this bylaw.

**Variance:** A departure from the terms of this bylaw authorized by the Board of Appeals under the terms of Section 9 hereof.

**Yard:** An open space unobstructed from the ground up, on the same lot with a principle building, extending along a lot line or front lot line and inward to the principle building. The size of a required yard shall be measured as the shortest distance between the nearest point of the building and a lot line or front lot line. Structures, which are below the finished lot grade, shall not be deemed to occupy required yards.

**Yard, Front:** A yard extending across the full width of a lot and lying between the front lot line and the nearest part of a building. (See Figure 4.)

**Yard, Rear:** A yard extending across the full width of a lot and lying between the rear lot line and the nearest part of a building. (See Figure 4.)

**Yard, Side:** A yard extending from the front yard to the rear yard and lying between a side lot line and the nearest part of a building. (See Figure 4.)

### **SECTION 3**

### **DISTRICTS AND BOUNDARIES**

### **SECTION 3.01 – ESTABLISHMENT OF DISTRICTS**

For the purpose of this bylaw the Town of Nahant is hereby divided into six (6) classes of districts as follows:

|                  |     |
|------------------|-----|
| Residence        | R-1 |
| Residence        | R-2 |
| Business         | B-1 |
| Business         | B-2 |
| Natural Resource | NR  |
| Public           | P   |

### **SECTION 3.02 – ZONING MAP**

A. The Boundaries of the districts are hereby established as shown on a map entitled Official Zoning Map of the Town of Nahant, which, together with all boundaries, notations and other data shown thereon, is hereby made a part of this by law. The Official Zoning Map shall be located in the office of the Town Clerk, shall be identified by the signatures of the Selectmen and attested by the Town Clerk, shall bear the seal of the Town, and shall contain the following legend:

This is to certify that this is the Official Zoning Map referred to in Section 3.02 of the zoning Bylaw of the Town of Nahant Massachusetts duly adopted on **October 2, 1962**, as amended to date.

“This is to certify that this is the Official Zoning Map referred to in Section 3.02 of the zoning Bylaw of the Town of Nahant Massachusetts duly adopted on **April 30, 1991**, as amended to date.”

“This is to certify that this is the New Official Zoning Map referred to in Section 3.02 of the zoning Bylaw of the Town of Nahant Massachusetts duly adopted on **April 30, 2011**, as amended to date.”

B. Changes duly made in district boundaries or other matters portrayed on the Official Zoning Map shall be entered thereon within 10 days after they become effective, and a notation made as follows:

On (**ATM April 25, 2009**) by official action of the Town, the following (change, changes) were made in the Official Zoning Map: ( **Article 18** by designating the property located at 96 Nahant Road ( The Nahant Life Saving Station) as a B1 Zoning District, (changed from a Natural Resource District) **AG approved 1/2010**.

“On (**ATM April 30, 2011**), by official action of the Town, the following (change, changes) were made in the Official Zoning Map: (**Article 19 the Town voted to adopt a new official Zoning Map. AG approved 8/2011**

Said Notation shall be signed by the Selectmen and attested by the Town Clerk.

C. Every parcel of land shown on the Zoning Map not otherwise shown as zoned, is hereby zoned as a Residential R-1 district; and all unzoned land within the Town of Nahant, if any, is hereby zoned as a Residential R-1 district.

### **SECTION 3.03 – BOUNDARIES OF DISTRICTS**

Where uncertainty exists as to the location of a district boundary on the Official Zoning Map, the following rules shall apply:

A. Where the district boundary is a street, the boundary line shall be the centerline of such street.

B. Where the boundary line is indicated approximately parallel to a street it shall be taken as parallel thereto and unless otherwise indicated, one hundred feet distant from the nearest street line.

C. Where the district boundary is indicated as a lot line, the boundary line shall be the lot line.

D. Where the district boundary is indicated as the edge of the ocean or other water body, the boundary line shall be considered to include any area in the bed of the water body.

In the case of a disputed boundary, the decision shall be made by the Building Inspector using the above guidelines, subject to the appeal procedures provided by law and this bylaw.

### **SECTION 3.04 – CASES OF LOTS IN TWO DISTRICTS**

Where a district boundary divides a lot, and the major portion of said lot is in the less restricted district, the regulations applicable to the less restricted portion of such lot may extend not more than 20 feet into the more restricted portion provided the lot has frontage on a street in the less restricted district.

## **SECTION 4**

### **USE REGULATIONS**

#### **SECTION 4.01 – PURPOSE AND INTENT**

It is the purpose and intent of this section of the bylaw to list those uses, which are specifically allowed or specifically prohibited in the various zoning districts listed in Section 3 of this bylaw. Any use not listed herein is prohibited.

#### **SECTION 4.02 – APPLICATION**

Except as herein provided, the provisions of this bylaw shall apply to the erection, construction, reconstruction, alteration, or use of buildings or structures and the use of land. Except as herein provided, any existing nonconforming use, structure, or lot shall not become further nonconforming.

No new or existing building or part thereof shall be constructed or used, and no premises shall be used, and no building or part thereof shall be altered, enlarged, reconstructed or used as follows:

- A. For any purpose which by emission or discharge of fumes, vapor, gas, dust, offensive odors, chemicals, poisonous fluids or substances, refuse, organic matter or excrement, the causing of noise or vibrations, or by unduly increasing the risk from fire or explosion or otherwise, would be dangerous or injurious to the public health or safety.
- B. For any purpose, which would be for any, reason injurious to the health, safety, convenience or welfare of the community or harmful to the property therein.

#### **SECTION 4.03 – EXISTING BUILDINGS & LAND**

This bylaw shall not apply to lawfully existing buildings or structures, nor to the lawfully existing use of any building, structure or land, except as provided in Section 7, Nonconforming uses.

#### **SECTION 4.04 – USES SUBJECT TO OTHER REGULATIONS**

Uses permitted by right or by special permit shall be subject, in addition to use regulations, to all other provisions of this bylaw and other applicable statutes, regulations and bylaws.

#### **SECTION 4.05 – TRAILERS, MOBILE HOMES, AND BOATS**

No person, except as hereinafter provided, shall occupy or use or permit to be used or occupied for dwelling, habitation, business, trade, profession or similar purposes any trailer, trailer coach, mobile home, vehicle, portable building, or boat, except that a boat in the water may be used as a seasonal dwelling during the summer months. If a residence has been destroyed by fire or other natural holocaust, or in other cases of emergency, hardship, accident, or similar circumstances, the occupancy of a trailer, trailer coach, mobile home or portable building for temporary dwelling purposes may be authorized by a permit from the Building Inspector, with certification from the Board of Health that said temporary dwelling complies with the provisions of the State Sanitary Code. Occupancy of such temporary dwelling shall not exceed 12 months while the residence is being rebuilt.

#### **SECTION 4.06 – RENTING OF ROOMS TO ROOMERS OF LODGERS**

Renting of rooms (lodging units) in a dwelling unit for the use of not more than two roomers or lodgers, who do not constitute a housekeeping unit separate from that of the resident family, is permitted in a residential or business district provided that at least one off-street parking space is provided for each such roomer. Rooms rented to roomers or lodgers shall not have private outside entryways or separate cooking facilities. Roomers must use cooking facilities of resident family.

#### **SECTION 4.07 – CUSTOMARY HOME OCCUPATIONS**

A. The following home occupation uses (See definition in Section 2) shall be permitted in the Residential or Business Districts, subject to the requirements of Section 4.12 A:

1. Use of not more than 25% of the gross floor area of a dwelling unit for the professional office of a doctor, dentist, lawyer, architect, engineer, accountant, artist, computer programmer or similar professional person, provided that not more than three (3) persons, including any employees, are engaged in such activities on the premises and further

provided that off-street parking shall be provided in accordance with Section 6 hereof and further provided that said doctor, dentist, lawyer, architect, engineer, accountant or similar professional person make his or her home and reside in said building dwelling.

2. Upon issuance of a special permit by the Board of Appeals, use of not more than two rooms one-third of the gross floor area of a dwelling unit for a customary home occupation, including professional office, beauty parlor, teaching of not more than three pupils simultaneously, dressmaking, the repairing of small goods, or the office of a builder, contractor, plumber, electrician, real estate agent or insurance agent provided that not more than three persons, including any employees, are engaged in such activities on the premises and no good or materials or equipment however described in a business in this section shall be stored outside the structure and no business activities shall be performed outside the structure, and provided further, that at least one off-street parking space shall be provided for each room so used in accordance with Section 6 hereof. The proprietor of the home occupation shall reside in said dwelling. Prior to issuing a special permit under this paragraph, the Board of Appeals shall make a finding that the issuance of such a permit would not be detrimental to the residential nature of the neighborhood.

B. The use shall be carried on strictly within the principle building.

C. One sign, not exceeding two square feet, may display the street number and the name of the occupant of the premises and identification of an accessory professional office or customary home occupation or the renting of rooms (see Section 8, Signs).

D. The buildings or premises occupied shall not be rendered objectionable or detrimental to the residential character of the neighborhood due to the exterior appearance, emission of odor, gas, smoke, dust, noise, electrical disturbance, or in any other way. In a structure containing more than one dwelling unit, the use shall in no way become objectionable or detrimental to any residential use within the structure.

E. A building containing a home occupation shall retain its appearance as a primarily residential building.

## **SECTION 4.08 – PARKING OF VEHICLES IN RESIDENCE DISTRICTS**

A. Parking of Unregistered Vehicles in Residence Districts – In a residence district, (a) no more than one unregistered, dismantled or inoperative motor vehicle shall be kept or stored on a lot unless kept or stored in a building; and (b) no unregistered, dismantled or inoperative motor vehicle shall be kept or stored in the front yard or within the required side or rear yards as set forth in the Table of Dimensional Requirements.

B. Parking of Other Vehicles in Residence Districts – Driveway space may be provided in the required front yard for not more than three vehicles per dwelling unit, including no more than one commercial vehicle. Garage or driveway space for more than one commercial vehicle may be provided with a special permit from the Board of Appeals; however, if such a special permit is granted, the second vehicle must be garaged.

The parking of a truck or commercial vehicle in a residential district is subject to the following additional regulations:

- a. The vehicle shall not exceed one-ton capacity (manufacturer's rating).
- b. The vehicle shall be permitted only if used as a means of transportation to and from the resident's place of business.
- c. It shall not be loaded with inflammable, noxious, dangerous or unsightly materials.

## **SECTION 4.09 – SWIMMING POOLS**

A. General – Outdoor pools used for swimming or bathing shall be in conformity with the requirements of this section; provided, however, these regulations shall not be applicable to any such pool less than 24 inches deep or having a surface area of less than 250 square feet.

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Materials and construction used in swimming pools shall comply with the applicable requirements of the Massachusetts State Building Code.

### **B. Plans and Permits**

1. Permits: No swimming pool or appurtenance thereto shall be constructed, installed, enlarged, or altered until a permit has been obtained from the Building Inspector. The approval of all Town authorities having jurisdiction over swimming pools shall be obtained

before applying to the Building Inspector for a permit. Copies of these approvals shall be filed as part of the supporting data for the application for this permit.

2. Plans: Plans shall accurately show dimensions and construction of pool and appurtenances and properly established distances to lot lines, buildings, walks, and fences; details of water supply system, drainage and water disposal systems; and all appurtenances pertaining to the swimming pool.

C. Locations – In-ground swimming pools shall be set back a minimum of 25 feet from a street property line, 10 feet from a side property line, and 10 feet from a rear property line. Above-ground swimming pools shall be set back a minimum of 25 feet from a street property line and 15 feet from a side or rear property line. No swimming pool shall be located less than 10 feet from any permanent structure. The Board of Appeals may, by special permit, allow location of a pool within the above required yard setback area, to within one-half the required distance, if it finds that literal enforcement of the required setbacks would involve practical difficulty or unnecessary hardship and the granting of relief would not result in a detriment to the public safety, health, convenience or welfare.

D. Drainage Systems – The swimming pool shall be equipped to be completely emptied of water, and discharged water shall be disposed of in an approved drain.

E. Appurtenant Structures – All appurtenant structures, installations, and equipment, such as showers, dressing rooms, equipment houses or other buildings and structures, shall comply with all applicable requirements of the building code and zoning bylaw. Any fuel stored for pool heating purposes shall be subject to Town fuel storage regulations.

F. Safety Precautions

1. Overhead Electrical Conductors – No overhead electrical conductors shall be installed within 15 feet of any swimming pool. All metal fences, enclosures, or railings near or adjacent to a swimming pool to which bathers have access, which may become electrically active as a result of contact with broken overhead conductors, or from any other cause, shall be effectively grounded.
2. Swimming Pool Safety Devices – Every person owning land on which there is situated a swimming pool, fish pond or other body of water which constitutes an obvious hazard and contains 24 inches or more of water in depth at any point, shall erect and maintain thereon an adequate fence or enclosure either surrounding the property or pool area, sufficient to make

such body of water inaccessible to small children. Such enclosure, including gates thereto, shall be not less than five feet above the underlying ground; and all gates shall be self-latching with latches placed not less than four feet above the underlying ground or otherwise made inaccessible from the outside to small children.

3. No water shall be placed in a pool until the required fence or enclosure is installed.
4. An occupancy permit shall be obtained from the Building Inspector prior to use of a pool.

#### **SECTION 4.10 – USES PERMITTED IN A NATURAL RESOURCE DISTRICT**

A. Purpose – The Natural Resource District is intended for natural resource and recreation uses in accordance with the following purposes:

1. The preservation and maintenance of protected wildlife and wetlands resource areas and habitats.
2. The protection of the Town against the costs which may be incurred when unsuitable development occurs in swamps, marshes, along water courses, in areas of high impact due to overcrowding of land and undue concentration of population, or on slopes subject to erosion.
3. To preserve and increase the amenities of the Town and foster enjoyment of its remaining natural resources as recreational values.
4. To conserve natural conditions, wildlife and open space for the education, passive and active recreation and general welfare of the public.

B. Uses – The following uses are permitted in a Natural Resource District:

1. Conservation of water, plants and wildlife.
2. Outdoor recreation, including play areas, nature study, boating and fishing, where otherwise legally permitted but excluding buildings and structures.
3. Wildlife management areas, foot, bicycle, and/or horse paths and bridges provided such uses do not affect the natural flow pattern of any watercourse.

