

ATTACHMENT D – VILLAGE CENTER REZONING AMENDMENT – 10/06/11

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SECTION 5.00 GENERAL

Any use which is, in Hampshire County, customarily accessory and incidental to a permitted Principal Use shall be permitted on the same lot with said Principal Use, or on a lot adjacent thereto in the same ownership, subject to the general limitation that it shall not be detrimental to the neighborhood or the property in the vicinity, and subject further to the following provision: Wherever a Principal Use is allowed by Special Permit from the Board of Appeals then Accessory Uses to the Principal Use shall be subject to a Special Permit, unless otherwise provided in this Article.

SECTION 5.01 RESIDENTIAL

5.010 Lodgers/Boarders/Roomers/Bed and Breakfast

5.0100 Lodgers/Boarders/Roomers/Bed and Breakfast - Maximum Three People. In any district, the taking of lodgers/boarders/roomers/bed and breakfast lodgers (maximum three people) shall be an accessory to the use of a dwelling unit, provided that:

5.01000 There shall be an owner who resides on the premises responsible for the operation.

5.01001 There shall be no separate cooking facilities. However, meals may be offered/provided to lodgers/boarders/roomers and breakfast may be provided to bed and breakfast lodgers.

5.01002 There shall be no substantial change to the exterior of the building.

5.01003 One parking space shall be provided for each room to be occupied by lodgers/boarders/roomers/bed and breakfast lodgers in addition to the parking required under Section 7.000.

5.0101 Lodgers/Boarders/Roomers/Bed and Breakfast - Four to Six People. In any district, the Zoning Board of Appeals may grant a Special Permit for the taking of lodgers/boarders/roomers/bed and breakfast lodgers (four to six people) as a use accessory to the use of a dwelling unit, provided that:

5.01010 There shall be an owner who resides on the premises responsible for the operation.

5.01011 There shall be no separate cooking facilities. However, meals may be offered/provided to lodgers/boarders/roomers, and breakfast may be provided to bed and breakfast lodgers.

5.01012 There shall be no substantial change to the exterior of the building.

5.01013 One parking space shall be provided for each room to be occupied by lodgers/boarders/roomers/bed and breakfast lodgers in addition to the parking required under Section 7.000.

5.01014 There shall be a maximum of five rooms available for rental to lodgers/ boarders/roomers/bed and breakfast lodgers.

5.01015 A management plan, as defined in terms of form and content in the Rules and Regulations of the Zoning Board of Appeals, shall be included as part of any application made under this section. A register of all lodgers/boarders/ roomers/bed and breakfast lodgers shall be kept in accordance with the Rules and Regulations covering hotels and motels within the Commonwealth.

5.0102 Bed and Breakfast

In the R-VC District, the Zoning Board of Appeals may grant a Special Permit for the taking of bed and breakfast lodgers in up to 7 rooms as a use accessory to the use of a dwelling unit.

In the B-G, B-L, B-VC and B-N Districts, the Zoning Board of Appeals may grant a Special Permit for the taking of bed and breakfast lodgers in up to 10 rooms as a use accessory to the use of a dwelling unit, and for limited bed and breakfast-related retail and consumer services as a second accessory use.

The Zoning Board of Appeals may grant a Special Permit for a use under this section, provided that, in addition to meeting the provisions of Article 7 and Section 10.38, the proposed use meets the following conditions:

5.01020 There shall be an owner who resides on the premises responsible for the operation.

5.01021 The building shall be connected to the public sewer prior to occupancy.

5.01022 There shall be no separate cooking facilities. However, breakfast may be provided to bed and breakfast lodgers.

5.01023 One parking space shall be provided for each room occupied by bed and breakfast lodgers in addition to the parking required under Section 7.000.

5.01024 Retail and consumer services shall be provided only to bed and breakfast lodgers, and shall be clearly secondary and incidental to the bed and breakfast use.

