

SECTION 135-6.0  
**SPECIAL REGULATIONS**

**6.1. ACCESSORY STRUCTURES.**

6.1.1 Swimming Pools and Racquet Courts. The Building Commissioner may grant a building permit for a swimming pool and the SPGA may grant a special permit for the construction of a racquet court, accessory to a residential use. Such accessory structures are subject to the following minimum conditions:

1. No racquet court shall be constructed within 15 feet, and no swimming pool shall be constructed within 20 feet, of a lot line or within the required minimum yard setback for a principal building, whichever is greater. The setback of the swimming pool shall be measured to the edge of the water in the pool; the setback of the racquet court shall be measured to the fence enclosing the court.
2. Screening at least five feet high shall be provided around the pool or court.
3. A fence or wall, at least eight feet high for the racquet court, shall be provided so that the court is completely enclosed. A principal or accessory building may form part of the enclosure.
4. No swimming pool or racquet court shall be constructed without the issuance of a building permit.

6.1.2 Satellite Receiving Antenna. A satellite receiving antenna with a receiving dish with a diameter equal to or less than three feet may be installed in any district. A satellite receiving antenna with a receiving dish with a diameter greater than three feet may be erected in any district after issuance of a building permit when it is accessory to another use and meets the following additional conditions:

1. The antenna is located in a rear yard but not within the required minimum setback set forth in § 135-4.0.
2. The antenna shall be permanently secured to the ground. No antenna shall be installed on a building or on a portable or movable structure, such as a trailer.
3. Size. No antenna shall exceed an overall diameter of 12 feet or a height of 15 feet above the natural grade when measured to its uppermost point when in an upright position.

4. Screening. The base of the antenna shall be screened from view from any abutting lot or from the street by an opaque fence, at least six feet high, or by planting providing comparable screening and opacity.
5. Appearance. The antenna shall be of a nonreflecting and inconspicuous color and compatible with the appearance and character of its surroundings. No advertising material shall be permitted.
6. The antenna shall not be used for commercial purposes except where accessory to a commercial use.
7. Where the SPGA determines any of the conditions set forth in any subsection above operates to prevent reception of satellite transmitted signals by the receiving antenna, the SPGA may issue a special permit to locate the antenna elsewhere on the lot, or on a building, where it may receive such signals.

## **6.2. HISTORIC PRESERVATION INCENTIVES.**

6.2.1 Purpose. The general objectives of this section are to:

1. Encourage preservation of buildings, structures, sites and settings, and elements of historical or architectural significance.
2. Establish eligibility criteria for buildings, structures, sites and settings, and elements attaining protected status under § 6.2.2.
3. Expand economic options for the owner/investor, by broadening the permitted uses in various zoning districts and removing barriers presented by development standards governing those permitted uses.
4. Permit the flexibility of development options by modifying dimensional requirements that might be an impediment to historic preservation.
5. Provide incentives to preserve contributory elements of historic or architectural significance, such as settings and sites, objects, monuments, trees or other elements.

6.2.2 Historic Eligibility Defined. Any historic element, as defined below, may qualify for eligibility under this section, if it is included on any of the following lists or surveys:

1. National Register of Historic Places.
2. State (Commonwealth of Massachusetts) Register of Historic Places.
3. Inclusion by the Lexington Historical Commission in its Comprehensive Cultural Resources Survey, or identification by that Commission of historic and/or architectural significance and thereby potential inclusion in the Comprehensive Cultural Resources Survey.
4. Pending nominations in good standing to the National or State Register.

6.2.3 Primary Qualifying Element. Primary qualifying elements shall include buildings, and other structures and outbuildings located on the property.

6.2.4 Secondary Qualifying Element. Secondary qualifying elements shall include sites and settings, objects, monuments, trees or any element of historical, architectural and/or cultural significance that indicates their contributory value in establishing historical context.

6.2.5 Special Permit Priority. Priority in granting special permits under these historic preservation incentives shall, in all cases, be placed upon keeping buildings and structures in place, rather than moving them to other locations, provided that the existing siting can be shown to represent valid historical setting and context. Moving of buildings, structures and elements to other locations shall be considered only if no other preservation measures are practical or reasonable on the existing site, or if the proposed removal is to return a building, structure or element to an original or more historically accurate location. The SPGA shall determine the validity of any such requests.

6.2.6 Special Permit. The SPGA, after making the findings required by § 6.2.7 below, may grant a special permit to authorize certain uses and activities, outlined below, that would allow the renovation, repair, adaptive reuse or, in limited instances, removal of historic or architecturally significant buildings:

1. The following uses may be allowed in the districts listed:

<b>USE OR ACTIVITY</b>	<b>DISTRICT(S)</b>
Conversion of single-family to two-family residences	RD, CB, CLO
Conversion of single-family residences to congregate living facilities	CB, CLO
Conversion of municipal buildings to residential use	CB, CLO
Creation of rooming units	CB, CLO, CN
Creation of accessory apartments in single-family residences	CB, CLO
Creation of bed-and-breakfast homes	RT, RD, CN, CB, CLO
General home occupation uses with a maximum of one employee other than an owner occupant and with a maximum of four customers per hour, as an average during the course of the business day	ALL
Professional office home occupation uses with a maximum of one employee other than an owner occupant	ALL
Home occupation, instruction	ALL
Home occupation, minor and major	ALL
Office uses, professional services	CN
Advertising/editing	CN, CB
Employment agency and similar uses	CN
Manufacturer's representative and similar uses	CN
Other business and administrative and similar uses	CN
Professional and business services, tailor, dressmaker and shoe repair	CLO
Real estate sales or rental office	CS
Repair of household appliances	CLO
Private postal service	CB

2. In order to further the purpose of this section, the SPGA may also modify:

Any of the operating or development standards contained in Table 1,<sup>1</sup> provided that any negative impacts to the surrounding area can be feasibly mitigated.