4. Wildlife and wetlands management programs.
5. Environmental Monitoring.

C. Uses by Special Permit – The follow uses are permitted in a Natural Resource District only upon special permit issued by the Board of Appeals in accordance with Section 9:

1. Boathouses, golf clubs, skating, picnic shelters and other structures for recreational uses by non-profit organizations including but not limited to public agencies.
2. Installation of utility lines necessary to serve areas inside and outside the district where other access is not feasible.
3. Environmental restoration or reclamation projects.

D. Special Permit Criteria in Natural Resource District – Prior to issuing a special permit for uses requiring a special permit in the Natural Resource District, the Board of Appeals shall consider the following:

1. Proof of Stability: The applicant shall furnish proof in writing to the Board of Appeals that the land in question is not subject to high water or erosion, not unsuitable because of drainage conditions for the intended use.
2. Reports by Other Boards: The Conservation Commission, Board of Selectmen, Recreation Commission and Planning Board may review the proof of suitability furnished by the applicant and report thereon to the Board of Appeals within 30 days of receipt of said proof.
3. Limitation of Proposed Use: The Board of Appeals shall find that the proposed use, including the development thereof, will not interfere with the purposes for which the Natural Resource District has been established and will not be detrimental to the public health, safety, or welfare, and shall set such limits to the special permit as will safeguard said purposes.

E. Prohibited Uses – The following uses are prohibited in a Natural Resource District:

1. The storage or disposal of any soil, loam, peat, sand, gravel, rock or other mineral substance, refuse, trash, rubbish, debris or dredged spoil, except as part of the construction process.

2. Any building or structure (private or public) except as permitted above.
3. Permanent storage of materials or equipment.
4. The storage or disposal of materials used for snow and ice control including sand, salt and other de-icing chemicals.
5. The storage or disposal of hazardous wastes, as defined by the Hazardous Waste Regulations promulgated by the Hazardous Waste Board, the Water Resources Commission, and the Division of Water Pollution Control under the provisions of Section 27 (8), 52, 57, 58 and Chapter 21 of the General Laws.

#### **SECTION 4.11 – MICROWAVE AND CABLE FACILITIES**

Microwave and cable signal reception facilities are permitted in the R-1 and R-2 districts subject to the following restrictions:

- A. Such facilities shall be subject to all dimensional requirements hereinafter contained in Section 5, except that the maximum height limitation shall be 60 feet.
- B. Such facilities may be maintained and operated only by an entity holding a community antenna television (cable) system license from the Town.
- C. There shall be no more than one such facility in R-1 and R-2 Districts.

#### **SECTION 4.12 – ACCESSORY USES**

##### **A. General Requirements**

1. An accessory use shall be permitted only on the same lot as the building or use to which it is accessory, except as provided in Section 6 of this bylaw.
2. No accessory use shall be located within the required front, side or rear yards as set forth in the Table of Dimensional Requirements.

3. Within any districts, structures and uses of the land customarily accessory to the principle use shall be permitted (within the limits described in this section). A dwelling shall be permitted as a use accessory to a business establishment upon issuance of a special permit. (Rev. 4/91)

4. In any district the total area of uses accessory to the principle use shall not occupy more than one-third of the gross floor area of all buildings on a lot and not more than 15 % of the total area of the lot.

5. In any district, uses which are accessory to activities permitted as a matter of right and which are necessary in connection with scientific research or scientific development or related production, whether or not on the same parcel as activities permitted as a matter of right, may be permitted upon the issuance of a special permit provided the Board of Appeals finds that the proposed use does not substantially derogate from the public good.

6. Antennas and Satellite Dish Antennas: Antennas and satellite dish antennas are permitted in residential, business, and public districts. Regular antennas shall not exceed a height of 45 feet from the ground. Satellite dish antennas shall be ground-mounted only and must comply with the dimensional regulations of the district where located and shall be screened at their base up to a height of eight (8) feet by fencing or plant materials. In areas accessible to the public, security fencing shall also be provided.

7. Accessory Outdoor Storage and Display: Outdoor storage and display accessory to a business use next to a residence or residential district shall not be permitted within 15 feet of the district boundary.

B. Residential and Business Districts – The following accessory uses and/or buildings shall be permitted in residential and business districts:

1. Renting of rooms to roomers or lodgers (See Section 4.06).
2. Home occupation as defined in Section 2, Definitions (see also Section 4.07).
3. Private swimming pool provided that it conforms to Section 4.09 of this bylaw.
4. Garage for parking non-commercial vehicles (See Section 4.08).

5. Storage shed not exceeding 80 square feet in area or eight feet in height.
6. Storage of boats, boat cradles, and other equipment accessory thereto; and further said boats and equipment may be stored inside and outside buildings, provided the Fire Chief is so notified in writing prior to such storage.
7. Provision of lodgings in a dwelling unit to one or more domestic servants actually employed as such on the premises by the resident family 35 or more hours each week.

C. Business Districts

1. Accessory Drive-In Retail or Service Establishment: A drive-up or drive-in window shall be permitted only for a bank or financial institution and shall require a special permit from the Board of Appeals to ensure that moving or waiting vehicles create no hazard or obstruction on a street or parking lot used by the general public. Drive-up service shall not constitute a nuisance of any type and shall not operate after 10:00 p.m.
2. Accessory Parking and Loading: Parking and loading accessory to a business use is permitted in business districts, subject to the requirements of Section 6, Off-street Parking and Loading.

**SECTION 4.13 – TABLE OF USE REGULATIONS**

See Table 1 on accompanying pages, which is declared to be a part of this bylaw.

In the following Table of Use Regulations, uses designated by the letter “P” are permitted in the districts shown, subject to the provisions of this bylaw and other applicable laws. Uses designated by the letter “S” are prohibited in the districts shown, except to the extent they are allowed by a valid special permit issued under this bylaw. Uses designated by the letter “N” are not permitted in the districts shown. Uses not listed in Table 1 are not permitted in any district.

(TABLE OF USE REGULATIONS follows)

**TABLE 1**  
**TABLE OF USE REGULATIONS**

| <u>Description of Use</u>                                                                              | Zoning Districts: |            |            |            |           |          |
|--------------------------------------------------------------------------------------------------------|-------------------|------------|------------|------------|-----------|----------|
|                                                                                                        | <u>R-1</u>        | <u>R-2</u> | <u>B-1</u> | <u>B-2</u> | <u>NR</u> | <u>P</u> |
| Single-family detached dwelling                                                                        | P                 | P          | P          | P          | N         | P        |
| Non-profit religious or educational purposes (see definition)                                          | P                 | P          | P          | P          | P         | P        |
| Municipal buildings & other public uses                                                                | P                 | P          | P          | S          | N         | P        |
| Non-profit outdoor recreational uses                                                                   | P                 | P          | P          | S          | P         | P        |
| Golf Course                                                                                            | N                 | S          | N          | N          | S         | S        |
| Agriculture, horticulture, floriculture, or viticulture (on site of 5 acres or more)                   | P                 | P          | P          | P          | P         | P        |
| Neighborhood convenience retail store not exceeding 2,500 square feet or employing more than 3 persons | N                 | N          | P          | N          | N         | N        |
| Other retail stores                                                                                    | N                 | N          | S          | N          | N         | N        |
| Professional offices not exceeding 2,500 square feet or employing more than 5 persons                  | N                 | N          | P          | S          | N         | N        |
| Other professional offices                                                                             | N                 | N          | S          | S          | N         | N        |
| General office use                                                                                     | N                 | N          | S          | S          | N         | N        |
| Banks and automated teller machines                                                                    | N                 | N          | S          | N          | N         | N        |
| Restaurants                                                                                            | N                 | N          | S          | N          | N         | N        |
| Catering establishment<br>(Continued)                                                                  | N                 | N          | S          | N          | N         | N        |

(Table 1 continued)

| <u>Description of Use</u>                                                  | Zoning Districts: |            |            |            |           |          |
|----------------------------------------------------------------------------|-------------------|------------|------------|------------|-----------|----------|
|                                                                            | <u>R-1</u>        | <u>R-2</u> | <u>B-1</u> | <u>B-2</u> | <u>NR</u> | <u>P</u> |
| Fast-order food establishment                                              | N                 | N          | N          | N          | N         | N        |
| Consumer service establishment                                             | N                 | N          | S          | N          | N         | N        |
| Theatre uses or places of assembly                                         | N                 | N          | S          | S          | N         | S        |
| Offices or meeting place for non-profit civic or historic organization     | N                 | N          | P          | S          | N         | P        |
| Bowling alley or other enclosed place of amusement or assembly             | N                 | N          | S          | N          | N         | N        |
| Membership club (see definition)09                                         | N                 | N          | <b>P</b>   | N          | N         | N        |
| Gasoline Station                                                           | N                 | N          | S          | N          | N         | N        |
| Automobile repair garage                                                   | N                 | N          | S          | N          | N         | N        |
| Commercial parking lot                                                     | N                 | N          | S          | N          | N         | N        |
| Non-hazardous research (see definition)                                    | N                 | N          | S          | S          | S         | N        |
| Computer facilities (such as a computer service bureau or training center) | N                 | N          | S          | S          | N         | N        |
| Arts & crafts studios                                                      | N                 | N          | P          | S          | N         | N        |
| Music Studios                                                              | N                 | N          | P          | S          | N         | N        |
| Video studios                                                              | N                 | N          | P          | S          | N         | N        |
| Exercise & dance studios                                                   | N                 | N          | P          | S          | N         | N        |
| Day care center                                                            | N                 | N          | S          | S          | N         | S        |
| Family day care home                                                       | P                 | P          | P          | P          | N         | N        |
| (Continued)                                                                |                   |            |            |            |           |          |

(Table 1 continued)

| <u>Description of Use</u>                                                                          | <u>Zoning Districts:</u> |            |            |            |           |          |
|----------------------------------------------------------------------------------------------------|--------------------------|------------|------------|------------|-----------|----------|
|                                                                                                    | <u>R-1</u>               | <u>R-2</u> | <u>B-1</u> | <u>B-2</u> | <u>NR</u> | <u>P</u> |
| Boathouse or structure for golf club, public skating or swimming, or other recreational structures | S                        | S          | S          | S          | S         | S        |
| Hotel or motel                                                                                     | N                        | N          | N          | N          | N         | N        |
| Auto rental or sales                                                                               | N                        | N          | N          | N          | N         | N        |
| Junkyard or used auto parts yard                                                                   | N                        | N          | N          | N          | N         | N        |
| Conservation uses related to water, plants & wildlife                                              | P                        | P          | P          | P          | P         | P        |
| Environmental monitoring                                                                           | P                        | P          | P          | P          | P         | P        |
| Accessory decorative gardens or vegetable gardens                                                  | P                        | P          | P          | P          | P         | P        |
| Accessory uses incidental to the above permitted uses, subject to the limitations of Section 4.12  | (See Section 4.12)       |            |            |            |           |          |

Zoning Districts:

R-1 Residential R-1  
R-2 Residential R-2  
B-1 Business B-1  
B-2 Business B-2  
NR Natural Resource  
P Public

Legend:

P Permitted Use  
N Not a Permitted Use  
S Special Permit Required

Notes: 1. Some uses may require site plan review. See Section 9.09.

2. It is the intent of this zoning bylaw not to create any industrial districts and not to permit any industrial uses anywhere in town.

## **SECTION 5**

### **DIMENSIONAL REQUIREMENTS**

#### **SECTION 5.01 – PURPOSE & INTENT**

The purpose and intent of this section is to provide adequate lot size, frontage, privacy, daylight, sunlight, and air in the town; to secure safety, to prevent overcrowding of land; to protect views; to protect the environment; to provide a least a minimum of useful outdoor space; and to establish a minimum and a maximum relationship between lot and structure for the purpose of retaining and preserving the amenities of the various areas of the Town of Nahant.

#### **SECTION 5.02 – SPECIAL REGULATIONS**

A. Number of Residential Buildings on a Lot: Any one lot in a residential district shall not contain more than one principle building plus not more than two allowed accessory buildings, except that the Board of Appeals may allow more than two accessory buildings by issuing a special permit.

Exception: The Zoning Board of Appeals may issue a special permit, on a temporary, (up to 15 months) non renewable basis, allowing a second principle building to be built on a lot already containing a principle building, if all of the following conditions are found to have been met:

1. The lot and second principle building to be constructed will otherwise be in conformity with all dimensional requirements of the zoning by laws.
2. There is no material adverse neighborhood impact in having two principle building on the lot, on a temporary basis, as reasonably required to build the second principle building and subsequently remove the original principle building.
3. Financial safeguards acceptable to the ZBA are provided to guarantee removal of the first principle building, and in the event of the principle building is not removed by the property owner, provide the town with the ability to remove that principle building. This shall include the granting of a demolition lien to the town, to be recorded at the registry of deeds, along with a special permit prior to a granting of a building permit.

Any special permit granted shall require the following:

- i. That only the original principle building be occupied as a residence until a Certificate of Occupancy is granted for the second principle building, after which either principle may be occupied as a residence for a period of 30 days, after which the certificate of occupancy for the original principle building shall become null, void and have no effect and that
- ii. The original principle building will be completely removed within 60 days of the granting of a Certificate of Occupancy for the second principle building. (Rev. 4/05)

B. Area and Frontage Requirements for All Districts:

1. Upon approval of the Planning Board, the required frontage for lots on curved streets where the radius of the arc at its degree of greatest curve is less than 100 feet, and lots on turning circles, may be reduced by not more than 50%, provided that the required lot width is attained at the required minimum front setback line.
2. In determining the area and frontage of a lot there shall not be included any land within the limits of a street upon which such lot abuts, even if the title to such street is in the owner of the lot, except, that if a corner lot has its corner bounded by a curved line connecting other bounding lines which, if extended, would intersect the area and frontage shall be computed as if such bounding lines were so extended. Tidelands between mean high water and mean low water shall also be excluded when determining area and frontage.
3. A lot upon which is located a building or for which a building permit has been issued and is then outstanding shall not be subdivided or reduced in area in any manner unless there is retained for such lot sufficient area and frontage to meet the requirements of this bylaw and unless such lot as retained (and any structure thereon) meets all the other requirements of this bylaw. If land is subdivided, conveyed, devised, or otherwise transferred in violation hereof, no building permit shall be issued with reference to such transferred land until the lot retained meets the requirements of this bylaw. Any land taken by eminent domain or conveyed for a public purpose for which the land could have been taken by eminent domain shall not be deemed to be transferred in violation of the provisions hereof.

