

MEMORANDUM

TO: Milton Planning Board

FROM: Matthew J. Dunn, Esq. for the Objectors, Philip Johenning and John Rowe

DATE: March 23, 2015

RE: *Oldfield Family, LLC/Thayer Nursery Corporation Application for a Special Permit for Landscape Business Use*

This memorandum supplements the summary of objections submitted by Philip Johenning and John Rowe to this Board on January 7, 2015. In addition to the grounds set forth in that memorandum, Mr. Johenning and Mr. Rowe further oppose the application submitted by the **Oldfield Family, LLC and Thayer Nursery Corporation** (together, "Thayer Nursery" or "Applicants") for a special permit for "Landscaping Business Use" on the properties known as and numbered 217, 237 and 270 Hillside Street, as well as 0 and 24 Forest Street in Milton (collectively, the "Subject Property") for the following reasons.

I. Additional Objections

1. Since Thayer Nursery submitted its original application for a special permit to this Board on October 21, 2014, it has altered and supplemented its proposal on several different occasions without providing abutters and other interested citizens with sufficient advance notice prior to presenting them to the Planning Board. This has resulted in a piecemeal submission and presentation of Thayer Nursery's application, which has made it overly difficult and confusing to understand if or how Thayer Nursery has complied with all of the specific requirements of the bylaw amendment. As Thayer Nursery itself actively participated in drafting the bylaw amendment, it was well aware of its requirements and should have had a complete application prepared in advance of its submission to this Board. The current review process undermines the very purpose of the public hearing process, which is to provide a full and open public presentation of the proposed conditions, uses and activities that Thayer Nursery seeks to engage in on its property by seeking a special permit.

2. Despite the difficult posed by the piecemeal submission and presentation of Thayer Nursery's application, there remain a number of substantial requirements mandated by the bylaw amendment that Thayer Nursery still has not addressed. They are as follows:

A. The Applicants are Ineligible for the Zoning Relief They Seek

As a prerequisite to apply for a special permit, the bylaw amendment requires that “the applicant or applicants, or their predecessors-in-interest, on that date (i.e. July 2012) held a special permit or use variance issued by the Board of Appeals pursuant to Section III.A.4 and/or 6 with regard to all or part of any such lot.” See Exhibit A at p. 1. In the application, the Oldfield Family, LLC indicates that it is the owner of the properties known as 217, 237 and 270 Hillside Street and 0 and 24 Forest Street (the “Property”), and Thayer Nursery states that it operates there as a tenant. Thayer Nursery further states that “(i)n 1967, the Oldfields (i.e. Robert and Margaret Oldfield) were granted a Special Permit by the Milton Zoning Board of Appeals...” and that “(i)n 1987 (the) Special Permit was amended by the Milton ZBA so as to allow lot 1B to be used in conjunction with the nursery business...” Thayer Nursery claims that “(f)rom 1963 to the present, the Oldfield Family has resided on the Property, has held ownership of the Thayer Nursery Corporation and has operated continuously as a nursery agribusiness...”

Significantly, the Applicants do not argue that the **Oldfield Family, LLC**, or **Thayer Nursery Corporation** held a special permit or use variance issued by the Board of Appeals in July 2012. Rather, they imply that they are “successors-in-interest” to the rights bestowed by the Milton ZBA in the 1967 and 1987 Special Permits to the Oldfield Family. However, the express terms of the 1967 Special Permit (as amended by the 1987 Special Permit) specifically limit who can hold those rights.

In Paragraph No. 10 of the 1967 Special Permit, the ZBA stated that “(t)his permit runs to you (i.e. Robert and Margaret Oldfield) **personally** (including any assistants) **only, and shall not be assigned or transferred to any other person.**” (emphasis added). See Exhibit B at p. 8. While the 1987 Special Permit amended Paragraph No. 10 of the 1967 Special Permit, it too restricted the assignment and transfer of the rights granted by the ZBA. See Exhibit C at p. 16. In Paragraph No. 4 of the 1987 Special Permit, the ZBA stated “Paragraph No. 10 of the conditions, limitations and safeguards is amended to read: ‘This permit runs to the applicants (i.e. Robert and Margaret Oldfield) and their children **personally** (including any assistants) **only, and shall not be assigned or transferred to any other person.**’” (emphasis added). *Id.* Such conditions limiting a special permit to use by the applicant (or their children) are recognized as valid in Massachusetts. See Maki v. Town of Yarmouth, 340 Mass.207, 213 (1960).

As the plain language provided in both the 1967 and 1987 Special Permits makes clear, only Robert Oldfield, Margaret Oldfield and their children can **personally** hold the rights in the Special Permits bestowed by the ZBA. Those rights cannot be assigned or transferred to anyone else - including the Oldfield Family, LLC and Thayer Nursery Corporation. Accordingly, by the very terms of the 1967 and 1987 Special Permits, the Applicants cannot be “successors-in-interest” because those rights cannot be assigned or transferred to them.

Stated differently, the Oldfield Family, LLC and Thayer Nursery Corporation are **not** Robert Oldfield, Margaret Oldfield or their children. They are legally distinct entities. See Spaneas v. Travelers Indem. Co., 423 Mass. 352, 354 (1996) (stating that a “corporation is an independent legal entity, separate and distinct from its shareholders, officers, and employees”); see also New England Pro Tour, Inc. v. Hebb, 22 Mass.L.Rptr. 413, *6 (Mass. Sup. Ct. Apr. 18,

2007) (stating that “a corporation, even a corporation wholly-owned by a single person, is a distinct and separate legal entity”). The Applicants cannot possess the same rights as Robert Oldfield, Margaret Oldfield and their children because the 1967 and 1987 Special Permits expressly prohibit it.

It is axiomatic that one cannot be a “successors-in-interest” if the “interest” that they claim cannot be validly assigned or transferred to them by the person who they claim is their “predecessor-in-interest.” In this case, the Applicants cannot be a “successors-in-interest” to Oldfield family members’ rights in the 1967 and 1987 special permits because the very terms of those decisions expressly state that there can be no valid assignment or transfer of those rights to anyone else - including the Applicants. Consequently, Thayer Nursery Corporation and the Oldfield Family LLC were simply operating the commercial ventures on the Property in July 2012 without any legal right to do so. They cannot point to any legally recognizable “predecessors-in-interest” that held a special permit or use variance issued by the Board of Appeals in July, 2012. As this is an eligibility pre-requisite under the bylaw amendment, t Thayer Nursery Corporation and the Oldfield Family LLC are ineligible for the zoning relief that they seek in their application.

Furthermore, to the extent that the Applicants may argue that Margaret Oldfield and F. Joshua Oldfield are the “applicants” for the special permit currently sought from this Board, they too lack standing to pursue such zoning relief. Neither own the Property. The Oldfield Family, LLC does. Moreover, neither Maggie, nor Josh will be the party operating the commercial ventures for which the special permit is needed. Thayer Nursery Corporation will be the one engaging in those activities. As such, neither Maggie, nor Josh are “parties in interest” to the requested zoning relief. Accordingly, they not eligible applicants under the bylaw amendment.

B. The Applicants Have Still Presented No Evidence as to the Extent of Their July 2012 Baseline Activities

As specifically stated in the bylaw amendment, the activities for which the Planning Board can authorize by special permit under the bylaw amendment are expressly limited only to those which were conducted in 2012. See Bylaw Amendment at ¶ 2. Moreover, the bylaw amendment restricts the size of those limited activities to a “level no greater than the level of that activity existing in 2012 *unless* there is a reliable showing that a greater level would be consistent with the purpose of this Subsection and cause no adverse effects on abutters or nearby residents.” *Id.*

The bylaw amendment does not allow any applicant to introduce a new activity on its property and expressly limits the existing activities to the level at which the applicant was conducting them in 2012. Although Mr. Johenning and Mr. Rowe pointed out this requirement at the public hearing before this Board on January 8, 2014, Thayer Nursery still has not supplemented its application with any information concerning the size and scope of its retail sales (including its farmers’ markets and other special events) and commercial landscaping, construction, snow-plowing and firewood sales businesses on the Subject Property in 2012. As previously stated, without this baseline information (which is required under the bylaw amendment), it would be impossible for the Planning Board to determine the appropriate size

and scope of the commercial activities that Thayer Nursery seeks to undertake on the Subject Property. This, in turn, would defeat the stated purpose of the bylaw amendment – which is to limit these commercial activities to a “level no greater than the level of that activity existing in 2012.”

The most accurate means to establish what the baseline level of activity was on the Subject Property in 2012 is for Thayer Nursery to supplement its application with inventory, sales reports and/or other accounting records for each line of business that it conducted on the Subject Property in 2012. These figures should then be verified by an independent accounting firm against Thayer Nursery’s 2012 tax returns. After this baseline is set – which will reveal the size and scope of Thayer Nursery’s commercial activities on the Subject Property in 2012 – Thayer Nursery should be required to submit this same information to the Planning Board on an annual basis in order to prove that it is not operating at a greater level than the 2012 baseline. This is consistent with the purpose of the bylaw amendment.

C. Drainage Plan

The bylaw amendment requires Thayer Nursery to show that its drainage measures (i) will not cause adverse drainage impacts on neighboring properties, (ii) will not increase water flows onto neighboring properties, and (iii) will not create ponding on neighboring properties. The drainage plan submitted by Thayer Nursery does not satisfy any of these requirements. In fact, the drainage measures already put in place by Thayer Nursery on the Subject Property have actually increased water flow into Mr. Johenning’s and Mr. Rowe’s home and onto their property. Accordingly, the Planning Board should order Thayer Nursery to provide it with a more detailed drainage plan that specifically addresses the three requirements of the bylaw amendment cited above as a pre-condition to further considering Thayer Nursery’s application.

D. Lighting Plan

Thayer Nursery still has not provided this Board with any plan that quantifies the intensity of the lighting used on the Subject Property or measures the light overspill onto the neighboring properties and the adjoining streets. Again, this information is necessary for the Planning Board to assess whether the day-to-day operations on the Subject Property will infringe upon rights of abutters and nearby residents. Accordingly, it should take no further action on Thayer Nursery’s application unless and until this specific information is submitted to the Planning Board.