The dimensional standards contained in Table 2<sup>2</sup> regarding to minimum lot area; lot frontage; front, side and rear setbacks; maximum percentage of site coverage; and maximum height (stories)

The standards for bed-and-breakfast homes (§ 6.5), conversion to a congregate living facility (§ 6.6), and accessory apartments (§ 6.7).

The dimensional controls of § 135-4.0

The off-street parking and loading requirements in § 5.1

The landscaping, transition and screening requirements in § 5.3

**6.2.7 Findings Required.** In order to grant a special permit, the SPGA shall determine:

1. That the uses authorized in § 6.2.6 or the modification of standards and requirements authorized in § 6.2.6 are necessary to maintain the historic or architecturally significant building, structure or element on the site on which it was originally constructed or to relocate it back to such a site;
2. That the proposed renovation, repair, adaptive reuse or removal preserves, to the maximum extent feasible, the historical and architectural features of the building, structure or element, said determination to be made by the SPGA;
3. Failure to grant the special permit is likely to result in inappropriate use or physical modification or pursuit of a demolition permit; and
4. That the proposed use will not generate negative impacts to the surrounding area or zoning district or that any negative impacts generated may be feasibly mitigated.

**6.2.8 Contributory Lots.** For one or more lots that do not otherwise qualify under § 6.2.2, above, and are shown on a definitive site development plan submitted by an applicant, the SPGA may grant a special permit to modify: the standards in Table 2, Schedule of

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**1. Editor's Note: Table 1 is included as an attachment to this chapter.**

**2. Editor's Note: Table 2 is included as an attachment to this chapter.**

Dimensional Controls,<sup>3</sup> the standards in §§ 3.3, 4.4, 6.3, 7.1, 7.2, and 7.3 in their entirety, the dimensional and intensity controls in § 135-4.0, the landscaping, transition and screening requirements in § 5.3, LANDSCAPING, TRANSITION AND SCREENING (entire section), or the off-street parking and loading requirements in § 5.1, OFF-STREET PARKING AND LOADING (entire section), provided the SPGA makes a finding that such modifications are necessary to make historic preservation feasible on another lot within the same development on which a historic element, as defined in § 6.2.2, is located. The use of one or more lots that do not otherwise qualify may apply to a conventional subdivision or special permit residential development.

### **6.3. NURSERIES NOT EXEMPT BY STATUTE.**

6.3.1 General. Where the SPGA determines that the character of the neighborhood would not be impaired, the storage and sale of some or all of the following supplementary items in conjunction with the operation of a nursery may be permitted by special permit:

1. Plants grown elsewhere than on the premises;
2. Items intended to improve or preserve the life and health of plants, including without limitation pesticides, insecticides, peat moss, humus, mulches, fertilizers, and other chemicals;
3. Hand gardening tools and hand gardening equipment, garden hose, watering and spraying devices, containers for living plants;
4. Cut flowers, Christmas trees and wreaths, in season;
5. Indoors only, birdseed, birdbaths, bird feeders, birdhouses; and
6. Ornamental or decorative items intended for use with plants.

6.3.2 Other Nursery Uses. The foregoing list may be expanded, in the discretion of the SPGA, to include other items related to plants, gardens or gardening, but shall not include power tools, other power equipment, furniture or items generally associated with the business of a hardware store rather than with the conduct of a nursery.

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3. Editor's Note: Table 2 is included as an attachment to this chapter.

6.3.3 Dimensional Requirements. A nursery granted a special permit shall conform to the dimensional controls in § 135-4.0 as to lot area, frontage and yards and the maximum height of buildings for the district in which located and to the following additional requirements:

1. Minimum lot area: two acres;
2. Buildings (other than greenhouses) may cover no more than a maximum of 20% of the lot area;
3. Greenhouses shall not be used for retail sales of items other than plants;
4. Buildings (other than greenhouses) used for retail sales shall not exceed a maximum of 7,500 square feet;
5. Not less than 50% of the total land area of the nursery shall be used for the propagation or cultivation of plants in the open or in greenhouses;

#### **6.4. WIRELESS COMMUNICATION FACILITIES.**

6.4.1 Purpose. This section permits the use of wireless communication facilities within the Town, regulates their impacts and accommodates their location and use in a manner intended to:

1. Protect the scenic, historic, environmental and natural or man-made resources of the Town;
2. Protect property values;
3. Minimize any adverse impacts on the residents of the Town (such as, but not limited to, attractive nuisance, noise and falling objects) with regard to the general safety, welfare and quality of life in the community;
4. Provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of wireless communication facilities;
5. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify wireless communication facilities;
6. Encourage the use of certain existing structures and towers;

7. Minimize the total number and height of towers located within the community;
8. Require tower sharing and clustering of wireless communication facilities where they reinforce the other objectives in this section; and
9. Be in compliance with the federal Telecommunications Act of 1996.<sup>4</sup>

6.4.2 Applicability. The requirements of this section shall apply to all wireless communication facilities, except where federal or state law or regulations exempt certain users or uses from all or portions of the provisions of this section. No wireless communication facility shall be considered exempt from this section by sharing a tower or other structure with such exempt uses.

