



## TOWN OF UPTON, MASSACHUSETTS

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### PLANNING BOARD

#### Article 24 (final warrant)

**DATE:** SEPTEMBER 26, 2024  
**TO:** DENISE SMITH, TOWN CLERK  
**FROM:** MICHAEL ANTONELLIS, TOWN PLANNER/DIR. LU&IS  
**SUBJECT:** PROPOSED AMENDMENT TO ZONING BYLAWS ; 300-10.1 DEFINITIONS, 300-3.1 TABLE OF PRINCIPAL USES, 300-3.2 ACCESSORY USES AND STRUCTURES, AND SECTION 300-6.2 WIRELESS DATA TRANSFER FACILITIES  
**CC:** JOE LAYDON, TOWN MANAGER; PLANNING BOARD

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On September 24, 2024, the Planning Board held a public hearing, to discuss the proposed amendment to the Upton Zoning Bylaws for the purposes of regulating Small Cell Wireless Facilities. The proposed amendment will affect Section 300-10.1 Definitions, 300-3.1 Table of Principal Uses, 300-3.2 Accessory uses and structures, and Section 300-6.2 Wireless Data Transfer Facilities. The purpose of the proposed amendments is to define make corrections within the existing bylaw to be congruent with FCC regulations and to identify “small cell wireless facilities” as a use that can be regulated in town. The Board voted (5-0) to recommend **favorable** action at Annual Town Meeting. Attached hereto is the proposed amendment in-full.

*(2/3rds vote required)/ Planning Board.*

  
Michael Antonellis, Dir LU&IS

RCVD TOWN CLK UPTON  
2024 SEP 30 AM 11:00



# TOWN OF UPTON, MASSACHUSETTS

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## PLANNING BOARD

### 24 (final warrant)

#### **ARTICLE 18. ZONING BYLAW - SMALL CELL ZONING BYLAW**

To see if the Town will vote to amend the Town of Upton Zoning By-laws Section 300-10.1 Definitions, 300-3.1 Table of Principal Uses, 300-3.2 Accessory uses and structures, and Section 300-6.2 Wireless Data Transfer Facilities to regulate small wireless facilities and make related changes as follows, with additions indicated by underline and deletions indicated by strike through and to authorize the Town Clerk to make any necessary non-substantive corrections including renumbering to incorporate these changes into the Zoning By-laws, or take any other action relative thereto.

#### Article 10 Definitions

##### **§ 300-10.1 Definitions and word usage.**

Add the following two definitions, for consistency with federal regulation:

##### PERSONAL WIRELESS SERVICE FACILITY (or simply FACILITY)

A facility as defined in 47 CFR 1.6002(i), such as may from time to time be amended. This definition covers antennas of all sizes, and their attendant structures, used for the purpose of providing personal wireless services.

##### SMALL WIRELESS FACILITY

A facility as defined in 47 CFR 1.6002(l), such as may from time to time be amended. A Small Wireless Facility may without limitation be secured to a pole or suspended on a line that connects two poles.

#### **Modify the following definition:**

##### **WIRELESS DATA TRANSFER FACILITY**

Transmission, monitoring or receiving antennas systems, their support structure and any peripheral attached thereto, that allow transfer of data through the air without a physical connection, other than a Small Wireless Facility. It does not refer to the structures housing the electronic systems necessary to operate the antennas.

#### Article 3 Use Regulations

### § 300-3.1 Table of Principal Uses

C. Table of Principal Uses: See Table A, below –

Table of Principal Uses by District

Principal Use	SRA	SRB	SRC	SRD	AR	GB	C&I	MGF	UCBD
36 <del>Personal wireless service</del> <u>Wireless data transfer facility facilities</u> (see § 300-6.2 for additional regulations)	PB	PB	PB	PB	PB	PB	PB	PB	N

### § 300-3.2 Accessory uses and structures.

Add a new Section D.:

D. Accessory uses in all districts. Installation of a Small Wireless Facility is permitted in all districts, subject to the provisions of § 300-6.2, subsection G.

## Article 6 Special Regulations

**Amend nomenclature to distinguish different types of facility, and add a section regulating the installation of Small Wireless Facilities:**

### § 300-6.2. Wireless data transfer facilities. Personal Wireless Service facilities.

A. Purpose and intent. The purpose of this section is to regulate ~~wireless data transfer~~ personal wireless service facilities (herein abbreviated “facility” or “facilities”) such that these services may be provided with the minimum harm to the public health, safety and general welfare by:

- (1) Protecting the general public from hazards associated with ~~wireless data transfer~~ such facilities.
- (2) Minimizing visual impact from ~~wireless data transfer~~ such facilities.
- (3) Preventing adverse impact on local property values.

(4) Improving the ability of the carriers to maximize coverage while minimizing adverse impact on the community.

B. Special permit granting authority. A wireless data transfer facility shall only be allowed by a special permit. The Planning Board shall act as the special permit granting authority (SPGA) for wireless data transfer facilities in the Town of Upton. The Planning Board is authorized to hear and decide upon applications for special permits for wireless data transfer facilities in accordance with the provisions of this Zoning Bylaw.

C. Application in zoning districts. A wireless data transfer facility shall be allowed by special permit in all zoning districts in accordance with the requirements and regulations of the Town of Upton Zoning Bylaw.

D. Applicability and exemptions.

(1) This section applies to any wireless data transfer facility. The following specific uses are exempt:

- (a) Satellite dishes or antennas used exclusively for residential use.
- (b) Police, fire, ambulance and other public emergency dispatch.
- (c) Citizens band radio.
- (d) Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, provided that the tower is not used or licensed for any commercial purpose and the tower is removed upon loss or termination of said FCC license.

(2) A nonexempt wireless data transfer facility or repeater facility that shares a tower or other structure with any exemptions listed above shall not be considered exempt from this bylaw for any reason.

(3) Existing towers may be reconstructed, expanded and/or altered in all zoning districts subject to a special permit granted by the Planning Board, provided that they conform to all of the requirements set forth in this Zoning Bylaw.

(4) Wireless data transfer devices and wireless data transfer accessory buildings may be located totally within existing buildings and existing structures in all zoning districts, subject to a special permit granted by the Planning Board.

E. Consistency with federal law. These regulations are intended to be consistent with the Telecommunications Act of 1996<sup>111</sup> in that:

- (1) They do not prohibit or have the effect of prohibiting the provision of personal wireless services.
- (2) They are not intended to be used to discriminate unreasonably among providers of functionally equivalent services.