E. Traffic Study

Just like with any other application for a special permit, Thayer Nursery must make a showing that the requested zoning relief can be granted without substantial detriment to the public good. In this case, Thayer Nursery is seeking this Board’s permission to make and receive truck deliveries using the narrow roadways of the Scott’s Woods neighborhood. As this implicates the health, safety and welfare of Milton residents sharing those same narrow roadways, this Board should require Thayer Nursery to submit a professional traffic study with its application which explains these impact that the proposed truck deliveries will have on

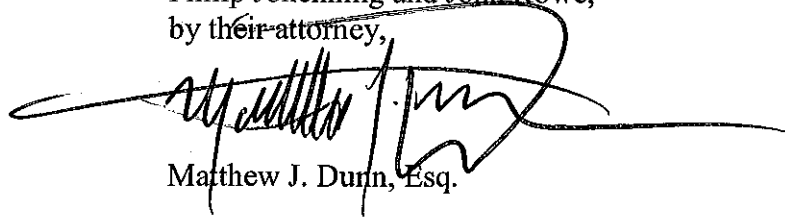
abutters and nearby residents, and sets forth a proposal to mitigate any adverse effects. None has ever been done. Accordingly, the Planning Board should take no further action on Thayer Nursery's application unless and until it submits this traffic study.

Conclusion

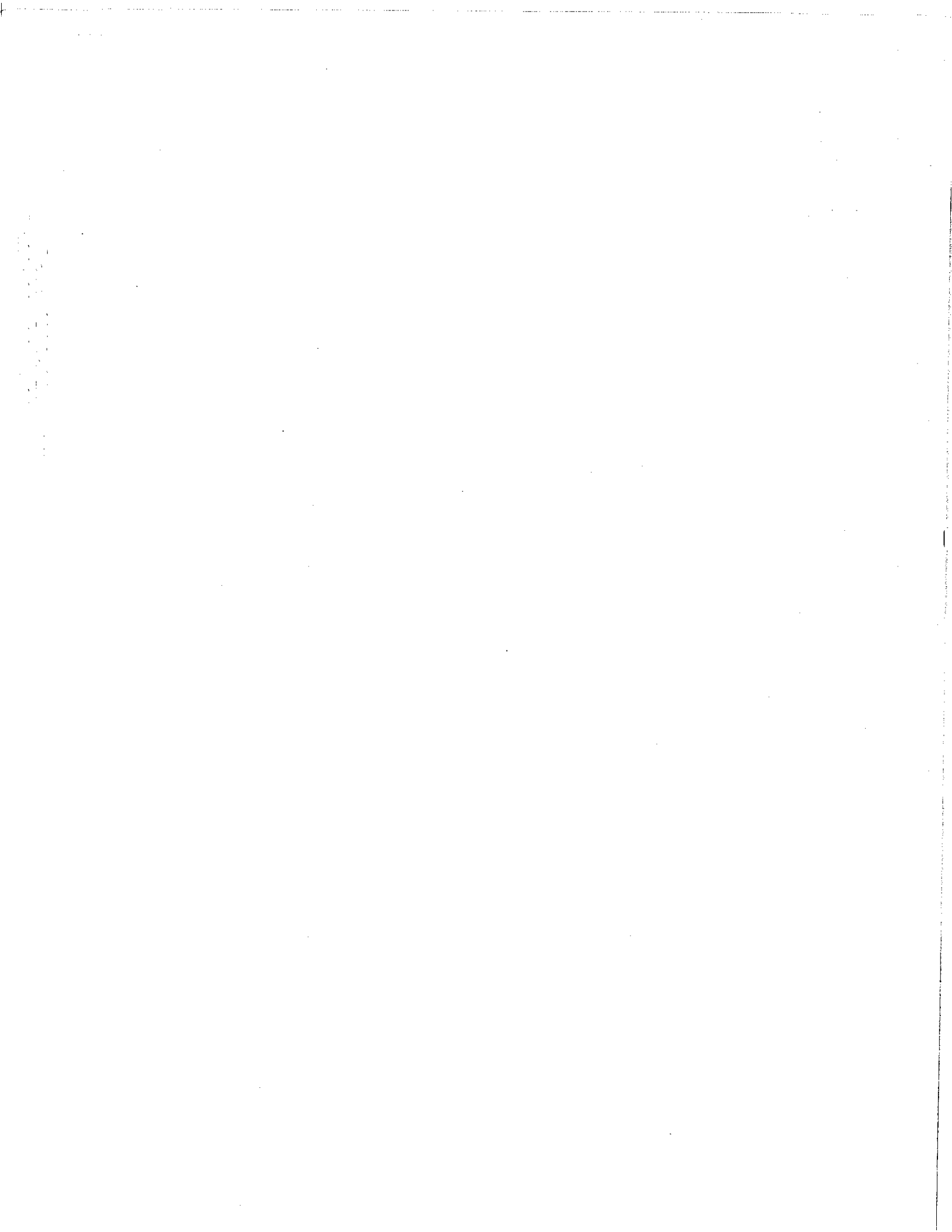
Whereas the Oldfield Family, LLC, Thayer Nursery Corporation, Maggie Oldfield and Josh Oldfield are ineligible for the zoning relief that they seek, and no one has shown that the use of the Subject Property will comply with all of the requirements of the bylaw amendment, this Board is precluded under the express terms of the bylaw amendment itself from issuing a special permit to the Applicant. See Bylaw Amendment at ¶ 8 (stating that the Planning Board may only grant a special permit for "Landscaping Business Use" where it finds compliance with the purpose of Zoning Amendment *and* with all of the foregoing terms, conditions, standards and requirements set forth therein).

Very truly yours,

Philip Johenning and John Rowe,
by their attorney,

A handwritten signature in black ink, appearing to read "Matthew J. Durn", is written over a horizontal line. The signature is stylized and somewhat cursive.

Matthew J. Durn, Esq.





TOWN OF MILTON
MASSACHUSETTS

SUSAN M. GALVIN
Town Clerk

To Whom It May Concern:

This is to certify that the following is a true copy of Article 2 of the Warrant for the Special Town Meeting held May 5, 2014 and the vote passed thereunder.

ARTICLE 2 To see if the Town will vote to amend Section 10 of the General

Bylaws, known as the Zoning Bylaws, by adding the following Subparagraph(k) to Section III.A.7:- "(K) Landscaping Business Use as provided in Section III. ____" and by adding the following Subsection ____ to Section III: ____

LANDSCAPING BUSINESS USE

In a residence zone on a lot or lots on which a landscaping business was being conducted in July 2012, the Planning Board may grant a special permit for landscaping business use on such lot or lots provided that the applicant or applicants or their predecessors in interest on that date held a special permit or use variance issued by the Board of Appeals pursuant to Section III.A.4 and/or 6 with regard to all or part of any such lot. The special permit shall satisfy all requirements specified in this Subsection and may contain other requirements, terms and conditions deemed necessary or appropriate by the Planning Board. A Special Permit for Landscaping Business Use shall have an initial term of three years, or such shorter period as the Planning Board may determine, and shall be renewable for one or more additional terms of five years with such additional terms and conditions as may be appropriate provided that there has been material compliance with the Special Permit in the prior term. Upon application by the Building Commissioner during the term or extended term of the Special Permit, the Special Permit may be revoked by the Board of Appeals after hearing in the event of a material violation which has not been promptly cured following notice from the Building Commissioner.

1. Purpose

The purpose of this subsection is to permit the ongoing operations of landscaping businesses, which were in operation on July 2012 and which existed on lots for at least one of which a special permit pursuant to Section III.A.4 and/or 6 or use variance was in force on July, 2012. This subsection is intended to make the physical layout and the day-to-day operations of each such landscaping business reasonably compatible with the interests of abutters and nearby residents and their rights to reasonable quiet and enjoyment of their properties. This subsection is intended to provide and require enforceable specifics for the layout and operations of each such landscaping business in order to control dust, noise, light and odor, to promote safety, to reduce inconvenience to neighboring residents, and to establish reasonable limits on the amount of infrastructure, equipment and operations.

2. Definition of Landscaping Business: Permissible Activities

For purposes of this Subsection, a landscaping business is defined as a business concern which operates to construct, install and maintain lawns, trees, yards, shrubs, gardens, patios, related grounds and other outdoor areas which are owned by others. The landscaping business may own or



lease real and personal property, employ employees and may be authorized by special permit to own, lease, operate, and store vehicles and equipment reasonably necessary for business operations. The landscaping business may be authorized to sell trees, shrubs, sod, seed, loam, mulch and related material and may be authorized to sell stone, stone dust, gravel, pavers, landscape ornamentations, timbers and related materials needed to implement a landscape design. It may be authorized to sell firewood if substantial sales of firewood occurred in 2012. It may be authorized to sell Christmas trees and other holiday materials if substantial sales of such occurred in 2012. It may be authorized to provide snow plowing and snow and ice removal services for third persons, including the Town. Such authorizations shall be contained in a Special Permit issued by the Planning Board which shall impose reasonable limitations, terms and conditions to implement and attain the purpose of this

Subsection. Any activity authorized by the Planning Board shall be an activity which was conducted in 2012. Authorization of an activity shall be at the level no greater than the level of that activity existing in 2012 unless there is a reliable showing that a greater level would be consistent with the purpose of this Subsection and cause no adverse effects on abutters or nearby residents. If necessary to achieve the purposes of this Subsection, a level of activity less than the level in 2012 may be required.

3. Landscaping Services May Exist on a Lot With Other Uses, Including Agricultural, Greenhouse, Nursery and/or Residential

A landscaping business may be located on a lot or lots in conjunction with other uses permissible in a residence district, including residential use, provided that if there shall be any involvement between the landscaping use and another use, the requirements of this Subsection shall apply to that other use. As used in this Subsection a lot shall be deemed to include all contiguous lots, including lots that may be separated by a road or waterway, under common ownership or lease. For purposes of this Subsection, an agricultural use is defined in and shall be conducted in accordance with M.G.L. c. 128, s. 1(a), M.G.L. c. 40A, s. 3 and M.G.L. c. 61A; a greenhouse and/or nursery use is defined in and shall be conducted in accordance with Section III, Subsections 4(b) and 7(d).