C. Yard Requirements for All Districts:

1. No front yard shall be used for the open storage of vehicles, travel trailers, or any other equipment. In residential districts, parking of motor vehicles is prohibited in the front yard, except in the driveway. In business districts, parking is permitted in the front yard area provided a 15-foot landscaped strip is provided adjacent to the street right-of-way line.
2. No part of a required yard may be occupied by any building or structure (except as provided in paragraph 5 below) except that window sills, belt courses and other ornamental features may project not more than six inches and cornices may project not more than 15 inches into any required front, side or rear yard as shown in Table 2; and a roofed or unroofed but otherwise unenclosed first story porch or stoop with a floor area not exceeding 20 square feet and steps leading to a house or porch may project into the required front or rear yard, as shown in Table 2, not more than four feet.
3. Where adjacent houses are closer to the street than 25 feet, front setback may be reduced to the average of the front yards of the other houses on the street within the same block (assuming a vacant lot to meet the district requirement), but in no event less than 15 feet.
4. Business structures or uses shall not display goods for sale purposes or display coin-operated vending machines of any type in any location which would infringe upon the required yard areas specified in this bylaw.
5. An accessory building attached to a principle building or freestanding shall comply in all respects with the yard requirements of this bylaw for the principle building. An unattached storage shed not greater than eight feet in height or 80 square feet in area serving a dwelling in a residential district may be located in a side or rear yard within 10 feet of a side or rear lot line.
6. A corner lot or a lot opening on two streets shall be subject to the regulations for front yard set forth in the Table of Dimensional Requirements with respect to every street on which it opens.

D. Exemptions to Maximum Height Regulations: The height limitations as set forth in the Table of Dimensional Requirements shall not apply to those accessory structural features described in the definition of height of building in Section 2, Definitions. In the R-2, B-1, B-2 and Natural Resource districts the maximum height may be increased to 35 feet by special permit if the Board of Appeals finds

that the additional height will not cause overdevelopment of the lot, increase the floor area ratio over that permitted in the district, or interfere with views or sunlight of adjoining or nearby properties in a significant manner.

E. Traffic Visibility at Driveways and Corners:

1. Traffic Visibility at Driveways: A fence, hedge, wall, sign or other structure or vegetation may be maintained on any lot provided that in the front yard area, no such structure or vegetation shall be over two and one-half feet in height above the adjacent ground within five feet of the front lot lines unless such vegetation or structure will not restrict visibility in such a ways as to hinder the safe entry of a vehicle from any driveway to the street.
2. Traffic Visibility at Corner: Between the property lines of intersecting streets and a line joining points on such lines 25 feet distant from their point of intersection of in the case of a rounded corner, the point of intersection of their tangents, no building or structure or obstruction may be erected in any residence district and no vegetation other than shade trees shall be placed between a height of three feet and seven feet above the curb height.

F. Screening and Buffering of Business and Multiple Residence Properties:

1. Screening and buffer strips containing no buildings, parking areas, or accessory uses shall be required for any business or multiple residence property, which abuts a residential property. The minimum width of this strip shall be 15 feet, of which the 10 feet closest to the property line shall not be paved.
2. The strip shall contain a screen of plantings of vertical habit not less than three feet in width and four feet in height at the time of occupancy of such lot and shall grow to a minimum of four feet in width and five feet in height at maturity. Individual shrubs or trees shall be planted not more than 10 feet on center, and shall thereafter be maintained by the owner or occupants so as to maintain a dense screen year-round. At least 50% of the plantings shall consist of evergreens. A solid wall or fence, five feet in height, complemented by suitable plantings, may be substituted for such landscaped screen planting. No screen shall be closer than five feet to a public or private street right-of-way line.
3. Lighting serving business or multiple residence properties or their parking areas shall be arranged so that it does not shine on or adversely affects adjoining properties.

G. Filling and Grade Changes on a Lot: The landscape character of a lot shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal or filling, and any grade changes shall be in keeping with the general characteristics and appearance of neighboring areas.

H. Pre-existing Lots: Any increase in area, frontage, width, yard, or depth requirements in this bylaw shall not apply to a lot for one or two-family residential use which at the time of recording or endorsement, whichever occurred sooner, was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least 5,000 square feet of area and 50 feet of frontage.

I. Nonprofit religious and educational uses and agricultural uses shall be subject to the dimensional requirements for the district in which they are located.

J. Fences and Retaining Walls: Fences and retaining walls may be constructed upon the issuance of a Building Permit, subject to the following restrictions and conditions, except as noted in Section 5.02F2: or when a retaining wall **has been** approved by the Conservation Commission functions as a sea wall.

1. Height Limits: In the required Front Yard, fences and retaining walls shall not exceed five (5) feet in height, except by Special Permit as provided in this section. In the required Side and Rear Yards, fences and retaining walls shall not exceed six (6) feet in height, except by Special Permit as provided in this section. The applicable Special Permit Granting Authority may issue a Special Permit to allow fences or retaining walls to exceed the said height limits after considering the effect on safety, views, and access to light and air, relating to the property on which the fence is located, neighboring properties, and the Town as a whole.

The height of fences and retaining walls shall be the vertical distance of the highest point of the fence or retaining wall above the mean original grade of the ground undisturbed adjoining the fence or retaining wall before any construction is commenced. In the case of a fence on top of a retaining wall, the height shall be the total height of the fence and retaining wall.

2. Poles and Cross Beams: Fences within required front, side and rear yards shall be constructed with the poles and cross beams facing the center of the owner's property, i.e. with the finished side facing adjacent properties or the street, unless the fence is finished on both sides.

3. Barbed Wire: Bared and needle wire are prohibited in Residential Districts and are allowed in other districts only upon the issuance of a Special Permit by the applicable Special Permit Granting Authority. (Rev. 4-93)

K. Section 5.02K. "Encroachment of Trees and plantings":

Each property owner in the town of Nahant shall trim or otherwise control the branches of trees, hedges, bushes or other shrubbery or planting growing on his, her, their or its property which encroaches on a public street or sidewalk so as to prevent the same from materially interfering with pedestrian traffic on such sidewalk or street.

( Rev. 4 2014 AG 9/5/2014)

### **SECTION 5.03 – TABLE OF DIMENSIONAL REQUIREMENTS**

All buildings and uses hereinafter erected shall conform to the requirements of the accompanying Table 2 entitled "Table of Dimensional Requirements" which hereby is declared to be a part of this bylaw.

(TABLE OF DIMENSIONAL REQUIREMENTS follows.)

## **SECTION 6**

### **OFF-STREET PARKING AND LOADING**

#### **SECTION 6.01 – INTENT OF REQUIREMENTS**

A. It is the intent of this section that any use of land involving the arrival, departure, storage, or entry upon the land of motor vehicles be so designed and operated as to reduce hazard to pedestrians upon the public sidewalks, to protect the use of adjoining property from nuisance caused by the noise, fumes and glare of headlights which may result from the operation of motor vehicles parking off the street, and at the same time to reduce congestion in the streets and contribute to traffic safety by assuring adequate places for the standing and storing off the street of motor vehicles associated with any use of land.

B. In order that all structures and land uses eventually be provided with sufficient off-street parking space to meet the needs of persons employed at or making use of such structures or land uses, no application for a permit for the erection of a new structure or substantial alteration of an existing structure or for the development of a land use, or for the change or extension of a use shall be approved unless the plan for off-street motor vehicle parking facilities is in accordance with the provisions of this Section 6.

#### **SECTION 6.02 – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING AND LOADING FACILITIES**

A. Whenever there is an alteration of a structure or a change or extension of a use, the total parking provided for the structure or use shall be in accordance with the requirements of Table 6-1.

B. In order that all structures and uses requiring the large-volume delivery of goods by truck as part of their functions shall eventually be provided with necessary space for off-street loading as required in Section 6.07, no application

for a permit for the erection of a new structure or substantial alteration of an existing structure or for the development of a land use, or for the change or extension of a use shall be approved unless the plan for off-street loading facilities is in accordance with the provisions of this Section 6.

C. In residence districts, if a structure is used for a home occupation or if boarders or roomers are taken in, parking shall be provided in accordance with the requirements of this Section 6. The Board of Appeals, by special permit, may waive not more than one-half the number of parking spaces required under this paragraph.

D. No parking area shall be used for any use that interferes with its availability for the parking need it is required to serve.

E. All required parking facilities shall be provided and maintained so long as the use exists which the facilities were designed to serve. Off-street parking facilities shall not be reduced in total extent after their provision, except when such reduction is in conformity with the requirements of this section. Reasonable precautions shall be taken by the owner or sponsor of a particular use to assure the availability or required facilities to the employees or other persons, which the facilities are designed to serve. Such facilities shall be designed and used in such a manner so as at no time to constitute a nuisance, or a hazard, or unreasonable impediment to traffic.

F. No boat or other equipment shall be parked or stored so as to occupy any part of an area required for off-street parking.

### **SECTION 6.03 – OFF-STREET PARKING SPACE REGULATIONS**

A. General Regulations: Off-street parking facilities shall be provided for each type of land use (principle uses plus accessory uses), in accordance with the following Table 6-1, which is part of this section, subject to further provisions of this section:

1. Where the computation of required parking space results in a fractional number, only the fraction of one-half or more shall be counted as one.
2. Two or more uses may provide for required parking in a common parking lot if the total space provided is not less than the sum of the spaces required for each use individually.

B. Residence Uses: Where residences are divided into rooms rather than dwelling units, one parking space shall be provided per room offered for rent, but not less than one space per two beds.

C. Places of Public Assembly:

1. Where places of public assembly are provided with benches rather than fixed individual seats, each two linear feet of bench shall equal one seat.
2. Where no fixed seats are used, each 20 square feet of public floor area shall equal one seat.

D. Institutions:

1. Institutional uses intended primarily for children under age 16 need not provide more than one-half the requirement specified.
2. Hospitals shall provide one parking space of each four patient beds. Hospitals, sanitariums or convalescent homes primarily providing long term custodial care for patients need not provide more than one parking space for each eight patient beds (see also Table 6-1).

E. Commercial Uses of Land or Structures:

Where a principle use on a lot is an open-air use not enclosed in a structure, the area of the lot devoted to such use shall be considered to be floor space for purposes of calculating parking requirements. Where the area devoted to such use is not clearly determinable, the Building Inspector shall determine the area to be considered equivalent to floor space.

## **SECTION 6.04 – LOCATION OF REQUIRED OFF-STREET PARKING FACILITIES**

Required off-street parking facilities shall be provided:

1. On the same lot or premises with the principle use served.
2. Where the requirements in (1) cannot be met, the **applicable special permit granting authority**, by special permit, may authorize the required

parking on lot within 200 feet of the principle use served. Except in the case of home occupations, no parking serving business uses shall be located in a residence district. (Rev. 4/91)

## **SECTION 6.05 – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

A. Parking facilities shall be occupied only by passenger cars and commercial vehicles not exceeding 7.5 feet in width and 18 feet in length, unless the special standards for larger vehicles provided in paragraph H of this section are met.

B. The minimum dimensions of spaces and aisles shall be as follows:

1. Space width shall be at least 8° feet;
2. Space depth shall be at least 18 feet for all angle parking and 22 feet for parallel parking. Such dimensions may include no more than two feet of any landscaped setback area adjacent to the front or rear of a space and used for bumper overhang.
3. Minimum width of aisles providing access to spaces for one-way traffic only, varying with the angle of parking shall be:

| <u>ANGLE OF PARKING</u> | <u>MINIMUM AISLE WIDTH</u> |
|-------------------------|----------------------------|
| Parallel                | 12 feet                    |
| 30 degree               | 12 feet                    |
| 45 degree               | 15 feet                    |
| 60 degree               | 20 feet                    |
| 90 degree               | 24 feet                    |

4. Not more than 40% of required parking spaces may be designed for compact or sub-compact cars with a minimum space size of 7° feet by 15 feet. Aisle width shall be the same as for regular sized cars. Spaces allocated for compact or sub-compact cars shall be clearly marked for such use.
5. Minimum width of aisles providing access to spaces for two-way traffic shall be 24 feet, except that aisles providing access primarily for overnight parking may be a minimum of 20 feet.

C. Except for one-family dwellings, parking facilities shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other motor vehicle. The **applicable special permit granting authority** may, by special permit, modify this requirement and the dimensional requirements of Paragraph B of this subsection where a parking facility is under full-time attendant supervision. (Rev. 4/91)

D. The width of entrance and exit drives, shall be:

1. A minimum of 12 feet for one-way use only.
2. A minimum of 20 feet for two-way use, except that driveways providing access primarily for overnight parking, with incidental daytime use, may be a minimum of 12 feet wide.
3. A maximum of 20 feet at the street lot line in residence districts, and 24 feet in business districts.

E. Setbacks for parking areas shall be provided as follows:

1. In all districts spaces in parking lots shall be set back from the street lot line to whatever extent may be necessary in the specific situation, as determined by the Building Inspector, to avoid the probability of vehicles backing or otherwise maneuvering on the sidewalk upon entering or leaving the spaces. In no case shall parking lots be designed to require or encourage vehicles to back into a public or private way in order to leave the lot.
2. In residential districts, the surfaced area of a parking lot and all entrance and exit drives shall be set back:
  - a. From the front line, except where an access driveway crosses the street lot line, either the distance specified for building setback or the average of the setbacks of the buildings on the adjacent lots on either side, whichever is less. Such setback area shall be landscaped and maintained. Parking spaces shall be located on the lot so as to leave a clear space of at least 20 feet in width between the dwelling and the street, in which no parking is allowed.
  - b. From the side lot line in the side yard, a minimum distance of two feet.

c. From the side and rear lot lines in the rear yard, a minimum of three feet.

3. Except for one and two-family dwellings, barricades shall be provided to prevent motor vehicles from being parked within required setback areas, or beyond the boundaries of the lot if no setback is required.

F. Abutting properties in residential districts shall be protected from adverse impacts of parking serving nonresidential or multi-family development, as follows:

1. All illumination on parking lots must be shielded so as not to shine upon abutting properties in residential districts.

2. Properties in residential districts (other than the use served by the parking lot), which abut the parking lot, shall be protected from visual or noise pollution or headlight glare by either:

a. A strip at least four (4) feet wide, densely planted with shrubs or trees which are at least four (4) feet high at the time of planting and which are of a type that may be expected to form a year-round dense screen at least six (6) feet high within three years.

b. A wall, barrier, or fence of uniform appearance at least five (5) feet high, but not more than seven (7) feet above finished grade. Such wall, barrier or fence may be opaque or perforated, provided that not more than 50% of the face is open.

3. Such screening shall be maintained in good condition at all times, and shall not exceed seven (7) feet in height within required side yards. Such screening or barrier may be interrupted by normal entrances or exits, and shall have no signs hung or attached thereto other than those permitted in the district.

