

Rate of Development By-Law

1. Purpose:

The purpose of this section is to promote orderly growth in the Town of _____, consistent with the rate of residential growth over the last ten or (10) calendar years; to preserve the water quality of the _____; to phase growth so that it will not unduly strain the community's ability to provide basic public facilities and services; to provide the town, its boards and agencies information, time and capacity to incorporate such growth into the Master Plan, Capital Facilities Plan, Open Space Plan and the town's budget, and; preserve and enhance existing community character and the value of property.

(The town should prepare information on those municipal services which can not accommodate the growth as identified in the purpose section. This information should include a program and time table to address the needs identified. For example: the school system is short xx number of class rooms and the town will be building an addition or a new school(s) within yy number of years or information on the effects of development on the surface water quality of the watersheds and that the community is considering town meeting action to address these effects. Also, it should be stated in this information that the town is in the process with revising its Master plan and provide a status report of the revisions completed.)

2. General:

Beginning on (Date of Town Meeting), permits for not more than _____ (__) dwelling units shall be issued in each of the five full calendar years following said date of town meeting action, for the construction of new residential dwelling units, unless granted a special permit as provided herein. For the first calendar year this by-law is in effect, the total number of building permits issued for new residential dwelling units between January 1st and (the date town meeting) approved the by-law shall be counted toward the total (__) to be issued for the year.

3. Procedures:

The building inspector shall issue building permits in accordance with the following procedures:

3.1 The building inspector shall act on each building permit in order of submittal. Any permit application that is deemed incomplete or inaccurate by the building inspector, shall be returned to the applicant within twenty (20) days of submittal.

Any permit application returned by the building inspector shall require new submittal.

3.2 Complete applications shall be assigned a number by the building inspector in order of acceptance and placed in a special file.

Choose one of the following:

(3.3 _____ (___) permits for the construction of new residential dwellings shall be made available month. Permits not issued in any month of the calendar year shall be available in any subsequent month for the issuance from the building inspector.

or

3.3 _____ (___) permits for the construction of new residential dwellings shall be available each quarter of the calendar year. The quarters are defined as follows:

Quarter # 1 January 1 st. through March 31 st.,

Quarter #2 April 1 st. through June 30 th.,

Quarter #3 July 1 st., through September 30 th.,

Quarter #4 October 1st. through December 31st.

Permits not issued in any quarter of the calendar year shall be available in any subsequent quarter for issuance from by the building inspector.)

(The number of permits to be issued in a year is the key to a reasonable and workable by-law. To high a number will render the by-law useless; to few will lead to hardships and possible court actions. It is strongly recommended to look at the historical data for at least 10 to 15 years when considering the number of permits to issue in a year.)

3.4 Any building permits not issued in any calendar year shall be available for issuance in the following year, after the issuance of the (___) permits available from that year, through the granting of a special permit by the Special Permit Granting Authority (Planning Board or Zoning Board of Appeals) as called for in Section 4 of this by-law.

3.5 All building permits deemed complete and placed in said file shall have the sixty (60) day time limit on said building permit(s) extend for the length of time the permit application is waiting in the rate of development file.

(Procedural explanation: The first day this by-law is in effect five applications for building permits are filed with the building inspector. The first and fourth permits filed are deemed complete and placed into the pool as number 98.1 and 98.2. The next day four more building permits are deemed complete and are placed in the pool as numbers 98.3-98.7. During the first month the building inspector signs numbers 98.1-98._ from the pool. The second month the building inspector signs numbers 98._-98._. This process would continue until the ___ building permit is reached. This permit (one over the limit is reached) is held over to the following year and becomes 99.1 and would be signed in January 1999.)

4. Special Permits Application: (This section is optional)

In cases where the building inspector has not issued all of the (___) building permits for new residential dwelling units in a given year, the building inspector shall inform the SPGA the number of unused permits and provide a list of the applications as deemed complete in order of submittal above the (___) building permits allowed for in the current year. These applicants may file with the SPGA for a special permit to grant unused permits from the previous year, subject to the following procedures, criteria and conditions.

4.1 Administrative Procedures:

The SPGA shall adopt rules and regulations relative to the issuance of special permits and file a copy with the Town Clerk. The SPGA shall follow the procedural requirements for special permits as set forth in Chapter 40A, Section 9.

4.2 Review Criteria and Findings:

The SPGA shall review all applications for the granting of a rate of development special permit and make a determination on the following findings:

(a.) The granting of this special permit will not adversely impact the surface water quality of the _____;

(b.) The granting of the special permit will not adversely impact the existing school system by overloading classroom size or space;

(c.) The granting of the special permit will not adversely impact the traffic conditions or levels of service on the existing road network;

(d.) The granting of the special permit will not adversely impact the existing recreational facilities;

(e.) The granting of the special permit will provide the town with a permanent reduction in the allowable density of the property.

4.3 Decision:

The findings, including the basis of such findings, of the SPGA shall be stated in the written decision of approval, conditional approval, or denial of the application for a special permit and shall require a 4/5 majority vote for approval. For approval of a special permit granted under this section, an affirmative finding of the SPGA shall be required for all 5 findings listed in section 4.2 above.

The SPGA shall also impose applicable conditions as it finds reasonably appropriate to safeguard the purposes of this By-law, including but not limited to front side or rear setbacks greater than the minimum required by this By-law.

Such conditions shall be imposed in writing, and the applicant may be required to post bond or other surety for compliance with said conditions in an amount satisfactory to the SPGA.

The special permit is granted for a period of two years and shall lapse if substantial use or construction has not commenced by such, except for good cause shown.

5. Exemptions:

The provisions of this section shall not apply to, nor limit in any way, the granting of building and occupancy permits required for enlargement, restoration, or reconstruction of dwellings existing on lots as of the date of passage of this by-law, but shall apply to the conversion of single family to two-family dwellings.

6. Time Limitation and Extension:

This section shall expire on (____) (5 years from the date of town meeting); unless Town Meeting votes to extend said "Rate of Development By-Law" prior to date of expiration.

(A sunset clause is an important legal consideration due to past court cases (see Zuckerman v. Town of Hadley (August 24, 2004), Golden v. Planning Board of Ramapo, 30 N. Y. 2d 359, 285 N.E. 2d 291/ 409 U.S. 1003 (1972) and Sturges v. Chilmark, 380 Mass. 246, 402 N.E. 2d 1346 (1980) .)

7. Zoning Change Protection:

The protection to lot(s), against subsequent zoning change as provided by M.G.L. Chapter 40A, Section 6, shall be extended for the amount of time said lot(s) were constrained by these provisions.