4. Plans, Rules and Specifications

An application for a Special Permit for Landscaping Business Use shall include the following plans, rules and specifications and such other descriptive text and material as may be specified by the Planning Board. The plans shall be prepared in a form suitable for recording by a Registered Professional Engineer. Each plan, rule or specification shall be specifically approved and shall be enforceable as part of the special permit.

- (a) Existing Conditions Plan. This plan shall show the existing site topography, buildings, structures, utility services, water and sewer lines, wells, drainage infrastructure, driveways, landscape, natural features, and areas of use.
- (b) Deeds and Leases. Copies of all deeds and leases showing applicants' interest in the premises proposed for landscaping business use.
- (c) Wetlands Delineation Plan. This plan shall show any wetlands existing on site.
- (d) Drainage Plan. This plan shall show provisions for drainage and drainage infrastructure for the effective control of stormwater and, insofar as reasonably possible, its retention on site. Drainage measures shall not cause adverse drainage impacts on neighboring properties. They shall not increase water flows onto neighboring properties nor create ponding on neighboring properties.
- (e) Landscape Plan. This plan shall show landscaping along lot lines designed to present an attractive appearance and to help buffer noise, and shall, as necessary for buffering major sources of noise, include one or more sound-buffering walls or fences appropriately sited and incorporated into an attractive setting and landscaped with vegetation on both sides. The

landscaping plan shall similarly show landscaping designed to help effectively control dust. The plan shall show all other landscaping to be provided. Species and size of plants to be provided shall be specified. Specifications for all fences, walls and sound-buffering landscape structures shall be part of this plan. Fences and walls shall be at least fifteen (15) feet from lot lines and landscaping shall, at a minimum, be provided in the area within thirty (30) feet of lot lines, provided that a driveway reasonably necessary for safe and efficient circulation of on-site traffic may be in this area.

(f) Operations. This plan shall show the driveways, the loading and unloading areas with specification for the on-site vehicular movements of trucks and other equipment used on site. Driveways shall not be located within twenty (20) feet of lot lines and shall be further removed whenever reasonably practical. Loading areas shall not be located within thirty (30) feet of lot lines and shall be further removed whenever reasonably practical. The plan shall provide for safe and convenient movements of vehicles on-site, minimizing idling equipment, back-up movements, noise and dust. The plan shall specify procedures for trucks making deliveries and for the on-site operation of the trucks and other equipment used in the business. The plan shall specify loading procedures for materials to be taken off-site for use in the landscaping business. The plan shall specify hours of operation for loading, unloading, operations and any other use of noisy equipment.

(g) Parking Plan. This plan shall show the parking spaces for customers, employees, trucks when not in use, and other vehicles when not in use and shall show the storage space for other equipment. Garages and their layouts for parking and storage shall be shown. The parking plan shall include a reliable analysis of the number of parking spaces needed for business operations.

(h) Building Plans. This plan shall show all business buildings, storage bins, dumpsters and other business structures, including dimensions, square footage, location, setbacks from lot lines, elevations, utilities, and specification of the business uses to which interior space will be put. There shall be no new or materially altered business buildings except as may be specifically approved in the Special Permit. Any new or substantially altered buildings shall be designed by an architect in a traditional style and sited at least 50 feet from any lot line. A building shall be deemed a business building if all or part of it is used for business purposes.

(i) List of Business Activities. The list shall set out the business activities, including any sales, to be conducted on site with a description of each activity and its anticipated use of facilities on site together with the anticipated extent, times and dates of the activities.

(j) Mitigation Plan. This plan shall specify proposed measures to be taken to control noise, dust and offensive odors in business operations. The plan shall specifically identify the likely sources of noise, dust and odors and specify effective measures to be taken to reduce and control each source of noise, dust and odor and prevent adverse impacts on nearby residents. Measures shall include mitigating requirements and restrictions on operations as well as physical changes designed to mitigate impacts.

(k) Lighting Plan. This plan shall show all exterior lighting which shall be designed to provide reasonably necessary lighting while minimizing light overspill onto the neighboring properties and the adjoining streets. The design of lighting fixtures shall be appropriate to a residential neighborhood. Light levels shall be low.

(l) Street Improvement Plan. In the event that truck traffic cannot adequately access the business property staying on pavement of the streets providing access, this plan shall propose street improvements to be provided at applicant's expense to permit safe access by trucks without damage to the street shoulders or adjoining property.

(m) Signs. The location and description of any signs advertising the business shall be specified. All signs shall be approved by the Town's Sign Review Committee.

(n) List of Vehicles. The list shall show the number and type of vehicles which were in use at the

business premises in business operations on July 1, 2013, and specification of the numbers and type of vehicles proposed for future operations with justification of a need for any increase in number or change of type. Any new acquisitions shall be chosen with quiet operation as a principal criterion. The list shall be kept current.

(o) Rules. A list of the rules proposed to be imposed by the Special Permit to ensure that vehicles and equipment are shut off and not left idling when not in use and that employees do their work efficiently and quietly. Earphones shall be required if radios, CD players or the like are in use by employees. Loudspeakers and amplified music shall not be used in business operations.

(p) Firewood Plan. In the event that the landscaping business proposes to sell firewood, this plan shall show the specifics of and procedures for firewood operations, including safe and reasonably quiet deliveries to the landscaping business, safe storage of firewood inventory by the business and safe and reasonably quiet loading of trucks making deliveries of firewood to customers. Firewood operations shall not have any significant dust or odor impacts.

(q) Snow and Ice Removal Plan. In the event that the landscaping business proposes to sell snowplowing or snow and ice removal services, this plan shall show the specifics of and procedures for snowplowing and snow and ice removal services, including safe and reasonably quiet equipping, loading and dispatch of trucks and on-site activities necessary for provision of the services, including storage of equipment and materials.

(r) Sales Plan. In the event the landscaping business proposes to maintain a sales office for sale of some or all of the materials listed in Paragraph 2 in conjunction with landscaping services, the plans shall show the specifics of and procedures for such sales. Any such sales operations shall not be materially different in extent or manner from similar sales conducted in 2012. The sales office may be operated between the hours of 7:00 A.M. and 6:00 P.M. Monday through Saturday and 9:00 A.M. and 6:00 P.M. on Sunday.

(s) Christmas Trees and Holiday Materials Plan. In the event that the landscaping business proposes to sell Christmas trees, pumpkins and other holiday materials, this plan shall show the specifics of and procedures of such holiday sales operations, including safe and reasonably quiet deliveries to the landscaping business. The sales of Christmas trees shall be allowed from the last Friday before Thanksgiving Day to the following January 1 and the hours of such sales may be from 8:00 A.M. to 9:00 P.M.

5. Approval of Plans, Rules and Specifications

As part of a special permit issued under this Subsection, the Planning Board shall approve plans, rules and specifications which the Board deems adequate under each of the foregoing paragraphs. Insofar as the material submitted by an applicant with the application for a special permit may be inadequate or fail to advance the purpose of this Subsection, the Planning Board shall require its revision. Once all plans, rules and specifications are determined to be adequate and to advance the purposes of this Subsection, they shall be incorporated into the Special Permit by reference and become enforceable requirements, terms and conditions of the Special Permit.

6. Site Plan Approval By Planning Board.

Site Plan Approval by the Planning Board in the manner and under the procedures and standards of Section VIII.D shall be required for a landscaping business use. The site plan submitted for approval by the Planning Board shall contain all the plans, rules, specifications, text and material contained in the application for the special permit and such other plans, text and material as the Planning Board may require.

7. Requirements for a Landscaping Business Use.

In addition to the requirements for plans, rules and specifications contained in the previous paragraph and other terms conditions and requirements imposed by the Planning Board, a special

permit for landscaping business use shall effectively provide for the following matters:

- (a) Storage, Loading and Unloading of Materials. A landscaping business shall have suitable storage facilities for safe storage of non-perishables used in its business, including mulch, loam, stone, stone dust and gravel. Effective measures shall be taken in the siting and use of these storage facilities to avoid adverse impacts from dust, odors and noise on neighboring properties and residents; such measures shall include: covering or enclosure of dusty or odorous materials; use of safe, efficient and reasonably quiet loading and unloading procedures; siting so as to best avoid adverse impacts, use of abatement procedures; and buffering with vegetation and noise reducing walls and fences. Such storage facilities shall be located at least forty (40) feet from lot lines.
- (b) Storage of Fertilizer. A landscaping business shall have suitable storage facilities for safe storage of fertilizer, other chemical products, fuel and oil used in landscaping operations, provided that reasonable measures are taken in the siting and use of these storage facilities to avoid and remediate spillage and to prevent any fertilizer or chemical product from becoming air born. Use of fertilizer and chemical products in growing operations shall be in accordance with instructions and regulations and shall not affect neighboring properties. In no event shall fertilizer or chemical products be stored within thirty-five (35) feet of a lot line. Underground tanks shall not be used for storage.
- (c) Operators of a Landscaping Business. Operators of a landscaping business shall be operated by the applicant(s) for the Special Permit or for amendment of the Special Permit. The operators shall be named in the Special Permit or amendment. Operators shall have an ownership or leasehold interest in the business premises. Operators shall be responsible for ensuring that all requirements, terms and conditions of the Special Permit are complied with. An operator or an authorized representative shall be on site during regular business hours and, if any complaints are received on account of non-compliance with any such requirements, terms and conditions, shall promptly cause such noncompliance to be cured and take appropriate steps to prevent any recurrence.
- (d) Vehicles. The operators of a landscaping business may own, lease, operate and maintain vehicles for use in its business. The Special Permit shall specify the number and type of vehicles which shall be permissible. The numbers and types of vehicles in use on the business premises on July, 2012 shall be the upper limit for numbers and types of vehicles absent a reliable showing that a higher number or different type would have no adverse impacts and would result in a reduction of overall noise. All vehicles shall be maintained in proper running order, clean and in good repair. Back-up horns on vehicles used on site shall be modulated to the minimum level deemed permissible by applicable law. Any maintenance, repair or cleaning of a vehicle, if performed on site, shall be performed in an enclosed space designated for the purpose. Vehicles may be used for nursery operations as well as for landscaping operations, but if registration of such vehicles is required, they shall be registered as required by the Massachusetts Registry of Motor Vehicles. Parking in garages or in areas suitably screened from view from neighboring properties shall be provided for all vehicles used in landscaping operations. There shall be no outside storage of inoperable vehicles or parts. Vehicles shall not be left running for more than five minutes when not in use. Insofar as mufflers can be provided to reduce the noise made by vehicles, mufflers which effectively serve this purpose shall be installed on the vehicles and maintained in good operating order.
- (e) On-site Traffic; Loading; Deliveries. There shall be safe and convenient movements of vehicles on-site, minimizing idling equipment, back-up movements, noise and dust. Enforceable procedures shall be specified for trucks making deliveries and for the on-site operation of the trucks and other equipment used in the business. Enforceable loading procedures for materials to be taken off site for use in the landscaping business shall be specified. Such loading and use of noisy equipment may occur only between the hours of 7:00 A.M. and 6:00 P.M. Monday through Friday and the hours of 8:00 A.M. and 5:00 P.M. on Saturday. There shall be no loading or use of noisy equipment on Sundays, provided that use of equipment for the loading of plant and nursery materials, which are not sold as part of landscaping services, shall be permissible between the hours of 10:00 A.M. and 3:00 P.M. on Sundays. Deliveries to the business premises shall be scheduled so as to

occur on Weekdays between the hours of 9:00 A.M. and 2:00 P.M. and the operators shall take reasonable steps to assure compliance. With respect to any deliveries made outside of these hours, the operators shall maintain a log available for public inspection stating the type and time of delivery and the reason why it was made out-of-hours. Routine deliveries of mail, packages and small items shall not be subject to this delivery limitation.

