

A. Zoning



ORDINANCE NO. _____

AN ORDINANCE IN AMENDMENT TO
THE ZONING CODE OF THE TOWN OF FOSTER

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

ARTICLE V. – NONCONFORMING USE

Sec. 38-231 – Nonconforming by dimension.

- Sec. 38-231 – Nonconforming by dimension shall be amended to meet requirements set forth in RIGL.

A ~~lawfully established~~ building, structure or parcel of land not in compliance with the dimensional regulations of this chapter is nonconforming by dimension. Dimensional regulations include all regulations of this chapter, other than those pertaining to the permitted uses. A ~~lawfully established~~ building, structure, parcel of land, or use thereof, not in compliance with the parking regulations of this chapter is also nonconforming by dimension. ~~A lawfully existing or lawfully established lot that is not in compliance with the dimensional regulations of this chapter including, but not limited to, those regulations for minimum lot size, lot width and lot frontage (also known as a substandard lot of record), is also nonconforming by dimension. A building or structure containing a permitted number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot area per dwelling unit regulations, is nonconforming by dimension.~~



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AN ORDINANCE IN AMENDMENT TO
THE ZONING CODE OF THE TOWN OF FOSTER

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

ARTICLE VI. – SUPPLEMENTARY REGULATIONS

Sec. 38-271 – Purpose of article.

- Sec. 38-271 – Purpose of article shall be amended to meet RIGL:

The purpose of the supplementary regulations enumerated in this article is to set specific conditions and dimensional criteria for various uses or areas, where general regulations are not applicable, ~~and to set specific standards for the granting of special use permits.~~



ORDINANCE NO. _____

**AN ORDINANCE IN AMENDMENT TO
THE ZONING CODE OF THE TOWN OF FOSTER**

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

ARTICLE VI. – SUPPLEMENTARY REGULATIONS

Sec. 38-293 – Stone wall protection and preservation.

- Sec. 38-293 – Stone wall protection and preservation shall be amended to meet RIGL:

(a) *Purpose and definition.* The purpose of this section is to encourage and support the protection and preservation of historic stone walls located in the Town of Foster; to establish general provisions for the alteration of such stone walls within the land development and subdivision, variance and special use, and permit application review processes; and to suggest guidelines for the re-building of stone walls or building of new stone walls.

Historic stone walls, defined as a structure of stones gathered and constructed by earlier generations into a purposeful formation and often intended to designate property boundaries or to identify and separate agricultural activities on a farm, were typically constructed before 1950.

Historic stone walls are valued as important parts of Foster's landscape and heritage; as artifacts of the unique agricultural past of the region and the harsh demands of farming in New England; as visual reminders of farms, cattle and wagon lanes, settlement patterns, and land use; and as functioning elements of the landscape and woodland habitat.

Ensuring a balance between preservation of the rural heritage and character of the Town of Foster, as represented by historic stone walls, and respect for private property rights is of utmost importance. It is in the public interest to both minimize any restriction of the rights of property owners while protecting and preserving historic stone walls and encouraging the re-building of stone walls or building of new stone walls.

(b) *General provisions—Historic stone walls.*

(1) The proposed alteration, relocation, excavation, dismantling, or demolition of a historic stone wall (or part thereof) shall be identified on any site plan submission that is required by:

- a. Application to the planning board as part of the minor or major land development and minor or major subdivision review process.
- b. Application to the zoning board of review or planning board as part of the variance or special use permit process.

c. Application to the building official as part of the building permit process.

d. Application to public works as part of the driveway permit process.

e. Application to the planning board as part of the development plan review process.

(2) Site plan submission shall include specific information as to the nature of the construction, excavation, or demolition project; the location and general condition of the existing historic stone wall(s) on the property, relative to the project; and the anticipated impact of the project on the historic stone wall(s).

(3) The reviewing entity and applicant shall seek to find an alternate location of the use or project proposed to alter, relocate, excavate, dismantle, or demolish the historic stone wall. If no beneficial alternative is found to be possible, a plan to minimize the disturbance and/or mitigate the impact shall be substituted, such as:

a. Abbreviating the cut-throughs as much as possible.

b. Rebuilding, repairing, replacing, or relocating disturbed portions of the wall(s) in a manner that reasonably approximates the material and methods of the originals, using as many of the original stones as possible.

c. Restoration of the ends of any such walls.

(4) Any public works project initiated by the Town of Foster that is likely to affect abutting historic stone wall(s) not subject to a formal review process as required in subsection (b)(1) of this section shall give prior notice to the property owner.

(c) *Suggested guidelines—Other stone walls.*

(1) Re-build stone walls and/or build new stone walls similar to those constructed by earlier generations, using native field stone and methods that approximate historic stone walls.

