

SECTION 11 – CHAPTER 43D PRIORITY DEVELOPMENT SITE OVERLAY DISTRICT (PDSOD)

11.1 Purpose

It is the purpose of this Section to further expedite permitting for Priority Development Sites, as adopted by Town Meeting pursuant to G.L. c. 43D, and presently identified as land situated at 150 Westborough Road (Assessor's Map 13, Parcel 100), and CenTech Park Lot 3 (Map 5, Lot 1E), and CenTech Park Lot 7 (Map 5, Lot 1H); and to provide appropriate systems for any proposed changes to a plan or facilities after the issuance of a special permit and/or site plan review and approval by the Planning Board when required by this Zoning By-Law or after the issuance of any other permit granted by an appropriate municipal agency. Other objectives of this Section are to:

- a. Increase clean, diverse, and geographically focused commercial and industrial activities;
- b. Strengthen Grafton's tax base;
- c. Target appropriate development sites for commercial or industrial development planning;
- d. Promote and increase the visibility of Grafton as a community open to assisting appropriate commercial and industrial developments;
- e. Provide an efficient process for all municipal permitting;
- f. Guaranty municipal permitting decisions on Priority Development Sites within 180 days of application; and
- g. Encourage businesses that depend upon, protect, and add to the natural resources of the Town.

11.2 Definitions

For purposes of this Section, G.L. c. 43D, and regulations promulgated pursuant thereto, the following definitions shall apply. To the extent that there may be any conflict between the definitions set forth in this Section and Chapter 43D or regulations promulgated pursuant thereto, the terms of said Chapter 43D or such regulations shall govern.

Governing Body - The Board of Selectmen.

Interagency Permitting Board - The Board, as described in G.L. c 23A, §62, established to review and approve or deny municipal priority development site proposals and to grant and administer technical assistance grants.

Issuing Authority - Any local board, commission, department, or other municipal entity of Grafton that is responsible for issuing permits, granting approvals, or otherwise involved in land use development, including redevelopment of existing buildings and structures.

Permit - A permit, formal determination, order of conditions, license, certificate, authorization, registration, plan approval, zoning relief or other approval or determination with respect to the use or development of land, buildings, or structures, required by any issuing authority including but not limited to those under statutory authorities contained in G.L. c. 40A, G.L. c. 41, §§81A to 81J, inclusive, and §§81X to 81GG, inclusive, G.L. c. 131, §§40 and 40A, G.L. c. 111, §§26 to 32, inclusive, G.L. c. 40C, G.L. c. 148, §§13 and 14, St. 1975, c. 772, or otherwise under state law or a Grafton by-law, and all associated regulations, by-laws and rules, but not including building permits or approvals pursuant to G.L. c. 41, §§81O to 81W, inclusive. “Permit” shall not include: the decision of an agency to dispose of property under its management or control; predevelopment reviews conducted by the municipal office of permit coordination or a technical review team; or permits granted by the Massachusetts Water Resources Authority.

Priority Development Site - A privately or publicly owned property that is: (1) located in a commercial or industrial underlying zoning district; (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building of at least 50,000 square feet of gross floor area in new or existing buildings or structures; and (3) designated as a priority development site by the Interagency Permitting Board. Several parcels or projects may be included within a single priority development site. Wherever possible, priority development sites should be located adjacent to areas of existing development or in under utilized buildings or facilities, or close to appropriate transit services.

Secretary - The Secretary of the Executive Office of Economic Development.

Technical Review Team - An informal working group consisting of representatives of the various issuing authorities designated by the heads of the appropriate issuing authorities to review requests submitted under this Section. The technical review team shall not include members of the Town’s Zoning Board of Appeal.

11.3 Overlay District

11.3.1 Establishment. The Chapter 43D Priority Development Site Overlay District, hereinafter referred to as the PDSOD, is an overlay district identified as land situated at 150 Westborough Road (Assessor’s Map 13, Parcel 100), and CenTech Park Lot 3 (Map 5, Lot 1E), and CenTech Park Lot 7 (Map 5, Lot 1H), that is superimposed over the applicable underlying and other overlying zoning districts. A map delineating the PDSOD, as is on file in the Office of the Town Clerk, is hereby made a part of the Zoning By-law.

11.3.2 Underlying Zoning. The PDSOD constitutes an overlay district superimposed on all applicable underlying and other overlying zoning districts. Except as from time to time may be limited by amendment hereto, the underlying and other overlying zoning, and all requirements and procedures pertaining thereto that are not inconsistent with the following, shall remain in full force and effect.