G. No parking space shall be located within 10 feet of that part of a building having windows of habitable rooms at the basement or first story level, except as permitted in paragraph K of this section.

H. The regulations for the parking of trucks, buses, or other commercial vehicles exceeding eight feet by 20 feet in size shall be as follows:

1. Spaces to provide parking for commercial vehicles exceeding eight feet by 20 feet in size shall be located at least 30 feet from the nearest dwelling unit in a residence district.

2. Spaces for such vehicles shall be specifically identified upon the site plan, and shall be of such dimensions as to accommodate the specified type of vehicles. Such vehicle shall be permitted to park only in the space so identified and approved.

3. Whenever such spaces are adjacent to a residential property, they shall be screened from abutting property as provided in Paragraph F above.

I. Drainage, surfacing, and maintenance of parking lots shall be as follows:

1. The parking lot shall be marked so as to indicate clearly the space to be occupied by each motor vehicle, in accordance with the dimensions specified in Paragraph B of this section. Such markings shall be maintained so as to be plainly visible.

2. Required off-street parking or loading spaces may be enclosed in a structure or may be open, provided that if open such facilities shall be graded and drained so as to avoid excessive water flow across public ways or land of others and shall be surfaced with gravel, asphalt, concrete or other material approved by the Board of Selectmen or, if said Board so authorizes, by the Building Inspector.

3. Lots shall be kept clean and free from rubbish and debris.

J. Parking lots for three vehicles or less shall conform to the regulations of this section, with the exception of Paragraphs D.1, D.2, E.1 and G.

K. Parking for handicapped persons shall be in accordance with the published standards of the Massachusetts Architectural Barriers Board.

## **SECTION 6.06 – TABLE OF REQUIRED OFF-STREET PARKING**

Off-street parking shall be provided in accordance with the following Table 6

1. In determining the number of parking spaces required, calculate the number or parking spaces required for each use on the site and add them together. Any fractional spaces of one-half or more shall be rounded up to the next whole number. In cases where differing uses will use parking spaces at differing times, the Building Inspector shall determine the maximum number of spaces required to meet peak demand.

TABLE OF REQUIRED OFF-STREET PARKING follows.

**Table 6-1**

**TABLE OF REQUIRED OFF-STREET PARKING**

| <u>Principle or Accessory Use</u>                                                                                   | <u>Parking Spaces</u>      | <u>Unit</u>                                                   |
|---------------------------------------------------------------------------------------------------------------------|----------------------------|---------------------------------------------------------------|
| One or two family dwelling                                                                                          | 2.0 per                    | Dwelling unit                                                 |
| Housing for the elderly:                                                                                            |                            |                                                               |
| Publicly assisted                                                                                                   | 0.5 per                    | Dwelling unit                                                 |
| Private                                                                                                             | 1.0 per                    | Dwelling unit                                                 |
| Multi-family dwellings or<br>Attached dwellings:                                                                    |                            |                                                               |
| 1 bedroom or less                                                                                                   | 1.5 per                    | Dwelling unit                                                 |
| 2 bedrooms or more                                                                                                  | 2.0 per                    | Dwelling unit                                                 |
| Dormitories                                                                                                         | 2.0 per                    | 3 beds                                                        |
| Accessory lodgings or lodging<br>houses                                                                             | 1.0 per                    | Room offered for rent<br>but not less than 1 per<br>2 beds    |
| Home occupations (4)                                                                                                | (See note 4 below)         |                                                               |
| Place of public assembly such as<br>Churches, theaters, assembly halls,<br>stadiums, clubhouses, function halls (1) | 1.0 per<br>plus<br>1.0 per | 5 seats<br><br>2 Employees in the<br>maximum working<br>shift |
| Mixed office, studio, civic,<br>Recreational or other uses                                                          | 1.0 per                    | 400 sq.ft. of GFA                                             |
| Bowling Alleys                                                                                                      | 2.0 per                    | Bowling lane                                                  |
| Eating & drinking places serving food<br>or beverages                                                               | 1.0 per                    | 2 employees in the<br>maximum working<br>shift                |
|                                                                                                                     | plus 1.0 per               | 4 Seats                                                       |
|                                                                                                                     | plus 1.0 per               | 100 sq.ft. of function<br>room not designed<br>for eating.    |
| (Continued)                                                                                                         |                            |                                                               |

Table of Required Off-Street Parking Continued,

| <u>Principle or Accessory Use</u>                                                  | <u>Parking Spaces</u> | <u>Unit</u>                                                                                                                                      |
|------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Hospital, chronic or convalescent<br>sanitariums, nursing or convalescent<br>homes | 1.0 per               | 2 employees in the<br>maximum working<br>shift                                                                                                   |
|                                                                                    | plus 1.0 per          | Attending doctor                                                                                                                                 |
|                                                                                    | (2) plus 1.0 per      | 4 Patient beds                                                                                                                                   |
| Schools, museums                                                                   | (2) 2.0 per           | 3 Staff members                                                                                                                                  |
|                                                                                    | Plus 1.0 per          | 3 Students of driving<br>age (unless car usage<br>is prohibited)                                                                                 |
|                                                                                    | Or 1.0 per            | 6 seats in largest place<br>of assembly,<br>(whichever is greater)                                                                               |
| Retail and service establishments                                                  | 1.0 per               | 250 Sq. ft. of GFA (3)                                                                                                                           |
| Supermarket                                                                        | 1.0 per               | 150 Sq. ft. of GFA                                                                                                                               |
| Business offices (including Financial<br>Institution)                              | 1.0 per               | 350 Sq. ft. of GFA                                                                                                                               |
| Medical and dental offices                                                         | 1.0 per               | 250 Sq. ft. of GFA                                                                                                                               |
|                                                                                    | Or 2.0 per            | Doctor, dentist, dental<br>hygienist, nurse<br>practitioner, therapist<br>or others involved in<br>direct patient care<br>(whichever is greater) |
| Research and development                                                           | 1.0 per               | 600 Sq. ft. of GFA                                                                                                                               |
|                                                                                    | Or 1.0 per            | 2 employees in the<br>maximum working<br>shift (whichever is                                                                                     |

(Continued)

greater)

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Table of Required Off-Street Parking Continued,

| <u>Principle or Accessory Use</u>                           | <u>Parking Spaces</u> | <u>Unit</u>                                                                     |
|-------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------|
| Industrial, including printing                              | 1.0 per               | 600 Sq. Ft. of GFA                                                              |
| Publishing                                                  | Or 1.0 per            | 2 Employees in the maximum working shift (whichever is greater)                 |
| Gasoline station or repair garage                           | 1.0 per               | 300 Sq. Ft. of GFA                                                              |
| Warehouse, wholesale establishment, public utility stations | 1.0 per               | 1,000 Sq. Ft. of GFA                                                            |
| Marina                                                      | 1.0 per<br>Plus       | Boat slip<br>Any additional spaces required to serve ancillary uses (per above) |
| Any other nonresidential use                                | 1.0 per               | 300 sq. ft. of GFA                                                              |

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(1) See further requirements in Section 6.03 C.

(2) See further requirements in Section 6.03 D.

(3) Gross floor area (GFA) is defined in Section 2, Definitions.

(4) Medical or dental professionals shall provide the number of parking spaces required for “medical and dental offices”. All other home occupations shall provide one space per nonresident employee plus visitor parking in accordance with anticipated demand but not less than 1 space per professional person, owner, or principle, unless the specific type of home occupation will not require customers or clients to come to the home.

## **SECTION 6.07 – OFF-STREET LOADING REGULATIONS**

- A. Structures and land uses in existence or for which building permits have been issued at the date of adoption of this section shall not be subject to the requirements stated below so long as the kind or extent of use is not changed, provided that any loading facilities now serving such structures or uses shall not in the future be reduced below such requirements.
- B. Where a structure or use existing on the effective date of this section is altered or extended in any way, off-street loading facilities shall be provided in accordance with Table 6-2.
- C. Where retail, or other stores are designed or constructed as a group or as a unified building, the aggregate of individual stores shall be treated as one building for the purpose of calculating off-street loading facilities.
- D. Where mixed uses occur, off-street loading facilities shall be the sum of the requirements for the several individual uses computer separately, except that such facilities may be less than such sum by special permit from the Board of Appeals when it can be demonstrated that such individual uses are not in operation at the same time.
- E. Off-street loading facilities shall be provided in accordance with the following Table 6-2, which sets forth requirements for each type of land use except for residential.

**Table 6-2**

**Number of Loading Bays Required For New Structures**  
**By Gross Floor Area of Structures**

| <b><u>Uses</u></b>                                                                                            | <u>Gross Floor Area (in thousands of square feet)</u> |              |               |                |                |                 |
|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|--------------|---------------|----------------|----------------|-----------------|
|                                                                                                               | <u>10-25</u>                                          | <u>25-50</u> | <u>50-100</u> | <u>100-150</u> | <u>150-300</u> | <u>Over 300</u> |
|                                                                                                               | (Per 150,000)                                         |              |               |                |                |                 |
| Retail, trade, wholesale<br>& Storage,<br>Communications &<br>Utilities, Consumer<br>Service, Office Building | 1                                                     | 2            | 3             | 4              | 5              | 1               |
| Hotel or dormitory,<br>Institution,<br>Recreation,<br>Education                                               | 1                                                     | 1            | 2             | 3              | 4              | 1               |

**SECTION 6.08 - DESIGN AND LAYOUT OF OFF-STREET LOADING FACILITIES**

A. Off-street loading facilities shall be designed to conform to the following specifications:

1. Each required space shall be no less than 12 feet in width, 30 feet in length, and 14 feet in height, exclusive of drives and maneuvering space, and located entirely on the lot being served.
2. There shall be appropriate means of access to a street or alley as well as adequate maneuvering space.

3. The maximum width of driveways and sidewalk openings measured at the street lot line shall be 30 feet; the minimum width shall be 20 feet.
4. Loading spaces may be enclosed in a structure and must be so enclosed if located within 50 feet of a residence district where the use involves regular night operation.
5. All accessory driveways and entranceways shall be graded, surfaced, and drained to the satisfaction of the Building Inspector, to the extent necessary to prevent nuisances of dust, erosion or excessive water flow across public ways or land of others.
6. Such facilities shall be designed and used in such manner as at no time to constitute a nuisance, or a hazard or unreasonable impediment to traffic.

B. All required loading facilities shall be provided and maintained in accordance with the following requirements:

1. They shall be provided and maintained so long as the use exists which the facilities were designed to serve.
2. They shall not be reduced in total extent after their provision, except when such reduction is in conformity with the requirements of this section.

## **SECTION 7**

### **NONCONFORMING USES**

#### **SECTION 7.01 – APPLICABILITY OF USE REGULATIONS**

Except as provided in this bylaw, no building, structure, or land shall be used except for the purposes permitted in the district as described in this bylaw. Any use not listed shall be construed to be prohibited.

#### **SECTION 7.02 – USES SUBJECT TO OTHER REGULATIONS**

Uses permitted by right or by special permit shall be subject, in addition to use regulations, to all other provisions of this bylaw or other applicable statutes.

#### **SECTION 7.03 – NONCONFORMING USES, STRUCTURES, AND LOTS**

- A. The provisions of this section apply to actions in connection with nonconforming uses, structures and lots as created by the initial enactment of this bylaw or by any subsequent amendment. It is the intent of this bylaw to discourage the perpetuity of nonconforming uses or the extension of nonconforming structures whenever possible.
- B. This zoning bylaw or any amendment thereof shall not apply to lawfully existing structures, nor to the existing use of any structure or of land to the extent to which it is being lawfully used at the time of adoption of this bylaw or any subsequent amendment thereof, or to a building permit or special permit issued before the first publication of notice of the public hearing on this bylaw or any amendment thereof, provided that said existing structure, existing use of any structure or of land was not in violation of previous Nahant zoning bylaws.
- C. This zoning bylaw or any amendment thereof shall apply to any change of use and to any alteration of a structure when the same would amount to reconstruction, extension of structural change, to a building permit or special permit issued after the first notice of the public hearing on this bylaw or any amendment thereof, and to any alteration of a structure to provide for its use for a

substantially different purpose or in a manner substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent, except where such alteration, reconstruction, extension or structural change to a one or two-family residential structure does not increase the nonconforming nature of said structure. A reconstruction, extension, structural change or alteration shall be deemed to increase the nonconforming nature of a structure if:

1. It results in the extension of the structure beyond the footprint of the existing structure into the required minimum front yard, side yard or rear yard as shown in Table 2, Table of Dimensional Requirements, or
2. It results in an extension of any portion of the structure beyond the maximum permitted height in stories or feet as shown in said Table, or
3. It results in an increase in building coverage and the proposed structure exceeds the maximum permitted by said Table, or
4. It results in a decrease in open space land and the resulting open space is less than required by said Table, or
5. It results in an increase in the floor area ratio and the resulting floor area ratio is greater than allowed by said Table.

D. Any structure or any use of a structure or land which does not conform to the regulations applicable in the district in which it is located by virtue of the adoption or subsequent amendment of this bylaw is a nonconforming use or structure and may be continued subject to the following provisions:

1. No structure or land where a nonconforming use or structure has been changed to a conforming use or structure or abandoned for more than two years, shall be permitted to continue as, or revert to, a nonconforming use or structure
2. Any building destroyed by fire or other natural cause may be repaired or rebuilt on the footprint of the structure existing at the time of the calamity, provided that reconstruction is commenced within a period of not more than two years and continued through to completion as continuously and expeditiously as reasonable.
3. Subject to the granting of a special permit by the **applicable special permit granting authority**, as provided for in Section 9, a nonconforming structure **or use** may be expanded, extended, altered, or reconstructed provided the **special permit granting authority** makes a finding that such

change, expansion, extension, alteration, or reconstruction shall not be substantially more detrimental than the existing nonconforming use or structure to the neighborhood. (Rev. 4/91)

4. No lot may be altered in size if the effect of such alteration is to make it nonconforming or more nonconforming.
5. Any off-street parking spaces, if already equal to or less than the number required to serve their intended use, shall not be further reduced in number.
6. All changes in structures or uses are subject to the parking requirements in Section 6 of this bylaw.
7. This section shall not apply to billboards, signs and other advertising devices.