5.01025 A management plan, as defined in terms of form and content by the Rules and Regulations of the Zoning Board of Appeals, shall be part of any application made under this Section. Where retail and consumer services are proposed, such information as the Board of Appeals may require on those services shall be included in the management of this plan.

5.011 Supplemental Apartment

5.0110 A supplemental apartment is a small accessory dwelling unit incorporated as part of and subordinate to a single family detached dwelling. As an accessory use, a supplemental apartment is exempt from the additional lot area/family requirements of Table 3. Supplemental apartments are intended to meet the changing housing needs of owner-occupied households, including housing for relatives and others associated with the household, and the provision of small, individual rental units.

5.0111 The Board of Appeals may authorize under a Special Permit in the Outlying Residence, Low Density Residence, Neighborhood Residence, Village Center Residence and General Residence Districts, one supplemental apartment accessory to the use of a single family dwelling, provided that:

5.01110 There shall not be more than 800 square feet of gross floor area in a supplemental apartment, except that any apartment built and maintained as fully accessible under the provisions of the Americans with Disabilities Act (ADA) may include a maximum of 900 square feet in gross floor area.

- 5.01111 Any single family dwelling in which a supplemental apartment is constructed shall not be used simultaneously for accessory lodging under any provision of Section 5.010.
 - 5.01112 One of the dwelling units shall be occupied by the owner(s) of the principal single family residence, which requirement shall be made a condition of any Special Permit issued under this section.
 - 5.01113 Notwithstanding the provisions of Section 12.14, a supplemental apartment shall be occupied by a total of no more than three (3) people.
- 5.012 Office or Studio - The use of a portion of a dwelling or of a building accessory thereof as the office of a doctor, dentist, optician, member of the clergy, lawyer, architect, engineer or other member of a recognized profession, or as the studio or office of an artist, musician, teacher, real estate or insurance agent residing on the premises shall be considered accessory to the use of the dwelling unit, provided that:
- 5.0120 Not more than two persons other than residents of the premises are regularly employed therein in connection with such use.
 - 5.0121 No external change is made which alters the residential appearance of the building on the lot.
 - 5.0122 There is no outward evidence that the premises are being used for any purpose other than residential (except for an accessory sign or vehicle as hereinafter permitted).
- 5.013 Home Occupation - *In the NAVC District, the Permit Granting Board may authorize home occupations as accessory uses by right under a Site Plan Review Approval, provided that the requirements of Sections 5.0130 through 5.0134, inclusive, are met. In all other residence districts, ~~The~~ the Board of Appeals may authorize, by issue of a Special Permit, the use of a portion of a dwelling or building accessory thereto as the workroom of a resident artist, craftsman, beautician, dressmaker, milliner, photographer, cabinetmaker, skate sharpener, radio repair technician or other person engaged in a customary home occupation, or as the office of a resident taxicab or limousine service operator (see Section 3.340.3), or as a place for incidental work and storage in connection with the off-premises trade by a resident builder, carpenter, electrician, painter, plumber or other artisan, or by a resident tree surgeon, landscape gardener or similar person, provided that:*
- 5.0130 Such use is clearly secondary to the use of a premises for dwelling purposes.
 - 5.0131 Not more than two persons other than residents of the premises are regularly employed there in connection with such use.
 - 5.0132 No trading in merchandise is regularly conducted except for products made on the premises or of parts of other items customarily maintained in connection with, and incidental to, such merchandise.
 - 5.0133 No external change is made which alters the residential appearance of the building on the lot.
 - 5.0134 All operations, including incidental storage, are carried on within the principal or accessory building, and that there is no outward evidence that the premises are being used for any purpose other than residential (except for an accessory sign or vehicle as hereinafter permitted).
 - 5.0135 The proposed accessory use would be suitably located in the neighborhood in which it is proposed and/or the total Town, whichever is deemed appropriate by the Board of Appeals.
 - 5.0136 In Residence Districts, the use will be reasonably compatible with other uses permitted as of right in the same district;
 - 5.0137 The use will not constitute a nuisance by reason of an unacceptable level of air or water pollution, excessive noise or visually flagrant structures and accessories, and the use is not a serious hazard to abutters, vehicles or pedestrians.
 - 5.0138 Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including special attention to safe vehicular circulation on the site and at the intersection with abutting streets.