(2) Rebuild, rather than dismantle, historic stone walls not subject to a formal review process as required in subsection (b)(1) of this section that are in disrepair with construction materials and methods that approximate the originals or leave them as-is.

(3) Develop plans to minimize the impact on any stone walls during the planning phase of any construction, excavation, or demolition project not subject to a formal review process as required in subsection (b)(1) of this section.

(d) Theft of historic stone walls.

(1) Definition. Pursuant to RIGL 45-2-39.1, an historic stone wall shall be defined as “a vertical structure of aligned natural stone, originally constructed in the 17th, 18th, 19th or 20th centuries, to designate a property boundary between farmsteads or to segregate agricultural activities with a single farmstead or to designate property lines.” This definition shall include new stone walls which closely approximate the appearance of adjoining stone walls with respect to coursing, stone type, joint width, construction and distribution of stones by size.

(2) Penalties for theft. Anyone convicted of the theft of an historic stone wall, pursuant to RIGL 11-41-1, or portions of an historic stone wall, or convicted of attempt to commit that larceny, shall be civilly liable to the property owner for the cost of replacing the stones and any other compensable damages related to that larceny.

a. Any person convicted of the theft of an historic stone wall, or portions of a wall, shall be subject to the penalties for larceny as provided in § 11-41-5.

b. Any person who makes any plea to a charge under RIGL 11-41-32, or any person found guilty or convicted under RIGL 11-41-32, may be ordered to make restitution as a part of his or her sentence and/or disposition. That restitution shall include, but not be limited to, the value of the historic stone wall or portions of it, the reasonable value of any labor and other materials necessary to repair and/or return the wall to the condition it was in prior to the theft, and any other reasonable expenses that, in the discretion of the sentencing judge, are necessary to do justice in disposing of the case. This section is in addition to any other sanctions a sentencing judge may impose in his or her discretion.



ORDINANCE NO. _____

AN ORDINANCE IN AMENDMENT TO
THE ZONING CODE OF THE TOWN OF FOSTER

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

Chapter 38 – ZONING

ARTICLE VII – SPECIAL USE PERMITS AND VARIANCES

Sec 38-321: Procedure generally shall be amended to come into compliance with RIGL. Article VII – Special Use Permits and Variances shall be amended to come into compliance with RIGL.

ARTICLE VII. – SPECIAL USE PERMITS, MODIFICATIONS AND VARIANCES

Sec. 38-321. - Procedure generally and issuance of modifications.

(a) Application and preapplication conference. An application for a variance for relief from the literal requirements of a zoning ordinance because of hardship, ~~or~~ an application for a special-use permit, or an application for a modification, may be made by any person, group or agency by filing with the ~~zoning official~~ zoning official ~~administrative officer~~ an application describing the request and supported by such data and evidence as may be required by the zoning board of review, planning board or by the terms of this chapter. Every applicant for a use variance, dimensional variance, modification, or special-use permit must submit a site plan for review. In filing for an appeal, variance, ~~or~~ special-use permit, or modification of greater than 5%.

the applicant, in addition to filing plans and specifications, shall accompany the request with a list of property owners within 200 feet of the property in question, ~~and with a \$~~ filing fee of \$100.00, payable to the town shall be required for all applications under this article. The ~~zoning official~~ administrative officer shall immediately transmit each application received to the zoning board of review and shall transmit a copy of each application to the planning board. Pursuant to Sec. 38-388, an application shall be considered substantially complete when the planning board is satisfied with the content of the site plan submission according to the appropriate checklist as determined by the administrative officer, following receipt of the filing fee.

A preapplication conference may be held between the applicant and the administrative officer and/or zoning enforcement officer prior to formal submission of an application for a special-use permit, variance, or modification. If requested by the applicant or municipality, the zoning board of review or the planning board may conduct a preapplication conference at an open meeting.

(b) Request for advisory opinion. The zoning board of review ~~shall request on applications for special use permits and~~ may request on applications for relief from the literal requirements of this chapter and applications for special-use permits an advisory opinion and recommendations from the planning board. If requested, ~~the~~ planning board shall report its findings and recommendations, including a statement on the general consistency with the goals and purposes of the comprehensive plan to the zoning board of review within 30 days of the receipt of the application from that board.

(c) Public hearing requirements. The zoning board or planning board on applications filed under Sec. 38-325 and 32-46 shall hold a public hearing on any application for variance, or special-use permit in an expeditious manner, after receipt, in proper form of an application, and shall give public notice thereof ~~at least 14 days prior to the date of the hearing in a newspaper of general circulation. Notice of hearing shall be sent by certified mail to the applicant, and to at least the abutting owners within 200 feet of the property in question and other interested parties. This notification shall include the road address of the subject property. All notification costs are to be borne by the applicant. Any party may appear at the hearing in person, by agent or by attorney pursuant to Sec. 38-38(b).~~

(d) Modifications.