(f) Outside Truck Traffic. Streets providing access to the business premises shall be adequate to accommodate the truck traffic to and from the site. There shall be an approved truck route which trucks shall use. In the event that a turn on or from public streets is necessary the landscape business use shall ensure that the turns can be and are safely and conveniently made on the street pavement without use of the street's shoulder provided that specific provision may be made in the Special Permit for use and maintenance of a non-paved area of the street for such turns. Any damage to street shoulders or adjoining property by trucks accessing or egressing the business premises shall be promptly repaired by the operators. The operators shall take appropriate measures to ensure that street shoulders adjoining the business are well maintained and kept in a non-dusty condition. Provision shall be made to ensure that trucks making deliveries of materials, plants, firewood or Christmas trees and other holiday materials do not park on public streets in Milton or stop on the public streets adjoining the business premises prior or subsequent to such deliveries.

(g) Dumpsters. A landscaping business may use dumpsters as shown on the Landscape Plan in the manner specified by the Operations Plan. Dumpsters shall be screened by fences and landscaping as shown. Movement or emptying of dumpsters shall occur between 10:00 A.M. and 2:00 P.M. All dumpsters shall be in good condition and emit no dust or odors. Noise from the use of dumpsters shall be at a low level.

8. Notice and Procedure for Decision

The notice and procedural requirements set out in Section IX.B and C and the standard to be used in rendering a decision set out in Section IX.C shall apply to special permits for a landscaping business use. Under this Subsection the Planning Board may grant a Special Permit for Landscaping Business Use where it finds compliance with the purpose of this Subsection and with all of the foregoing terms, conditions, standards and requirements and finds that the landscaping business use will not cause any substantial detriment to the neighborhood or to the intent of the bylaw. A special permit may be made subject to such terms and conditions as the Planning Board may find necessary or appropriate.

2. Decision

The special permit issued by the Planning Board shall be recorded with the Registry of Deeds by the Applicant at the Applicant's expense within thirty days after the Town Clerk has certified that the time for appealing the special permit has expired. A copy of the recorded document with recording information shall be provided to the Town Planner promptly after recording. The special permit shall remain in effect during its term (unless revoked) for as long as the land and landscaping business use is operated by the permittee in accordance with the special permit. In the event that the land and business is transferred to a third party and said third party shall seek to continue operation of the landscaping business use then a new special permit application shall be required and the Planning Board may issue a new special permit in accordance with the provisions of this Subsection.

VOTED. The Town voted to amend Section 10 of the General Bylaws, known as the Zoning Bylaws, by adding the following Subparagraph(k) to Section III.A.7:-

"(K) Landscaping Business Use as provided in Section III. N" and by adding the following Subsection N to Section III:

LANDSCAPING BUSINESS USE

In a residence zone on a lot or lots on which a landscaping business was being conducted in July 2012, the Planning Board may grant a special permit for landscaping business use on such lot or lots provided that the applicant or applicants or their predecessors in interest on that date held a special permit or use variance issued by the Board of Appeals pursuant to Section III.A.4 and or 6 with regard to all or part of any such lot. The special permit shall satisfy all requirements specified in this Subsection and may contain other requirements, terms and conditions deemed necessary or appropriate by the Planning Board. A Special Permit for Landscaping Business Use shall have an initial term of three years, or such shorter period as the Planning Board may determine, and shall be renewable for one or more additional terms of five years, or such shorter period as the Planning Board may determine, with such additional terms and conditions as may be appropriate provided that there has been material compliance with the Special Permit in the prior term. Upon application by the Building Commissioner during the term or extended term of the Special Permit, the Special Permit may be revoked by the Board of Appeals after hearing in the event of a material violation which has not been promptly cured following notice from the Building Commissioner.

1. Purpose

The purpose of this subsection is to permit the ongoing operations of landscaping businesses, which were in operation on July 2012 and which existed on lots for at least one of which a special permit pursuant to Section III.A.4 and/or 6 or use variance was in force on July, 2012. This subsection is intended to make the physical layout and the day-to-day operations of each such landscaping business reasonably compatible with the interests of abutters and nearby residents and their rights to reasonable quiet and enjoyment of their properties. This subsection is intended to provide and require enforceable specifics for the layout and operations of each such landscaping business in order to control dust, noise, light and odor, to promote safety, to reduce inconvenience to neighboring residents, and to establish reasonable limits on the amount of infrastructure, equipment and operations.

2. Definition of Landscaping Business; Permissible Activities

For purposes of this Subsection, a landscaping business is defined as a business concern which operates to construct, install and maintain lawns, trees, yards, shrubs, gardens, patios, related grounds and other outdoor areas which are owned by others. The landscaping business may own or lease real and personal property, employ employees and may be authorized by special permit to own, lease, operate, and store vehicles and equipment reasonably necessary for business operations. The landscaping business may be authorized to sell trees, shrubs, sod, seed, loam, mulch and related material and may be authorized to sell stone, stone dust, gravel, pavers,

landscape ornamentations, timbers and related materials needed to implement a landscape design. It may be authorized to sell firewood if substantial sales of firewood occurred in 2012. It may be authorized to sell Christmas trees and other holiday materials if substantial sales of such occurred in 2012. It may be authorized to provide snow plowing and snow and ice removal services for third persons, including the Town. Such authorizations shall be contained in a Special Permit issued by the Planning Board which shall impose reasonable limitations, terms and conditions to implement and attain the purpose of this Subsection. Any activity authorized by the Planning Board shall be an activity which was conducted in 2012. Authorization of an activity shall be at the level no greater than the level of that activity existing in 2012 unless there is a reliable showing that a greater level would be consistent with the purpose of this Subsection and cause no adverse effects on abutters or nearby residents. If necessary to achieve the purposes of this Subsection, a level of activity less than the level in 2012 may be required.

3. Landscaping Services May Exist on a Lot With Other Uses, Including Agricultural, Greenhouse, Nursery and/or Residential

A landscaping business may be located on a lot or lots in conjunction with other uses permissible in a residence district, including residential use, provided that if there shall be any involvement between the landscaping use and another use, the requirements of this Subsection shall apply to that other use. As used in this Subsection a lot shall be deemed to include all contiguous lots, including lots that may be separated by a road or waterway, under common ownership or lease. For purposes of this Subsection, an agricultural use is defined in and shall be conducted in accordance with M.G.L. c. 128, s. 1(a), M.G.L. c. 40A, s. 3 and M.G.L. c. 61A; a greenhouse and/or nursery use is defined in and shall be conducted in accordance with Section III, Subsections 4(b) and 7(d).

4. Plans, Rules and Specifications

An application for a Special Permit for Landscaping Business Use shall include the following plans, rules and specifications and such other descriptive text and material as may be specified by the Planning Board. The plans shall be prepared in a form suitable for recording by a Registered Professional Engineer. Each plan, rule or specification shall be specifically approved and shall be enforceable as part of the special permit.

- (a) Existing Conditions Plan. This plan shall show the existing site topography, buildings, structures, utility services, water and sewer lines, wells, drainage infrastructure, driveways, landscape, natural features, and areas of use.
- (b) Deeds and Leases. Copies of all deeds and leases showing applicants' interest in the premises proposed for landscaping business use.
- (c) Wetlands Delineation Plan. This plan shall show any wetlands existing on site.
- (d) Drainage Plan. This plan shall show provisions for drainage and drainage infrastructure for the effective control of stormwater and, insofar as reasonably possible, its retention on

site. Drainage measures shall not cause adverse drainage impacts on neighboring properties. They shall not increase water flows onto neighboring properties nor create ponding on neighboring properties.

- (e) **Landscape Plan.** This plan shall show landscaping along lot lines designed to present an attractive appearance and to help buffer noise, and shall, as necessary for buffering major sources of noise, include one or more sound-buffering walls or fences appropriately sited and incorporated into an attractive setting and landscaped with vegetation on both sides. The landscaping plan shall similarly show landscaping designed to help effectively control dust. The plan shall show all other landscaping to be provided. Species and size of plants to be provided shall be specified. Specifications for all fences, walls and sound-buffering landscape structures shall be part of this plan. Fences and walls shall be at least fifteen (15) feet from lot lines and landscaping shall, at a minimum, be provided in the area within thirty (30) feet of lot lines, provided that a driveway reasonably necessary for safe and efficient circulation of on-site traffic may be in this area.
- (f) **Operations.** This plan shall show the driveways, the loading and unloading areas with specification for the on-site vehicular movements of trucks and other equipment used on site. Driveways shall not be located within twenty (20) feet of lot lines and shall be further removed whenever reasonably practical. Loading areas shall not be located within thirty (30) feet of lot lines and shall be further removed whenever reasonably practical. The plan shall provide for safe and convenient movements of vehicles on-site, minimizing idling equipment, back-up movements, noise and dust. The plan shall specify procedures for trucks making deliveries and for the on-site operation of the trucks and other equipment used in the business. The plan shall specify loading procedures for materials to be taken off-site for use in the landscaping business. The plan shall specify hours of operation for loading, unloading, operations and any other use of noisy equipment.
- (g) **Parking Plan.** This plan shall show the parking spaces for customers, employees, trucks when not in use, and other vehicles when not in use and shall show the storage space for other equipment. Garages and their layouts for parking and storage shall be shown. The parking plan shall include a reliable analysis of the number of parking spaces needed for business operations.
- (h) **Building Plans.** This plan shall show all business buildings, storage bins, dumpsters and other business structures, including dimensions, square footage, location, setbacks from lot lines, elevations, utilities, and specification of the business uses to which interior space will be put. There shall be no new or materially altered business buildings except as may be specifically approved in the Special Permit. Any new or substantially altered buildings shall be designed by an architect in a traditional style and sited at least 50 feet from any lot line. A building shall be deemed a business building if all or part of it is used for business purposes.