- (3) They do not regulate personal wireless services on the basis of environmental effect of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning emissions.
- F. Wireless Data Transfer Facility: Design requirements and performance standards. All wireless data transfer facilities erected, installed and/or used shall comply with the following design requirements and performance standards:
  - (1) Shared use. Shared use of towers by commercial wireless data transfer carriers is required unless such shared use is shown by substantial evidence to not be feasible.
  - (2) Height.
    - (a) The maximum allowed height of a tower shall be 150 feet. The Planning Board may grant a waiver of the maximum allowed height limitation under this section for a tower not to exceed 200 feet in total if the Planning Board finds that the increased height is in the best interest of the Town.
    - (b) Data transfer devices located on a structure shall not exceed 10 feet in height above the roofline of the structure, unless the Planning Board finds that a greater height is essential to the proper functioning of the wireless communication services to be provided by the applicant at such location. For structures where it is difficult to determine the roofline, such as water tanks, the height of the data transfer devices shall not exceed 10 feet above the highest point of the structure.
  - (3) Co-location. In the event that the Planning Board finds that co-location is preferable in order to conform to the intent and purpose of this bylaw, then towers shall be designed to accommodate the maximum number of presently interested users that is technologically practical. In addition, if the number of proposed users is fewer than four, the applicant shall provide a plan showing how the proposed tower can be expanded to accommodate up to four users. In the event that the Planning Board finds that co-location is preferable, the applicant must agree to allow co-location pursuant to commercially reasonable terms to additional users.
  - (4) Proximity to existing residence. Towers shall be located a minimum of 750 feet from an existing residential dwelling or proposed dwelling in a permitted submission.
  - (5) Setback. A tower shall be set back from the property lines of the lot on which it is located by a distance equal to 1 1/2 times the overall vertical height of the tower and any attachments.
  - (6) Screening requirements.

- (a) All exterior wireless data transfer facilities equipment and fixtures shall be painted or otherwise screened or colored to minimize their visibility to abutters, adjacent streets and residential neighborhoods. Wireless data transfer facilities, equipment and fixtures visible against a building or structure shall be colored to blend with such building or structure. Wireless data transfer facilities, equipment and fixtures visible against the sky or other background shall be colored or screened to minimize visibility against such background. A different coloring scheme shall be used to blend the structure with the landscape below and above the tree or building line. Existing on-site vegetation shall be preserved to the maximum extent feasible.
- (b) Data transfer devices shall be situated on or attached to a structure in such a manner that they are screened, preferably not being visible from abutting streets and residences. Freestanding dishes or data transfer devices shall be located on the landscape in such a manner so as to minimize visibility from abutting streets and residences, and to limit the need to remove existing vegetation. All equipment shall be screened, colored, molded and/or installed to blend into the structure and/or the landscape.

(7) Fencing. Fencing shall be provided to control access to wireless data transfer facilities and shall be compatible with the scenic character of the Town and shall not be of razor wire and shall be subject to the approval of the Planning Board. Any entry to the proposed access road shall be gated (and locked) at the intersection of the public way, and a key to the lock provided to emergency response personnel.

(8) Lighting. Night lighting of towers shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the Federal Aviation Administration.

(9) Parking. There shall be a minimum of one parking space for each facility, to be used in connection with the maintenance of the site, and not be used for the permanent storage of vehicles or other equipment.

(10) Access. For proposed tower sites, the width, grade, and construction of the access road shall be designed so that emergency response vehicles can get to the tower and wireless data transfer facility accessory buildings, and shall be designed to provide proper storm drainage.

G. Small Wireless Facility. This bylaw section is to permit regulation of the installation of small wireless facilities outside of public property.

- (1) No small wireless facility shall be placed, installed, constructed or modified without first obtaining Special Permit approval from the Planning Board.
- (2) The Planning Board shall adopt and may from time to time amend policies, rules and regulations relative to approval under this section 300-6.2(G). All policies and

amendments shall be subject to a public hearing. Adoption of policies and amendments shall require a simple majority vote of the Planning Board.

(3) A copy of the policies, rules and regulations shall be kept on file with the Town Clerk and shall apply to and set forth the following:

- a) The application process, including public hearing requirements, evaluation criteria and timing for action by the Planning Board.
- b) The form and contents of the application and application fee.
- c) Applicable design, placement, safety, and aesthetic criteria.
- d) Requirements for modification, abandonment and annual recertification.

(4) The policies described in section (2) shall be intended to preserve the aesthetic character of the Town; to safeguard public safety, health and welfare; protect the financial interests of the Town; and to protect against intangible public harm resulting from unsightly or out-of-character deployments.

(5) The Select Board shall adopt the policies, rules and regulations described in section 2 above, with necessary modifications applicable to rights-of-way and other lands under the control of the Select Board. These policies, rules and regulations shall also be kept on file with the Town Clerk.

G. H. General requirements.

(1) No wireless data transfer facility may be erected except upon the issuance of a special permit by the Planning Board and approval under site plan approval as set forth in § 300-9.4 of the Zoning Bylaw and subject to all of the provisions of this section. It is recommended to the applicant to undertake both the special permit and site plan approval procedures concurrently in order to expedite the permitting process. Multiple applicants for the same site/facility are also encouraged, provided there is one lead applicant responsible for all submissions and further provided that no application shall be considered complete and filed until all the applicants have complied with all of the submission requirements.

(2) All owners and operators of land used in whole or in part for a wireless data transfer facility and all owners and operators of such wireless data transfer facility shall, as a continuing condition of installing, constructing, erecting and using a wireless data transfer facility, permit other FCC-licensed commercial entities seeking to operate a wireless data transfer facility to install, erect, mount and use compatible wireless data transfer equipment and fixtures on the equipment mounting structure on reasonable commercial terms, provided that such co-location does not materially interfere with the transmission and/or reception of communication signals to or from the existing wireless data transfer facility, and provided that there are no structural or other physical

limitations that make it impractical to accommodate the proposed additional wireless data transfer equipment or fixtures.

