



**Town of Concord**  
**Department of Planning and Land Management**  
141 Keyes Road  
Concord, MA 01742

**MEMORANDUM**

**To:** West Concord Task Force – Real Estate Subcommittee  
**From:** Marcia Rasmussen, Director of Planning and Land Management  
**Re:** **Zoning – land use and dimensional requirements**  
**Date:** October 10, 2008 (revised October 16, 2008)

**I. Overview:**

The West Concord Village is comprised of several zoning districts, which include Residence C, Business, Limited Business District #8, Industrial and Industrial Park. The Zoning Bylaw defines the allowed uses in each district and the dimensional requirements for building heights, lot area, setbacks from lot line, and, through site plan review, the parking and site improvement requirements. There are also Conservancy Districts (Wetland, Flood Plain and Groundwater), which are overlays, superimposed on the basic zoning. Regulations in these overlay districts are often more restrictive than and sometimes override certain allowances of the underlying zoning district. Restrictions typically affect lot coverage, site design and construction cost.

**II. General Discussion of Zoning Districts:**

**1. Residence C district:** Residence C district requires a minimum lot area of 10,000 square feet, minimum frontage of 80 feet, front yard (setback) of 20 feet, side yard of 15 feet and rear yard of 30 feet, with a building height of 35 feet (church steeples and elevator shafts are exempt). The Zoning Bylaw Section 4 defines the various uses allowed (see attached Table I – Principal Use Regulations). “By-right” uses in the Residence C district include single-family dwelling, educational use, child care facility, religious use, municipal use and extensive uses of forestry, agriculture and conservation. Uses allowed by special permit include: two-family or additional dwelling, boarding house, philanthropic and lodge/club, greenhouse, private recreation, in addition to certain clustered developments (Planned Residential Development, Residential Cluster and Residential Compound).

**2. Business district:** The Business district does not have lot area or frontage requirements for business uses, but requires a minimum lot area of 10,000 s.f. and 80 feet of frontage for a residential use. A minimum front yard (setback) of 10 feet is required and the building height is limited to 35 feet. “By-right” uses in the Business district include: Extensive uses of forestry, agriculture, greenhouse conservation and private recreation; Residential uses of single-family dwelling, combined business/residence, boarding house, hotel/motel; Institutional uses of educational, child care facility,

religious, philanthropic, hospital and nursing home, lodge or club; Government use; all Business uses except veterinary or kennel use (not allowed) and transportation services (by special permit only), and all Industrial uses. Uses allowed by special permit include: two-family or additional dwelling and certain clustered developments (Planned Residential Development, Residential Cluster and Residential Compound).

**3. Limited Business District #8 (LBD #8):** This limited business district requires a minimum lot area of 5 acres and minimum lot line setbacks of twenty feet. There is no frontage requirement or minimum lot width requirement. The maximum building height is 40 feet and the maximum lot coverage is 50% (including pavement), of which there is maximum lot coverage by buildings of 25%. “By-right” uses in the LBD#8 include: Extensive uses of forestry, agriculture and conservation; no Residential uses; Institutional uses of educational, child care facility and religious; Government uses; no Business uses; and, no Industrial uses. Uses allowed by special permit include: earth removal, philanthropic, assisted living residence, financial and business office, and professional office.

**4. Industrial district:** The Industrial district requires a minimum lot area of 20,000 square feet, minimum frontage of 100 feet, front yard (setback) of 10 feet, side yard and rear yard of 10 feet (5 feet of which shall be landscaped when abutting the residential district), with a building height of 35 feet. The maximum lot coverage is 75%, the same to include the gross ground floor area of all buildings and pavement or open space equal to 50% of the gross floor area of the building, whichever is greater. “By-right” uses in the Industrial district include: Extensive uses of forestry, agriculture, greenhouse, conservation and private recreation; no Residential uses; Institutional uses of educational, child care facility, religious, philanthropic, and lodge or club; Government uses; all Business uses except retail, personal service shop and transportation services; and Industrial uses of warehouse, R&D and Light manufacturing, and Manufacturing, packaging, processing and testing. Uses allowed by special permit include: retail (when combined with residential and industrial use), transportation services and storage yard, open air sales.