- (i) List of Business Activities. The list shall set out the business activities, including any sales, to be conducted on site with a description of each activity and its anticipated use of facilities on site together with the anticipated extent, times and dates of the activities.
- (j) Mitigation Plan. This plan shall specify proposed measures to be taken to control noise, dust and offensive odors in business operations. The plan shall specifically identify the likely sources of noise, dust and odors and specify effective measures to be taken to reduce and control each source of noise, dust and odor and prevent adverse impacts on nearby residents. Measures shall include mitigating requirements and restrictions on operations as well as physical changes designed to mitigate impacts.
- (k) Lighting Plan. This plan shall show all exterior lighting which shall be designed to provide reasonably necessary lighting while minimizing light overspill onto the neighboring properties and the adjoining streets. The design of lighting fixtures shall be appropriate to a residential neighborhood. Light levels shall be low.
- (l) Street Improvement Plan. In the event that truck traffic cannot adequately access the business property staying on pavement of the streets providing access, this plan shall propose street improvements to be provided at applicant's expense to permit safe access by trucks without damage to the street shoulders or adjoining property.
- (m) Signs. The location and description of any signs advertising the business shall be specified. All signs shall be approved by the Town's Sign Review Committee.
- (n) List of Vehicles. The list shall show the number and type of vehicles which were in use at the business premises in business operations on July 1, 2012, and specification of the numbers and type of vehicles proposed for future operations with justification of a need for any increase in number or change of type. Any new acquisitions shall be chosen with quiet operation as a principal criterion. The list shall be kept current.
- (o) Rules. A list of the rules proposed to be imposed by the Special Permit to ensure that vehicles and equipment are shut off and not left idling when not in use and that employees do their work efficiently and quietly. Earphones shall be required if radios, CD players or the like are in use by employees. Loudspeakers and amplified music shall not be used in business operations.
- (p) Firewood Plan. In the event that the landscaping business proposes to sell firewood, this plan shall show the specifics of and procedures for firewood operations, including safe and reasonably quiet deliveries to the landscaping business, safe storage of firewood inventory by the business and safe and reasonably quiet loading of trucks making deliveries of firewood to customers. Firewood operations shall not have any significant dust or odor impacts.
- (q) Snow and Ice Removal Plan. In the event that the landscaping business proposes to sell snowplowing or snow and ice removal services, this plan shall show the specifics of and procedures for snowplowing and snow and ice removal services, including safe and reasonably quiet equipping, loading and dispatch of trucks and on-site activities necessary for provision of the services, including storage of equipment and materials.

- (r) Sales Plan. In the event the landscaping business proposes to maintain a sales office for sale of some or all of the materials listed in Paragraph 2 in conjunction with landscaping services, the plans shall show the specifics of and procedures for such sales. Any such sales operations shall not be materially different in extent or manner from similar sales conducted in 2012. The sales office may be operated between the hours of 7:00 A.M. and 6:00 P.M. Monday through Saturday and 9:00 A.M. and 6:00 P.M. on Sunday subject to such reasonable restrictions on sales activities as may be required by the Planning Board.
- (s) Christmas Trees and Holiday Materials Plan. In the event that the landscaping business proposes to sell Christmas trees, pumpkins and other holiday materials, this plan shall show the specifics of and procedures of such holiday sales operations, including safe and reasonably quiet deliveries to the landscaping business. The sales of Christmas trees shall be allowed from the last Friday before Thanksgiving Day to the following January 1 and the hours of such sales may be from 8:00 A.M. to 9:00 P.M.

5. Approval of Plans, Rules and Specifications

As part of a special permit issued under this Subsection, the Planning Board shall approve plans, rules and specifications which the Board deems adequate under each of the foregoing paragraphs. Insofar as the material submitted by an applicant with the application for a special permit may be inadequate or fail to advance the purpose of this Subsection, the Planning Board shall require its revision. Once all plans, rules and specifications are determined to be adequate and to advance the purposes of this Subsection, they shall be incorporated into the Special Permit by reference and become enforceable requirements, terms and conditions of the Special Permit.

6. Site Plan Approval By Planning Board.

Site Plan Approval by the Planning Board in the manner and under the procedures and standards of Section VIII.D shall be required for a landscaping business use. The site plan submitted for approval by the Planning Board shall contain all the plans, rules, specifications, text and material contained in the application for the special permit and such other plans, text and material as the Planning Board may require.

7. Requirements for a Landscaping Business Use.

In addition to the requirements for plans, rules and specifications contained in the previous paragraph and other terms conditions and requirements imposed by the Planning Board, a special permit for landscaping business use shall effectively provide for the following matters:

(a) Storage, Loading and Unloading of Materials.

A landscaping business shall have suitable storage facilities for safe storage of non-perishables used in its business, including mulch, loam, stone, stone dust and gravel.

Effective measures shall be taken in the siting and use of these storage facilities to avoid adverse impacts from dust, odors and noise on neighboring properties and residents; such measures shall include: covering or enclosure of dusty or odorous materials; use of safe, efficient and reasonably quiet loading and unloading procedures; siting so as to best avoid adverse impacts, use of abatement procedures; and buffering with vegetation and noise reducing walls and fences. Such storage facilities shall be located at least forty (40) feet from lot lines.

(b) Storage of Fertilizer.

A landscaping business shall have suitable storage facilities for safe storage of fertilizer, other chemical products, fuel and oil used in landscaping operations, provided that reasonable measures are taken in the siting and use of these storage facilities to avoid and remediate spillage and to prevent any fertilizer or chemical product from becoming air born. Use of fertilizer and chemical products in growing operations shall be in accordance with instructions and regulations and shall not affect neighboring properties. In no event shall fertilizer or chemical products be stored within thirty-five (35) feet of a lot line. Underground tanks shall not be used for storage.

(c) Operators of a Landscaping Business.

Operators of a landscaping business shall be operated by the applicant(s) for the Special Permit or for amendment of the Special Permit. The operators shall be named in the Special Permit or amendment. Operators shall have an ownership or leasehold interest in the business premises. Operators shall be responsible for ensuring that all requirements, terms and conditions of the Special Permit are complied with. An operator or an authorized representative shall be on site during regular business hours and, if any complaints are received on account of non-compliance with any such requirements, terms and conditions, shall promptly cause such non-compliance to be cured and take appropriate steps to prevent any recurrence.

(d) Vehicles.

The operators of a landscaping business may own, lease, operate and maintain vehicles for use in its business. The Special Permit shall specify the number and type of vehicles which shall be permissible. The numbers and types of vehicles in use on the business premises on July, 2012 shall be the upper limit for numbers and types of vehicles absent a reliable showing that a higher number or different type would have no adverse impacts and would result in a reduction of overall noise. All vehicles shall be maintained in proper running order, clean and in good repair. Back-up horns on vehicles used on site shall be modulated to the minimum level deemed permissible by applicable law. Any maintenance, repair or cleaning of a vehicle, if performed on site, shall be performed in an enclosed space designated for the purpose. Vehicles may be used for nursery

operations as well as for landscaping operations, but if registration of such vehicles is required, they shall be registered as required by the Massachusetts Registry of Motor Vehicles. Parking in garages or in areas suitably screened from view from neighboring properties shall be provided for all vehicles used in landscaping operations. There shall be no outside storage of inoperable vehicles or parts. Vehicles shall not be left running for more than five minutes when not in use. Insofar as mufflers can be provided to reduce the noise made by vehicles, mufflers which effectively serve this purpose shall be installed on the vehicles and maintained in good operating order.

(e) On-site Traffic; Loading; Deliveries.

There shall be safe and convenient movements of vehicles on-site, minimizing idling equipment, back-up movements, noise and dust. Enforceable procedures shall be specified for trucks making deliveries and for the on-site operation of the trucks and other equipment used in the business. Enforceable loading procedures for materials to be taken off site for use in the landscaping business shall be specified. Such loading and use of noisy equipment may occur only between the hours of 8:00 A.M. and 6:00 P.M. Monday through Friday and the hours of 9:00 A.M. and 5:00 P.M. on Saturday unless an earlier start of no more than one hour is shown to be reasonably necessary for the operations of the landscaping business. There shall be no loading or use of noisy equipment on Sundays, provided that use of equipment for the loading of plant and nursery materials, which are not sold as part of landscaping services, shall be permissible between the hours of 10:00 A.M. and 3:00 P.M. on Sundays. Deliveries to the business premises shall be scheduled so as to occur on Weekdays between the hours of 9:00 A.M. and 2:00 P.M. and the operators shall take reasonable steps to assure compliance. With respect to any deliveries made outside of these hours, the operators shall maintain a log available for public inspection stating the type and time of delivery and the reason why it was made out-of-hours. Routine deliveries of mail, packages and small items shall not be subject to this delivery limitation.

(f) Outside Truck Traffic

Streets providing access to the business premises shall be adequate to accommodate the truck traffic to and from the site. There shall be an approved truck route which trucks shall use. In the event that a turn on or from public streets is necessary the landscape business use shall ensure that the turns can be and are safely and conveniently made on the street pavement without use of the street's shoulder provided that specific provision may be made in the Special Permit for use and maintenance of a non-paved area of the street for such turns. Any damage to street shoulders or adjoining property by trucks accessing or egressing the business premises shall be promptly repaired by the operators. The operators shall take appropriate measures to ensure that street shoulders adjoining the business are well maintained and kept in a non-dusty condition. Provision shall be made

to ensure that trucks making deliveries of materials, plants, firewood or Christmas trees and other holiday materials do not park on public streets in Milton or stop on the public streets adjoining the business premises prior or subsequent to such deliveries.