6.4.3 Location of Facilities; Priorities. Wireless communication facilities shall be located according to the following priorities. Applicants shall demonstrate that they have investigated locations higher in priority ranking than the one for which they are applying and whether such sites are available and, if applicable, under what conditions. The priorities are:

1. Within an existing structure concealed;
2. Within an existing structure and camouflaged;
3. Camouflaged on an existing structure, such as but not limited to an existing electric transmission tower or an existing radio antenna, a water tower, or building, and of a compatible design;
4. Co-located with existing wireless communication service facilities;
5. On Town of Lexington owned land which complies with other requirements of this section and where visual impact can be minimized and mitigated;
6. If adequately demonstrated to the SPGA in the special permit process that each of the priorities set forth above is not feasible, erection of a new facility that complies with the other requirements of this section and where visual impact can be minimized and mitigated.

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4. Editor's Note: See 47 U.S.C. § 151 et seq.



**6.4.4 Facilities Permitted by Right.** A concealed wireless communication facility may be installed in a structure on a lot in a commercial district provided all the requirements for a wireless communication facility building permit are met.

**6.4.5 Facilities Authorized by Special Permit.** A wireless communication facility may be installed in the locations indicated in § 6.4.3, provided all prescribed conditions, listed below, are met and the SPGA grants a special permit:

1. Multifamily dwelling. A concealed wireless communication facility may be installed in a building or in a structure on a building on a lot on which a dwelling other than a one-family or two-family dwelling is the principal use provided all residents of such dwelling or facility receive 30 days' notice before the application for a special permit is submitted.
2. Institutional, agricultural, natural resource or commercial uses in residential districts.
  - a. A concealed wireless communication facility may be installed in a building or in a structure on a building on a lot on which an institutional, agricultural, natural resource or commercial use in a residential district (as provided in Table 1<sup>5</sup>) is the principal use.
  - b. A wireless communication facility may be installed if it is co-located with an existing electrical power transmission line tower, an existing nonconforming transmitting or receiving tower, or a water tower, provided that the wireless communication facility is camouflaged and does not exceed the height of the tower.
  - c. For the purposes of this section, an electrical power transmission tower, an existing transmitting or receiving tower or antenna for commercial activities other than a wireless communication facility shall be considered to be a commercial use in a residential district.
3. Uses in commercial districts. A wireless communication facility may be installed on a lot in a commercial district provided the wireless communication facility is camouflaged and does not exceed the height requirements of § 4.4.

**6.4.6 Site Development Requirements.** The following standards shall apply:

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5. Editor's Note: Table 1 is included as an attachment to this chapter.

1. Shelters and accessory buildings. Any communication equipment shelter or accessory building shall be designed to be architecturally similar and compatible with the surrounding area. Whenever feasible, a building shall be constructed underground.
2. Setbacks. Any new tower shall be set back at least one time the height of the tower plus 10 feet from each lot line of the site on which the tower is located. Any non-concealed antenna shall be set back at least one time the height of the antenna, as measured from the ground level, from each lot line of the site on which the antenna is located. However, if the antenna is being attached to an existing tower whose setback is already approved, either by right, by special permit or by variance, and if the SPGA determines that the addition of the antenna does not materially alter the basis of that prior approval, then no new, independent setback requirement shall be created by the addition of the antenna. In nonresidential districts or on Town of Lexington owned land, the SPGA may grant a special permit to allow a lesser setback if it makes a finding that such lesser setback provides adequate safety, promotes co-location or improves design, and will not negatively impact the appearance and character of the neighborhood.
3. Security and signs. The area around the wireless communication facility shall be completely secure from trespass or vandalism. A sign not larger than one square foot shall be posted adjacent to the entry gate indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone number. Advertising on any antenna, tower, fencing, accessory building or communication equipment shelter is prohibited.
4. Lighting. Unless required by the Federal Aviation Administration, no exterior night lighting of towers or the wireless communication facility is permitted except for manually operated emergency lights for use when operating personnel are on site.
5. New towers. Any new freestanding tower shall be of a monopole construction. New towers shall not exceed the minimum height necessary to provide adequate coverage within the Town of Lexington. Erection of a new tower that exceeds the height restrictions listed in § 6.4 is not permitted unless the applicant demonstrates in the special permit

process that adequate coverage within the Town of Lexington cannot be met for the locations permitted under § 6.4.

6.4.7 Justification of Need. The following standards shall apply:

1. Coverage area. The applicant shall provide a map of the geographic area in which the proposed facility will provide adequate coverage.
2. Adequacy of other facility sites controlled by the applicant. The applicant shall provide written documentation of any facility sites in the Town and in abutting towns or cities in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. Said documentation shall demonstrate that these facility sites do not already provide, or do not have the potential to provide by site adjustment, adequate coverage.
3. Capacity of existing facility sites. The applicant shall provide written documentation that it has examined all facility sites located in the Town and in abutting towns in which the applicant has no legal or equitable interest to determine whether those existing facility sites can be used to provide adequate coverage.
4. Adequate coverage through the least disruptive means. The applicant shall provide written documentation that the proposed facility uses the least disruptive technology (through the use of repeaters or other similar technology as it may be developed subsequent to adoption of this bylaw) in which it can provide adequate coverage in conjunction with all facility sites listed above.

6.4.8 Application; Procedures.

1. The applicant or co-applicant for any permit for a wireless communication facility must be a licensed carrier who has authority from the FCC to provide wireless communication services for the facility being proposed. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of the filing of the application for the permit.
2. Review by the Design Advisory Committee. The Town of Lexington's Design Advisory Committee shall review an applicant's site plans and make recommendations to the Director of Inspectional Services for by right permit applications and to the SPGA for special permits. The Design

Advisory Committee will make comment on whether the site plans show that a proposed wireless communication facility will be concealed for a by right permit if built according to the plans, or whether the site plans show that a proposed wireless communication facility will be concealed or sufficiently camouflaged for a special permit if built according to the plans.