- E. Notwithstanding any other requirements of Section 7.03, no structure, constituting the principle use, located on a nonconforming lot, whether such structure is conforming or nonconforming, may be removed and reconstructed, or removed and replaced elsewhere on such lot, without a special permit. (Rev. 4/03)

#### **SECTION 7.04 – COMMENCEMENT WITHIN SIX MONTHS**

Construction or operations under a building or special permit shall conform to any subsequent amendment of the bylaw unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

## **SECTION 8**

### **SIGNS**

#### **SECTION 8.01 – PURPOSE AND INTENT**

Because of their potential detrimental impact on the visual and perceptual environment of the community, signs must be regulated in order to:

- A. Prevent hazards to vehicular and pedestrian traffic.
- B. Prevent conditions, which have a blighting influence and contribute to a decline in property values.
- C. Provide for easy recognition and legibility of all permitted signs and other uses in the immediate vicinity.
- D. Preserve the amenities and visual quality of the town and protect against the deterioration of the community environment.

It is the intent of this section to protect property values, create more attractive residential and business districts, enhance and protect the physical appearance of the community, and to encourage the most appropriate use of land.

#### **SECTION 8.02 – APPLICABILITY**

- A. General Applicability: All signs shall comply with the regulations for the erection and construction of signs contained in this section, other applicable Town bylaws, and the State Building Code of the Commonwealth of Massachusetts unless exempt from Town bylaws by the Massachusetts General Laws, as amended.

No signs or advertising devices of any kind or nature shall be erected on any premises or affixed to the outside of any structure to be visible from the outside of any structure except as provided herein.

- B. Nonconforming Signs: A nonconforming sign is any sign, which does not conform to the regulations of this bylaw. Accessory signs or other advertising

devices legally erected before the adoption of this bylaw may continue to be maintained, provided, however, that no such sign or other advertising device shall be permitted if, after the adoption of this bylaw, it is enlarged, reworded, redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this bylaw; and provided further that any such sign or other advertising device which has deteriorated to such an extent that the cost of restoration would exceed 50% of the replacement cost of the sign or other advertising device at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this bylaw. Any exemption provided in this section shall terminate with respect to any sign or other advertising device which:

1. Shall have been abandoned (not used for six months or more);
2. Advertises or calls attention to any products, businesses or activities which are not longer sold or carried on at the particular premises; or
3. Shall not have been repaired or properly maintained within 30 days after notice to that effect has been given by the Building Inspector.

### **SECTION 8.03 – SPECIAL REGULATIONS**

The provisions of Section 8.05 (Signs Permitted) shall be the general controlling section for all signs. However, the following special regulations shall also apply:

A. Two signs identifying churches, synagogues, and other similar religious uses are permitted, one of which may not exceed 20 square feet in area and one of which may not exceed 10 square feet in area.

B. One sign is allowed for each of the following:

Membership club  
Place of public assembly  
Community facility  
Public utilities  
Extended care facilities

Not to exceed 20 square feet.

## **SECTION 8.04 – PROHIBITED SIGNS AND DEVICES**

The following signs and devices shall not be permitted, constructed, or erected:

- A. Signs, which incorporate in any manner flashing, moving or intermittent, lighting, excluding public service signs showing time and temperature.
- B. Wind signs, including banners, pennants, spinners, streamers, and other wind-actuated components.
- C. String lights used in connection with commercial premises with the exception of temporary lighting for holiday decorations.
- D. Any sign, which advertises a business or product, previously sold or located on the premises but no longer sold or located on the premises.
- E. Portable signs.
- F. Window signs which cover, in the aggregate, more than 25% of area of the window.
- G. Signs painted directly on the exterior surface of any wall.
- H. Signs erected so as to obstruct any door, window or fire escape on a building.
- I. Roof signs.
- J. Colored lights and illuminated signs employing colors in use in traffic signal lights are prohibited within view of any signalized intersection. A sign shall not, by reason of its location, shape, size or color, interfere with traffic or be confused with or obstruct the view or effectiveness of any official traffic sign, traffic signal or traffic marking.
- K. Any imitation of official traffic signs or signals and the use of such words as “stop”, “look”, “danger”, “go slow”, “caution”, or “warning” are prohibited.
- L. Fluorescent colors are prohibited
- M. Signs, which advertise products or activities, not conducted on the premises (non-accessory signs) or signs that incorporate such advertising into their signs by including product trade marks or trade names in their accessory sign design.

N. Neon signs.

## **SECTION 8.05 – SIGNS PERMITTED**

Signs whose subject matter related exclusively to the premises on which they are located, or to products, accommodations, or activities on those premises (accessory signs), shall be allowed as provided herein. No person shall erect, display, or maintain a billboard, sign, or other advertising device (non-accessory sign) within the Town of Nahant, except those specifically exempt under State law or as otherwise provided for hereinafter.

### **A. Number and Types of Business Signs:**

1. One wall sign or ground sign is permitted for each establishment. Such sign may not exceed 20 square feet in area. If located on a corner lot, a secondary wall or ground sign, not exceeding 10 square feet in area, is also permitted. The top of a ground sign shall not be higher than four feet above the ground.

No sign shall be painted directly on the exterior surface of any wall. All signs must be painted, posted, or otherwise securely affixed to a substantial intermediary removable surface, which shall be securely affixed to the wall of the building. The foregoing, however, shall not prevent the installation of a sign by individual letters or devices cut into, or securely affixed to, the exterior wall of a building. The material of the sign and intermediary surface and the manner in which they are affixed to their respective surfaces or walls shall be subject to the approval of the Building Inspector.

2. A freestanding sign not exceeding 20 square feet in area in lieu of the primary wall or ground sign described in paragraph 1 above may be allowed with a special permit. A freestanding sign shall not exceed 18 feet in height and shall have a minimum clearance of eight feet. It shall not block traffic visibility.

### **B. Signs in Residential Districts:**

In residential districts or premises used exclusively for residential purposes, the following signs are permitted:

One sign displaying the street number or name of the occupant of the premises, not exceeding two square feet in area. Such sign may include identification of an accessory professional office or customary home occupation or the renting of rooms.

C. Other Signs (All Districts) – The following are allowed in addition to signs as limited above:

1. Permanent Signs:

- a. Names of buildings, date of erection, monumental citations, and commemorative tablets up to 10 square feet in area, when made a permanent and integral part of the building.
- b. One directory of the occupants or tenants of the building affixed at each entrance is permitted but shall not exceed an area determined on the basis of one square foot for each occupant or tenant.
- c. Traffic control and guidance signs, in conformance with public traffic control standards, but located on private property, and orientational signs up to one square foot in area, displayed for purposes of direction or convenience, including signs identifying rest rooms, freight entrances, and the like.

2. Temporary Signs: the following temporary signs are allowed without a permit:

- a. One “For Sale” or “For Rent” sign, not exceeding four square feet in area and advertising only the premises on which the sign is located.
- b. One building contractor’s sign maintained on a building while the same is actually under construction, not exceeding four square feet in area.
- c. Display Window Signs: Signs on the surface of or inside display windows, lighted only by building illumination and covering no more than 25% of the display area (business districts only).

3. Event Signs:

Temporary banners and posters covering nonprofit social, holiday and religious events (except posters intended for window display) shall be referred to the Building Inspector for approval and issuance of a permit if deemed necessary by said Inspector. Such temporary signs and banners must be firmly attached to a supporting device and present no undue hazard to the public. The time allowed this type of advertising shall not exceed 60 days.

D. Location of Signs:

1. No sign shall extend more than three (3) feet above the roof plate line of the wall to which it is attached, nor above the third floor of a multi-story building. No roof signs are allowed.
2. For other than first floor occupants, wall signs, if any, shall be located between the second and third floors.
3. No permanent sign shall be located in a residential district, except as provided above, unless serving a permitted nonconforming businesses use.
4. No sign shall project over a public right-of-way by more than 18 inches or come within three (3) feet of the curb line. A sign on a fabric awning may project over a sidewalk by not more than four (4) feet but may not come within three (3) feet of the curb line.

The Board of Appeals may authorize a projecting sign not exceeding 10 square feet in area by special permit, but only incases where it is clear that such signs or structures will not block other signs or cause visual clutter or confusion. Such signs or structures shall not come within three (3) feet of a curb line and a minimum clearance of 10 feet shall be maintained between the bottom of the sign and the sidewalk.

E. Illumination:

1. Signs shall be illuminated only by steady, stationary, shielded light sources directed solely at the sign, or internal to it, without causing glare for motorists, pedestrians, or neighboring premises.
2. Illuminated signs shall not produce more than one foot-candle of illumination four feet from the sign.
3. Signs shall not be illuminated between the hours of 12:00 midnight and 6:00 a.m. unless related to an establishment operating between those hours.

4. All permanent outdoor lights such as those used for area lighting or building floodlighting shall be steady, stationary, shielded sources directed so as to avoid causing glare for motorists, pedestrians, or neighboring premises. The marginal increase in light, as measured at a property line other than a street line, shall not exceed one foot-candle.

5. Illuminated signs are permitted only in business districts.

## **SECTION 8.06 – SIGN PERMITS AND MAINTENANCE**

### **A. Permits:**

1. All persons desiring to erect, install, place, construct, alter, move, or maintain a sign shall apply to the Building Inspector for a permit.

2. All applications for sign permits shall include a drawing to scale indicating the following:

- a. The proposed sign
- b. All existing signs maintained on the premises
- c. The lot plan and building façade indicating location of the proposed sign, and photograph of existing building surface
- d. Specifications for its construction, lighting and wiring.

All drawings shall be of sufficient clarity to show the extent of the work.

3. Such permit shall be issued only if the sign complies or will comply with all applicable provisions of this bylaw.

4. The Building Inspector shall establish a schedule of fees for sign permits, subject to the approval of the Board of Selectmen, and shall collect such fees.

5. Signs Requiring Permits: All signs except residential signs and temporary signs shall require a permit.

### **B. Repair and Maintenance:**

1. All signs, including temporary signs, shall be securely erected or affixed and shall be kept safe, neat and clean and in good and safe repair and operating conditions, to the reasonable satisfaction of the Building Inspector.

2. The Building Inspector is authorized to order the repair or removal of any sign and its supporting structure which in the judgment of the Building Inspector is dangerous, or is in disrepair or which is erected or maintained contrary to this bylaw.

## **SECTION 8.07 – SPECIAL PERMITS/SIGNS**

In particular instances, the Board of Appeals may permit more than the number of signs hereinabove permitted or signs of a greater size or in a location other than hereinabove specified, if it is determined that the architecture of the building, the location of the building with reference to the street, or the nature of the use being made of the structure is such that an additional sign or signs of a larger size should be permitted in the public interest. In granting such permission, the Board of Appeals shall specify the size and location of the sign or signs and impose such other terms and restrictions as it may deem to be in the public interest. However, in no case shall any sign permitted by special permit exceed a size of more than two times the size normally permitted in the district. Any applicant under this provision shall provide information required in Section 8.06 above, in addition to specific information in the form of perspectives, renderings, photographs, models or other representations sufficient to show the nature of the proposed sign and its effect on the immediate surroundings. Prior to the granting of a special permit under this provision, the Board of Appeals shall solicit comments on the proposed sign from the Planning Board. In cases where the Planning Board is the special permit granting authority, any special permits for signs shall be granted by the Planning Board.

## **SECTION 9**

### **ADMINISTRATION AND ENFORCEMENT**

#### **SECTION 9.01 –ADMINISTRATIVE OFFICIAL**

A Building Inspector shall be appointed annually by the Board of Selectmen for the purposes of administration and enforcement of this bylaw and such Building Inspector shall be directly responsible to the Board of Selectmen. The Building Inspector shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered, or moved would be in violation of the provisions of this bylaw; and no permit shall be granted for a new use of a building, structure, or land which would be in violation of this bylaw.

#### **SECTION 9.02 – BUILDING PERMITS**

A. No structure shall hereafter be erected, altered, repaired or changed in use, intensity of use, or dimensions nor shall any lot be changed in use nor shall any existing open space be paved unless a building permit authorizing the same has been issued by the Building Inspector and posted on such building or lot. Such permit shall be posted in a manner and place visible from the nearest public way. Where a permit authorizes erection or alteration of any structure, such permit shall be posted on or before the day on which such work begins, and shall remain posted throughout the period of such work and, in any event, for a period of at least 14 days. Where a permit authorizes a change in use of any structure or lot, such permit shall be posted on or before the first day of such new use and shall remain posted for a period of at least 14 days from the beginning of the new use. Ordinary repair, as defined in Section 2, shall not require a building permit.

B. An application for a building permit shall be delivered to the Building Inspector in writing and shall be accompanied by such appropriate plans, documents and information as the Building Inspector may require to indicate conformity with the provisions of this bylaw.

C. Upon finding that all conditions, requirements and provisions set forth in this bylaw and any other applicable statutes, regulations, or bylaws have been met in regard to the erection, alteration or use of a structure or lot, the Building Inspector shall grant a permit for the same. If the applicant has not submitted all required documentation, or if the Building Inspector does not have sufficient information to make a decision, or if any condition, requirement or provision of this bylaw or other applicable statutes, regulations or bylaws are not met or adhered to, the Building Inspector shall refuse to grant a permit, stating clearly in writing the

reason for such refusal. The Building Inspector shall either grant or refuse a permit within 35 days of receiving an application for said permit. Failure to act upon any such application by the Building Inspector within 35 days from the date of filing of said application shall be deemed denial and shall be subject to appeal to the Board of Appeals

D. A copy of each application and building permit, including occupancy permit, shall be filed forthwith upon issuance or refusal, in the office of the Board of Selectmen and shall be maintained as public records. Such filing shall be the responsibility of the Building Inspector.

E. It shall be incumbent upon the owner of any structure or lot to make an application in writing to the Building Inspector for an occupancy permit within 14 days after the completion of the structure or any alterations, additions or changes therein; and for the use, and/or occupancy of a lot, a similar application shall be made by the owner at the time he intends to use or occupy said lot. Failure to act upon any such application by the Building Inspector within 14 days from the receipt of said application shall mean that the application has been denied. A structure or lot shall not be used or occupied for the intended use until an occupancy permit is issued.