**5. Industrial Park district:** The Industrial Park district requires a minimum lot area of 4 acres, minimum frontage of 50 feet on an interior private street or 200 feet on a public way, front yard (setback) of 20 feet, side yard and rear yard of 20 feet (except 100 feet is required from property lines of parcels zoned residential and in residential use, 50 feet of which must be a landscaped buffer). Maximum building height is 40 feet (but not more than three stories and excluding basements). The maximum lot coverage is 50%, (including pavement), of which there is maximum lot coverage by buildings of 20%. “By-right” uses in the Industrial Park district include: Extensive uses of forestry, agriculture, greenhouse, conservation and private recreation; no Residential uses; Institutional uses of educational, child care facility, religious, philanthropic, and lodge or club; Government uses; all Business uses except retail, personal service shop, outdoor amusement and transportation services; and Industrial uses of warehouse, R&D and Light manufacturing, and Manufacturing, packaging, processing and testing. Uses allowed by special permit include: transportation services.

**6. Wetlands Conservancy District (Section 7.3):** The Wetlands Conservancy District is a zoned wetland district, as compared to the actual wetlands, which are defined under the State Wetlands Protection Act. Most development in this area is not allowed without a special permit from the Board of Appeals. Safeguards and mitigation may be required which can affect final design and costs.

**7. Flood Plain Conservancy (Section 7.2):** The Flood Plain Conservancy District is a zoning overlay district based upon studies by the Federal Emergency Management Agency and includes all land that is at, or lower than, the 100-year flood elevation. Most development below the 100-year flood elevation is

not allowed without a special permit from the Board of Appeals. Safeguards and mitigation may be required which can affect final design and costs.

### **III. Exempt uses and “Grandfathered” situations**

The State’s Zoning Act (MGL Ch. 40A) has two important sections that are noteworthy.

Section 3 describes those uses that are exempt from Zoning “relations” or regulations. Most significant of these are religious and educational uses and child care facilities. These three uses are subject only to “reasonable dimensional regulations” limited to the bulk and height of structures; yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

Section 6 addresses uses, structures and lots that are pre-existing and non-conforming. Zoning regulations in Concord were adopted in 1928. Any existing uses, structures and lots that were in use but did not conform to the new zoning were considered “grandfathered”, or a pre-existing, non-conforming use, structure or lot. Zoning does change over time, but a particular use, building or lot does not. Therefore, whenever the owner of such a grandfathered use, building or lot does want to change, there is a provision in the Concord Zoning Bylaw that allows them to seek a special permit to change, alter or extend the pre-existing, non-conforming use, structure or lot. However, the owner of such property cannot make it more non-conforming and cannot add a use that does not comply with the zoning uses for that district.

### **IV. The Regulatory Process for Zoning:**

For any re-use of land in West Concord Village, a special permit may be needed due to existing non-conformities with regard to parking and setbacks; and at a minimum, some form of site plan review would be required. Site plan approval, where the use and the plan conform to the Zoning Bylaw, is by the Building Commissioner with a recommendation from the Planning Board. Site plan approval where a special permit or waiver from parking requirements is required is under the purview of the Board of Appeals, with a recommendation from the Planning Board.

**1. Special Permit from the Zoning Bylaw (Section 11.6):** A special permit use is discretionary; the Board of Appeals must find that the proposed use is in harmony with the purpose and intent of the Zoning Bylaw. At a public hearing (where abutters are notified) the Board considers potential impacts to the surrounding neighborhood as well as potential benefits and may require measures to mitigate the impact of the intended use. Additionally, site plan review is required for most uses (exceptions are single-family dwellings and agricultural uses).