3. Review by the Communications Advisory Committee. The Board of Selectmen's Communications Advisory Committee shall review an applicant's application and make recommendations to the Director of Inspectional Services for by right permit applications and to the SPGA for special permits. The Communications Advisory Committee will make comment as to the application's adherence to the provisions of this section. The Committee may recommend that a consultant be hired by the SPGA (at the applicant's expense) if technical expertise is needed.
4. Permits. Each application for a permit must contain site plans with sufficient detail that would enable the Town to determine whether the proposed facility meets the requirements of this section.

6.4.9 SPGA. The Board of Appeals shall be the SPGA for permits under § 6.4.

6.4.10 Regulations. The SPGA shall maintain a set of regulations that contains the necessary policies, procedures, and standards to implement the provisions of this section.

6.4.11 Special Permit Criteria. A special permit shall be granted under this section only if the SPGA shall find that the project is in harmony with the general purpose and intent of this section and the SPGA's regulations. In addition, the SPGA shall make the findings required by § 9.4 and the following additional findings:

1. That the applicant is not already providing adequate coverage or is unable to maintain adequate coverage without the special permit;
2. That the applicant is not able to use existing facility sites either with or without the use of repeaters to provide adequate coverage;
3. That the proposed wireless service facility minimizes any adverse impact on historic resources, scenic views,

residential property values, and natural or man-made resources;

4. That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities;
5. That the facility shall comply with the appropriate FCC regulations regarding emissions of electromagnetic radiation and that the required monitoring program is in place and shall be paid for by the applicant; and
6. That the applicant has agreed to rent or lease available space on any tower it controls within Lexington or its contiguous towns, under the terms of a fair market lease, without discrimination to other wireless service providers.

6.4.12 Conditions. If a special permit is granted, in addition to such terms and conditions as may be authorized by § 9.4 of this bylaw, the SPGA may impose such additional conditions and safeguards as public safety, welfare and convenience may require.

6.4.13 Denial. Any decision by the SPGA to deny a special permit under this section shall be in conformance with the Telecommunications Act, in that it shall be in writing and supported by substantial evidence contained in a written record.  
**[Amended 3-23-2016 ATM by Art. 37]**

6.4.14 Term of Permit. Each special permit shall be valid for a fixed or conditional period of time as determined by the special permit granting authority. A special permit for any wireless communication service facility that exceeds height provisions of § 6.4 shall be valid for a maximum of 15 years. At the end of the approved time period, the facility shall be removed by the carrier or a new special permit shall be required.

6.4.15 Report. All permitted and special permitted wireless communication facility carriers shall periodically file with the Town, every five years (or sooner if specified in a special permit), on operational aspects of the facility including: power consumption; power radiation; frequency transmission; the number, location, and orientation of antennas; and types of services provided.

6.4.16 Removal Requirements. Any wireless service facility that ceases to operate for a period of one year shall be removed. Cease to operate is defined as not performing the normal functions

associated with the wireless service facility and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the facility site shall be remediated such that all wireless communication facilities that have ceased to operate are removed. If all facilities on a tower have ceased to operate, the tower (including the foundation) shall also be removed and the site shall be revegetated by the owner. Existing trees shall only be removed if necessary to complete the required removal. The applicant shall, as a condition of the special permit, provide a financial surety or other form of financial guaranty acceptable to the SPGA, to cover the cost of removal of the facility and the remediation of the landscape, should the facility cease to operate.

## **6.5. BED-AND-BREAKFAST HOME.**

6.5.1 Purpose. This section is intended to ensure that the conversion of an existing one-family dwelling unit into a bed-and-breakfast home containing not more than three bed-and-breakfast units is maintained primarily as a residence and the bed-and-breakfast accommodations are subordinate and incidental to the principal use of the dwelling as a residence.

6.5.2 Conditions and Requirements; General. The Building Commissioner may issue a certificate of occupancy for a bed-and-breakfast home to be conducted in a one-family dwelling unit in a RO or RS District provided that each of the following conditions and requirements are met:

1. No bed-and-breakfast home, new or preexisting, shall be operated without first being granted a certificate of occupancy from the Building Commissioner.
2. A bed-and-breakfast home is an accessory use and the primary use of the dwelling unit shall remain as a residence and not as a lodging house or as a "bed-and-breakfast establishment," as that term is defined in MGL c. 64G. As an accessory use, the bed-and-breakfast operation shall not occupy more than 45% of the gross floor area of the dwelling unit.
3. Within one dwelling unit, there shall be a maximum of three bedrooms which are rented to roomers, or are bed-and-breakfast units.
4. Food for a fee may be served only to overnight guests.

6.5.3 Conditions and Requirements; Exterior Appearance. The dwelling unit containing the bed-and-breakfast home shall be designed so that the exterior appearance of the structure remains that of a one-family dwelling, subject further to the following conditions and requirements:

1. All stairways to upper stories shall be enclosed within the exterior walls of the dwelling. There shall be no exterior fire escapes.
2. An enlargement or addition to the structure is permitted provided the architectural character of a one-family dwelling is maintained.

6.5.4 Conditions and Requirements; Parking. In order to maintain the appearance of a one-family neighborhood, all parking spaces on the lot created for the bed-and-breakfast units must be located in a side or rear yard.

6.5.5 Certificate of Occupancy.

1. The certificate of occupancy for the bed-and-breakfast operation shall be limited to a maximum of three years. A certificate of occupancy shall be issued only to the owner of the property and shall not be transferable. Any changes in ownership of the property shall require a new certificate of occupancy.
2. Upon issuance of a certificate of occupancy, the Building Commissioner shall notify abutters of the lot that a certificate of occupancy has been issued and of the terms and conditions under which it has been issued.