- (3) Each proposed construction of a new wireless data transfer facility, tower, wireless data transfer device or wireless data transfer accessory building shall require an initial special permit. Any extension in the height of, addition of wireless data transfer accessory buildings or wireless data transfer devices to, or replacement of any wireless data transfer facility shall require an amendment to the special permit previously issued for that facility or, in the case where there is no special permit, an initial special permit.
- (4) New wireless data transfer facilities shall be considered by the Planning Board only upon a finding by the Planning Board that:
  - (a) The applicant has used reasonable efforts to co-locate its proposed wireless data transfer facilities on existing or approved facilities; and;
  - (b) The applicant either was unable to negotiate commercially reasonable lease terms with the owner of any existing or approved facility that could accommodate the proposed facilities from both structural engineering (i.e., the height, structural integrity, weight-bearing and wind-resistant capacity of the existing or approved facility) and radio frequency engineering (i.e., height, coverage area, etc.) perspectives; or there neither exists nor is there currently proposed any facility that could accommodate the proposed facilities from structural and radio frequent engineering perspectives. A report discussing this information entitled "New Wireless Data Transfer Feasibility Study" is to be submitted to the Planning Board as part of any special permit submission.  
[Amended 5-8-2021 ATM by Art. 16]
- (5) The Planning Board may require the applicant to pay reasonable fees for professional review of the applicant's proposal by a professional or radio frequency engineer, attorney and/or other qualified professional.
- (6) A wireless data transfer facility may be located on the same lot by special permit with any other structures or uses lawfully in existence and/or lawfully undertaken pursuant to this bylaw.

#### H. I. Criteria for granting special permit.

- (1) Applications for special permits may be denied if the Planning Board finds that the petitioner does not meet or address the requirements of § 300-6.2 herein, § 300-9.4 of this Zoning Bylaw and MGL c. 40A, § 9.

- (2) When considering an application for a wireless data transfer facility, the Planning Board shall take into consideration the proximity of the facility to residential dwellings and its impact on these residences. New towers shall only be considered after a finding that existing (or previously approved) towers suitable for and available to the applicant on commercially reasonable terms cannot accommodate the proposed use(s), taking into consideration radio frequency engineering issues and technological constraints.
- (3) When considering an application for a proposed data transfer device to be placed on a structure, the Planning Board shall take into consideration the visual impact of the unit from the abutting residences and streets.

L J. Conditions. The Planning Board shall impose, in addition to any reasonable conditions supporting the objectives of the Zoning Bylaw, such applicable conditions as it finds appropriate to safeguard the neighborhood or otherwise serve the purpose of § 300-6.2 herein, including, but not limited to screening, buffering, lighting, fencing, modification of the external appearance of the structures, limitation upon the size, method of access or traffic features, parking, removal or cessation of use, or other requirements. Such conditions shall be imposed, in writing, with the granting of a special permit or Site Plan approval. As a minimum, the following conditions shall apply to all grants of special permit relating to a wireless data transfer facility pursuant to this section:

- (1) Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission and Federal Aviation Administration, and required maintenance shall be filed with the Building Commissioner by the special permit holder, with a copy received by the Planning Board no later than January 31 of each year. [Amended 5-8-2021 ATM by Art. 16]
- (2) Removal of abandoned towers and facilities. Any wireless data transfer facility that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such tower and facility shall remove same within 90 days of receipt of notice from the Planning Board, notifying the owner of such abandonment. If such tower or facility is not removed within said 90 days, the Planning Board may cause such tower or facility to be removed at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.
- (3) For all towers, the applicant shall provide a performance bond or other security from a surety authorized to do business in Massachusetts and satisfactory to the Planning Board, in an amount equal to the cost of removal of any and all wireless data transfer facility from the premises and for the repair of such premises and restoration to the condition that the premises were in at the onset of the lease, said amount to be determined at the discretion of the Planning Board by either the applicant's engineer or professional hired by the Planning Board at the applicant's expense. The amount of the bond shall be the total estimate of restoration costs and anticipated fees (in today's dollars) by the applicant's engineer, plus an annual increase of 3% for the term

of the lease. The term of the bond shall be for the full term of any lease, plus 12 months. The Town must be notified of any cancellation or change in the terms or conditions in the bond.

- (4) For all towers, an agreement must be executed whereby the user will allow the installation of municipal data transfer devices at no cost to the Town of Upton, and which will allow other carriers to lease space on the tower so long as such use does not interfere with the user's use of the tower, or with any Town-controlled data transfer devices.
- (5) For all towers located on nonmunicipal property, a clause must be inserted in any lease that unconditionally permits the Town or contractors hired by the Town to enter the premises, at any time, whereupon towers are located, if any Town-wide or Town-controlled telecommunications are located thereon.
- (6) For all towers located on municipal property, a certificate of insurance for liability coverage in amounts determined by the Board of Selectmen must be provided, naming the Town as an additional insured.
- (7) For all towers located on municipal property, an agreement must be executed whereby the user indemnifies and holds the Town harmless against all claims for injury or damage resulting from or arising out of the use or occupancy of the Town-owned property by the user.
- (8) All permittees shall be required to file annually on or before February 1 with the Upton Planning Board a complete list of all wireless data transfer facility locations in the Town then used by the permittee, including data transfer devices mounted on the interior of a building or structure.
- (9) The special permit shall lapse in two years unless substantial use or construction has commenced by such date, unless for good cause shown a written request for an extension of time is made to the Planning Board before the two years has expired. Such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time. This two-year period does not include such time as required to pursue or await the determination of an appeal from the granting of this special permit.
- (10) Any future extension or addition of a wireless data transfer facility or construction of new or replacement towers shall be subject to an amendment of the special permit, following the same procedure as for an original grant of a special permit.
- (11) Prior to construction, the permittee shall provide a recorded copy of a restrictive covenant prohibiting construction on all areas contained in the setback/fall areas.

L. K. Severability. If any section of this bylaw is ruled invalid by any authority or a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the bylaw.

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## TOWN OF UPTON, MASSACHUSETTS

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### PLANNING BOARD

**DATE:** SEPTEMBER 26, 2024 **Article 25 & 26 (final warrant)**

**TO:** DENISE SMITH, TOWN CLERK

**FROM:** MICHAEL ANTONELLIS, TOWN PLANNER/DIR. LU&IS

**SUBJECT:** PROPOSED AMENDMENT TO ZONING MAP & ZONING BYLAWS; UPTON ZONING BY-LAWS SECTION 300-2.1 ESTABLISHMENT, SECTION 300-2.2 MAP AND SECTION 300-5.10.B (PARKING) AND TO ADD A NEW SECTION 300-8.2 MBTA COMMUNITIES MULTIFAMILY OVERLAY DISTRICT (MCMOD)

**CC:** JOE LAYDON, TOWN MANAGER; PLANNING BOARD

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On September 24, 2024, the Planning Board held a public hearing, to discuss the proposed amendment to the Upton Zoning Bylaws for the purposes of complying with the state's MBTA Communities law, MGL Chapter 40A Section 3a. The proposed amendment will amend the Zoning Map and Upton Zoning By-laws Section 300-2.1 Establishment, Section 300-2.2 Map, Section 300-5.10.B (parking), and to add a new Section 300-8.2 MBTA Communities Multifamily Overlay District (MCMOD). The purpose of the proposed amendments is to create a new zoning overlay district that will allow for multi-family dwelling units as-of-right and to also include a commercial mixed-use component as well as an inclusionary zoning requirement to alleviate the town's affordable housing deficit. The Board voted (4-1) to recommend **favorable** action at Annual Town Meeting. In their motion, the board also voted to separate Section 300-8.2D(3) as a separate article. Attached hereto is the proposed amendment in-full.