F. Building Permit Documentation:

1. Any application for a Building Permit shall be accompanied by:
  - a. A plan, accurately drawn to scale, showing existing conditions and all proposed work in such a manner that the Building Inspector will be able to determine whether or not the proposed work complies with this bylaw; and
  - b. A statement of the applicant, signed under penalty of perjury, stating the existing and intended use of each building or structure; and
  - c. Such additional information or documentation as may be necessary to provide for the execution and enforcement of this bylaw.
2. In addition to the foregoing, an application for a Building Permit for any new structure or any exterior extension of an existing structure shall be accompanied by:
  - a. Plans, accurately drawn to scale and certified by a licensed civil engineer, architect, landscape architect, or registered land surveyor, showing (a) the actual shape, dimensions and square footage of the lot to be built upon; (b) the exact location and size (including height) of all

structures presently on the lot, including measurements to all front, side and rear lines; and (c) the location of new buildings or structures to be constructed, together with the lines within which all buildings or structures are to be erected, measurements to all front, side and rear lines, and the height of the proposed structure; and

b. All necessary documentation for the Building Inspector to determine whether the proposed structure or extension complies with the terms of this bylaw. Unless the Building Inspector, in his direction, waives the requirement in particular cases, such documentation shall include plans, accurately drawn to scale and certified by a licensed civil engineer, architect, landscape architect, or registered land surveyor, showing the percent of building coverage of the existing and proposed structures, the location and percentage of existing and proposed open space land, and the existing and proposed floor area ratios; and

c. All necessary documentation evidencing either that permission is not required from the Conservation Commission for the proposed work, or that the said Commission has approved the proposed work. Unless the Building Inspector, in his discretion, waives the requirement in particular cases, documentation that permission is not required shall include a statement certified by a licensed civil engineer, architect, landscape architect, or registered land surveyor, stating that the proposed work is not located in a flood hazard zone or in the adjacent buffer zone.

3. In addition to the foregoing, an application for a Building Permit for any site work, including but not limited to grading, paving or installation of fences, retaining walls or other structures (not including buildings) shall be accompanied by:

a. All necessary documentation for the Building Inspector to determine whether the proposed structure or work complies with the terms of this bylaw. Unless the Building Inspector, in his discretion, waives the requirement in particular cases, such documentation shall include plans, accurately drawn to scale and certified by a licensed civil engineer, architect, landscape architect or registered land surveyor, showing the existing conditions, the exact location of the proposed work, and the location and percentage of existing and proposed open space land.

b. All necessary documentation evidencing either that permission is not required from the Conservation Commission for the proposed work, or that the said Commission has approved the proposed work. Unless the Building Inspector, in his discretion, waives the requirement in particular cases, documentation that permission is not required shall include a

statement certified by a licensed civil engineer, architect, landscape architect or registered land surveyor, stating that the proposed work is not located in a flood hazard zone or in the adjacent buffer zone.

4. The Building Inspector, in his discretion, may refuse to accept any application, which does not comply with the requirements of this bylaw.

G. The Building Inspector shall establish a schedule of fees for building permits, subject to the approval of the Board of Selectmen, and shall collect such fees.

### **SECTION 9.03 – PENALTY FOR VIOLATION**

Any person, firm or corporation who violates or refuse to comply with any of the provisions of this bylaw shall, upon conviction, be fined a sum not to exceed 300 dollars for each offense. Each day or portion of a day that any violation is allowed to continue shall constitute a separate offense. Violations of this bylaw may, at the discretion of the Board of Selectmen, be enforced by non-criminal dispositions, in accordance with the procedures set forth in Section 21D of Chapter 40 of the Massachusetts General Laws. This bylaw may also be enforced by the Superior Court, which may issue injunctions to restrain violations.

For violations of this bylaw related to Section 8 Signs, Section 5.02.E. Traffic Visibility at Driveways and Corners and Section 5.02.J. Fences and Retaining Walls, the Building Inspector may issue a citation in the amount of \$50.00, and may issue an additional citation for each day that the violation exists.

After a 5-day notification period, accumulation of fines will be suspended, upon filing an appeal to the Zoning Board of Appeals. Any property owner, who has been issued a citation(s) and disagrees with the Building Inspector's citation, may appeal the citation(s) to the Zoning Board of Appeals within 30 days of issuance. (Rev. 4/05)

### **SECTION 9.04 – REQUEST FOR ENFORCEMENT**

Any person or persons may request in writing that the Building Inspector enforce the provisions of this bylaw or the Zoning Act against any party allegedly in violation of the same. If the Building Inspector is so requested in writing, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within 14 days of receipt of such request. A party aggrieved by the refusal of the Building Inspector to enforce this bylaw may appeal to the Board of Appeals under Section 9.06 hereof. A party aggrieved by the failure of the Building Inspector to

respond in writing within 14 days may request that the Board of Selectmen order the Building Inspector to respond.

## **SECTION 9.05 – BOARD OF APPEALS OR SPECIAL PERMIT GRANTING AUTHORITY**

### **A. Establishment; Composition; Terms; Qualifications; Interest; Powers:**

1. The Board of Appeals shall consist of five (5) members and three (3) associate members, appointed by the Board of Selectmen in accordance with the provisions of Chapter 40A, Section 12 of the General Laws. Upon adoption of this amended zoning bylaw, current members and associate members of the Board of Appeals shall continue in office for the duration of their appointed terms and two additional members shall be appointed within three months. The terms of each member shall be of such length and so arranged that the term of one member shall expire each year.
2. No member or associate member of the Board of Appeals shall represent before such Board any party in any matter pending before it.
3. Powers: Under this bylaw, the Board of Appeals shall have the following powers:
  - a. To hear and decide appeals.
  - b. To hear and decide, except as otherwise provided in this bylaw, applications for special permits.
  - c. To authorize upon appeal or upon petition a variance from the term of this bylaw.

In exercising its powers under Paragraph 3.b. and 3.c. 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.

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.

While the Board of Appeals may issue a special permit to grant relief from these Zoning By-laws, variances to standards of state regulations, which contain most of the standards for construction (especially note “floodplains”) cannot be issued by any Town Body. Variances to state standards can only be issued through the proper state channels, e.g. the State Board of Building Regulations and Standards. A special permit may be issued where a proponent may get such a state variance; however, the special permit shall be granted on condition of the project having all necessary variances to state regulations, in addition to all relevant Nahant Zoning By-laws requirements, and shall require, in the case of floodplain construction/development, notification to the applicant of increased risks and increase flood insurance premium rates.

When the Building Inspector receives technical data from a floodplain property owner, demonstrating that the land is not subject to flooding, this information shall be sent to FEMA (Federal Emergency Management Agency) in order to obtain a Letter of Map Amendment showing the Flood Insurance Rate Map will officially remove the property from the floodplain, so that flood insurance will not be required for federally-backed loans or mortgages. (Rev. 4/96)

**B. Adoption of Rules:** The Board of Appeals and other Town agencies acting as special permit granting authorities (SPGA’s) shall adopt rules pursuant to the Zoning Act and not inconsistent with the provisions of the Bylaws of the Town, for conducting its business and otherwise carrying out the provisions of the Zoning Bylaw. A copy of such rules shall be filed in the Office of the Town Clerk. Meetings of the Board of Appeals or SPGA shall be held at the call of the Chairperson, and also when called in such other manner as the Board of Appeals of SPGA shall determine in its rules.

**C.** The Chairperson of the Board of Appeals of SPGA, or in his or her absence the Acting Chairperson, may administer oaths, summon witnesses and call for the production of papers. All hearings shall be open to the public. The Board of Appeals shall act within 100 days after the date of filing of an appeal, application, or petition, except in regard to special permits, where action shall be taken by the SPGA within 90 days following a public hearing for which notice has been given by publication or posting as required in the applicable Sections of this zoning bylaw. Failure of the Board of Appeals or other SPGA to act within the specific times shall be deemed to constitute the approval of the Board of Appeals or SPGA of the appeal, application or petition.

The Board of Appeals or SPGA shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reasons for its decision, and of its other official actions, copies of all which shall be filed within 14 days in the office of the Town Clerk and the office of the Planning Board and shall be a public record. Notice of decisions shall be mailed immediately to the

petitioner, applicant or appellant, and to parties in interest as defined in Massachusetts General Laws, Chapter 40A, Section 11, and to every person present at the hearing who requests that notice be sent to him and states the address to which such notice is to be sent. Each notice shall specify that appeals, if any shall be made pursuant to Chapter 40A, Section 17, and shall be filed within 20 days after the date of filing of such notice in the office of such Town Clerk.

Upon the granting of a variance or special permit, or any extension, modification or renewal thereof, the Board of Appeals or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the Board of Appeals or SPGA, containing the name and address of the owner, identifying the land affected, setting forth issuance of such variance or permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the Planning Board and Town Clerk. No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied. If appropriate, the certification shall also state whether it is a variance or special permit which has been approved by reasons of the failure of the Board of Appeals or SPGA to act thereon within the time prescribed, and that a copy of the application for the special permit or petition for the variance accompanied by the certification of the Town Clerk stating the fact that the Board of Appeals or SPGA failed to act within the time prescribed and no appeal has been filed and that the grant of the application or petition resulting from such failure to act has become final or that if an appeal has been filed, that it has been dismissed or denied, is recorded in the Essex South District Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fees for recording or registering shall be paid by the owner or applicant.

The concurring vote of four of the five members of the Board of Appeals (or five members of a seven member Planning Board acting as a SPGA) shall be necessary to reverse any order or decision of any administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this bylaw, or to effect any variance in the application of this bylaw.

**D. Other Requirements:** The granting of an appeal by the Board of Appeals shall not exempt the applicant from any provision of this bylaw not specifically set forth as exception in this particular case from a provision of this bylaw. It shall be unlawful for any owner or person to reconstruct, convert or alter a structure or change the use, increase the intensity of use or extend or displace the use of any building, other structure or lot, or change any required limitations or special conditions imposed by the Board of Appeals or

other SPGA in authorizing a special permit or variance without appealing to the Board of Appeals or SPGA as a new case over which the Board of Appeals or SPGA shall have complete administrative power to deny, approve, or modify.

#### **SECTION 9.06 – APPEALS**

Any person aggrieved by reason of inability to obtain a permit or enforcement action from the Building Inspector under the provisions of this bylaw, or any officer, department or Board of the Town, aggrieved by an order or decision of the Building Inspector or other Town official in violation of any provisions of this bylaw may take an appeal to the Board of Appeals within 30 days of the order or decision in accordance with the appeals procedures set forth in Chapter 40A, Sections 8 and 15, of the Massachusetts General Laws.

Before the Board of Appeals considers any appeal, copies of the notice of appeal and supporting documents shall be filed with the Board of Health, Planning Board and Conservation Commission for their review and recommendations.

#### **SECTION 9.07 – VARIANCES**

After notice and public hearing as provided in this bylaw, the Board of Appeals may authorize a variance from the terms of this bylaw for particular dimensional requirements where the Board of Appeals specifically finds that, owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such parcel or such building but not affecting generally the district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying nor substantially derogating from the intent or purpose of this bylaw. Before any variance is granted the Board of Appeals must find all conditions to be present as specified in Chapter 40A, Section 10 of the General Laws of the Commonwealth of Massachusetts. Use variances are specifically prohibited by this bylaw.

The Board of Appeals may impose conditions, safeguards and limitations both of time and of use, similar to those which may be imposed for special permits under Section 9.08C hereof.

If the rights authorized by a variance are not exercised within one year of the date of the granting of such variance it shall lapse, and may be re-established only after notice and a new hearing pursuant to Section 9.10B.

Before the Board of Appeals considers any petition for a variance, copies of the petition and all plans, site plans and specifications shall be filed with the Board of Health, Planning Board and Conservation Commission for their review and recommendations.

### **SECTION 9.08 – SPECIAL PERMITS**

A. The Board of Appeals or the Planning Board, acting as the special permit granting authority, as provided for in Section 9 or Chapter 40A of the General Laws, may grant special permits, but only those specifically allowed in this bylaw. Before the Special Permit Granting Authority considers any application for a special permit, copies of the application and all plans, site plans and specifications shall be filed with the Board of Health, Planning Board (except where the Planning Board is acting as special permit granting authority) and Conservation Commission for their review and recommendations as provided in Section 11 of Chapter 40A of the General Laws. Such plans and documents shall meet the standards of Section 9.02F, Building Permit Documentation.

The Board of Appeals shall act as the special permit granting authority (SPGA) except as follows:

1. If the proposed use or structure is in a B-1 or B-2 District and,
2. Consists of a change of use for more than 1,000 square feet of gross floor area within an existing structure, or the building of a new structure exceeding a gross floor area of 500 square feet (within any 12 month period), then the Planning Board shall act as the SPGA and site plan review shall be required, as set forth in Section 9.09.

B. In acting on special permits, the special permit granting authority shall take into account the general purpose and intent of this bylaw and may impose conditions and safeguards deemed necessary to protect the surrounding neighborhood, in addition to the applicable requirements of this bylaw, including, but not limited to the following:

1. Front, side or rear yards greater than the minimum required by this bylaw.
2. Screening of parking areas or other parts of the premises from adjoining premises or from the street by walls, fences, planting or other devices.
3. Modification of the exterior features or appearance of the building or structure.
4. Limitation of size, number of occupants, method or time of operation, or extent of facilities.

5. Regulation of number, design and location of access drives or other traffic features.
  6. Off-street parking or loading spaces beyond the minimum required by this bylaw.
  7. Control of the number, location, size or lighting of signs.
- C. In granting a special permit, the special permit granting authority may impose special conditions after taking into account, among other considerations, the following:
1. Protection of adjoining premises in the general neighborhood from any detrimental use of the lot or structure
  2. Convenience and safety of vehicular and pedestrian movement within the area.
  3. Responsibility and adequacy of the methods of disposal of sewage, refuse and other wastes.
  4. Provisions for the loading and unloading of vehicles incidental to the servicing of the buildings and related uses of the lot.
  5. Preservation of views and sunlight to adjoining and nearby properties where possible.
  6. With regard to business uses requiring a special permit, prior to granting such permit the special permit granting authority shall make a finding that the proposed business use will not be detrimental to the town and neighborhood in terms of health, welfare and safety and that no substantial environmental degradation will result from the granting of such permit, such as air or water pollution, visual or noise pollution, vehicular traffic congestion, overcrowding or misuse of the land, or damage to irreplaceable natural or historic resources.
- D. 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.

- E. Site Plan Review – Certain business uses, as described in Section 9.08A, require a special permit from the Planning Board and are subject to site plan review as described in Section 9.09.
- F. Time Period – Special permits granted under applicable sections of the bylaw shall lapse after two years of the date of the granting of the special permit if substantial use thereof has not sooner commenced except for good cause or, in the case of a special permit for construction, if construction has not begun by such date except for good cause.