## **6.6. CONGREGATE LIVING FACILITY.**

6.6.1 Purpose. This section is intended to:

1. Encourage alternative living arrangements for the Town's elderly residents;
2. Permit housing arrangements compatible in size and scale with one-family and two-family neighborhoods; and
3. Encourage an economic, energy-efficient use of the Town's housing supply while maintaining the appearance and character of the Town's neighborhoods.

6.6.2 Conditions and Requirements; General. Congregate living facilities must meet each of the following conditions and requirements:

1. In the RO, RS and RT Districts, there shall be accommodations for not more than 15 residents in the dwelling.
2. The lot area shall be at least 10,000 square feet.
3. The dwelling shall be connected to the public water and sanitary sewer system.

6.6.3 Conditions and Requirements; Exterior Appearance. Congregate living facilities shall be designed so that the appearance of the structure is that of a dwelling characteristic of the zoning district in which it is located, i.e. a detached one-family dwelling if located in a RO, RS or RT District or a two-family dwelling if located in a RT District, subject further to the requirement that any stairway to a second or third story shall be enclosed within the exterior walls of the dwelling. There shall be no exterior fire escapes.

6.6.4 Conditions and Requirements; Off-Street Parking. In order to maintain the appearance of a one-family neighborhood, not more than two outdoor parking spaces shall be located in the front yard. All other parking spaces shall comply with the standards in § 5.1 for a parking lot. Additional screening may be required to minimize the visual impact of parking on adjacent properties.

6.6.5 Services and Facilities for Residents.

1. Supportive services, such as nutrition, housekeeping, or social activities and access to other services, such as health care, recreation or transportation, shall be provided. At least one meal per day shall be served to residents in a common dining room.
2. There shall be rooms and facilities that promote a shared living experience for residents including at least: a dining room, one living/common room suitable for social activities, space for outdoor activities and other rooms for other supportive services.
3. A service providing organization, with sufficient resources, responsible for the provision of the supportive services shall be identified. If the relationship between that organization and the facility is terminated, and if, within 90 days, another



comparable service providing organization is not designated, the certificate of occupancy shall be suspended or revoked. The service providing organization shall employ a manager or coordinator to direct the supportive services, and the manager or coordinator, or a designee, who shall not be a client of the congregate living facility, shall be on the site at least eight hours per day, seven days per week.

4. A resident may occupy a separate bedroom or a suite of rooms which may have one or more of the following: a private full or half bath, a kitchenette of a size and type suitable for preparation of light meals for one or two persons, but not larger, or a living room.
5. There shall be provided at least 150 square feet of open space for each resident. **[Amended 4-9-2014 ATM by Art. 32]**
6. The dwelling may not contain any separate dwelling unit other than that provided for the manager or coordinator.

6.6.6 Recommendation. Prior to the granting of a special permit or the issuance of a building permit, the permitting authority shall submit a copy of the application to the Human Services Committee and the Board of Health which shall be given a reasonable time period in which to make a recommendation on the application.

6.6.7 Condition. Each building permit or special permit shall include a condition that the certificate of action is subject to suspension or revocation if the dwelling is no longer used as a congregate living facility or if the support services are no longer rendered. Each special permit must be recorded in the Registry of Deeds.

## **6.7. ACCESSORY APARTMENTS. [Amended 4-9-2014 ATM by Art. 32; 3-25-2015 ATM by Art. 52; 3-30-2016 ATM by Art. 40]**

6.7.1 Purpose. This section authorizing the provision of accessory dwelling units is intended to:

1. Increase the number of small dwelling units available in the Town;
2. Increase the range of choice of housing accommodations;
3. Encourage greater diversity of population with particular attention to young adults and senior citizens; and

4. Encourage a more economic and energy-efficient use of the Town's housing supply while maintaining the appearance and character of the Town's one-family neighborhoods.

6.7.2 General. An accessory apartment is a second dwelling unit subordinate in size to the principal dwelling unit on a lot, located in either the principal dwelling or an accessory structure.

6.7.3 Conditions and Requirements; General. The following standards shall apply:

1. There shall be no more than one accessory apartment on a lot.
2. The owner of the property on which the accessory apartment is to be created shall occupy one or the other of the dwelling units, except for temporary absences as provided herein. For the purposes of this section, the "owner" shall be one or more individuals who constitute a family, who hold title directly or indirectly to the dwelling, and for whom the dwelling is the primary residence.
3. Temporary absence of owner. An owner of a property containing an accessory apartment who is to be absent for a period of less than two years may rent the owner's unit as well as the second unit during the temporary absence provided:
  - a. Written notice thereof shall be made to the Building Commissioner on a form prescribed by him.
  - b. The owner shall be resident on the property for at least two years prior to and between such temporary absences.

6.7.4 Conditions and Requirements; Exterior Appearance. The accessory apartment shall be designed to maintain the appearance and essential character of a one-family dwelling with accessory structures, subject further to the following conditions and requirements:

1. All stairways to second or third stories shall be enclosed within the exterior walls of the dwelling.
2. Where two or more entrances exist on the front facade of a dwelling, one entrance shall appear to be the principal entrance and other entrances appear to be secondary.

6.7.5 Basic Accessory Apartment. A basic accessory apartment shall be permitted if the following criteria are met:

1. The apartment shall be located in the principal dwelling.
2. The gross floor area of the apartment shall not exceed 1,000 square feet.
3. There shall not be more than two bedrooms in the apartment.