*(simple majority vote required)/ Planning Board.*

A handwritten signature in black ink, appearing to read "Michael Antonellis".

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Michael Antonellis, Dir. LU&IS



# TOWN OF UPTON, MASSACHUSETTS

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## Planning Board

**25 (final warrant)**

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### **ARTICLE 19: ZONING BYLAW – MBTA COMMUNITIES**

To see if the Town will vote to amend the Zoning Map of Upton, Massachusetts to add the proposed “MCMOD (MBTA) District”, being an overlay district, shown on the Article \_\_\_\_\_ Exhibit- MBTA Zoning Map entitled “MBTA Communities Multifamily Overlay District (MCMOD)” included in the Warrant and to amend the Town of Upton Zoning By-laws Section 300-2.1 Establishment, Section 300-2.2 Map and Section 300-5.10.B (parking) and to add a new Section 300-8.2 MBTA Communities Multifamily Overlay District (MCMOD) as follows and to authorize the Town Clerk to make any necessary non-substantive corrections including renumbering to incorporate these changes into the Zoning By-laws and Zoning Map, or take any other action relative thereto;

#### **Section 300-2.1 Establishment.**

Add the following:

**J. MBTA Communities Multifamily Overlay District (MCMOD)**

#### **Section 300-2.2 Map.**

Amend the current Zoning Map of Upton, Massachusetts to add the proposed “MBTA Communities Multifamily Overlay District (MCMOD)”, being an overlay district, shown on the Article 19 Exhibit- MBTA Zoning Map entitled “MBTA Zoning Compliance” a copy of which is filed with the Town Clerk, or take any other action relative thereto.

#### **Section 500-10-B. Parking bylaw for UCBD only.**

Amend this to read “**Section 500-10-B. Parking bylaw for UCBD and MCMOD only.**”

#### **Add a new section 300-8.2 as follows:**

#### **Section 300-8.2. MBTA Communities Multifamily Overlay District (MCMOD)**

- A. Purpose.** The purpose of the MBTA Communities Multi-family Overlay District (MCMOD) is to allow multi-family housing as of right in accordance with Section 3A of the Zoning Act (Massachusetts General Laws Chapter 40A). This zoning provides for as of right multi-family housing to accomplish the following purposes:

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#### **LU&IS DIRECTOR**

Michael Antonellis • [mantonellis@uptonma.gov](mailto:mantonellis@uptonma.gov)

#### **LU&IS ADMINISTRATOR**

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- (1) Encourage the production of a variety of housing sizes and typologies to provide equal access to new housing throughout the community for people with a variety of needs and income levels;
- (2) Support vibrant neighborhoods by encouraging an appropriate mix and intensity of uses to support an active public space that provides equal access to housing, jobs, gathering spaces, recreational opportunities, goods, and services.
- (3) Locate housing within walking distance downtowns or town centers to promote general public health, reduce the number of vehicular miles travelled, support economic development, and meet community-based environmental goals, including reducing greenhouse gases and improving air quality.
- (4) Preserve open space in a community by locating new housing within or adjacent to existing developed areas and infrastructure.
- (5) Support public investment in public transit and pedestrian- and bike-friendly infrastructure.
- (6) Increase the municipal tax base through private investment in new residential developments.

B. Establishment and Applicability. This MCMOD is an overlay district having a land area of approximately 14.3 acres in size that is superimposed over the underlying zoning district (s) and is shown on the Zoning Map.

- (1) Applicability of MCMOD. An applicant may develop multi-family housing or mixed use housing located within a MCMOD in accordance with the provisions of this Section 300-8.2.
- (2) Underlying Zoning. The MCMOD is an overlay district superimposed on underlying zoning districts. The regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the respective underlying zoning district(s) shall remain in full force, except for uses allowed as of right or by special permit in the MCMOD. Uses that are not identified in Section 300-8.2 are governed by the requirements of the underlying zoning district(s).

C. Definitions.

- (1) Affordable unit. A multi-family housing unit that is subject to a use restriction recorded in its chain of title limiting the sale price or rent or limiting occupancy to an individual or household of a specified income, or both.
- (2) Affordable housing. Housing that contains Affordable Units as defined by this Section 300-8.2.C.
- (3) Applicant. A person, business, or organization that applies for a building permit, Site Plan Review, or Special Permit.
- (4) Area Median Income (AMI). The median family income for the metropolitan statistical region that includes the Town of Upton, as defined by the U.S. Department of Housing and Urban Development (HUD).
- (5) As of right. Development that may proceed under the Zoning in place at time of application without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.

- (6) Building coverage. The maximum area of the lot that can be attributed to the footprint of the buildings (principal and accessory) on that lot. Building Coverage does not include surface parking.
- (7) Compliance Guidelines. Compliance Guidelines for Multi-Family Zoning Districts Under Section 3A of the Zoning Act as further revised or amended from time to time.
- (8) EOHLC. The Executive Office of Housing and Community Development.
- (9) Development standards. Provisions of Section 300-8.2.G. General Development Standards made applicable to projects within the MCMOD.
- (10) Lot. A continuous parcel of land with legally definable boundaries.
- (11) MBTA. The Massachusetts Bay Transportation Authority.
- (12) Mixed-use development. Development containing a mix of residential uses and non-residential uses, including, commercial, institutional, or other uses.
- (13) Multi-family housing. A building with three or more residential dwelling units or two or more buildings on the same lot with more than one residential dwelling unit in each building.
- (14) Multi-family zoning district. A zoning district, either a base district or an overlay district, in which multi-family housing is allowed as of right.
- (15) Open space. Contiguous undeveloped land within a parcel boundary.
- (16) Parking, structured. A structure in which vehicle parking is accommodated on multiple stories; a vehicle parking area that is underneath all or part of any story of a structure; or a vehicle parking area that is not underneath a structure, but is entirely covered, and has a parking surface at least eight feet below grade. Structured Parking does not include surface parking or carports, including solar carports.
- (17) Parking, surface. One or more parking spaces without a built structure above the space. A solar panel designed to be installed above a surface parking space does not count as a built structure for the purposes of this definition.
- (18) Residential dwelling unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- (19) Section 3A. Section 3A of the Zoning Act, General Laws Chapter 40A.
- (20) Site plan review authority. The Site Plan Review authority is the Planning Board.
- (21) Special permit granting authority. The Special Permit Granting Authority shall include the Select Board, Zoning Board of Appeals, Planning Board, or Zoning Administrators as designated by the Zoning Bylaws for the issuance of special permits.
- (22) Subsidized Housing Inventory (SHI). A list of qualified Affordable Housing Units maintained by DHCD used to measure a community's stock of low-or moderate-income housing for the purposes of M.G.L. Chapter 40B, the Comprehensive Permit Law.
- (23) Transit station. An MBTA subway station, commuter rail station, or ferry terminal.
  - a. Commuter rail station. Any MBTA commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service.
  - b. Ferry terminal. The location where passengers embark and disembark from regular, year-round MBTA ferry service.
  - c. Subway station. Any of the stops along the MBTA Red Line, Green Line, Orange Line, or Blue Line.