**2. Variance from the Zoning Bylaw (Section 11.7):** Rarely, and only in extraordinary circumstances, the Board of Appeals may grant a variance from the Zoning Bylaw, such as a front yard setback not otherwise permitted in that zoning district. The Zoning Bylaw mirrors the state Zoning Act (M.G.L. 40A) setting stringent legal conditions for granting a variance. Variances can only be granted in cases of unusual hardship, financial or otherwise, due to unique circumstances related to the land or building. An applicant should not request a variance unless they have determined, with legal counsel, that their situation satisfies the legal criteria. The Board of Appeals is under no legal obligation to grant a variance, and in no case can it grant a variance to allow a prohibited use.

**3. Site Plan Review (Section 7.7 of the Zoning Bylaw):** Almost every commercial or industrial project, including expansion and certain redevelopment, requires a Site Plan approval from the Planning Board (and in the case where a special permit is sought, the site plan approval comes from the Board of Appeals). The Boards consider the specifics of site layout, building design, parking facilities,

landscaping, drainage, lighting and mitigation of traffic and other impacts. If the proposed use is allowed and the plans conform to the zoning requirements, then the plan will be approved (often times subject to conditions). The contents of the submitted plan must meet the requirements outlined in the application form and, to the extent applicable, the Subdivision Rules and Regulations.

The Boards consider the following matters in reviewing site plans submitted:

- a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers, and preservation of views, light and air;
- b) Convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;
- c) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
- d) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;
- e) Adequacy of the method of exterior lighting for convenience, safety and security within the site and for the protection of neighboring properties, roadways and the night sky;
- f) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of the Zoning Bylaw;
- g) Impact on the Town's resources including the effect on the Town's water supply and distribution system, sewage collection and treatment, fire protection, and streets.

Please note that proposed uses that are educational, religious or child care facility no longer have their site plans approved by the Planning Board, but by the Building Commissioner with a recommendation from the Planning Board. This is due to recent case law.

## **V. Other development regulations**

- 1. Subdivision Control Law:** The process of dividing land or re-configuring lots falls under the Subdivision Rules and Regulations of the Planning Board (MGL Chapter 41). If the land is divided using existing frontage on public ways, the process is called "Approval Not Required (ANR) under Subdivision Control Law". The procedures for submitting plans and the design standards for subdivisions are outlined in the Town of Concord Subdivision Rules and Regulations.
- 2. Wetlands Protection Act:** The Concord Natural Resources Commission is responsible for administering the Wetlands Protection Act.
- 3. Historic Districts Commission:** Any proposed exterior renovations or demolition of structures in a Historic District requires a Certificate of Appropriateness from the Historic Districts Commission (this applies to only properties in the Church Street Historic District).
- 4. Board of Health:** The Board of Health enforces the state and local health and environmental codes.
- 5. Public Works Commission:** Street opening permits for installation of utilities or new curbcuts/driveway access are administered by the Department of Public Works. The provision of public water to a site is the responsibility of the Water and Sewer Division of Public Works. The Public Works Commission is also responsible for any extension of the town's sewer service.

**6. Comprehensive Permit:** When the number of affordable housing units in a municipality does not represent ten percent of the total number of residential housing units, then a developer can use the comprehensive permit process to develop housing that includes an affordable component. The comprehensive permit law is found under MGL Ch. 40B, and allows the developer to over-ride local zoning and other regulations, but they cannot over-ride State and federal regulations. An affordable housing unit is one that is subsidized in some manner and must be approved and listed by the State's Department of Housing and Community Development on the State's Housing Inventory. Concord is very close to reaching and exceeding the ten percent mandate with the approval of the Alexan Concord project at the Concord-Acton-Sudbury-Maynard town line. The application to have these units included on the list will be submitted shortly, but the developer will need to be vigilant in constructing the project and the Town will need to be diligent in issuing permits to have the units remain on the list (until the final occupancy is granted).