- 5.014 Livestock or Poultry - The raising or keeping of livestock or poultry for use by residents of the premises shall be considered as an accessory use to residential uses in selected residential districts in Amherst and shall not be permitted in other districts. All livestock and poultry raised and kept as an accessory use shall be raised and kept in a safe and humane manner consistent with best agricultural practices, and shall be subject to the regulations of this section and all applicable local and state laws. The accessory raising or keeping of livestock or poultry in residential districts:
- 5.0140 Shall be allowed by right in the Outlying Residence (R-O) and Low-Density Residence (R-LD) Districts;
 - 5.0141 Shall be allowed in the General Residence (R-G), Village Center Residence (R-VC), and Neighborhood Residence (R-N) Districts under the following provisions:
 - 5.0141.0 Only selected domesticated fowl (hens, ducks, pigeons, and doves) and domesticated rabbits (including domesticated hares) may be raised and kept as an accessory use. On such properties, no roosters, geese, swans, turkeys, pheasants, peacocks, guinea fowl, pygmy goats, potbellied pigs, or any other livestock or poultry shall be permitted, except under the provisions of a Special Permit granted by the Zoning Board of Appeals.
 - 5.0141.1 No more than a combined total of twelve (12) total adult domesticated fowl and rabbits shall be kept on any property, regardless of the number of dwelling units. Only reproductively mature fowl and rabbits shall be considered adults counting toward this maximum.
 - 5.0141.2 Domesticated fowl and rabbits shall be confined with fencing or other secure enclosure, which enclosure and any associated sheltering structure shall be set at least ten (10) feet from any property lines and twenty (20) feet from residential structures on any adjacent property. Within such an enclosure, a minimum of ten (10) square feet of open yard area shall be provided per adult animal. Upon receipt of a signed affidavit from all owners of property affected by a setback, in which said owners agree to a specific modification, the Building Commissioner may vary the setback from the property lines in question for enclosures, and for sheltering structures within the height and setback limitations established for accessory structures under Section 6.15.
 - 5.0141.3 Within or attached to any such enclosure shall be provided a secure sheltering structure (e.g., coop, dovecote, hutch, or shed, as appropriate) of sufficient size to ensure the health and safety of the animals.
 - 5.0142 In all cases, the accessory keeping and raising of livestock or poultry shall require registration of said livestock or poultry with the Amherst Health Department and shall permit regular inspections by the Animal Welfare Officer under applicable state and local law or regulations. All Special Permits issued under this section shall include as conditions of approval the submission of evidence of such registration.
 - 5.0143 Any provision of Section 5.014, Livestock or Poultry, may be waived or modified under a Special Permit granted by the Zoning Board of Appeals for compelling reasons of public health, safety, and general public welfare.
 - 5.0144 No provision of Section 5.014, Livestock or Poultry, shall apply to farm properties or agricultural operations recognized under MGL Ch. 40A, Section 3, as amended.
- 5.015 Garaging or Parking of Motor Vehicles
- 5.0151 Garaging or parking of one light panel, delivery or pick-up truck shall be considered to be a permitted accessory use in a residential district.
 - 5.0152 Garaging or parking of larger commercial vehicles or more than one commercial vehicle may be allowed under a Special Permit, issued by the Board of Appeals.

5.016 Dwellings in Office, Research & Industrial Districts

In any Office Park (OP), Professional Research Park (PRP) or Light Industrial (LI) District, dwelling units may be permitted as an accessory use on any lot where the dwelling unit or units are determined by the permit-granting authority to be necessary for the accommodation of a manager, custodian, security guard, or other employee essential to the operation of the principal non-residential use of the lot. This may include accommodation for such employee's immediate family or household. Not more than 10% of the gross floor area (GFA) of all buildings, as determined by the Building Commissioner, shall be devoted to such accessory residential use. A larger percentage of residential GFA may be allowed only if specifically authorized by the Board of Appeals under a Special Permit.