D. Permitted Uses.

(1) Uses Permitted as of Right. The following uses are permitted as of right within the MCMOD.

- a. Multifamily housing.
- b. Mixed Use Development. As of right uses in mixed-use development are as follows, any other type of mixed-use is prohibited:

<b>Ground Floor</b>
Community space.
Educational uses.
Retail.
Experiential retail, including retail associated with dance or exercise studios, music studios, photography studios, or other combination of education, services, and retail.
Restaurant, café, and other eating establishments without a drive-through.
Office, professional office, medical and dental offices, and co-working space.
Artists' studios, maker space, and small-scale food production no more than 5,000 SF, and retail associated with each use.
<b>Any Floor</b>
Residential (required component).
Uses that are allowed by-right within the Upton Center Business District (UCBD) pursuant to section 300-3.1

(2) Accessory Uses. The following uses are considered accessory as of right to any of the permitted uses in Section D.1.

- a. Parking, including surface parking and parking within a structure such as an above ground or underground parking garage or other building on the same lot as the principal use;
- b. Uses that may be permitted under Section 300-3.2 Accessory Uses and Structures.

(3) Uses Permitted by a Special Permit. The following uses and accessory uses are allowed by Special Permit and subject to the requirements of the MCMOD district:

- a. Uses that are allowed by Special Permit within the Upton Center Business District (UCBD) pursuant to section 300-3.1.
- b. Where a use may be allowed within the UCBD district by Special Permit, but is not otherwise allowed in the underlying zoning district, the standards of the UCBD district shall be applied;

E. Dimensional Standards.

(1) Table of Dimensional Standards. Notwithstanding anything to the contrary in this Zoning, the dimensional requirements applicable to multi-family and mixed use development in the MCMOD are as follows:

Standard	
Lot Size	

Minimum (SF)	10,000
Height	
Stories	2.5
Feet	25
Minimum Open Space	0%

(2) Additional Standards

Standard	
Maximum Building Coverage	30%

(3) Additional Standards

Standard	
Minimum Frontage	100
Front Yard Setback	30
Side Yard Setback	10
Rear Yard Setback	30

(4) Multi-Building Lots. In the MCMOD, lots may have more than one principal building.

(5) Exception. The limitation on height of buildings shall not apply to chimneys, ventilators, towers, silos, spires, or other ornamental features of buildings, which features are in no way used for living purposes and do not constitute more than 25% of the ground floor area of the building.

(6) Exceptions. Renewable Energy Installations. The Planning Board may waive the height and setbacks in Section 300-8.2 E. Dimensional Standards to accommodate the installation of solar photovoltaic, solar thermal, living, and other eco-roofs, energy storage, and air-source heat pump equipment. Such installations shall not create a significant detriment to abutters in terms of noise or shadow and must be appropriately integrated into the architecture of the building and the layout of the site. The installations shall not provide additional habitable space within the development.

F. These parking requirements are applicable to development in the MCMOD.

(1) Number of parking spaces. The following maximum numbers of off-street parking spaces shall be permitted by use, either in surface parking or within garages or other structures:

Use	Maximum Spaces
Multifamily	1.5 spaces per Dwelling Unit
Mixed Use (Non-residential / Commercial)	Sum of uses computed separately. See 300-8.2F(2)below.

(2) Shared Parking within a Mixed-Use Development. Parking requirements for a mix of uses on a single site may be adjusted through the Site Plan Review process, if the applicant can demonstrate that shared spaces will meet parking demands by using accepted methodologies pursuant to Section 300-5.10.B(2).

## G. General Development Standards

- (1) Development standards in the MCMOD are applicable to all multi-family housing developments with four (4) or more units or mixed-use developments of more than 5,000 SF within the MCMOD. These standards are components of the Site Plan Review process in Section 300-8.2.I. Site Plan Review.
- (2) Site Design.
  - a. Connections. Sidewalks shall provide a direct connections among building entrances, the public sidewalk (if applicable), bicycle storage, and parking.
  - b. Vehicular access. Where feasible, curb cuts shall be minimized, and shared driveways encouraged.
  - c. Screening for Parking. Surface parking adjacent to a public sidewalk shall be screened by a landscaped buffer of sufficient width to allow the healthy establishment of trees, shrubs, and perennials, but no less than 6 (six) feet. The buffer may include a fence or wall of no more than three feet in height unless there is a significant grade change between the parking and the sidewalk.
  - d. Parking Materials. The parking surface may be concrete, asphalt, decomposed granite, bricks, or pavers, including pervious materials but not including grass or soil not contained within a paver or other structure.
  - e. Plantings. Plantings shall include species that are native or adapted to the region. Plants on the Massachusetts Prohibited Plant List, as may be amended, shall be prohibited.
  - f. Lighting. Light levels shall meet or exceed the minimum design guidelines defined by the Illuminating Engineering Society of North America (IESNA) and shall provide illumination necessary for safety and convenience while preventing glare and overspill onto adjoining properties and reducing the amount of skyglow.
  - g. Mechanicals. Mechanical equipment at ground level shall be screened by a combination of fencing and plantings. Rooftop mechanical equipment shall be screened if visible from a public right-of-way.
  - h. Dumpsters. Dumpsters shall be screened by a combination of fencing and plantings. Where possible, dumpsters or other trash and recycling collection points shall be located within the building.
  - i. Stormwater management. Strategies that demonstrate compliance of the construction activities and the proposed project with the most current versions of the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Massachusetts Stormwater Handbook, Massachusetts Erosion Sediment and Control Guidelines, and, if applicable, additional requirements under the Town's MS4 Permit for projects that disturb more than one acre and discharge to the municipal stormwater system, and an Operations and Management Plan for both the construction activities and ongoing post-construction maintenance and reporting requirements.
- (3) Buildings: General.