11.4 Applicability of PDSOD

In accordance with the provisions hereof and the provisions of G.L. c. 43D and 400 CMR 2.00 et seq., an applicant for a project located within the PDSOD may seek expedited review and approval in accordance with the requirements of this Section 11. In such case, notwithstanding anything to the contrary contained elsewhere in this Zoning By-law or any other Town By-law or Regulation that pertains to time frames for action by any municipal board or commission, review will be undertaken and completed within the time frames set forth herein.

11.5 Applications and Completeness Review

The Board of Selectmen, as the Governing Body, as that term is used in G.L. c. 43D, shall provide any applicant for a project located within the PDSOD with a comprehensive packet of permit applications necessary for the PDSOD project. In order to identify applicable permits for any project, appropriate Town officials may conduct preliminary reviews or conferences with the applicant. Once the applicant has submitted an application packet, the Board of Selectmen shall have 20 business days from the date of submission of the application to determine completeness of the application packet. The Board shall timely notice the applicant by certified mail as to the completeness of the application packet. If the Board fails to give such notice to the applicant within 20 business days, the application shall be deemed complete. The 180-calendar-day review period described below shall commence the day after notice is mailed or at the expiration of the 20 business day period in cases where the Board of Selectmen fails to give such notice within said 20 business days.

Should the Board of Selectmen determine that an application packet is incomplete, the Board shall timely notify the applicant in writing by certified mail with an explanation as to why the application packet is incomplete, and request the information necessary to complete the application. The resubmission of an application packet will begin a new 20-business-day completeness review period. Subsequent completeness decisions must be sent by certified mail and conform to the process outlined in the above.

11.6 Permitting Process and Extensions

The Board of Selectmen, in coordination with all issuing authorities of the Town, must complete the local permitting process within 180 calendar days after the certified notice of completeness is sent, or the 20-day-completeness review period has expired and the application is deemed to be complete. This period may be waived or extended for good cause upon written request of the applicant with the consent of the Board of Selectmen, or upon written request of the Board of Selectmen with the consent of the applicant.

The 180-calendar-day review period may be extended by the Board of Selectmen for a maximum period of 30 days, if a previously unidentified permit or review has been determined necessary within the first 150 calendar days of the process. When the Board of Selectmen determines that a previously unidentified permit is necessary, it shall send immediate notice of such additional requirements to the applicant by certified mail and send a copy of such notice to the Interagency Permitting Board. Where public notice and comment or hearing are required for the previously

unidentified permit, the required action date shall be not later than 30 days from the later of the close of the hearing or comment period, which shall be scheduled to commence as quickly as publication allows.

The 180-calendar-day review period may also be extended when any Town Issuing Authority determines that (1) action by another federal, state, or municipal government agency not subject to this By-Law is required before the Issuing Authority may act; (2) pending judicial proceedings affect the ability of the Issuing Authority or applicant to proceed with the application; or (3) enforcement proceedings that could result in revocation of an existing permit for that facility or activity or denial of the application have been commenced. In those circumstances, the Issuing Authority shall provide written notification to the Secretary and the Interagency Permitting Board by certified mail. When the reason for the extension is no longer applicable, the Issuing Authority shall immediately notify the applicant, the Secretary, and the Interagency Permitting Board by certified mail, and shall complete its decision within the time period specified in this section, beginning the day after the notice to resume is issued by the Board of Selectmen. If the Board of Selectmen, in consultation with any Issuing Authority, determines that substantial modifications to the project since the application was determined to be complete pursuant to Section 11.5 render an Issuing Authority incapable of making a decision on an application, an extension of the 180-calendar-day review period may be granted by the Interagency Permitting Board for demonstrated good cause at the written request of the Issuing Authority. The Issuing Authority shall provide terms for the extension including the number of additional days requested. Within ten business days of receipt of the request, the Interagency Permitting Board, or its designee, shall respond to the Issuing Authority with an extension determination. If the applicant makes a substantial modification to a project for the purpose of public benefit, the Issuing Authority may request an extension from the Interagency Permitting Board, and if granted, shall make every reasonable effort to expedite the processing of that permit application.

11.7 Permit Modifications

All issuing authorities shall make every reasonable effort to review permit modification requests within as short a period as is feasible to maintain the integrity of the expedited permitting process. The applicable Issuing Authority shall inform an applicant within 20 business days of receipt of a request whether the modification is approved, denied, determined to be substantial, or requires additional information for the Issuing Authority to issue a decision. If additional information is required, the Issuing Authority shall inform an applicant by certified mail within 20 business days after receipt of the required additional information whether the modification is approved or denied or that further additional information is required by the Issuing Authority in order to render a decision.