5.017 Trailer - A trailer or mobile home may be used on any lot for not more than 60 days in any twelve month period and shall be removed at the end of said 60 days, except as provided below:

5.0170 The owner or occupier of a residence which has been destroyed by fire or natural disaster may place a mobile home on the site of such residence and may, by right, reside in such mobile home for a period not to exceed twelve months while the residence is being built. Any such mobile home shall be subject to the provisions of the State Sanitary Code.

5.0171 The tenant of a commercial place of business which has been destroyed by fire or natural disaster may place a trailer on the site of such place of business and may, by right occupy such trailer for period not to exceed twelve months while the business premises are being built. Any such trailer shall be subject to the provisions of the Amherst Board of Health.

5.0172 In circumstances other than noted in Sections 5.170 and 5.171 above, the Board of Appeals may allow the use of a trailer or mobile home as a dwelling or commercial place of business for longer than 60 days, under Special Permit, provided that a time limit is imposed as part of such permit.

5.0173 A trailer may be used for a construction site office on a temporary basis, such trailer to be removed upon completion of the construction project.

SECTION 5.02 LIGHT INDUSTRIAL DISTRICT

Where clearly secondary and incidental to a manufacturing establishment or other Principal Use in a Light Industrial District, any of the following shall be considered as Accessory Uses:

- 5.020 Restaurant, company store, or similar facility for the convenience of and use by, employees on the premises;
- 5.021 Salesroom for selling at retail to the general public not more than 10% of any goods assembled, packaged, finished, processed or otherwise manufactured on the premises;
- 5.022 Regular open-air storage of materials, merchandise, products or equipment needed in connection with, or produced by, the Principal Use on the Premises, but only if such open storage is specifically authorized by a Special Permit from the Board of Appeals.

SECTION 5.03 OFFICE PARK & PROFESSIONAL AND RESEARCH PARK

A restaurant, company store, or similar facility for the convenience of, and use by, employees on the premises shall be considered an accessory use in the OP and PRP Districts.

SECTION 5.04 RETAIL BUSINESS AND CONSUMER SERVICE USES

- 5.040 The rental of automobiles, trucks, trailers and farm implements may be granted under a Special Permit as accessory to establishments selling motor vehicle fuel, related products and services.
- 5.041 Seasonal outdoor dining, including sidewalk cafes, courtyard or terrace dining and similar uses may be permitted in the *NAVC*, *AC*, B-G, B-L, B-VC, B-N and COM Districts as an accessory use to: 1) a restaurant, café, lunchroom, cafeteria, refreshment stand, drive-up, fast-food eatery or similar eating establishment, or; 2) to a bakery, deli, or other similar establishment for the production and sale of food or beverage on the premises, or; 3) to a retail store or convenience store selling prepared and packed food or beverage on the premises, under a Special Permit or Site Plan Review approval, whichever is required for the principal use. In the case of a retail or convenience store selling prepared and packaged food on the premises, any unpackaged food or beverage such as ice cream or soft drinks sold in association with any accessory seasonal outdoor dining use shall be sold and served only through a limited-access walk-up window or similar facility, to be consumed out of doors.

In residential districts, seasonal outdoor dining may be permitted under a Special Permit as an accessory use to a farm stand restaurant. Where appropriate, health, fire and building permits have been obtained, seasonal outdoor dining uses may also include the outdoor preparation and cooking of food or beverages.