(1) Modifications defined. A modification is permission granted and administered by the zoning-enforcement officer, pursuant to the provisions of this chapter to grant a dimensional variance other than lot area requirements to a limited degree not to exceed twenty-five percent (25%) of each of the applicable dimensional requirements listed in Sec 38-192.

(2) Amount of relief qualifying as a modification. Modifications from the literal dimensional requirements of the zoning ordinance in the instance of construction, alteration, or structural modification of a structure or lot of record. The zoning-enforcement officer is authorized to grant modification permits. Modifications encroaching up to twenty-five percent (25%) of each of the dimensional requirements specified in Sec. 38-192 are authorized to be granted by the zoning-enforcement officer. A modification does not permit moving of lot lines.

(3) Decision. Within ten (10) days of the receipt of a request for a modification, the zoning-enforcement officer shall make a decision as to the suitability of the requested modification based on the following determinations:

a. The modification requested is reasonably necessary for the full enjoyment of the permitted use;

b. If the modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;

c. The modification requested does not require a variance of a flood hazard requirement, unless the building is built in accordance with applicable regulations; and

d. The modification requested does not violate any rules or regulations with respect to freshwater wetlands.

(4) Modifications of five percent (5%) or less. Upon an affirmative determination, in the case of a modification of five percent (5%) or less, the zoning enforcement officer shall have the authority to issue a permit approving the modification, without any public notice requirements.

(5) Modifications greater than five percent (5%). In the case of a modification of greater than five percent (5%), the zoning enforcement officer shall notify, by first class mail, all property owners abutting the property which is the subject of the modification request, and shall indicate the street address of the subject property in the notice, and shall publish in a newspaper of local circulation within the city or town that the modification will be granted unless written objection is received within fourteen (14) days of the public notice. If written objection is received within fourteen (14) days, the request for a modification shall be scheduled for the next available hearing before the zoning board of review on application for a dimensional variance following the standard procedures for such variances, including notice requirements provided for under this section. If no written objections are received within fourteen (14) days, the zoning-enforcement officer shall grant the modification. The zoning-enforcement officer may apply any special conditions to the permit as may, in the opinion of the officer, be required to conform to the intent and purposes of the zoning ordinance. The zoning enforcement officer shall keep public records of all requests for modifications, and of findings, determinations, special conditions, and any objections received. Costs of any notice required under this subsection shall be borne by the applicant requesting the modification.



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IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

Chapter 38 – ZONING

ARTICLE VII – SPECIAL USE PERMITS AND VARIANCES

Sec 38-322: Applicability of article shall be amended to come into compliance with RIGL:

The zoning board of reviewplanning board may grant a special-use permit or variance for relief from the literal requirements of this chapter, following site- in conjunction with formal development plan review by the planning boardor administrative development plan review by the administrative officer, in accordance with the procedures and standards set forth in article IX of this chapter, for any use or structure designated

as a special-use permit or designated as permitted, requiring development plan review in article IV of this chapter or elsewhere in this chapter. See also Sec. 38-325. The planning board is authorized to grant applications for relief from the literal requirements of this chapter where that application requires approval as a land development or subdivision under chapter 32. See Sec. 38-325. Nothing in this section shall be construed to limit the zoning board of review's authority to grant variances or special-use permits not requiring subdivision, development plan review or land development review.



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**AN ORDINANCE IN AMENDMENT TO
THE ZONING CODE OF THE TOWN OF FOSTER**

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

Chapter 38 – ZONING

ARTICLE VII – SPECIAL USE PERMITS AND VARIANCES

Sec 38-323: Standards for granting shall be amended to meet RIGL:

Sec. 38-323. - Standards for granting special-use permits.

(a) Applications for special-use permits shall be reviewed by the zoning board of review unless an application is reviewed under unified development review. In these instances, Applications for special-use permits shall be reviewed by the planning board pursuant to Sec. 38-325 and 32-46. The review authority may shall not grant a special use permit unless it finds the following:

- (1) The use will comply with all applicable requirements and development and performance standards set forth in articles VI and IX of this chapter.
- (2) The use will be in harmony with the general purpose and intent of this chapter and the comprehensive plan of the town.
- (3) The granting of the special use permit will substantially serve the public convenience and welfare.
- (4) The use will not result in or create conditions inimical to the public health, safety, morals and general welfare.
- (5) It will not substantially or permanently injure the appropriate use of surrounding property.
- (6) In addition to the above, the zoning board of review shall consider:
 - a. Access to air, light, views and solar access;

- b. Public access to waterbodies, rivers and streams; and
- c. The conservation of energy and energy efficiency.