- a. Position relative to the street or road providing legal frontage. The primary building shall have its principal façade and entrance the side of the lot which contains the legal frontage. See also Section G.7. Buildings: Corner Lots.
- b. Entries. Where feasible, entries shall be clearly defined and linked to a paved pedestrian network that includes the public sidewalk.

(4) Buildings: Multiple buildings on a lot.

- a. In a mixed-use building, access to and egress from the residential component shall be clearly differentiated from access to other uses. Such differentiation may occur by using separate entrances or egresses from the building or within a lobby space shared among different uses.
- b. Parking and circulation on the site shall be organized so as to reduce the amount of impervious surface. Where possible, parking and loading areas shall be connected to minimize curb cuts onto public rights-of-way.
- c. A paved pedestrian network shall connect parking to the entries to all buildings and the buildings to each other.
- d. The orientation of multiple buildings on a lot should reinforce the relationships among the buildings. All building façade(s) shall be treated with the same care and attention in terms of entries, fenestration, and materials.
- e. The building(s) adjacent to the public street shall have a pedestrian entry facing the public street.

(5) Buildings: Mixed-use development.

- a. For a mixed-use development, uses may be mixed within the buildings or in separate buildings.
- b. Paved pedestrian access from the residential component shall be provided to residential parking and amenities and to the public sidewalk, as applicable.
- c. Materials for non-residential uses shall be stored inside or under cover and shall not be accessible to residents of the development.
- d. Parking and circulation on the site shall be organized so as to reduce the amount of impervious surface. Where possible, parking and loading areas shall be connected to minimize curb cuts onto public rights-of-way.

(6) Buildings: Shared Outdoor Space. Multi-family housing and mixed-use development shall have common outdoor space that all residents can access. Such space may be located in any combination of ground floor, courtyard, rooftop, or terrace. All outdoor space shall count towards the project's minimum Open Space requirement.

(7) Buildings: Corner Lots. A building on a corner lot shall indicate a primary entrance either along one of the street-facing façades or on the primary corner as an entrance serving both streets.

- a. Such entries shall be connected by a paved surface to the public sidewalk, if applicable.
- b. All façades visible from a public right-of-way shall be treated with similar care and attention in terms of entries, fenestration, and materials.

- c. Fire exits serving more than one story shall not be located on either of the street-facing façades.

(8) Buildings: Infill Lots. If the adjacent buildings are set back at a distance that exceeds the minimum front yard requirements, infill buildings shall meet the requirements of Section 300-8.2 E. Dimensional Standards. Otherwise, infill buildings may match the setback line of either adjacent building, or an average of the setback of the two buildings to provide consistency along the street.

(9) Buildings: Principal Façade and Parking. Parking shall be subordinate in design and location to the principal building façade.

- a. Surface parking. Surface parking shall be located to the rear or side of the principal building. Parking shall not be located in the setback between the building and any lot line adjacent to the public right-of-way.
- b. Integrated garages. The principal pedestrian entry into the building shall be more prominent in design and placement than the vehicular entry into the garage.
- c. Parking structures. Building(s) dedicated to structured parking on the same lot as one or more multi-family buildings or mixed-use development shall be subordinate in design and placement to the multi-family or mixed-use building(s) on the lot.

(10) Waivers. Upon the request of the Applicant and subject to compliance with the Compliance Guidelines, the Site Plan Review Authority may waive the requirements of this Section 300-8.2.G. General Development Standards, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the MCMOD.

## H. Affordability Requirements.

(1) Purpose.

- a. Promote the public health, safety, and welfare by encouraging a diversity of housing opportunities for people of different income levels;
- b. Provide for a full range of housing choices for households of all incomes, ages, and sizes;
- c. Increase the production of affordable housing units to meet existing and anticipated housing needs; and
- d. Work to overcome economic segregation allowing Upton to be a community of opportunity in which low and moderate-income households have the opportunity to advance economically.

(2) Applicability. This requirement is applicable to all residential and mixed-use developments with eight (8) or more dwelling units, whether new construction, substantial rehabilitation, expansion, reconstruction, or residential conversion (Applicable Projects). No project may be divided or phased to avoid the requirements of this section.

(3) Affordability requirements.

- a. Subsidized Housing Inventory. All units affordable to households earning 80% or less of AMI created in the MCMOD under this section must be eligible for listing on DHCD's Subsidized Housing Inventory.

(4) Provision of Affordable Housing. In Applicable Projects, not fewer than twelve and a half percent (12.5%) of housing units constructed shall be Affordable Housing Units. If EOHLC determines that the Town has not shown this 12.5% requirement to be feasible, at least 10% of housing units constructed, or such greater percentage as approved by EOHLC in writing, shall be Affordable Housing Units. For purposes of calculating the number of units of Affordable Housing required within a development project, a fractional unit shall be rounded down to the next whole number. The Affordable Units shall be available to households earning income up to eighty percent (80%) of the AMI.

(5) Fee in Lieu.

- a. As an alternative to the requirements of paragraph (3) of this section, and at the sole discretion and majority vote of Select Board upon a recommendation of the Planning Board, the developer or property owner shall contribute a fee to the Municipality's Affordable Housing Trust Fund in lieu of providing all or a portion of the required Affordable Housing Units within the proposed development.
- b. The fee in lieu of providing one or more Affordable Housing Units shall be a minimum of \$80,000 per required Affordable Housing Units not provided within the development. This fee may be adjusted upward by a majority vote of Select Board.
- c. Any payment to the Affordable Housing Trust Fund as an in lieu contribution for Affordable Housing Units shall be made as follows: at least 50 percent of the total owed prior to the issuance of a building permit; and the remaining total owed prior to the issuance of an occupancy permit.

(6) Development Standards. Affordable Units shall be:

- a. Integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of exterior and interior materials with the other units and/or lots;
- b. Dispersed throughout the development;
- c. Located such that the units have equal access to shared amenities, including light and air, and utilities (including any bicycle storage and/or Electric Vehicle charging stations) within the development;
- d. Located such that the units have equal avoidance of any potential nuisances as market-rate units within the development;
- e. Distributed proportionately among unit sizes; and
- f. Distributed proportionately across each phase of a phased development.

- g. Occupancy permits may be issued for market-rate units prior to the end of construction of the entire development provided that occupancy permits for Affordable Units are issued simultaneously on a pro rata basis.

(7) Administration

- a. The Zoning Enforcement Officer shall be responsible for administering and enforcing the requirements in this section.