## **SECTION 9.09 – SITE PLAN REVIEW**

A. Site plan review in accordance with this section shall be required for business uses, requiring a special permit from the Planning Board, as described in Section 9.08A

B. Site plans shall be submitted to the Planning Board by the applicant with copies to the Board of Health and Conservation Commission. Said site plans shall show, among other things, all existing and proposed buildings, structures, parking spaces, driveway openings, driveways, service areas, and other open uses, all facilities for sewage, refuse and other waste disposal, and for surface water drainage, and all landscape features, such as fences, walls planting areas, exterior lighting, and walks. The plans shall be certified by a licensed civil engineer, architect, landscape architect, or registered land surveyor as to the location of the building(s), setbacks, and all other required dimensions, elevations and measurements (including floor area ratio) and further that the plan(s) be signed under the penalties of perjury. The site plan shall be at a minimum scale of 1" = 20' unless another scale is found suitable by the Planning Board.

The Planning Board shall not take final action on such site plan unless it has received a report thereon from the Board of Health and the Conservation Commission, or until 35 days have elapsed after receipt of such plan without submission of a report thereon. The Planning Board may also seek input from other Town boards and agencies and shall not take final action on such plan until such boards or agencies have transmitted reports thereon, or 35 days have elapsed without receipt of a report. (Rev. 4/91)

C. Additional Requirements – Detailed review of certain uses or structures which have a substantial impact upon the town and upon traffic, utilities and property values therein, thereby affecting the public health, safety and general welfare thereof may be required by the Planning Board.

In addition to the site plan, the following additional materials are required (but may be waived) by the Planning Board:

1. Drawing of Existing Conditions – A drawing (at a minimum scale of one inch equals twenty feet (1"=20') unless another scale is found suitable by the special permit granting authority) showing the location, type, size and dimensions of existing trees, rock masses, existing topography at two foot contour intervals, and other natural features with designations as to which features will be retained. In order to meet the conditions for approval of a special permit, all existing trees, rock masses, and other natural features shall be retained until a special permit is approved.
2. Additional Drawings of Proposal –
  - a. Structure: a drawing including color and type of surface materials showing front and rear elevations, and side elevations where there are no adjoining buildings, and floor plans.
  - b. Landscape: a drawing showing the location, dimensions, and arrangements of all open spaces and yards, including type and size of planting materials, color and type of surface materials, methods to be employed for screening, and proposed topography at two foot contour intervals.
3. A professionally prepared traffic study adding site and neighborhood impacts.
4. Model – An inexpensive study model or final presentation model at a minimum scale of one inch equals twenty feet (1"=20') unless another scale is found suitable by the Planning Board, showing the tract, abutting streets, proposed contours, proposed buildings and the massing of abutting buildings.
5. Photographs – Photographs showing the proposed building site and surrounding properties, and of the model (if required).
6. Impact Statement – Statement by applicant with explanation of how each of the environmental design review standards is incorporated into the design of the proposed development. Where a particular standard is not applicable; a statement to that effect will suffice. An environmental impact statement prepared in accordance with State or Federal regulations may be accepted as a substitute in lieu of this statement.

D. Design Review and Planning Board Procedure – The Planning Board shall inform other relevant Town agencies of the availability of any additional materials available for review. The Planning Board shall evaluate the proposed use on the basis of the standards set forth in this section. If outside consulting services are deemed necessary by the Planning Board in evaluation or proposals and the preparation of the design review report, such services shall be engaged by the Planning Board and the costs therefore shall be paid by the applicant. A pre-submission conference with the Planning Board is recommended. Procedures are governed by Rules for Filing for Special Permits with Site Plan Review, adopted by the Planning Board. (Rev. 4/91)

E. Design Review Standards – The following standards shall be utilized by the Planning Board in reviewing all site and building plans. These standards are intended to provide a frame of reference for the applicant in the development of site and building plans as well as a method of review for the reviewing authority. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation. The specification of one or more particular architectural styles is not included in these standards. The standards of review outlined in subsections 1 through 10 below shall also apply to all accessory buildings, structures, freestanding signs, and other site features, however related to the major buildings or structures.

1. Preservation of Landscape – The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas.
2. Relation of Buildings to Environment – Proposed development shall be related harmoniously to the terrain and to the use, scale and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. The Planning Board may require a modification in massing so as to reduce the effect of shadows on abutting property in residence districts or on public open space.
3. Circulation – With respect to vehicular and pedestrian traffic and circulation, including entrances, ramps, walkways, drives and parking, special attention shall be given to location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, and arrangement of parking areas that

are safe and convenient and (insofar as practicable) do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties. Any off-site traffic impacts shall be addressed and mitigated. Any proposed development shall not produce additional traffic impacts to the town such that additional traffic causes any street intersection in a neighborhood to meet traffic signal warrants, as promulgated by the Massachusetts Department of Public Works.

4. Surface water drainage – Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system.
5. Utility service – Electric telephone, cable TV and other such lines and equipment shall be underground where applicable. The proposed method of sanitary sewage disposal and solid waste disposal from all buildings shall be indicated
6. Advertising features – The size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from the use and enjoyment of proposed buildings and structures and the surrounding properties.
7. Special features – Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.
8. Safety – With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation and maximize accessibility by fire, police and other emergency personnel and equipment. Insofar as practicable, all exterior spaces and interior public and semi-public spaces shall be so designed as to minimize the fear and probability of personal harm or injury by increasing the potential surveillance by neighboring residents and passersby of any accident or attempted criminal act.
9. Heritage – With respect to Nahant's heritage, removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

10. Microclimate – With respect to the localized climatic characteristics of a given area, any development which proposes new structures, new hard-surface ground coverage, or the installation of machinery which emits heat, vapor, or fumes, shall endeavor to minimize, insofar as practicable, any adverse impacts on light, air and water resources, or on noise and temperature levels of the immediate environment.

F. Alternate Members of Planning Board – The Board of Selectmen and the members of the Planning Board shall appoint two alternate members of the Planning Board, each of who shall be a registered voter in the Town, to serve for two-year terms, so that the term on one alternate member expires on June 30 of each year. The appointment shall be made in the same manner as provided by law for filling vacancies on the Planning Board. The chairman of the Planning Board may designate an alternate member or members to sit on the board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest on the part of any member or members of the Planning Board or in the event of a vacancy on the board. (Rev. 4/91)

## **SECTION 9.10 – PROCEDURES**

A. Filing Requirements- Applications and petitions for special permits and variances, including plans and documentation as required by Section 9.02F (including any requirements previously waived by the Building Inspector), shall be filed with the Town Clerk, and copies of such application, plans and supporting documentation, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the Board of Appeals or special permit granting authority in sufficient copies to provide one for each member. If copies of applications, plans, and other supporting documents are required to be filed with additional agencies (such as the Planning Board), the petitioner shall provide sufficient copies to the Town Clerk for submission to such agencies. Detailed submission requirements for site plans are published by the Planning Board and are on file at the office of the Town Clerk.

For appeals, the petitioner shall file a notice of appeal specifying the grounds thereof, with the Town Clerk, and a copy of said notice, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and the Board of Appeals. Such officer or board shall forthwith transmit to the Board of Appeals and Planning Board all documents and papers constituting the record of the case in which the appeal is taken.

B. Public Hearings – The Board of Appeals or special permit granting authority shall hold a public hearing within 65 days from the date of the filing of an application for a special permit with the Town Clerk. A public hearing on an appeal or variance shall be held within 65 days of receipt of notice or petition by the Board of Appeals. The hearing

agency shall cause the notice of the time and place of such hearing and the subject matter thereof, sufficient for identification, to be published 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 before the day of hearing, and by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before such hearing, and also at least 14 days before the day of the hearing shall send notice by mail, postage prepaid, to the petitioner and to parties in interest as defined in Chapter 40A, Section 11. The publication required by this section shall contain the following:

1. the name of the petitioner;
2. a description of the area or premises which are the subject of the petition;
3. the date, time and place of the public hearing;
4. the subject matter of the hearing;
5. the nature of action or relief requested, if any.

At the hearing, any part, whether entitled to notice thereof or not, may appear in person for by agent or by attorney.

- C. Decision Requirements - The Board of Appeals or special permit granting authority shall make specific findings of fact and conclusions in accordance with this bylaw and the requirements of Chapter 40A of the Massachusetts General Laws
- D. Repetitive Petitions – No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals or special permit granting authority shall be acted favorably upon within two years after the date of final unfavorable action unless said Board of Appeals or SPGA finds, by a vote of four members of a board of five members or a two-thirds vote of a board of more than five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

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

## **SECTION 10**

### **FLOOD PLAIN DISTRICT**

#### **SECTION 10.1 – PURPOSES**

The purposes of this District are:

1. To provide that lands in the Town of Nahant, subject to seasonal or periodic flooding, as described hereinafter, shall not be used in such a manner as to endanger the health or safety of the occupants thereof, or of the public generally, or as to burden the public with cost resulting from unwise individual choices of land use.
2. To assure the continuation of the natural flow pattern of the watercourses within the Town and to minimize the impact of coastal storms, in order to protect persons and property against the hazards of flood inundation.

#### **SECTION 10.2 – DELINEATIONS**

1. The Flood Plain District is defined as all lands in the Town which are within the boundaries of the areas designated as “A”, “B” and “V” zones, as delineated on a map entitled, “Flood Insurance Rate Map”, dated September 28, 1984 (hereafter “the Map”), as amended, on file with the Town Clerk. All lands, water bodies and wetlands within such designated areas as shown on the Map shall be included within the Flood Plain District.
2. Notwithstanding the foregoing, certain areas shown on the Map as within or not within the flood plain may be subject to question. In such cases, a Request For Determination of Applicability shall be submitted to the Conservation Commission in accordance with the state Wetlands Protection Regulations.

#### **SECTION 10.3 – USE REGULATIONS**

##### **The Flood Plain District shall be considered as overlying all other districts.**

1. The flood plain district shall be considered as overlying all other districts.
2. In the Flood Plain District, land and structures thereon may be used in accordance with the provisions of this article for any purpose otherwise allowed under Section 4. Use Regulations, for the underlying district in which such land or structure is situated.
3. In the Flood Plain District, no new construction of buildings, nor substantial improvements to or relocation of existing buildings shall be undertaken except as provided in Section 10.4 hereof. “Substantial improvements”, as used in this

section 10 is any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the actual cash value of the structure, either before the improvement is started, or if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, “substantial improvements” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure.

The term does not, however, include either (1) any alteration to comply with existing state or local health, sanitary, building or safety codes or regulations or (2) any alterations of a structure listed on the National Register of Historic Places or a state inventory of historic places.

4. In addition, no dwelling lawfully existing prior to the adoption of these provisions may be altered or enlarged by the addition of more than 20% of the existing ground coverage, and no existing structures in the Coastal High Hazard Area designated as “V-3” Zone VE on the Map shall be expanded except as permitted in Section 10.4 hereof.
5. In the Flood Plain District, no dumping, filling or earth transfer shall be permitted or utilized, except the following:
  - a. Public rights of way may be filled for the purpose of maintenance or improvement of an existing roadway or right of way.
  - b. When public buildings and structures belonging to the Town of Nahant are to be improved or rebuilt, fill may be utilized to the extent allowed by the safety standards set by the Federal Emergency Management Agency
6. The following additional uses are permitted( if allowed in the underlying district):
  - a. Outdoor recreation, including play areas, nature study, boating, fishing and golf courses as are otherwise legally permitted.
  - b. Foot, bicycle and/or horse paths and bridges, provided such uses do not affect the natural flow pattern of any watercourse.
  - c. Non-commercial signs (as permitted in the residential district).
  - d. Uses such as farming, gardening, bathing beaches or picnic areas.

- e. Boat docks and launching ramps, subject to the approval of state and/or federal agencies, if required.
- f. Construction of a public roadway approved by a Town Meeting vote.
- g. Wildlife management areas and conservation of water, plants and wildlife.
- h. Garages within the “A” zone, as shown on the Map and driveways accessory to dwellings.
- i. Any repair, construction or improvements to buildings lawfully existing prior to the adoption of these provisions, which repair, reconstruction or improvements do not constitute substantial improvements as defined herein.

#### **SECTION 10.4 – DEVELOPMENT REGULATIONS**

Reconstruction, substantial improvements and relocations shall be permitted within the Flood Plain District, if they are (a) located landward of the reach of high tide, (b) elevated on adequately anchored piles with lowest floor level, including basement, at or above base flood elevation as shown on the Map, with space below lowest floor free of obstructions. A building permit shall be issued by the Building Inspector with respect to all proposed construction and/or development in accordance with Section 9, but no building permits shall be issued until all necessary federal and state permits have been obtained by the applicant. All new or replaced utilities and facilities, such as sewer, septic, gas, electrical and water systems shall be located and constructed to minimize flood damage and adequate drainage shall be provided so as to reduce exposure to flood hazards. In addition, no fill shall be used for structural support, and there shall be a certification by the registered architect or engineer that the structure is secured to pilings in such a manner as will withstand velocity waters and hurricane wave wash.

#### **SECTION 10.5 – BOARD OF APPEALS**

- A. In the Flood Plain District, the **applicable special permit granting authority** may grant a special permit as provided for in Section 9 for new construction or substantial improvements to a structure to be erected on a lot of one-half acre or less in size, contiguous to and surrounded on all sides by lots with existing structures constructed below 11 feet above mean sea level subject to the following:

1. There shall be a showing of good and sufficient cause and there shall be a determination by the **special permit granting authority** that failure to grant the permit would result in exceptional financial or other hardship to the applicant.
2. There shall be a determination by the **special permit granting authority** that the issuance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
3. There shall be a determination by the **special permit granting authority** that the relief granted shall be the minimum necessary (to afford relief).
4. The **special permit granting authority** must notify the applicant in writing that the issuance of a permit to locate a structure at an elevation below the base flood elevation as shown on the Map will result in increased actuarial rates for flood insurance coverage. (Rev 4/91)

B. The Town shall include, within its Annual Report submitted to the Federal Emergency Management Agency, the number of permits issued hereunder, and shall maintain a record on file in the office of the Board of Selectmen of all permits granted, including justification for their issuance.

C. The granting of a special permit hereunder shall not affect or grant relief from the provisions of this zoning bylaw relating to the underlying district in which the land lies.

## **SECTION 10.6 – NEW SUBDIVISIONS AND DEVELOPMENTS**

In addition to all other requirements provided by law, the State Building Code, and these regulations relative to structures and uses in areas of special flood hazard, the Planning Board shall review all proposed subdivision and all anew construction within flood hazard areas and no such division or construction shall be approved unless the Planning Board shall determine that such subdivisions and/or construction of utilities in such manner as to minimize or eliminate damage to such utilities from flood waters.