(g) Dumpsters

A landscaping business may use dumpsters as shown on the Landscape Plan in the manner specified by the Operations Plan. Dumpsters shall be screened by fences and landscaping as shown. Movement or emptying of dumpsters shall occur between 10:00 A.M. and 2:00 P.M. All dumpsters shall be in good condition and emit no dust or odors. Noise from the use of dumpsters shall be at a low level.

8. Notice and Procedure for Decision

The notice and procedural requirements set out in Section IX.B and C and the standard to be used in rendering a decision set out in Section IX.C shall apply to special permits for a landscaping business use. Under this Subsection the Planning Board may grant a Special Permit for Landscaping Business Use where it finds compliance with the purpose of this Subsection and with all of the foregoing terms, conditions, standards and requirements and finds that the landscaping business use will not cause any substantial detriment to the neighborhood or to the intent of the bylaw. A special permit may be made subject to such terms and conditions as the Planning Board may find necessary or appropriate.

9. Decision

The special permit issued by the Planning Board shall be recorded with the Registry of Deeds by the Applicant at the Applicant's expense within thirty days after the Town Clerk has certified that the time for appealing the special permit has expired. A copy of the recorded document with recording information shall be provided to the Town Planner promptly after recording. The special permit shall remain in effect during its term (unless revoked) for as long as the land and landscaping business use is operated by the permittee in accordance with the special permit. In the event that the land and business is transferred to a third party and said third party shall seek to continue operation of the landscaping business use then a new special permit application shall be required and the Planning Board may issue a new special permit in accordance with the provisions of this Subsection.

VOICE VOTE

The moderator declared a two-thirds vote.

A true copy, Attest

Susan M. Gahin
Town Clerk



TOWN OF MILTON
MASSACHUSETTS

SUSAN M. GALVIN
Town Clerk

To Whom It May Concern:

This is to certify that the following is a true copy of a vote taken at the Annual Town Meeting held May 5, 2014 and the vote passed thereunder.

At the request of the Moderator, Brian M. Walsh, a motion was made and seconded that on matters requiring a two-thirds vote by statute, a count need not be taken unless the vote so declared and immediately questioned by seven or more voters as provided by General Laws Chapter 39 Section 15.

UNANIMOUS VOTE

A true copy, Attest

Susan M. Galvin
Town Clerk



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2/16/2015

TOWN OF MILTON

Decision of the Board of Appeals, as constituted under Section VIII of Chapter 10 of the General Bylaws of the Town of Milton, upon the application of Robert C. Oldfield and Margaret T. Oldfield dated August 7, 1987.

A public hearing was held on the eighth day of September, 1987 in the Town Hall, Milton, Massachusetts, pursuant to notice duly given according to law and to the Rules of the Board, upon the application of Robert C. Oldfield and Margaret T. Oldfield dated August 7, 1987 and filed under the provisions of General Bylaws, Chapter 10 (the so-called "Zoning Bylaw"), Section III. A. 7. (d), to amend a special permit issued to them on June 1, 1967 permitting erection of a lath house 48' x 72' and a greenhouse 100' x 30' on lot located at 270 Hillside Street, Milton (herein referred to as "the premises") all for the purpose of operating a nursery selling only produce raised on the premises. The application sought to amend the special permit so as to permit: (1) the use of an adjoining lot shown as Lot 1B on a plan filed with the Board as part of the application; (2) the construction and use of a 26 feet by 44 feet display room for the display of produce raised on the premises and incidental products; and (3) the use of a portion of Lot 1B for parking of not more than 5 trucks.

Members of the Board present at the hearing were Roderick M. Connelly, Joseph Lane and Marion McEttrick.

Section III. A. 7. (d) of the Zoning Bylaw provides that the Board of Appeals may issue a permit for the use of land and property

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in a residence district as a greenhouse or nursery selling only produce raised on the premises. In order to grant a permit under Section VIII C. the Board of Appeals must be satisfied that the desired relief may be granted without substantial detriment to the public good and without substantially derogating from the intent or purpose of the Zoning Bylaw. Such a permit was issued to the applicants by this Board on June 1, 1967 and was subject to appropriate conditions, limitations and safeguards stated in writing by the Board of Appeals and made a part of the permit.

Several persons living in the general neighborhood of the premises in question, appeared at the hearing and were recorded as in favor of granting the application. One person appeared at the hearing was recorded as opposed to the application. One neighbor wrote a letter to the Board registering opposition to the application.

Applicant's attorney, Richard E. Bachman, filed a "Brief in Support of the Application."

The applicants have operated a nursery business known as Thayer Nursery on Lot 1A of the premises selling only produce raised on the premises pursuant to the original special permit since about June 2, 1967. More recently and pursuant to the proviso in Section III A. & (d) of the Zoning Bylaw the applicants have also sold Christmas trees and related items. In 1976 the applicants acquired Lot 1B and began using that lot in conjunction with their nursery business under the belief that such use was permitted under the 1967 Special Permit. The applicants were not informed that the use of the new lot for nursery purposes was not allowed under either the Special Permit or the Zoning



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Bylaw until 1986 when the Building Inspector brought the matter to their attention. Consequently, the applicants filed this application seeking inter alia, permission to use Lot 1B for nursery purposes as allowed by the original Special Permit.

During the approximately 20 years that the applicant has operated Thayer Nursery on the premises no complaints have ever been received by either the Building Inspector or the Zoning Board of Appeals that the applicants were operating the nursery in violation of any of the conditions, limitation and safeguards set forth in the Special Permit except for the problem involving the use of Lot 1B referred to above. Moreover, the members of the Board are familiar with the operation of Thayer Nursery and find that the premises have always been neat, clean and/or in conformity with and in appreciation of the rural residential character of the neighborhood. Since Lot 1B is a back lot with no frontage on either Hillside Street or Forest Avenue, the use of that lot for nursery purposes will have little or no impact on the residents of those streets. Also, the applicants have planted evergreens along the southeasterly side of Lot 1B to screen the nursery from the view of the residents living on Parkwood Drive and from whose backyards Lots 1A and 1B can be seen. Therefore, the Board finds that Lot 1B can be used for nursery purposes associated with Lot 1A without substantial detriment to the public good and without substantially derogating from the intent or purposes of the Zoning Bylaw.

Associated with the use of Lot 1B for nursery purposes is the applicants' request to park thereon 5 trucks to be used in conjunction with the business of Thayer Nursery. The Board finds that Lot 1B is



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the least obtrusive and most screened area of the entire premises (i.e. Lots 1A and 1B) where trucks may be parked. However, Mr. and Mrs. Driscoll, whose house lot abuts the southeasterly boundary of Lot 1B should not be exposed to having trucks parked unreasonably close to their property line. Accordingly, the application to park no more than 5 trucks used in conjunction with the applicants' nursery is granted but with the condition that no trucks be parked within 65 feet of the northeasterly lot line of Lot 1B all as shown as a line marked "Line of Logs" on the September 30, 1987 revision of the Plan filed with the application. The Board understands that Mr. Driscoll and Mr. Oldfield have conferred on this subject and the proposed line is agreeable to Mr. Driscoll.

The third amendment of the Special Permit sought by the application is permission to add a display room having dimensions of 26 feet by 44 feet to the southeasterly side of the greenhouse and office as shown on the Plan. This Display Room will be used to show both produce raised on the premises and products to be sold which are incidental to the sale of produce raised on the premises. The second floor consisting of about 1/2 the floor area of the first floor will contain an office for conduct of the nursery. The proposed height of the new display room will be 23 1/2 feet⁽¹⁾. Since the display room

(1) At the September 8, 1987 hearing a maximum height of 16 feet appeared to have been agreed. The applicant, his attorney and Mr. Frank Bagge, the applicant's architect appeared at the meeting of the Board on October 6, 1987 and explained that the 16 feet maximum height restriction was based on a misunderstanding. After listening to the tape of the September 8, 1987 hearing the Board agreed that the maximum allowable height should have been 23 1/2 feet.

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will occupy an area on Lot 1A presently used to display such produce and products under a lath house, the Board finds that the erection and use of a Display Room with room for a single office on the second floor may be granted without substantial detriment to the public good and without substantially derogating from the intent or purpose of the Zoning Bylaw.

The applicants also requested that Paragraph 10 of the conditions, limitations and safeguards of the Special Permit be amended to include their children as persons to whom the Special Permit runs and that the sale of firewood and garden tools be deemed incidental to the conduct of the nursery business. The Board finds that Paragraph 10 of the original Special Permit was intended to prevent the transfer of the permit to third persons who were not held in such high esteem as that which the neighbors held the applicants and that there was no intention to deprive members of the applicants' immediate family of the benefits of the Special Permit. In addition, the Board finds that the sale of firewood and garden tools is incidental to a nursery business and grants the request to sell those items on the premises.

Finally, the Board reaffirms that those conditions, limitations and safeguards set out in Paragraphs 1 through 11 of the Special Permit dated June 1, 1967 which are not inconsistent with the grant of this application shall remain in full force and effect.

Therefore, the Board, by unanimous vote of the members sitting on this case, hereby determines that the Special Permit issued to the applicants on June 1, 1967 be amended as set forth in the attached "Amendments to Special Permit issued to Robert C. Oldfield and Margaret T. Oldfield, 270 Hillside Street, Milton, Massachusetts 02186 dated June 1, 1967."

2/16/2015

TOWN OF MILTON

Amendments to Special Permit Dated June 1, 1967

To: Robert C. Oldfield
Margaret T. Oldfield
270 Hillside Street
Milton, Massachusetts 02186

Upon your application dated August 7, 1987 for amendments to the Special Permit issued to you on June 1, 1967 pursuant to Section III A. 7. (d) of Chapter 10 of the General Building Laws (Zoning Bylaw) and as shown on a plan dated May 4, 1987 and a revision dated September 30, 1987 and a Plan entitled "Section Through Display Room" dated September 30, 1987, all of which are filed with the Board and open to public inspection.