6.7.6 Expanded Accessory Apartment. The SPGA may grant a special permit for an expanded accessory apartment if the following criteria are met:

1. The gross floor area of the apartment shall not exceed 40% of the gross floor area of the dwelling, excluding areas of the structure used for parking.
2. The apartment shall be located in the principal dwelling.
3. The size of the dwelling is consistent with typical nearby one-family dwellings.

6.7.7 Accessory Structure Apartment. Notwithstanding the prohibition against having more than one dwelling on a lot, the SPGA may grant a special permit to allow the construction of an accessory apartment in an accessory structure on the same lot as a one-family dwelling if the following criteria are met:

1. The gross floor area of the apartment does not exceed 1,000 square feet.
2. The SPGA determines that the exterior appearance of the accessory structure is compatible with the principal dwelling on the same lot and with dwellings and accessory structures on adjoining lots.

## **6.8. HOME OCCUPATIONS.**

6.8.1 Purpose. The provisions of this section are intended to accommodate limited business uses in dwellings, conducted by the residents thereof, in order to promote wider economic opportunities for Lexington residents, while at the same time protecting residential neighborhoods from adverse impacts.

6.8.2 Applicability. The provisions of this section shall apply to all permitted home occupations except where specifically stated otherwise.

6.8.3 Accessory Use. Home occupations shall be considered accessory uses to the principal residential use of a dwelling, and shall be conducted by a resident of the dwelling. A home occupation shall

be incidental to the principal use as a residence, but need not be a use that is customarily associated with residential use.

6.8.4 Maintenance of Residential Character. There shall be no exterior indication of the home occupation, except as provided herein in the form of off-street parking:

1. The business shall not require alterations to the exterior of the building.
2. There shall be no exterior storage of materials, supplies, or equipment related to the business.
3. There shall be no sign indicating the business.

6.8.5 Number of Home Occupations. More than one home occupation may be established in a dwelling, subject to the use regulations of § 3.1, but all home occupations combined shall not exceed any of the standards of this section.

6.8.6 Hours of Operation. Business visits to a home occupation shall be limited to the hours from 7:00 a.m. to 9:00 p.m., unless otherwise authorized by special permit.

6.8.7 Employees.

1. A minor home occupation or instruction home occupation shall have no nonresident employee, contractor, or partner.
2. A major home occupation shall have no more than one full-time nonresident employee, contractor, or partner (or the equivalent thereof) on the premises at any one time.
3. The number of nonresident employees working at off-premises locations is not limited, provided that such employees do not regularly visit the premises.

6.8.8 Commercial Vehicles, Pickups and Deliveries.

1. Vehicles used to deliver goods to the home-based business shall be limited to passenger vehicles, mail carriers, and panel trucks or small vans such as used by express package carriers and office supply companies.
2. Pickups and deliveries shall not exceed those normally and reasonably occurring at a residence and shall not include more than an average of two pickups and deliveries of products or materials per day.

6.8.9 Parking. A major home occupation shall provide off-street parking spaces for the home occupation, in addition to spaces for the dwelling unit, as follows:

1. One parking space shall be provided for a nonresident employee, partner, or contractor regularly working on the premises;
2. When a home occupation requires a special permit, the SPGA may require, at its discretion, the provision of up to one parking space for each client or customer expected to visit the premises at one time, if site-specific conditions warrant it. Provision of such a space shall be in addition to parking required for the dwelling unit and nonresident employees.

6.8.10 Environmental Impacts. The operation of the home occupation may not use and/or store hazardous materials (as defined in MGL c. 21E, § 2) in excess of quantities permitted in residential structures.

## **6.9. SPECIAL PERMIT RESIDENTIAL DEVELOPMENTS.**

6.9.1 Purpose. This section is intended to:

1. Ensure that the development of multiple dwellings does not detract from the livability, scale, character or economic value of existing residential neighborhoods;
2. Encourage greater diversity of housing opportunities in Lexington to meet the needs of a population which is diversified with respect to number of persons in a household, stage of life, and income;
3. Encourage the development of affordable housing;
4. Promote development proposals designed with sensitivity to the characteristics of the site that otherwise might be limited by application of uniform, largely geometric standards;
5. Permit different types of structures and residential uses to be combined in a planned interrelationship that promotes an improved design relationship between new buildings and public facilities and common open space;
6. Preserve historically or architecturally significant buildings or places;

7. Encourage the preservation and minimum disruption of outstanding natural features of open land and to minimize impacts on environmentally sensitive areas;
8. Encourage sustainable development through the use of green building practices and low-impact development techniques;
9. Promote the efficient and economical provision of public facilities such as utilities and streets and facilitate a detailed assessment, by Town officials and the public, of the adequacy of such facilities and services for the proposed level of development.

6.9.2 Applicability. A special permit residential development is a project in which one or more lots, tracts, or parcels of land are to be improved for use as a coordinated site for housing. No special permit residential development shall be initiated without first obtaining a special permit in accordance with the provisions of this section. The purpose of the special permit is to provide detailed review of residential developments that have a substantial impact upon the character of the Town, adjacent residential areas and the provision of public facilities and services.

#### 6.9.3 Types of Special Permit Residential Development.

1. A site sensitive development (SSD) is the development of a parcel with configurations of lots allowing flexibility and creativity in residential development through reductions in minimum lot area and frontage requirements in order to minimize site disturbance, preserve historic and sensitive natural resources, and allow for efficient patterns of construction to lower development cost. The number of dwellings in a site sensitive development may not exceed the number of dwellings that could be constructed in the development of a conventional subdivision. **[Amended 4-9-2014 ATM by Art. 32]**
2. A balanced housing development (BHD) is a development allowing deviation from the dimensional standards that apply to developments in conventional subdivisions in order to achieve a balance of housing choices for a diversity of household types and sizes. Instead of determining density by minimum lot area and frontage requirements, the amount of residential development for the tract as a whole is based on calculations of gross floor area and impervious surface area

derived from a conventional development plan for the tract of land. **[Amended 4-9-2014 ATM by Art. 32]**

3. A public benefit development (PBD) is a type of balanced housing development that allows increases in gross floor area and impervious surface area in return for the creation of 10% of the units as affordable housing.