(b) The zoning board of review or planning board may not extend or enlarge a special use permit except by granting a new special use permit except in review of a special-use permit application for an accessory use to a principal use which requires a special-use permit in the district which the lot is located. In such instances, the accessory use shall be added as a condition to the special-use permit for the principal use.

In such cases, if the principal use, which is permitted by special-use permit in the district in which it is located has nonconforming rights, the accessory use shall be permitted as of right.

(c) Pursuant to Sec. 38-236 a nonconforming use may be changed to a different nonconforming use by special use permit. If so changed, the alteration shall more closely adhere to the intent and purpose of this chapter.



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**AN ORDINANCE IN AMENDMENT TO
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IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

Chapter 38 – ZONING

ARTICLE VII – SPECIAL USE PERMITS AND VARIANCES

Sec 38-324: Issuance of variances and special use permits shall be amended to come into compliance with RIGL:

Sec. 38-324. - Issuance of variances and special-use permits.

(a) *Application.* An application for relief from the literal requirements of this chapter because of hardship or an application for a special-use permit may be made by any person, group or agency by filing with the zoning-official administrative officer an application describing the request and supported by such data and evidence as may be required by the zoning board of review or planning board or by the terms of this chapter. In filing for an appeal, variance or special-use permit, the applicant, in addition to filing plans and specifications, shall accompany the request with a list of property owners within 200 feet of the property in question and with a filing fee of \$100.00, payable to the town. In filing for a modification of greater than five percent (5%), the zoning enforcement officer shall produce a list of property owners abutting the subject property and shall notify the property owners pursuant to Sec. 38-321(d)(5). All modification applications shall be accompanied with a filing fee of \$100.00. The zoning-official-administrative officer shall immediately transmit each application received to the zoning board of review and shall transmit a copy of each application to the planning board.

(b) *Procedure.* ~~Where an application is reviewed under unified development review, the planning board shall request on applications for special-use permits, and may request on applications for relief from the literal requirements of this chapter, an advisory opinion and recommendations from the zoning board of review. If requested, the zoning board of review shall report its findings and recommendations, including a statement on the general consistency with the goals and purposes of the comprehensive plan to planning board within 30 days of the receipt of the application from that board.~~

~~Where an application is not reviewed under unified development review, the zoning board of review shall request on applications for special use permits, and may request on applications for relief from the literal requirements of this chapter, an advisory opinion and recommendations from the planning board. If requested, the planning board shall report its findings and recommendations, including a statement on the general consistency with the goals and purposes of the comprehensive plan to the zoning board of review within 30 days of the receipt of the application from that board.~~

(c) *Public hearing and notice.* ~~The zoning board or the planning board on applications filed under 38-325 and 32-46 shall hold a public hearing on any application for variance in an expeditious manner, after receipt, in proper form of an application, and shall give public notice thereof at least 14 days prior to the date of the hearing in a newspaper of general circulation. Notice of hearing shall be sent by first class mail to the applicant, and to at least the abutting owners within 200 feet of the property in question and other interested parties. This notification shall include the road address of the subject property. All notification costs are to be borne by the applicant. Any party may appear at the hearing in person, by agent or by attorney pursuant to Sec. 38-38(b).~~

(d) *Standards for relief.* Standards for relief are as follows:

(1) *Variance.* In granting a variance, the board shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:

a. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to a physical or economic disability of the applicant, ~~excepting those physical disabilities addressed in 45-24-30(a)(16).~~

b. The hardship is not the result of any prior action of the applicant ~~and does not result primarily from the desire of the applicant to realize greater financial gain.~~

c. The granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the comprehensive plan upon which this chapter is based.

~~d. The relief to be granted is the least relief necessary.~~

~~ed.~~ The zoning board of review or the planning board shall, in addition to the above standards, require that evidence be entered into the record of the proceedings showing that:

1. In granting a use variance, the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of this chapter. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and

2. In granting a dimensional variance, the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience, ~~which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property meaning that the relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted.~~ The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief. The zoning board of review, or the planning board under 38-325 and 32-46 has the power to grant dimensional variances where the use is permitted by development plan review.