I. Site Plan Review

- (1) Applicability. Site Plan Review is required for a project that proposes four (4) dwelling units or more, pursuant to Section 300-9.4 of the Zoning Bylaw. An application for Site Plan Review shall be reviewed by the Planning Board for consistency with the purpose and intent of Sections 300-8.2.D through 300.8.2. and under the provisions of Chapter 308 of the Town Code - Planning Board Regulations for Site Plan Approval.

J. Exemptions and exclusions.

The provisions of Section 300-8.2 shall be exempt from the provisions of Section 300-7.1 of the Upton Zoning Bylaw.

K. Severability.

If any provision of Section 300-8.2 is found to be invalid by a court of competent jurisdiction, the remainder of Section 300-8.2 shall not be affected but shall remain in full force. The invalidity of any provision of this Section 300-8.2 shall not affect the validity of the remainder of the Town of Upton Zoning Bylaw.



## TOWN OF UPTON, MASSACHUSETTS

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### LAND USE & INSPECTIONAL SERVICES

#### 26 (final warrant)

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#### **ARTICLE 21. G.L. C. 40A, § 3A (MBTA ZONING) USES PERMITTED BY SPECIAL PERMIT AMENDMENT**

To see if the Town will vote to amend the new Section 300-8.2 MBTA Communities Multifamily Overlay District (MCMOD) by inserting a new subsection 300-8.2D(3) as shown below in underline, and to authorize the Town Clerk to make any necessary non-substantive corrections, including renumbering to incorporate these changes into the Zoning By-laws, or take any other action relative thereto;

#### **Section 300-8.2. MBTA Communities Multifamily Overlay District (MCMOD)**

##### **D. Permitted Uses.**

**(3) Uses Permitted by a Special Permit. The following uses and accessory uses are allowed by Special Permit and subject to the requirements of the MCMOD district:**

- a. Uses that are allowed by Special Permit within the Upton Center Business District (UCBD) pursuant to section 300-3.1.**
- b. Where a use may be allowed within the UCBD district by Special Permit, but is not otherwise allowed in the underlying zoning district, the standards of the UCBD district shall be applied;**

**LU&IS DIRECTOR**

Michael Antonellis • [mantonellis@uptonma.gov](mailto:mantonellis@uptonma.gov)

**LU&IS ADMINISTRATOR**

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## TOWN OF UPTON, MASSACHUSETTS

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### PLANNING BOARD

#### Article 27 (final warrant)

**DATE:** OCTOBER 10, 2024  
**TO:** DENISE SMITH, TOWN CLERK  
**FROM:** MICHAEL ANTONELLIS, TOWN PLANNER/DIR. LU&IS  
**SUBJECT:** PROPOSED AMENDMENT TO ZONING BYLAWS; UPTON ZONING BY-LAWS SECTION 300-7.6 ACCESSORY DWELLING UNITS  
**CC:** JOE LAYDON, TOWN MANAGER; PLANNING BOARD

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On October 8, 2024, the Planning Board held a public hearing, to discuss the proposed amendment to the Upton Zoning Bylaws for the purposes of complying with the state's Affordable Homes Act and related changes to MGL Chapter 40A. The proposed amendment pertains to the Upton Zoning By-laws Section 300-7.6 Accessory Apartments. The proposed amendment seeks to revise the language to "Accessory Dwelling Units" (A/K/A ADUs) and other changes to be congruent with new state law. The proposed amendment will make ADUs allowable by-right in residential zoning districts. The Board voted 4-0 to recommend adopting the amendment into the Zoning Attached hereto is the proposed amendment in-full.

*(two-thirds vote required)/ Planning Board.*

A handwritten signature in black ink that reads "Michael Antonellis".

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Michael Antonellis, Dir. LU&IS

RCVD TOWN CLK UPTON  
2024 OCT 10 AM11:15



# TOWN OF UPTON, MASSACHUSETTS

## Planning Board

RCVD TOWN CLK UPTON  
2024 OCT 10 AM11:16

**27 (final warrant)**

### **ARTICLE 20. ZONING BYLAW AMENDMENT – SECTION 300-7.6 ACCESSORY DWELLING UNITS**

To see if the Town will vote to amend the Town of Upton Zoning-Bylaws, Section 300-7.6 Accessory Apartments and Section 300-10.1 Definitions as follows, with additions indicated by underline and deletions indicated by strikethrough, and to authorize the Town Clerk to make any necessary non-substantive corrections including renumbering to incorporate these changes into the Zoning By-laws, or take any other action relative thereto:

#### **§300-10.1 Definitions and word usage.**

##### **ACCESSORY APARTMENT**

~~A separate dwelling unit complete with its own cooking and sanitary facilities and functioning as a separate unit, and contained within a building that contains a single family dwelling. Additions, renovations and all construction shall meet the requirements of the current edition of the State Building Code.:~~

##### **ACCESSORY DWELLING UNIT**

A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in gross floor area than 1/2 the gross floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as may be imposed by a municipality, including, but not limited to, additional size restrictions and restrictions or prohibitions on short-term rental, as defined in section 1 of chapter 64G.

#### **§ 300-7.6. Accessory apartments Accessory Dwelling Units**

- A. Purpose and intent. ~~It is the purpose of this bylaw to provide small additional dwelling units specifically intended for property owner family members, family au pair providers or family health care providers without adding to the number of buildings in the Town. The intent of permitting Accessory Dwelling Units is to develop housing units in the AR, SR-A, SR-B, SR-C, and SR-D residential zoning districts that are appropriate for households at a variety of life cycle stages.~~
- B. ~~Special permit granting authority. Accessory apartments may only be allowed by special permit from the Zoning Board of Appeals in accordance with the special permit process~~

as set forth in this section as well as § 300-9.3 of this Zoning Bylaw. Use Allowed by Right or By Special Permit

- (1) Accessory Dwelling Unit By Right: Accessory Dwelling Units which meet the requirements of the definition as stated in Section 300-10.1 of this bylaw, M.G.L Chapter 40A, Section 1A, and M.G.L Chapter 40A, Section 3, shall be allowed by-right in the AR, SR-A, SR-B, SR-C, and SR-D residential zoning districts
- (2) Accessory Dwelling Unit by Special Permit- Accessory Dwelling Units that exceed the size requirements set forth in the definition in Section 300-10.1 may only be allowed in the AR, SR-A, SR-B, SR-C, and SR-D residential zoning districts through the grant of special permit from the Zoning Board of Appeals in accordance with the special permit process as set forth in this section, 300-7.6C and 300-7.6D as well as § 300-9.3 of this Zoning Bylaw. For more than one (1) accessory dwelling unit, or rental thereof, on a lot in the AR, SR-A, SR-B, SR-C, and SR-D residential zoning districts, there shall be a special permit for the use of land or structures for an accessory dwelling unit.
- (3) Accessory Dwelling Unit not located in a Residential Zone. Accessory Dwelling Units as defined in a Section 300-10.1 may be allowed in nonresidential zoning districts, C&I, GB, and UCBD, through the grant of a special permit by the Zoning Board of Appeals in accordance with the special permit process as set forth in this section, 300-7.6C and 300-7.6D, as well as § 300-9.3 of this Zoning Bylaw.