The following conditions shall apply to any seasonal outdoor dining permitted under this section:

- 5.0410 Except as may be specifically allowed under conditions attached to said Site Plan Review or Special Permit, no structure, framework, planter box, fence, wall or furnishing used in conjunction with the operation of an outdoor dining use shall be allowed to remain in the area so used between November 1 and the April 1 following thereafter. In the B-G District, such temporary structures and furnishings shall be exempt from the provisions of Sections 6.20 and 6.23. No such exemption shall apply to fixed or permanent structures or furnishings.
- 5.0411 Where a site for a proposed outdoor dining facility is partly or completely situated upon a sidewalk within the public way or upon other publicly-owned land, evidence of a lease and/or license allowing the use of the site by the applicant shall be provided prior to the issuance of an occupancy permit.
- 5.0412 The permit-granting authority shall receive from the Building Commissioner a statement that the outdoor dining use will not unduly hinder safe exit from or access to the establishment in the event of a fire or other emergency.
- 5.0413 Except as may be specifically allowed under conditions attached to said Site Plan Review or Special Permit, no wall or fence related to an outdoor dining facility shall have a height of more than four (4) feet. No such facility shall be equipped with free-standing heating and cooling devices or served by the HVAC system(s) of adjacent and associated buildings, except for fans.
- 5.042 Live or pre-recorded entertainment involving music and/or human voice, whether amplified or unamplified, may be permitted in the *NAVC*, *AC*, B-G, B-L, B-VC, B-N and COM Districts as an accessory use to a restaurant, bar, inn or bed and breakfast (Section 5.0102 only) under a Special Permit or Site Plan Review, whichever is required for the principal use, except that a Special Permit shall be required whenever any accessory entertainment is proposed and any outside wall of that portion of the building occupied by the principal use is located 150 feet or less from a residential dwelling in a Residence district.

The following conditions shall apply to any entertainment permitted under this section:

- 5.0420 Such entertainment shall be clearly accessory and incidental to the principal use.

5.0421 Sound produced by the proposed entertainment shall not generally exceed 70 dB (A) as measured at any boundary of the property on which the establishment is located, as determined by the regulations adopted pursuant to Section 5.0422.

5.0422 In order to develop reasonable and effective conditions under this section, the Planning Board shall develop regulations for the measurement of sound undertaken under Section 5.0421, and may require such information as it may deem necessary. The permit granting board or authority may impose a probationary period involving one or more monitoring tests, including but not limited to sound measurements taken during live performances and/or use of sound systems. Permit conditions may include, but are not limited to, requirements for sound-proofing, limits on volume within rooms where entertainment occurs, and any other reasonable measures the permit granting board or authority may deem necessary.

5.043 Drive-Through Facilities

Any attached or free-standing structure designed or operated to provide goods or services for patrons who drive to the structure and remain in their vehicles while receiving said goods or services shall be considered a drive-through facility, and accessory to Principal Uses under this Bylaw. Stand-alone automated teller machines or similar unattended facilities shall be regulated under this section. Exceptions shall be drive-in restaurants (Section 3.352.2), automotive filling stations (Section 3.381) and car washes (Section 3.383), where associated drive-through facilities shall be considered part of the Principal Use and regulated accordingly. No drive-through facility shall be permitted in any zoning district except as hereinafter provided. Existing drive-through facilities accessory to any existing legal non-conforming use shall be regulated under the provisions of Section 9.2.

5.0430 No drive-through facility shall be permitted in the *NAVC, AC, B-G, B-N, OP, PRP* or *LI* Districts. Drive-through facilities may be permitted in those portions of the *B-L* District abutting the *B-G* District under a Special Permit issued by the Special Permit Granting Authority authorized to act under the applicable section of the Bylaw for the Principal Use.

5.0431 In the *COM* District and in those outlying *B-L* districts not abutting the *B-G* District, drive-through facilities may be permitted as accessory to any permitted retail or consumer service use, or motor vehicle related use under the applicable Site Plan Review approval or a Special Permit required for the associated Principal Use, either proposed or existing.

5.0432 A drive-through facility serving as the entrance/exit structure for the control of access, payment of access fees, and the like may be permitted as accessory to any extensive use, institutional use, governmental/public service use or public parking use in any zoning district under a Site Plan Review or Special Permit, whichever is required for the Principal Use. Where the associated Principal Use is permitted by right in the applicable zoning district, an accessory drive-through facility shall require Site Plan Review approval.