6.9.4 Scale of Development. An applicant is not entitled to the maximum development, nor is the applicant entitled to approval of a special permit residential development. The amount of development permitted will be based on a fully complying proof plan and the SPGA's evaluation of the extent to which the proposed development complies with the criteria set forth-below.

6.9.5 Dimensional Standards. The requirements of § 135-4.0 are modified as follows:

1. Lot area. There is no minimum lot area required. Individual lot area shall be sufficient to meet off-street parking requirements of this bylaw and the installation of any on-site water supply and sewage disposal facilities.
2. Frontage. There is no minimum frontage required. Frontage for each lot shall be sufficient to provide for adequate access to the building site. Where shared driveways or other circumstances render frontage on a street to be of no importance, none is required.
3. Yard and Height Requirements. Yards required by § 135-4.0 and the height limit of § 135-4.3.5 apply to the perimeter of the site, but are not applicable within the site. **[Amended 3-30-2016 ATM by Art. 39]**
4. Site coverage. There is no maximum site coverage limit for individual lots. Site coverage for the development tract as a whole is limited as described below.

6.9.6 Gross Floor Area Standards.

1. Site sensitive developments (SSD). The total gross floor area (GFA) in an SSD may not exceed the sum of the gross floor area that would be permitted on each of the lots shown on the proof plan under § 135-4.4 of this bylaw. **[Amended 3-30-2016 ATM by Art. 41]**
2. Balanced housing developments. The total gross floor area (GFA) of all structures in a BHD shall be less than the number

of lots shown on the proof plan multiplied by 7,200 square feet.

3. Public benefit developments. The total gross floor area (GFA) of all structures in a PBD shall be less than the number of lots shown on the proof plan multiplied by 8,640 square feet.

#### 6.9.7 Dwelling Unit Count and Limitations on Unit Size.

1. Site sensitive developments. The number of dwellings in a SSD shall not exceed the number of dwellings shown on the proof plan.
2. Balanced housing developments. The number of dwelling units permitted in a BHD is not limited. At least 25% of the dwelling units must have a GFA not larger than 2,700 square feet, and at least 50% of the dwelling units must have a GFA not larger than 3,500 square feet.
3. Public benefit developments. The number of dwelling units permitted in a PBD is not limited. At least 25% of the dwelling units must have a GFA not larger than 2,700 square feet, and at least 50% of the dwelling units must have a GFA not larger than 3,500 square feet. In addition, 10% of the total number of dwelling units in the development must be affordable to households earning no more than 80% of the area median income.

#### 6.9.8 Impervious Surface Standards.

1. Site sensitive developments. The impervious surface limit in a SSD is based on the proof plan. The limit for the development as a whole is calculated as follows:
 

Step 1: Determine the area in square feet of each lot shown on the proof plan. For each lot in a RS or RT District, multiply its lot area by 0.20; for each lot in the RO District, multiply its lot area by 0.12.

Step 2: Determine the total area of the impervious surfaces contained on the proof plan that are not contained within lots, such as roads, sidewalks, and similar surfaces.

Step 3: The impervious surface limit for the SSD is the sum of the impervious surface calculations from Steps 1 and 2.
2. Balanced housing developments. The impervious surface limit in a BHD is calculated in the same manner as that of a SSD.



3. Public benefit developments. The impervious surface limit in a PBD is calculated in the same manner as that of a SSD and increased by 20%, i.e. multiplied by 1.20.

#### 6.9.9 Site Coverage Standards.

1. For site sensitive developments, the site coverage limit is based on the proof plan. The limit for the development as a whole is calculated as follows:

Step 1: For each lot on the proof plan, multiply its lot area in square feet by 0.15 for lots in RS and RT Districts, and by 0.09 for lots in RO Districts.

Step 2: The site coverage limit for the SSD as a whole is equal to the sum of the individual lot site coverage calculations determined in Step 1.

2. For balanced housing developments, there is no site coverage limit.
3. For public benefit developments, there is no site coverage limit.

#### 6.9.10 Common Open Space Standards.

1. Minimum common open space. At least 33% of the developable site area in a BHD or PBD shall be set aside as common open space. A maximum of 20% of common open space may be devoted to parking or structures used for, or accessory to, active outdoor recreation, provided such parking or structures are consistent with the open space uses of such land.
2. Location; condition. Where required or provided, common open space shall be land that may be in one or more parcels of a size and shape appropriate for the intended use and available for use by all occupants of a development.
3. Easement. When such open space is conveyed to persons or entities other than the Town, an easement over such land shall be granted to the Town to ensure its perpetual use as open space, conservation, recreation or park land.

#### 6.9.11 Ownership of Open Space. Common open space may be conveyed to:

1. The Town, subject to acceptance, to ensure its perpetual use as open space, conservation, recreation or park land; or

2. A legal association comprised of the owners of the development, which may include homeowners or owners of condominium or cooperative units; or
3. A nonprofit organization, the principal purpose of which is the conservation of open space.