(2) Special use permit. In granting a special use permit, the zoning board of review ~~or planning board~~ shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:

- a. The special use is specifically authorized by this chapter.
- b. The special use meets all of the criteria set forth in the sections of this chapter authorizing such special use.
- c. The granting of the special use permit will not alter the general character of the surrounding area or impair the intent or purpose of this chapter ~~or the comprehensive plan of the town.~~

(e) *Special conditions.* In granting a variance or special-use permit, or in making any determination upon which it is required to pass after public hearing under this chapter, the board may apply such special conditions that may, in the opinion of the board, be required to promote the intent and purposes of ~~the comprehensive plan of the town and~~ this chapter. Failure to abide by any special conditions attached to a grant shall constitute a zoning violation. Such special conditions shall be based on competent credible evidence on the record, shall be incorporated into the decision, and may include, but are not limited to, provisions for:

- (1) Minimizing adverse impact of the development upon other land, including the type, intensity, design and performance of activities;
- (2) Controlling the sequence of development, including when it must be commenced and completed;
- (3) Controlling the duration of use or development and the time within which any temporary structure must be removed;
- (4) Ensuring satisfactory installation and maintenance of required public improvements;
- (5) Designating the exact location and nature of development; and
- (6) Establishing detailed records by submission of drawings, maps, plats or specifications.

(f) Commencement of construction/project. Construction/project shall start within twelve (12) months of the date of recording. Construction shall be completed within sixty (60) months of the date of recording.



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IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

Chapter 38 – ZONING

ARTICLE VII – SPECIAL USE PERMITS AND VARIANCES

Secs. 38-325—38-355. – Reserved shall be amended to come into compliance with RIGL:

Sec. 38-325. – Unified Development Review

(a) Unified development review established. Review and decision on variances and special use permits for properties undergoing land development or subdivision review, which qualifies for unified development review by the planning board, shall be conducted and decided by the planning board. This process is to be known as unified development review.

(b) Application and review process. The application and review process for applications qualifying for unified development review shall be conducted as follows pursuant to Sec. 32-46:

1. Generally. Review of projects submitted under unified development review shall adhere to the procedures, timeframes and standards of the underlying category of the project as listed in § 45-23-36, but shall also include the following procedures:

2. Minor subdivisions and land-development projects. Except for dimensional relief granted by modification as set forth in Sec. 38-321, requests for variances and special use permits related to minor subdivisions and land-development projects shall be submitted as part of the application materials for the preliminary plan stage of review or if combined, for the first stage of reviews. A public hearing on the application, including any variance and special use requests that meet the requirements of subsection (7) of this section shall be held prior to consideration of the preliminary plan by the planning board. The planning board shall conditionally approve or deny the request(s) for the variance(s) and/or special-use permit(s) before considering the preliminary plan application for the minor subdivision or land-development project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final plan of the minor subdivision or land-development project.

3. Development plan review. Except for dimensional relief granted by modification as set forth in Sec. 38-321, requests for variances and/or special-use permits related to minor subdivisions and land-development projects shall be submitted as part of the application materials for the preliminary plan stage of review. A public hearing on the application, including any variance and special use-permit requests that meets the requirements of subsection (7) of this section shall be held prior to consideration of the preliminary plan by the planning board. The planning board shall conditionally approve or deny the request(s) for the variance(s) and or special-use permit(s) before considering the preliminary plan application for the minor subdivision or land-development project. Approval of the variance(s) and or special-use permit(s)

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shall be conditioned on approval of the final plan of the minor subdivision or land-development project.

4. Major subdivisions and land-development projects – Master plan. Except for dimensional relief granted by modification as set forth Sec. 38-321, requests for variances and/or special-use permit(s) related to major subdivisions and land-development projects shall be submitted as part of the application materials for the master plan stage of review, or if combined, the first stage of review. A public hearing on the application, including any variance and special-use permit requests that meets the requirements of subsection (7) of this section, shall be held prior to consideration of the master plan by the planning board. The planning board shall conditionally approve or deny the requests for the variance(s) and/or special use permit(s) before considering the master plan application for the major subdivision or land-development project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final plan of the major subdivision or land-development project.

5. Major subdivision and land-development projects – Preliminary plan. During the preliminary plan stage of review, applicants shall have the ability to request alteration of any variance(s) and/or special-use permit(s) granted by the planning board during the master plan stage of review, and/or to request new variance(s) and/or special-use permit(s), based on the outcomes of the more detailed planning and design necessary for the preliminary plan. If necessary, the applicant shall submit such requests and all supporting documentation along with the preliminary plan application materials. If the applicant requests new or additional zoning relief at this stage a public hearing on the application, that meets the requirements of subsection (7) of this section, shall be held prior to consideration of the preliminary plan by the planning board. The planning board shall conditionally approve, amend, or deny the requests for alteration(s) and/or new variance(s) and/or new special-use permit(s), before considering the preliminary plan application for the major subdivision or land-development project. Approval of the alteration(s) and/or new variances, and/or new special use permits shall be conditioned on approval of the final plan of the major subdivision or land-development project. If the planning board denies the request for alteration(s), variance(s), and/or new special-use permit(s), the planning board shall have the option of remanding the application back to the master plan stage of review. Alternatively, if the planning board denies the request for alteration(s), new variance(s) and/or new special-use permit(s), the applicant may consent to an extension of the decision period mandated by 45-23-41(f) so that additional information can be provided and reviewed by the board or commission.