SECTION 5.05 SIGNS

Signs and advertising devices referring to the property itself, or to commodities or service customarily available on the premises, shall be considered Accessory Uses, subject to the restrictions set forth in Article 8, Sign Regulations.

SECTION 5.06 RECREATION

5.060 Swimming Pools

5.0600 Private Swimming Pools - In-ground or above-ground swimming pools, 24 inches deep or greater, may be considered accessory to the use of a dwelling unit provided such pool is used only by the residents of the premises and their guests, that no portion of the water area be closer than 20 feet to the front, any side or rear lot line, and that the pool be securely fenced to a height of not less than four feet, and that if such fence has a gate, it be a self-closing gate with a latch. No fence shall be required for above-ground pools if access to the pool, and any deck area surrounding the pool, is exclusively by means of ladders or stairs that are removable, retractable, or that may be secured in some other way so as to prevent access to the pool and the deck area surrounding the pool.

- 5.0601 Public and Semi-Public Swimming Pools - Refer to Massachusetts General Laws, Chapter 140, Section 206.
- 5.061 Recreation Ways - Specific provisions for *public* transportation by bicycle, horseback and walking within the Flood Prone-Conservancy District shall be considered as an accessory use.

SECTION 5.07 SCIENTIFIC RESEARCH OR DEVELOPMENT

- 5.070 Uses accessory to and necessary in connection with scientific research, scientific development, or related production activities in districts where such activities are permitted under a Special Permit or Site Plan Review approval may be permitted as an amendment to the permit for the principal use provided that the Permit Granting Board or Special Permit Granting Authority finds that the proposed accessory use does not substantially derogate from the public good. Such an accessory use need not be located on the same parcel or parcels of land as the related principal use or activity permitted by right.
- 5.071 Limited manufacturing activity may be considered an allowed accessory use to a technical research and development office, laboratory, or research facility in the *NAVC, AC, B-G, B-L, B-VC, COM, OP, PRP* and *LI* Districts, provided that the following requirements are satisfied:
 - 5.0710 Such manufacturing activity shall be directly related to the research and development activities of the principal use.
 - 5.0711 No manufacturing activity shall occur within two hundred (200) feet of a dwelling unit in a residential district, or within one hundred (100) feet of any dwelling unit in a non-residential district, including any accessory dwelling units under Section 5.016.
 - 5.0712 No manufacturing, processing, or fabrication normally conducted under Sections 3.372.1 or 3.372.2, nor any on-premises sale of products shall be permitted in association with uses under this section.
 - 5.0713 All manufacturing activity shall customarily occur inside of buildings; however, outdoor research work and incidental outdoor fabrication of equipment to conduct outdoor experimentation may be permitted under a Special Permit granted by the Special Permit Granting Authority authorized to act under the applicable section of the Bylaw and issued in conformance with the Standards and Conditions of the principal use and the provisions of Section 10.38.
 - 5.0714 Manufacturing activity, excluding incidental fabrication of outdoor experiments, shall not occupy an area in excess of sixty (60) percent of the gross floor area of a building or group of associated buildings owned by the same establishment.
- 5.072 An airport or helipad shall not be considered an accessory use under this section.

SECTION 5.08 CHILD CARE SERVICE

- 5.080 A licensed family day care service for six (6) or fewer children shall be permitted as an accessory use, by right, in a one family dwelling, two family dwelling, converted dwelling, row house, and apartment. The adjacent tenants, adjacent neighbors and the property owner shall be notified by certified mail by the day care day care provider at least two (2) weeks prior to the establishment of the licensed family day care service. The Zoning Enforcement Officer shall be provided with a copy of the license to operate.
- 5.081 A licensed day care facility shall be permitted as an accessory use in the following zoning districts, provided that the Zoning Enforcement Officer is provided with a copy of the license to operate: *NAVC, AC, R-F, B-G, B-L, B-VC, B-N, COM, OP, LI, PRP*.