## **SECTION 10.07 – WETLANDS PROTECTION**

In addition to the requirements set forth herein, all development subject to federal, state and local wetlands protection regulations shall obtain the necessary approvals of the Nahant Conservation Commissions, the Massachusetts Department of Environmental Protection, the U.S. Army Corps of Engineers, or applicable agencies.

## **SECTION 11**

### **RESIDENTIAL – OPEN SPACE PRESERVATION BY – LAW** **As defined by Massachusetts General Law 40A. 9.1**

#### **SECTION 11.01 INTENT**

This by-law is designed to preserve Nahant's open spaces, woodlands, public lands and scenic vistas. It would permit maximum flexibility for the development of single and/or multi-family homes in the Town of Nahant, by encouraging the preservation of open space within residential developments and promoting the most harmonious use of the land's natural features and resources. A single parcel of land owned by one owner, consisting of no less than three quarter (3/4) of an acre, may be developed under the Residential Open Space Preservation (ROSP) by-law as an alternative to the standard single-family house lot sub-division.

#### **SECTION 11.02 PURPOSES**

Development under the ROSP by-law shall be designed to achieve the following goals:

- A. To encourage the more efficient use of land in harmony with its natural features by maintaining the existing topography, mature trees, flora, springs and seashore.
- B. To encourage creativity in the design of sub-divisions through a carefully controlled process.
- C. To discourage sprawled development; provide a shorter network of streets and utilities and encourage a better economic use of and by consuming less open space.
- D. To permanently preserve open and wooded areas within the development for use by the homes in the development as recreation and/or open space.
- E. To encourage and monitor the development of high-quality designs and site-planning to enhance the neighborhood and the Town of Nahant as a whole.
- F. To promote diverse housing at a variety of costs

- G. To permit greater usage of existing buildings, to maintain the character of the town.

### **SECTION 11.03 FILING THE APPLICATION**

Each special permit application submitted under the ROSP by-law shall be filed with the Planning Board and the Town Clerk. The application shall be accompanied by six (6) copies of the preliminary plan of the entire tract under consideration, which must be prepared and stamped by a registered professional architect, engineer or landscape architect.

## **SECTION 12**

### **SECTION 12.01 - SEVERABILITY**

The invalidity of any section, paragraph or provisions of this bylaw, or of any district or part thereof as shown upon the zoning map, or of any boundary line shown upon said map, shall not affect the validity of any other section, paragraph or provisions of this bylaw, or of any other district or part thereof as shown upon the zoning map, or of any other such boundary line.

## **SECTION 13**

### **WIRELESS COMMUNICATION ZONING BYLAW**

### **SECTION 13.01 – BACKGROUND**

The Town of Nahant is a unique densely populated residential coastal community extending 2 ½ miles into Massachusetts Bay by a causeway. It is the smallest town in the Commonwealth of Massachusetts with a land area of 1.06 square miles and population of 3,828(3,087 people per square mile). Nahant's residential areas make up 60% pf the land area in densely-pocketed hillsides while business areas make up 10% and the remaining 30% is open space/recreational land, the majority of which is at or below sea level. The objective of locating wireless communication facilities and antenna installations is to provide cellular phone coverage, as mandated by the Federal Communications Act of 1996, while preserving the health, safety, recreation/open space areas and historical character of the community. Knowing that this is a rapidly changing technology, the Nahant Planning Board must stay abreast of technology to modify and/or adopt additional by-laws or ordinances and will work diligently to meet the federal, state laws and needs of the community.

### **SECTION 13.02 – OBJECTIVES**

As the Special Permit Granting Authority for Wireless Communication Facilities, the Planning Board's objective is to adopt a zoning by law to regulate the development, installation, and operation of wireless communication facilities for telecommunication use only that:

1. Protects the cultural and historic character of Nahant, including the health and safety of its citizens by minimizing the visual and physical impact of wireless facilities and antenna installations;
2. To provide standards with respect to wireless communication facilities and antenna installations that protect and preserve recreation/open space areas, health, and safety concerns with minimal impact of any visual and historical character on the various neighborhoods of Nahant;
3. Complies with the Federal Telecommunications Act of 1996.

### **SECTION 13.03 – DEFINITIONS**

ACT: The Federal Telecommunications Act of 1996 and amendments.

**ADEQUATE COVERAGE:** The geographic area in which the carrier provides a level of service not greater than is expected by **the residents of Nahant and (omitted)** the Federal Communications Commission under its license or authority.

**ANTENNA:** A device by which electromagnetic waves are sent or received (whether a dish, rod, mast, pole, set of wires, plate, panel, line, cable or other arrangement serving such purpose).

**CAMOUFLAGED:** An antenna placed within an existing or proposed structure disguised or hidden by a compatible part of an existing or proposed structure, or made to resemble an architectural feature of the building or structure on which it is placed.

**CARRIER:** A company, authorized by the FCC, that provides wireless communications services.

**CO-LOCATION:** The use of a single mount (antenna) by more than one carrier and/or several mounts on a tower by more than one carrier.

**COMMUNICATION EQUIPMENT SHELTER:** A structure designed principally to enclose equipment used in connection with wireless communication transmission, and/or reception.

**CONCEALED:** An antenna within a building or other structure, which is not visible for outside the structure.

**ENFORCEMENT:** The Building Inspector shall enforce the provisions of the Wireless Communication bylaw.

**FACILITY SITE:** A lot, parcel or structure thereon, or any part thereof, which is owned or leased by one or more Carrier and upon which one or more wireless communication facility(s) and required landscaping are located.

**HEIGHT:** The distance from the highest point of a structure to the original grade of the land under the center point of the structure.

**INTERNAL ARRAY:** Antennae placed within a Monopole, invisible from the exterior.

**JUSTIFICATION OF NEED:** Documentation by Carrier that the coverage area of the proposed Wireless communication Facility can not be served by Carrier's other existing facilities or by using other technology to increase coverage of existing facilities.

**MONOPOLE:** A single self-supporting vertical pole with no guy wire anchors, usually consisting of galvanized or other unpainted metal, or a wooden pole with below-grade foundations.

**MOUNT:** Structure or framework that is used to attach antenna.

**RADIO-FREQUENCY RADIATION (RFR):** The electromagnetic emissions from wireless service facilities.

**SPECIAL PERMIT GRANTING AUTHORITY FOR WIRELESS COMMUNICATIONS FACILITIES:** The Nahant Planning Board, which will hold public hearings to consider the granting of special permits.

**SPECIAL PERMIT APPEALS:** Must follow Chapter 40A regulations.

**TOWER:** A structure, framework, or monopole constructed on the ground, that is designed to support wireless communication transmitting, receiving and/or relaying antennae and/or equipment that was originally constructed for commercial or public communication use.

**WIRELESS COMMUNICATION FACILITY:** All equipment buildings and structures with which a wireless communication service carrier broadcasts and receives the radio-frequency waves which carry their services and all locations of said equipment or any part thereof.

### **SECTION 13.04 – USE RESTRICTIONS**

A wireless Communication Facility (WCF) must receive a Special Permit from the Planning Board (the Special Permit Granting Authority) prior to issuance of a Building Permit.

1. Special Permits for Towers may be granted by the Planning Board only to proposed WCF's that satisfy the following minimum criteria:

| <b>District</b> | <b>Allowance</b> | <b>Dimensional Requirements</b> |                                                                                                                                                  |
|-----------------|------------------|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Public          | Restricted       | Height:                         | 30', except in the case where the Tower is an Internal Array Monopole, the height may be up to a maximum of 90' and not on any school properties |
|                 |                  | Setback:                        | 30' from nearest structure in all directions of abutting property. Note setback does not include structure on the same lot.                      |

|                          |            |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------|------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Residential<br>(R1 & R2) | Restricted | Height:  | 30', except in the case where a microwave lattice Tower exists prior to the date of the first Public Hearing on this Proposed Wireless Communication Zoning Bylaw, in which case a new Internal Array Monopole may replace the existing cable tower to a maximum height equal to the lower 250% of the existing Tower or 90'. No antennae or other communications equipment may be affixed to the exterior of the structure unless such equipment may be affixed to the exterior of the structure unless such equipment is (1) below 30' in height and (2) provides a substantial and direct public benefit to the Town of Nahant. |
|                          |            | Setback: | 50' from nearest structure in all directions, except fixed church steeples existing as of the adoption of this Section 13 of the zoning bylaw. Note setback does not include structure on the same lot.                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Business<br>(B1 & B2)    | Restricted | Height:  | 30'                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                          |            | Setback: | 50' from nearest structure in all directions. Note setback does not include structure on the same lot.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Natural<br>Resource      | Prohibited | Height:  | 0'                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

1. Special

Permits for WCF's that propose antenna that are either camouflaged or concealed may be granted by the Planning Board only in Public, Residential and Business Districts.

2. A structure containing a camouflaged or concealed antenna, except fixed church steeples existing as of the adoption of this Section 13 of the zoning by-law, must meet 50' setback requirements but the underlying zoning district restrictions for heights do not apply. Note setback does not include structure on the same lot.
3. A Special Permit may not be granted in any district for a WCF that proposes to locate an antenna that is not at least 5' higher than any residential structure that is (1) within 50' of the antenna and (2) is within the broadcast path of the antenna.

### **SECTION 13.05 – GUIDELINES FOR ISSUANCE OF SPECIAL PERMITS**

In granting Special Permits or WCF's, the Planning Board will consider:

1. The visual, safety and environmental impact of the proposed WCF,
2. The need for the WCF in servicing the community and complying with the Federal Communications Act of 1996,
3. Alternative locations investigated by the WCF proponent, and
4. The ability of the proponent to maintain the WCF and comply with the Order of Conditions.

In granting Special Permits or WCF's, the Planning Board need not consider:

1. Costs to the proponent to lease or acquire the facility site, to construct the tower, or to install the antennae;
2. Costs to the proponent to operate and maintain the WCF; and
3. The extent to which the proposed WCF provides the proponent with adequate coverage.

In order to minimize the overall impact of WCF's throughout the Town, one or two new towers are contemplated with heights that will provide adequate coverage for most of the Town for several competing carriers. In granting a Special Permit for said tower(s), the Planning Board will seek to:

1. Minimize visual impact through tower design, height, and location; restrict antennae to an internal array; and have supporting equipment placed within a single structure;
2. Minimize other environmental impacts including, but not limited to, noise, lighting, RFR, and obstruction to wildlife;
3. Maximize opportunities for multiple (co-located) carriers to satisfy their requirements for adequate coverage of the Town's residents and

4. Ensure adequate ongoing maintenance of the tower.
4. Ensure adequate ongoing maintenance of the tower.

Consistent with the bylaw objective, the Planning Board will seek to approve WCF's that minimize overall visual impact throughout the Town. Therefore, with the exception of the Town's first tower discussed above, an application should demonstrate that the proponent has attempted to satisfy its adequate coverage requirements through the following WCF alternatives, in order of preference:

1. Co-location on an existing, approved tower,
2. Co-location at a facility site where a concealed WCF has been approved,
3. Co-location at a facility site where a camouflaged WCF has been approved,
4. Concealed WCF,
5. Camouflaged WCF,
6. Freestanding tower WCF, with co-location.

Special Permits will be granted for limited terms of 5 years and will require reapplication for term extensions. The operating history of the WCF will be taken into account by the Special Permit Granting Authority when issuing extensions. The Planning Board, acting as the SPGA, will develop regulations and standards for the WCF including the antenna, equipment, and tower.

#### **SECTION 13.06 – MINIMUM REQUIREMENTS FOR SPECIAL PERMIT APPLICATION**

In order to be acted upon by the Planning Board, all applications for a WCF Special Permit shall include all items described in SECTION 9.09 of the Zoning Bylaw, with the following exceptions:

Application need not include:

1. Traffic study.

Application must also include:

1. **Justification of Need:** The proponent is required to justify to the Planning Board the need for proposed WCF. The report shall include documentation on the coverage area of the proposed facility, whether other WCF's controlled by the proponent would be capable of providing coverage, the capacity of the other facilities controlled by the applicant that could provide the coverage, and whether other technology could be used to increase the coverage without the necessity of constructing the proposed facility.

2. **Technical Data:** Application must include existing and maximum future projected measurements of RFR from the proposed WCF, along with projected noise and light levels. Application must describe types of supporting equipment, back-up power, and the route of telecommunications lines servicing the WCF.
3. **Alternative study:** The proponent must demonstrate that it has sought to achieve its objectives through WCF's creating lesser visual impact, as described above. Documentation should include description of alternative structures considered, owners of said structures, communication with the owner, and reasons why the alternative structures were determined not to be feasible.
4. **Consultant Reimbursement:** Application must include a deposit of \$5,000 for each proposed WCF, which funds will be used to pay reasonable costs associated with the Planning Board's review of the application, including fees for outside consultants with expertise in wireless communications technology and law. Any unused funds will be returned to applicant upon approval or withdrawal of application.
5. **Photos:** Application shall include close-up and distance photos of existing conditions from all sides and photos with the WCF superimposed showing the proposed final condition so that the Planning Board can make an informed determination as to the visual impact of the proposed WCF.
6. **Bond:** Proponent shall make a statement committing it to the provision of a financial surety or other form of financial guarantee acceptable to the Planning Board to cover the cost of removal of the facility and the remediation of the landscape, should the facility cease to operate. Application shall indicate proposed amount of surety.
7. FCC Applications and approvals.
8. **Permitting:** Application shall include a list of all permits that must be received prior to operation of WCF and proponent's schedule for applying for said permits

#### **SECTION 13.07 – OPERATING REQUIREMENTS**

For approved applications, the Planning Board shall issue an Order of Conditions, to which the WCF's must comply and which will be enforced by the Building Inspector. Each Order of Conditions shall include at least the following:

1. **Reporting Requirements:** Proponents and/or carriers must periodically file with the Town, no less than every two years, information on operational aspects of the WFC including power consumption, RFR generation, frequency transmission; number, location and orientation of antennae, types of services provided, monthly average number of calls handled, and copies of all written complaints received about the WCF. In addition, the Planning Board and the Board of Health shall receive a copy of all reports filed by the proponent and/or carrier with the FCC.

2. **Removal Requirements:** All structures associated with a WCF are to be removed within ninety (90) days of the cessation of the use. At the time of removal, the site must be be remediated and all equipment removed. If a tower based WCF ceases to operate for a period of two years, the Special Permit associated with the site will terminate and be considered (deemed) null and void, the tower structure and foundation shall also be removed and the site shall be revegetated. Landscaping shall be returned to its original state or to a modified version as decided and approved, in advance, by the Nahant Planning Board.  
(Rev. 4/01?)