6.9.12 Streets and Drives. The objective of this section is that adequate access for fire-fighting, medical and other emergency operations be provided from the public street system to each site sensitive, balanced housing, or public benefit development, as follows:

1. Connection to public street system. Each street and interior, drive, or system of streets or interior drives, shall connect to a public street.
2. A dead-end interior drive will be treated in the same manner as a dead-end street, and is subject to the provisions governing a dead-end street that are found in the Subdivision Regulations. **[Amended 3-23-2016 ATM by Art. 37]**
3. In a development served by a dead-end street or dead-end interior drive, a secondary means of access may be required in order to provide adequate access for fire-fighting, medical and other emergency vehicles. The Fire Chief will be consulted as to the adequacy of the access.

6.9.13 Compliance with Other Rules and Regulations. The construction of community services, such as utilities, and of streets and interior drives shall comply with the requirements of the Planning Board's Subdivision Regulations. **[Amended 3-23-2016 ATM by Art. 37]**

6.9.14 Modification by Special Permit. The SPGA may, as part of the grant of a special permit, modify the requirements of §§ 6.9.8 and 6.9.9, and the following provisions, as they may apply to individual dwellings or lots within a special permit residential development:

<b>Bylaw Provisions</b>	<b>SSD</b>	<b>BHD</b>	<b>PBD</b>
Number of dwellings on a lot	No	Yes	Yes
Lot width	Yes	Yes	Yes
Contiguous developable site area	Yes	Yes	Yes

<b>Bylaw Provisions</b>	<b>SSD</b>	<b>BHD</b>	<b>PBD</b>
Location of off-street parking spaces	Yes	Yes	Yes
Setbacks required for parking spaces and driveways	Yes	Yes	Yes
Subdivision of land in relation to lots or buildings that are nonconforming or would not comply with this bylaw as a result of the proposed development	Yes	Yes	Yes

6.9.15 Types of Dwellings. The SPGA may, as part of the grant of a special permit, allow the following types of dwellings:

<b>Type of Dwelling</b>	<b>SSD</b>	<b>BHD</b>	<b>PBD</b>
One-family detached	Yes	Yes	Yes
Two-family (*Yes in RT District)	No*	Yes	Yes
Townhouse	No	Yes	Yes

6.9.16 Accessory Apartments. The SPGA may authorize accessory apartments, as described in § 6.7 of this bylaw, to be created within a site sensitive development. **[Amended 4-9-2014 ATM by Art. 32; 3-30-2016 ATM by Art. 40]**

6.9.17 Conversion. The SPGA may authorize an existing structure, that was constructed at least 10 years prior to the date of application for approval of the special permit, to be converted to a residential use not otherwise permitted. The special permit shall incorporate by reference the building design and definitive site development plans filed with the application for a special permit, and, where applicable, any legally binding document that has been submitted to ensure the completion and continued availability of any proposed improvement or compliance with special conditions. In order to grant the permit the SPGA shall determine that:

1. The structure can be modified for a residential use that does not have adverse impacts on any adjacent one-family neighborhood;

2. The exterior character of the structure is maintained and is compatible with any adjacent neighborhood of one-family dwellings;
3. Modification of the existing structure maintains more of the site as open space than the alternative of removal of the structure and further subdivision of the lot into house lots.

6.9.18 SPGA. The Planning Board shall be the special permit granting authority for all special permit residential developments. The Planning Board may grant any special permits that are required for the special permit residential development, notwithstanding provisions of this bylaw designating a different special permit granting authority.

6.9.19 Criteria. The SPGA may only grant a special permit if it makes a determination that the proposed development is consistent with the standards and criteria set forth in § 9.4.2 and the following additional criteria:

1. Where there is common open space, it shall include, as applicable:
  - a. Some, or all, of the outstanding natural features of the site and of the man-made features, including but not limited to stone walls, that enhance the land form;
  - b. Land that increases visual amenities for residents of the development and of the adjacent neighborhood;
  - c. One or more paths or entry points specifically designed for access purposes.
2. The dwellings are sited and oriented in a complementary relationship to: each other, the common open space, and the adjacent properties with respect to scale, mass, setback, proportions and materials;
3. Negative visual impacts of the development, if any, are screened from adjacent properties and nearby streets by landscaping or other site planning techniques;
4. Where opportunities exist, improved access is provided to, or additional links and connections are developed to, a Town system of public facilities, such as open space, recreation facilities, footpaths or bicycle paths;
5. Any building which contains more than one dwelling unit is designed so that either:

- a. The building has the exterior appearance of a one-family dwelling; or
  - b. If two-family dwellings and/or townhouses are constructed, each individual dwelling unit has access to ground level and an opportunity for a private yard, patio, or other private outdoor space;
6. There are provisions for common facilities, such as recreation or parking, or for services such as the maintenance of streets, walkways or paths, utilities, landscaping or recreation facilities;
  7. Where there are sufficient dwelling units, the layout of the street(s) and interior drive(s) will accommodate vehicles, other than automobiles, that are used in local transportation services.
  8. To the extent practicable, sustainable development techniques, including green buildings, have been utilized.
  9. A public benefit development shall meet the following criteria:
    - a. There are sufficient benefits to the adjacent neighborhood and the Town generally to warrant an increase in the maximum development otherwise permitted; and
    - b. Legally binding documents have been submitted that insure that affordable units will continue to be available to eligible households in perpetuity. An affordable unit shall be subject to maximum household income established for that unit, based on the area median income (AMI) as annually determined by the U.S. Department of Housing and Urban Development, assuming one more person in the household than the number of bedrooms in the unit. Eligible households shall have incomes no greater than 80% of the AMI.<sup>6</sup>

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6. Editor's Note: Former Section 6.10, Medical marijuana treatment centers, added 6-17-2013 STM by Art. 4, was repealed 3-26-2014 ATM by Art. 30.