The Board hereby amends the aforesaid Special Permit to permit the following:

1. Lot 1B as shown on the Plans referred to above may be used in conjunction with the greenhouse and nursery business, which the applicants are conducting on Lot 1A.

2. The applicants may park no more than 5 trucks used in conjunction with the nursery business on Lot 1B; provided, however, that no trucks may be parked within 65 feet of the northeasterly lot line of Lot 1B as shown by a line marked "Line of Logs" on the Plan revision dated September 30, 1987. No trucks may be parked on Lot 1A. No trucks not used in conjunction with the applicants' nursery business may be parked anywhere on Lots 1A or 1B. Accordingly, the



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last sentence of Paragraph 1 of the conditions, limitations and safeguards contained in the original special permit is amended to read as follows:

"Any truck based on the premises shall be parked in the area designated in this Amendment when not in use."

Nothing contained in this Paragraph 2 is intended to limit the right of the applicants and members of their immediate family to park vehicles owned by them and used only for personal use anywhere on the premises.

3. The applicants may erect a Display Room and office having dimensions of 26 feet by 44 feet as shown on the artist's rendering of "Proposed Display Room" dated May 4, 1987 a copy of which was presented to the Board at the hearing and an architects "Section Through Display Room" Plan dated September 30, 1987 and at the location on Lot 1A as shown on the plans. The proposed Display Room shall be used for the display and sale of produce raised on the premises and for the display and sale of items incidental to the sale of such produce. The Display Room shall not exceed 23 1/2 feet in height.

4. Paragraph 10 of the conditions, limitations and safeguards is amended to read:

"This permit runs to the applicants and their children personally (including any assistants) only, and shall not be assigned or transferred to any other person."

5. The sale of garden tools and firewood as incidental to the operation of the nursery business is permitted.

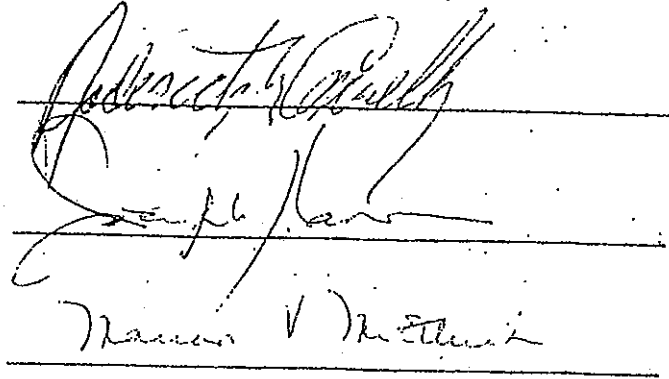
Except as specifically stated in Paragraphs 1 through 5 above



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the conditions, limitations and safeguards set forth in the Special Permit dated June 1, 1967 and not amended herein are specifically restated and incorporated herein by reference. The rights granted herein shall apply only during the time that the Special Permit dated June 1, 1967 is in force and effect.

Issued by the Board of Appeals this 29th day of October, 1987.



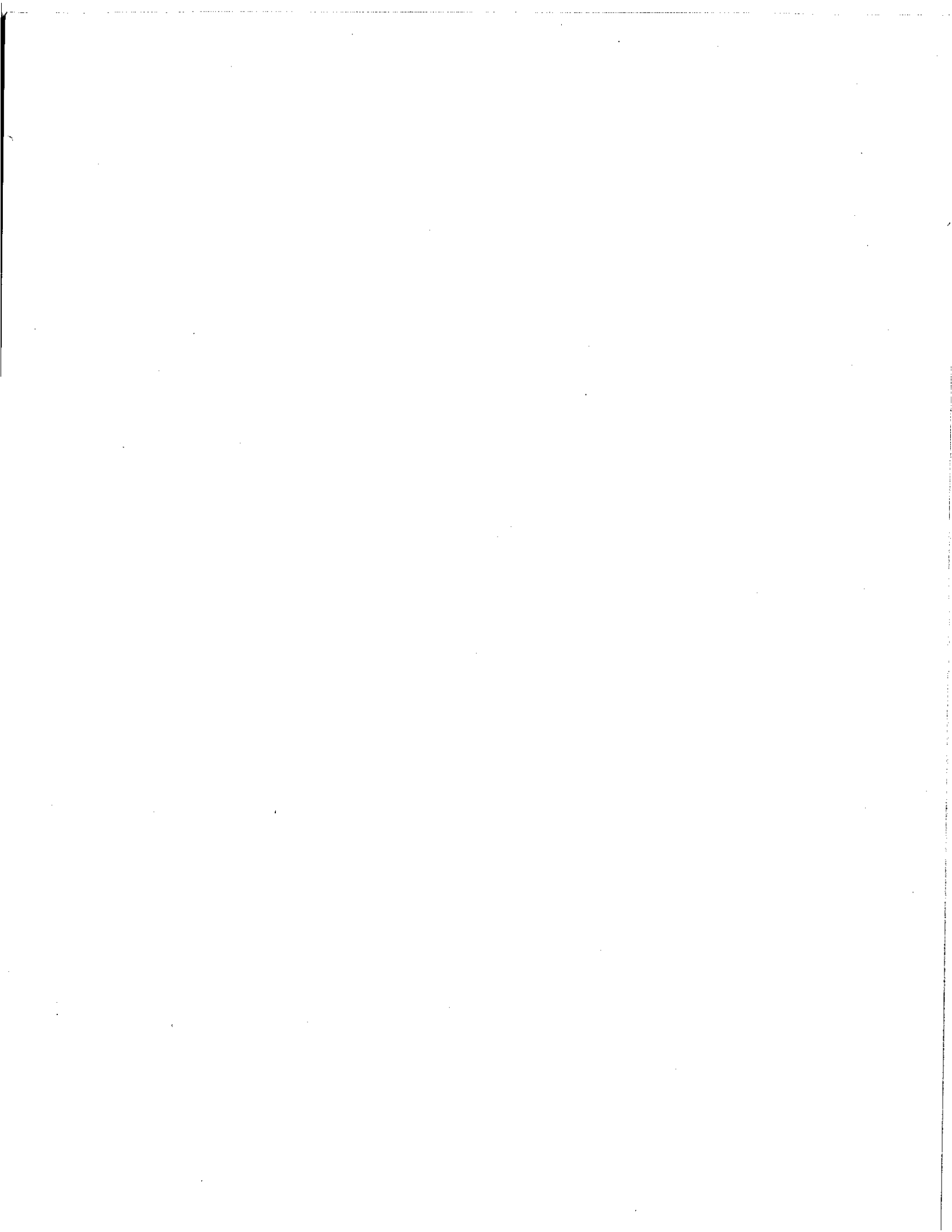
Three handwritten signatures are present, each written over a horizontal line. The signatures are cursive and difficult to read, but they appear to be the names of the Board of Appeals members.

FILED

OCT 29 1987

WITH
TOWN CLERK

Board of Appeals



TOWN OF MILTON

Decision of the Board of Appeals, as constituted under Section VIII of Chapter 10 of the General Bylaws of the Town of Milton; upon the application of Robert C. Oldfield and Margaret T. Oldfield dated January 9, 1967

hearing documents in archives

A public hearing was held on the thirtieth day of January, 1967 in the Town Hall, Milton, Massachusetts, pursuant to notice duly given according to law and to the Rules of the Board, upon the application of Robert C. Oldfield and Margaret T. Oldfield dated January 9, 1967 and filed under the provisions of General Bylaws, Chapter 10 (the so-called "Zoning Bylaw"), Section III. A. 7. (d), for a special permit for the erection of a lath house 48' x 72' and a greenhouse 100' x 30' on lot located at 270 Hillside Street, Milton (herein referred to as "the premises") all for the purpose of selling only produce raised on the premises; all in accordance with application and plan (herein called "said plan") filed with the Board and open to public inspection.

Two members of the Board were present at the hearing and also Mr. Oliver S. Sughrue, Associate Member of the Board, substituting for Mr. John M. Curley.

At least one member of the Board has viewed the premises, located in a Residence A. District.

Section III. A. 7. (d) of the Zoning Bylaw provides that the Board of Appeals may issue a permit for the use of land and property in a residence district as a greenhouse or nursery selling only produce raised on the premises. Such permit shall be subject to appropriate conditions, limitations and safeguards stated in writing by the Board of Appeals and made a part of the permit. Also, under Section VIII. C. the Board of Appeals must be satisfied that the desired relief may be granted without substantial detriment to the public good and without substantially derogating from the intent or purpose of the Zoning Bylaw.

A number of persons, mostly living in the general neighborhood of the

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premises in question, appeared at the hearing and were recorded as in favor of granting the application. Various of these gave two main reasons for their position: (1) that they held applicant personally in high esteem and were confident he would do nothing detrimental to the neighborhood; and (2) that they felt the proposed greenhouse and lath house and the use thereof and of the premises, as shown on said plan, to be made in connection therewith would be less detrimental to the neighborhood than the use involved in the likely alternate use of the premises for possibly three new dwellings.

One person owning land nearby on which she expects to build a dwelling appeared at the hearing both personally and through her attorney, Mr. Walter S. Robbins, as not objecting to the issuance of a permit, but asking that the Board carefully limit the scope of any such permit so as to protect the residential character of the neighborhood. She later filed a letter and Mr. Robbins filed both a memorandum of law and a letter suggesting certain procedures.

Applicant's attorney, Mr. Bachman, filed both a "Proposed Findings of Facts" and a Memorandum of Law.

Frequent reference was made at the hearing, and in various of the documents above mentioned, to an alleged non-conforming use of the premises for the conduct of a greenhouse and nursery. The Board agrees with Mr. Robbins' contention that the legal status of any existing non-conforming or other use of the premises is not germane to this case except as it, or any previous use, may provide a general background for the character of the neighborhood. In other words, a greenhouse and nursery use whatever its status and extent, has taken place on these premises for many years in the past.

The Board will limit itself to considering whether, and subject to what conditions, limitations, and safeguards, any permit should be issued by it under Section III. A. 7. (d) of the Zoning Bylaw, as well of course

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as under Section VIII. C. of said Bylaw. Vide the within application and advertisement published in connection therewith.