6. Decision. The time periods by which the planning board must approve or deny applications for variances and special-use permits under the unified development review provisions shall be the same as the time periods by which the board must make a decision on the applicable review stage of the category of project under review. In granting requests for dimensional and use variances, the planning board shall be bound to the requirements of § 45-24-41 relative to entering evidence into the record in satisfaction of the applicable standards. In reviewing requests for special-use permits, the planning board shall be bound to the conditions and procedures under which a special-use permit may be issued and the criteria for the issuance of such permits, as found within the zoning ordinance pursuant to RIGL 45-24-42, and shall be required to provide for the recording of findings of fact and written decisions as described in the zoning ordinance pursuant to RIGL 45-24-42.

7. Public hearing. Unless otherwise provided in this chapter or in chapter 32, all applications under this section or Sec. 32-46 shall require a single public hearing, held pursuant to RIGL 45-23-50.1(d). The public hearing must meet the following requirements:

a. Public hearing notice shall adhere to the requirements found in § 45-23-42(b).

b. The notice area for notice of the public hearing shall, at a minimum, include all property located in or within not less than two hundred feet (200') of the perimeter of the area included in the subdivision and/or land-development project. Notice of the public hearing shall be sent by the administrative officer to the administrative officer of an adjacent municipality if:

- (1) The notice area extends into the adjacent municipality; or
- (2) The development site extends into the adjacent municipality; or
- (3) There is a potential for significant negative impact on the adjacent municipality. Additional notice within watersheds shall also be sent as required in § 45-23-53(b) and (c).

c. Public notice shall indicate that dimensional variance(s), use variance(s) and/or special-use permit(s) are to be considered for the subdivision and/or land-development project.

d. The cost of all public notice is to be borne by the applicant.

8. Time periods. The time periods by which the planning board must approve, approve with conditions or deny the requests for variances and special-use permit(s) under the unified development review provisions of chapter 38 shall be the same as the time periods by which the board must make a decision on the applicable review stage of the underlying type of project under review as found in chapter 32.

9. Expiration of approval. The expirations period of an approval of a variance or special-use permit granted under this section shall be the same as those set forth in the statute for the underlying type of project under review.

10. Appeal. Decisions under this section, including requests for the variance(s) and/or special-use permit(s) that are denied by the planning board may be appealed pursuant to 45-24-69.

(c) Town council. Where an applicant requires both planning board approval and town council approval for a zoning ordinance or zoning map change or kennel license, the applicant shall first obtain an advisory recommendation on the zoning change or kennel license from the planning board as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain zoning change or kennel license approval from the council.

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IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

Chapter 38 – ZONING

ARTICLE VII – SPECIAL USE PERMITS AND VARIANCES

Sec. 38-326. – Dimensional variance in conjunction with special-use permit shall be added to come into compliance with RIGL:

Sec. 38-326 – Dimensional variance in conjunction with special-use permit.

An applicant may apply for, and be issued a dimensional variance in conjunction with a special-use permit according to the following procedures:

1. *Submission.* The applicant shall submit a complete application for a dimensional variance and a complete application for a special-use permit.
2. *Review.* If the special use could not exist without the dimensional variance, the planning board under Sec. 32-46 and 38-325 shall consider the special-use permit and the dimensional variance together to determine if granting the special use is appropriate based on both the special use criteria and the dimensional variance evidentiary standards.
3. *Public notice.* Public notice shall be given pursuant to Sec. 38-38(b).



ORDINANCE NO. ____

**AN ORDINANCE IN AMENDMENT TO
THE ZONING CODE OF THE TOWN OF FOSTER**

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

Chapter 38 - ZONING

ARTICLE VII – SPECIAL USE PERMITS AND VARIANCES

Sec. 38-327. – Specific and objective criteria for categories of special use permits shall be added to come into compliance with RIGL:

Sec. 38-327. Specific and objective criteria for categories of special-use permits.

Agricultural uses #2(b) Raising animals for sale or for sale of animal products: Animals exceeding 35 on five acres or less: five additional animals for each additional acre over five acres. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use.

The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. A waste management and removal plan is required pursuant to Sec. 38-290.