11.8 Automatic Grant of Approval

Failure by any Issuing Authority to take final action on a permit within the 180-calendar-day review period, or properly extended review period, shall be considered a grant of the relief requested of that authority. In such case, within 14 days after the date of expiration of the time period, the applicant shall file an affidavit with the Town Clerk, attaching the application, setting forth the facts giving rise to the grant, and stating that notice of the grant has been mailed, by

certified mail, to all parties to the proceedings as defined by 400 CMR Section 2.03, and all persons entitled to notice of hearing in connection with the application as defined by 400 CMR Section 2.03.

No Issuing Authority may use lack of time for review as a basis for denial of a permit if the applicant has provided a complete application and has met all other obligations in accordance with this Section.

Notwithstanding the aforesaid, an automatic grant of approval shall not occur:

- a) when the Board of Selectmen has made a timely determination under Section 11.5 that the application packet is not complete and the applicant does not provide the requested information within 90 calendar days. In such case, the Board of Selectmen shall notify the Interagency Permitting Board of the discontinuance of the permit process;
- b) when the Board of Selectmen, in consultation with an Issuing Authority, has determined that substantial modifications to the project since the application was determined to be complete pursuant of Section 11.5 render the issuing authority incapable of making a decision on an application, except if the Issuing Authority fails to render a decision on an application within the time period of an extension granted by the Interagency Permitting Board on account of a substantial modification to the project pursuant to Section 11.6 of this By-Law; or
- c) when the Board of Selectmen has determined that a final application contains false or misleading information. In such event, the Board of Selectmen must submit a statement of findings to the Interagency Permitting Board by certified mail with a copy to the applicant by certified mail. Pursuant to 400 CMR 2.11(c), such a finding may be appealed to the Land Court on a motion of the applicant. Pending the Court's ruling, the 180-calendar-day review period shall be tolled. If the Court rules in favor of the applicant, the 180-calendar-day review period shall resume. If the Court rules in favor of the Town, the 180-calendar-day review process shall be waived.

11.9 Appeals

Appeals of any Issuing Authority decision or of an automatic grant of approval shall be filed within 20 calendar days after the last individual permitting decision has been rendered, or within 20 calendar days after the conclusion of the 180-day period, whichever is later. The 180-day period shall be increased by the number of days in any extension granted hereunder.

The applicant or any person aggrieved by a final decision of any Issuing Authority, or by the failure of that authority to take final action concerning the application within the time specified, whether or not previously a party to the proceeding, or any governmental officer, board, or agency, may appeal to the Division of Administrative Law Appeals by bringing an action within 20 calendar days after a written decision on the application was or should have been rendered. Appeals from decisions of multiple permitting authorities shall be filed simultaneously and shall be consolidated for purposes of hearing and decision. Pursuant to 400 CMR 2.13, this section shall not apply to appeals pursuant to G.L. c. 131, §§40 and 40A, which shall continue to be appealed in accordance with said G.L. c.131, G.L. c. 30A, and applicable regulations.

11.10 Permit Transfers and Renewals

Permits shall not transfer automatically to successors in title, unless the permit expressly allows such transfer without the approval of the appropriate Issuing Authority.

Issuing authorities may develop procedures for simplified permit renewals and annual reporting requirements. If such procedures are not developed, renewals of permits shall be governed by the procedures and timelines specified in G.L. c. 43D.

Permits issued pursuant hereto shall expire 5 years from the date of the expiration of the applicable appeal period unless exercised sooner. Where permits cover multiple buildings, commencement and continuation of construction of one building shall prevent expiration of all permits on that site. No permit issued hereunder shall be affected by changes in the law subsequent to the issuance of such permits. Additionally, nothing in this section shall limit the effectiveness G.L. c. c. 40A, §6.

11.11 Changes to Approved Permits

After the issuance of any permit for a project or land use in the PDSOD the appropriate permitting authority may approve, upon request, minor changes to an approved permit without receiving an application or conducting a public hearing provided such change is, in the opinion of the permitting authority, not substantially different than presented in the materials and information used in making the original decision. The permitting authorities reserve the right to solicit comments from other Town boards, departments and committees, as well as its consulting engineer, in making determinations regarding such change(s). The permitting authority may, upon its determination, require a modification of the original decision if it finds that the proposed changes are substantial in nature and of public concern, and substantially alter the plans and information used in making its Decision. The permitting authority, in considering such change(s), shall make specific findings justifying the granting or denying of any such request for minor modification. Any proposed change deemed substantial in nature shall require a modification of the original decision, and application for such modification and any public hearing shall be made pursuant to the permitting authorities' rules and regulations.

11.12 Severability

If any provision of this Section 11 is found to be invalid by a court of competent jurisdiction, the remainder of Section 11 shall remain in full force. The invalidity of any provision of this Section 11 shall not affect the validity of the remainder of the Town's Zoning By-Law.