SECTION 5.09 FARMS

- 5.090 Farm Conference Center

The Board of Appeals may authorize, by issue of Special Permit, the use of a portion of a property as a Farm Conference Center, in the *NAVC, AC*, R-LD, R-O, and R-N Districts only, provided that:

- 5.0901 The use shall be located on a parcel of land of at least five acres in size, on which there is an existing principal use that is agricultural in nature.
- 5.0902 The Farm Conference Center uses shall be related to, and incidental to agricultural uses.
- 5.0903 The subject property shall have a lot frontage of at least 200 feet on a heavily travelled road and shall be located close to business, commercial and/or educational districts.
- 5.0904 All buildings associated with this use shall be connected to the public sewer system prior to occupancy.
- 5.0905 All buildings used for the conference center shall be located at least 100 feet from all property lines.
- 5.0906 The parking for such use shall be located at least fifty feet from all property lines and shall be screened from residential abutters.
- 5.0907 The Board of Appeals may authorize the provision of temporary accommodations in conjunction with the Farm Conference Center. However, no permanent or continuing residential occupancy shall be authorized under this section.
- 5.0908 Parking shall be provided in accordance with Section 7.002 of the Zoning Bylaw.

5.091 Farm Stand Restaurant

The Board of Appeals may authorize, by the issuance of a Special Permit, the use of a portion of a property as a farm stand restaurant in the *NAVC, AC*, R-LD, R-O and R-N districts only, provided that:

- 5.0910 The use shall be located on a parcel of land of at least five (5) acres in size on which there is an existing principal use that is agricultural in nature.
- 5.0911 The restaurant use shall be related to and incidental to the agricultural use and farm stand, and some of the food products served therein shall have been produced by the owner of the land on which the restaurant is located.
- 5.0912 The subject property shall have a frontage of at least 200 feet on a heavily travelled road and shall be located close to business and/or commercial districts.
- 5.0913 For the purposes of this section, the farm stand restaurant shall be deemed incidental to the principal use if the farm stand restaurant area accessible to the public does not exceed 40% of the total floor area in the building in which it is located which would not include any outside area eating accommodations as may be approved by the Special Permit Granting Authority.
- 5.0914 All buildings associated with this use shall be connected to the public sewer system prior to occupancy. The Board of Appeals may waive this requirement based upon a finding that public sanitary sewer is not reasonably available to the site, that such waiver is not detrimental to the neighborhood and that the existing or proposed septic system is in accordance with regulations of the Board of Health.

SECTION 5.10 FILLING OF LAND (See Sections 3.121 & 3.122)

Any filling of land accessory to the development of property, which raises the existing grade of any portion of a property 5,000 square feet or more in area by an average of two (2) feet or more, or any such filling which raises the existing grade of any portion of a property 2,000 square feet or more in an area by an average of five (5) feet or more shall require a Special Permit subject to the following conditions:

- 5.100 No slope created by the filling operation shall be finished at a grade in excess of the natural angle of repose of the materials.
- 5.101 All filled areas which are not to be built upon within one (1) year shall, upon completion of the operation, be covered with not less than four (4) inches of loam, brought to the finish grade, seeded and mulched in a satisfactory manner.
- 5.102 No permit for the filling of land shall be issued if such filling will: 1) endanger public health or safety; 2) constitute a nuisance; 3) result in a detriment to the normal use of the adjacent property; 4) cause significant erosion or sedimentation due to improper drainage design or management; or 5) result in traffic hazards in residential areas or excessive congestion, or physical damage on public ways.
- 5.103 In granting a permit for such an accessory use, the Zoning Board of Appeals may impose reasonable requirements on grading, seeding and planting, barriers needed for public safety, control of erosion and drainage and other appropriate aspects of the use.
- 5.104 The Zoning Board of Appeals may require a suitable performance bond or other security adequate to ensure satisfactory compliance with provisions of this section.