Agricultural uses #4 Commercial nursery structures. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Agricultural uses #6 Poultry farm with capacity for more than 10,000 birds. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally a special-use permit is required to control odor, air, soil or water pollution.

Open recreation uses #4 Camping area (licensed by town). This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Open recreation uses #5 Rod and gun clubs, rifle or pistol ranges. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to control noise and vibration.

Public and semi-public uses #1 School or college. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Public and semi-public uses #4 Medical clinic. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Public and semi-public uses #5 Hospital. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the HC2 district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Public and semi-public uses #10 Cemetery. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Office uses #3 Real estate office. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Business uses #1 Barber, beautician, shoe repair, tailor, laundry pickup and similar service shops. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to control air, soil, or water pollution.

Business uses #2 Antique shop, gift shop, florist shop, pet shop and similar specialty shops. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Business uses #3 Mortuary or funeral home. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Business uses #8 Gasoline filling station (no major repairing). This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special use permit is required to control air, soil or water pollution.

Business uses #9 General automotive repair. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special use permit is required to control air, soil or water pollution.

Business uses #19 Medical office building situated on a State or US highway. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any

adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Business uses #20 Communications towers and antennas. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in all districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Business uses #23 Winery. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to manage traffic and on-site consumption.

Business uses #24 Farm brewery. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to manage traffic and on-site consumption.

Business uses #25 Farm distiller. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to manage traffic and on-site consumption.

Business uses #26 Micro-brewery. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to manage traffic and on-site consumption.

Business uses #27 Distillery. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to manage traffic and on-site consumption.

Transportation and parking uses #3 Rail or motor freight terminal. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to control noise and air, soil or water pollution.

Wholesale business and storage uses #4 Open storage of solid fuel (other than wood). This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR, GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Service industries uses #2 Electric substation. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR, GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to control air, soil or water pollution.

Service industries uses #4 Any other structure which is part of a public service system. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR, GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Service industries uses #5 Laundromat. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to control air, soil, or water pollution.

Industrial uses #1. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to control air, soil or water pollution.

Industrial uses #13 Loam stripping. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR, GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally a special-use permit is required to control noise, air, soil or water pollution, erosion and vibration.

Industrial uses #14 Retail outlet for permitted industrial operation. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Industrial uses #15 Soap manufacture. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public

safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to control air, soil or water pollution.

Industrial uses #16 Sodium compounds manufacture. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to control air, soil or water pollution.

Industrial uses #17 Stone cutting. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR, GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally a special-use permit is required to control noise, air, soil or water pollution, erosion and vibration.

Industrial uses #20 Chemical manufacture. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to control air, soil or water pollution.

Industrial uses #21 Gravel banks, natural material processing, stone crushing and sorting, mining, quarrying. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR, GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally, a special-use permit is required to control noise, air, soil or water pollution, erosion and vibration.

Prior to a special-use permit being granted for the above uses, a soil erosion and sediment control plan shall be approved by the Zoning Enforcement Officer, pursuant to chapter 26. A special-use permit for the above uses shall be conditionally granted by the Planning Board upon subsequent grant of a license by the Town Council. The license shall be renewed annually by the Town Council pursuant to Sec. 12-47.

Prior to annual license renewal by the Town Council, inspection of the premises shall be made by the Zoning Enforcement Officer to determine that the conditions of the special-use permit and the soil erosion and sediment control plan are being complied with.

Accessory uses #2 Any use of land or of a structure, or portion thereof, customarily incidental and subordinate to the principal use of the land or structure which is permitted in the district as a special-use permit and located on the same lot. This use shall meet the standards for granting

as listed in Sec. 38-323. A Special-use permit is required in all districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Special-use permits under this category are approved as special conditions on the special-use permit for the primary use.

Medical marijuana uses #2 Licensed cultivator. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR district to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally a special-use permit is required to control odor and soil or water pollution.

Medical marijuana uses #5 Residential cooperative cultivation. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the AR and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally a special-use permit is required to control odor and soil or water pollution

Recreational marijuana uses #1 Cannabis or marijuana cultivator. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings. Additionally a special-use permit is required to control odor and soil or water pollution

Recreational marijuana uses #2 Cannabis establishment or marijuana establishment. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Recreational marijuana uses #3 Cannabis product manufacturer or marijuana product manufacturer. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Recreational marijuana uses #4 Cannabis retailer or marijuana retailer. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.

Recreational marijuana uses #5 Medical cannabis treatment center or Medical marijuana treatment center. This use shall meet the standards for granting as listed in Sec. 38-323. A Special-use permit is required in the GB and HC2 districts to provide for public safety and to protect neighboring residential properties from any adverse effects which may be caused by this use. The standards of Sec. 38-324(d)(2) shall be entered into the record of the proceedings.