C. Special Permit Procedures

- (1) Applications shall be filed in accordance with the Rules and Regulations of the Zoning Board of Appeals. An application shall not be deemed complete until all copies of required information and documentation have been filed with the Zoning Board of Appeals.
- (2) The Zoning Board of Appeals shall hold a public hearing as required by MGL c. 40A, § 11.
- (3) The Zoning Board of Appeals shall file its decision with the Town Clerk as required by MGL c. 40A, § 9
- (4) The special permit decision may be appealed pursuant to MGL c. 40A, § 17, and filed within 20 days after the date the decision notice was filed with the Town Clerk.
- (5) No special permit, or any extension, modification, or renewal thereof, can take effect until a copy of the decision bearing the certification of the Town Clerk is recorded in the Registry of Deeds.
- (6) The special permit shall lapse if a substantial use thereunder has not begun within 24 months following the filing of the special permit approval with the Town Clerk; provided, however, if before the expiration of the 24 months, the Zoning Board of Appeals finds that there is good cause for such lack of substantial use, the Zoning Board of Appeals may extend the permit.

D. Special Permit Criteria. The Zoning Board of Appeals may grant a special permit for an accessory dwelling unit if it determines that all the requirements set forth in this bylaw have been met and such use will not be detrimental to the public good. The determination shall include consideration of each of the following criteria:

(1) Occupancy. ~~Occupancy shall be limited to the owner of the property and no more than four family members related to the homeowner by blood, adoption or marriage; or au pair providers; or health care providers. An affidavit from the owner shall be provided, stating that occupation of the Accessory Dwelling Unit will be limited to family members, au pair providers, or health care providers. An affidavit shall be provided stating that one of the two dwelling units shall be occupied by the owner of the property. For the purpose of this subsection, the "owner" shall be one or more individuals who constitute a family, who hold title to the dwelling, and for whom the dwelling is the primary residence for voting purposes.~~

(1) Plans. A plot plan of the existing dwelling unit and proposed ~~accessory apartment~~ Accessory Dwelling Unit shall be submitted to the SPGA showing the location of the building on the lot, the proposed ~~accessory apartment~~ Accessory Dwelling Unit, location of any septic system and the required parking.

(2) Physical size. The ~~accessory apartment~~ Accessory Dwelling Unit shall not exceed fifty percent (50%) of the total gross living area of the primary dwelling, 1,000 square feet in floor space with no more than two bedrooms and shall be located in or attached to the principal residential structure on the lot.

(3) Number of units. ~~Not~~ More than one ~~accessory apartment~~ Accessory Dwelling Unit may be established on a lot by grant of a Special permit by the Zoning Board of Appeals pursuant to M.G.L Chapter 40A, Section 3. No more than two (2) Accessory Dwelling Units shall be permitted on a lot.

(4) Services. The Board of Health may issue a recommendation as to the suitability of the disposal of sewage, waste and drainage generated by the occupancy of the ~~accessory apartment~~ Accessory Dwelling Unit. In addition, no special permit shall be granted without a condition that the ~~accessory apartment~~ Accessory Dwelling Unit shall conform to the provisions of Title V of the Sanitary Code, 310 CMR 15.00.

(5) Building exterior. The external appearance of the building in which the ~~accessory apartment~~ Accessory Dwelling Unit is to be located shall not be significantly altered from the appearance of a single-family building. All stairways to upper floors shall be enclosed within the exterior wall of the building. There shall be no enlargement or extension of the building except for the ~~accessory apartment~~ Accessory Dwelling Unit itself and minimal additions necessary to comply with building, safety or health codes, handicap accessibility (if needed), or the enclosure of an entryway or

stairway. Any new exterior entrance shall be located on the side or rear of the building.

(6) Off-street parking. There shall be at least two off-street parking spaces for the principal dwelling unit and at least one off-street parking space for the ~~Accessory Apartment~~ Accessory Dwelling Unit, except for Accessory Dwelling Units located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal, or bus station, which shall not require an additional parking space. No parking spaces shall be located within the boundary of a street right-of-way. In no case shall parking spaces which are more than two spaces deep be considered in computing the required number of parking spaces. Said parking space(s) shall be constructed of materials consistent similar with to the existing driveway and shall have vehicular access to the driveway.

E. Decision. Special permits for an ~~accessory apartment~~ Accessory Dwelling Unit may be granted by the SPGA upon a finding that the construction and occupancy of an apartment will not be detrimental to the neighborhood in which the subject property is located and after consideration of all criteria set forth in this bylaw section as well as § 300-9.3 of this Zoning Bylaw.

F. Conditions. ~~Accessory apartments~~ Accessory Dwelling Units shall be subject to the following conditions in addition to any other conditions that may be provided for in the special permit:

- (1) The ownership of an Accessory Dwelling Unit dwelling unit shall not be conveyed or otherwise transferred separately from the principal dwelling.
- (2) ~~The Building Commissioner may, in addition to other remedies, order removal of the separate kitchen facilities, equipment or fixtures that were made or installed to create such unit, if the unlawful use of such unit is discovered.~~
- (2) The applicant for a special permit shall file with the Zoning Board of Appeals such plans, specifications and other information concerning the unit and its proposed use as the Board may require by general rule or request to the applicant.
- (3) Except as provided herein, all requirements of ~~single residential the Town's Zoning districts for which the Accessory Dwelling Unit is located and the Agricultural Residential District~~ will apply as provided in the Town of Upton Zoning Bylaw.

G. Duration. The special permit shall expire after five years. The special permit shall be renewed by the SPGA without a public hearing if the special permit holder submits an affidavit to the SPGA prior to such expiration, indicating that there has been no change in circumstances with regard to the Accessory Dwelling Unit.

G. Grandfathering. ~~Accessory apartments~~ Accessory Dwelling Units permitted or allowed by ~~variancee special permit~~ at the time of adoption of this bylaw section are exempt from these provisions.