The Board takes judicial notice of the fact that the Hillside Street residential community nearby to the premises constitutes at least one of the most rural neighborhoods in Milton. The Board will therefore give particular attention to the possible adverse effects of any commercial enterprise in this vicinity. Having in mind the testimony of many persons above referred to, and its own knowledge of this community, as well as the general background of these premises above referred to, it seems to the Board that a special permit should clearly be issued in this case, and the question before the Board then narrows itself to a consideration of (a) whether the two structures which applicant desires to erect and the use to be made of them and of the existing barn and of the premises in connection therewith should be permitted and (b) to what conditions, limitations and safeguards such special permit should be subject.

First we consider the size of the greenhouse and lath house. The greenhouse at its highest part will be approximately 20 feet (not 35 feet as indicated on the application for building permit) above the ground and will measure 100 by 30 feet, or a total area of 3,000 square feet. It is estimated to cost \$15,000. The lath house is approximately 8½ feet at its highest point and is 72 feet long by 48 feet wide or encompassing an area of about 3,550 square feet. It is estimated to cost about \$175. Obviously both these estimates of cost must be exclusive of non-paid work possibly by applicant and persons close to him. No evidence has been presented to the Board that the size of the proposed structures is so large as to impair the residential character of the neighborhood, having in mind especially the size of Lot A as shown on said plan. However, the Board understands that there is no present intention to erect a greenhouse of this size, and therefore the Board will cut down the requested size slightly.

E. J. [Signature]
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O. [Signature]

The next question concerns what limitations and safeguards should be inserted in the permit. The Board has considered carefully the case of Needham vs Winslow Nurseries (330 Mass. 95, 1953). The Supreme Court's interpretation in this case of the words "greenhouse" and "nurseries" and enumeration of uses accessory thereto is helpful as indicating what the basic rights of applicant would be if granted a permit (including, in effect, accessory uses under Section III. A. 6. of the Milton Zoning Bylaw) herein for a greenhouse and nursery apart, that is, from any conditions, limitations and safeguards which may be imposed. It should be noted, as Mr. Robbins has pointed out, that the by-law involved in the Winslow case did not contain the words "selling only produce raised on the premises" as does Section III. A. 7. (d) of the Milton Zoning Bylaw above referred to. The Court did apparently assume that to come within the Needham By-law plants (which term, whenever used herein, shall include trees, shrubs, and vines) sold had to be the "product of the nursery", so the Court comes close to the "produce raised" test of the Milton Bylaw, even though it may be argued, as Mr. Robbins does, that "raised on the premises" is more restrictive than "product of the nursery". In any case as above noted, the Board will assume that any conditions, limitations, and safeguards to be imposed herein may interfere with rights similar to those conceded to the greenhouse and nursery operator by the Winslow case.

The Board will now in a series of numbered paragraphs consider various possible conditions, limitations and safeguards:

- (1) Trucks: Section III. B. 1. (b) provides that an accessory use shall not include "the garaging or maintaining on any lot of more than one commercial automobile ..." An exception based on "agriculture" is obviously not applicable here, since "agriculture" and "greenhouse or nursery" are separately dealt with in the Bylaw. It seems to the Board that any truck should ordinarily be housed, especially when not in use, and a condition to this effect will be inserted.
- (2) Buildings which may be constructed: The greenhouse to be erected is covered by express designation in said Section III. A. 7. (d). So far as the Lath House is concerned the Board agrees with

Mr. Bachman's contention that a "shade house" such as the proposed lath house constitutes an accessory use to the greenhouse or nursery business, pursuant to the provisions of Section III. A. 6 of the Zoning Bylaw. The Winslow case at least implies that "ventilated buildings" are an accessory use to a greenhouse or nursery.

- (3) What Products may be Sold on the Premises: Mr. Bachman in his brief asks that the Board grant a permit to conduct the greenhouse and nursery business on the premises and allow the law as interpreted in the Winslow case and such other cases as are or may be relevant to govern the extent of the permitted activities, including particularly the identity of what may be sold. It seems clear that activities not permitted by the Court in the Winslow case (such as the sale of "dead wood" Christmas wreaths or trees not grown on the premises) would a fortiori be outside the scope of any permit issued herein. However, the Board will enumerate certain other activities which were allowed by the Court in the Winslow case, but which may need to be restricted now or in the future in the within case as follows:

- (a) The sale of plants purchased elsewhere and kept only "dormant" (or so that they do not grow) on the premises. The Board believes that the words "raised on the premises" as used in the M Zoning Bylaw may well imply at least a relatively substantial period of actual growth on the premises (as suggested by Mr. Robbins).
- (b) The business of landscaping, whether in connection with plants sold or not, from the premises.
- (c) The sale of such products as fungicides, insecticides, chemicals, peat moss, humus, mulches, sterilized soil, and fertilizers.

With reference to the foregoing subparagraphs (a) to (c) inclusive The Board is reluctant at this point to insert flat conditions in the permit limiting any of the activities therein referred to. Instead, it will insert a "reasonable efforts" provision in the permit with opportunity for further action to be taken by the Board at a later hearing or hearings after some years of experience provide data relating to the effect of operations under the permit on the residential character of the neighborhood.

- (4) Other Conditions, Limitations and Safeguards:

- (a) Premises to be kept in tidy, neat condition.
- (b) The permit shall run to applicant personally (including assistant) and shall not be assignable in any way.
- (c) The permit shall terminate forthwith on any sale of the premises (a mortgage not to be deemed a sale).
- (d) Parking space shall be provided for customers. No customers' cars shall at any time be parked on Hillside Street or Forest Street.
- (e) The lot to be used in connection with the greenhouse and nursery should be kept at its present size.

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(f) Times when open for business.

Therefore, the Board, by unanimous vote of the members sitting on this case, hereby determines that a permit should be issued in the attached form subject to the conditions, limitations and safeguards therein contained.

Handwritten initials and date:
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SPECIAL PERMIT

TO: Robert C Oldfield and
Margaret T. Oldfield,
270 Hillside Street
Milton, Massachusetts 02186

Upon your application dated January 9, 1967 for a permit as required under Section III. A. 7. (d) of Chapter 10 of the General Bylaws for the erection and maintenance of a lath house 48' x 72' and a greenhouse 100' x 30' on lot (containing 141,210 +/- square feet) located at 270 Hillside Street, Milton, and the use thereof and of the existing barn situated on said lot for selling only produce raised on the premises, all as shown in application dated January 9, 1967 and plan dated December 1, 1966 and filed with the Board and open to public inspection:

The Board hereby grants you a special permit pursuant to said subsection 7. (d) for such erection and maintenance, and such use of said greenhouse, lath house (as accessory to said greenhouse) and barn, all as shown on said plan (except as hereinafter provided). This permit shall be subject, however, to the following conditions, limitations, and safeguards which are necessary in the opinion of the Board to safeguard the legitimate use of the property in the neighborhood and the health and safety of the public:

- (1) No parking whatsoever shall take place on Hillside Street by automobiles of customers or by automobiles or trucks used by applicant in connection with the greenhouse. Applicant shall provide a parking area which shall have a capacity more than sufficient to take care of any parking by customers. Any truck normally based on the premises shall ordinarily be housed when not in use.
- (2) The premises shall be kept in neat and presentable condition. There shall be no unsightly piles of loam, no manure or fertilizer which may have an odor which will be perceptible from nearby property or which may tend to attract flies or vermin. No odors, noises or other occurrences tending to impair the residential character of the neighborhood shall take place. No heating plant used in connection with the greenhouse shall be allowed to emit either odor or soot deposit perceptible to the neighborhood.

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- (3) No advertising signs of any kind or flood lights shall be erected on the premises except as specifically provided by the Zoning Bylaw or as may be allowed by permit from the Board of Appeals after notice to interested parties and a hearing; provided, however, that a sign not over one foot by two feet in size and bearing applicant's name and the statement "Flowers for Sale" or similar words lettered in black on a white background may be used without such permit.
- (4) The proposed greenhouse shall not be larger than twenty-eight (28) feet by ninety (90) feet.
- (5) Applicant shall make reasonable efforts to keep the volume of his merchandizing activities referred to in numbered subparagraphs (3) (a) to (c) inclusive of the decision of the Board of Appeals attached hereto at a level not substantially above their present size so as not to impair the residential character of the neighborhood.
- (6) The size of Lot A, as shown on the plan submitted with the application and above referred to, shall not be decreased from its present area of about 141,210 square feet as long as activities under the permit issued herein take place.
- (7) The times when business may be transacted on the premises are not prescribed herein; any limitation thereon to be dealt with by the Board under subsection (8) following.
- (8) The provisions of the foregoing paragraphs (1) to (7), inclusive may be added to, altered or amended at any time and from time to time by the Board of Appeals after notice to parties deemed by the Board to be interested and a hearing. Reference is hereby made to the decision of the Board of Appeals attached hereto and in particular to subparagraphs lettered (3) (a) to (c), inclusive thereof for the nature of certain additional conditions, *inter alia*, which may be considered and acted upon at any such hearing or hearings in the future in the light of developments in the conduct of the greenhouse and nursery activities which may occur subsequent to the date hereof.
- (9) Said lath house and greenhouse and the type of construction thereof shall comply with all laws and regulations governing the erection of such structures in Milton, this Permit having solely to do with the provisions of Section III. A 7. (d) of the Zoning Bylaw above referred to.
- (10) This permit runs to you personally (including any assistants) only, and shall not be assigned or transferred to any other person.
- (11) This permit does not in any way affect the provisions of the so-called Building Code (viz., Chapter 7 of the General Bylaws of the Town of Milton) as it may apply to the construction of the lath house and greenhouse, and the Building Commissioner is instructed to issue no building permit hereunder which does not comply with all provisions of law including the provisions of said Building Code.

This permit expressly forbids any action in violation of any of the above conditions and shall be revocable by the Board, acting either on its own motion or on the motion of the Building Commissioner or of any person

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deemed by the Board to be interested and after notice to the applicant and a hearing, for violation of any of the above conditions as herein stated or as hereinafter amended from time to time as above permitted.

Attached is a copy of the decision of the Board of Appeals issuing you this permit.

ISSUED by the Board of Appeals this First day of June, 1967.

FILED

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WITH
TOWN CLERK

Edward J. Brown

Blake J. Cuckshaw

Olewn S. Seyber