ORDINANCE NO. _____

**AN ORDINANCE IN AMENDMENT TO
THE ZONING CODE OF THE TOWN OF FOSTER**

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

ARTICLE VIII. – LAND DEVELOPMENT PROJECTS

Sec. 38-357 – Development standards for general business (GB) development.

- Sec. 38-357 – Development standards for general business (GB) development shall be amended to meet RIGL:

Sec. 38-357. - Development standards for general business ~~mixed-use~~ (GBM) development.

This designation is characterized by nodes for commercial establishments to provide town-wide shopping and service needs. These may include retail, service, office and related activities, residential and municipal uses.

(1) *Purpose.* The purpose of this section is to provide a procedure for the evaluation and approval of new integrated general business ~~mixed-use~~ developments. The regulations are intended to promote developments which are compatible with surrounding areas and which incorporate buffers or transition areas to reduce potential negative impacts on agricultural or single-family residential areas. The regulations are intended to encourage a mixture of compatible uses to create a sustainable and attractive environment for a wide variety of trades and businesses. The regulations are intended to be flexible, to allow for innovative design techniques, to accommodate unique land uses, and to encourage creative approaches to development issues.

Foster encourages a coordinated design approach for development within the GBM district with an emphasis on compatibility with the natural environment and surrounding land uses. This coordinated approach ~~will~~ allows for a sufficient mix of uses and accessory uses to create a self-contained or self-sustained development. It allows for planning of a land development project or development plan review and calculation of densities over the entire project within the surrounding area rather than in addition to on an individual lot-by-lot basis.

A coordinated design approach should:

- Break up the apparent mass and scale of large structures, and large paved parking areas, in order to ensure that such development is compatible with and does not detract from Foster's character, scale, and sense of place;
- Help integrate multi-use development with its surroundings;
- Promote and facilitate a safe and comfortable-pedestrian scale environment;
- Encourage a mixture of uses and sizes of structures; and
- Provide safe and accessible parking areas, allowing for safe pedestrian movement.

It is anticipated that public officials will have considerable involvement in determining the nature of the development through the development plan review process, which will include consideration and application of aspects of both the Foster Land Development and Subdivision Regulations and the Foster Zoning Ordinance.

Where the requirements of any part of this section may conflict with any other section of the Foster Land Development and Subdivision Regulations or the Foster Zoning Ordinance, this section shall prevail as to, or for, the general business-~~mixed-use~~ development.

(2) Applicability and procedure.

- a. General business-~~mixed-use~~ developments are permitted in GBM zones as set forth in article III and article IV of this zoning ordinance with the approval of and subject to possible conditions and restrictions imposed by the planning board or zoning board of review pursuant to this section.
- b. No general business-~~mixed-use~~ development shall be undertaken nor any portion of such development be constructed until a plan for such development has been approved by the planning board in accordance with the procedures established by subsection (2)(d) of this section:
 - ~~1. The land development and subdivision regulations of the Town of Foster for major land development and major subdivision, except as detailed in subsection (5) of these standards; and~~
 - ~~2. Additional procedures and requirements set forth herein for general business mixed-use developments.~~
- c. Compatibility and interrelation of uses within the general business-~~mixed-use~~ developments and coordination of traffic, utilities, parking, public wells, storm-water management, security, ~~public~~-onsite wastewater treatment systems, storage, architecture, open space, infrastructure, and other needs, as well as the entire development's impact on the surrounding area and roadways mandate that the development be considered ~~in its entirety according to the procedures set forth in subsection (2)(d) of this section~~ and approved, if appropriate, ~~as a whole~~ and developed as a whole. Phasing of construction may be permitted, as set forth in the land development and subdivision regulations, or as required by the planning board. Improvement guarantees shall be required as set forth in article VIII of the land development and subdivision regulations.

d. Applicants for a general business mixed use development ~~Under this section, unless reviewed as a minor land development pursuant to RIGL 45-23-32(19) and Sec. 32-161 or waived pursuant to RIGL 45-23-50(b), an application for a change of use, commercial or mixed use in the GB district shall follow procedures for major land development and major subdivisions (see article VI of the Foster Land Development and Subdivision Regulations) formal or administrative development plan review, according to Sec. 38-191 and either Sec. 38-394 or Sec. 38-395.~~

An application for a residential use exceeding a single family residence shall be reviewed as minor land development. If the application exceeds the standards for minor land development review, the application shall be reviewed as a major land development. Subdivisions shall be reviewed as minor or major subdivisions depending on the number of buildable lots created, including pre-application meetings, master plan review, preliminary plan review, and final plan review, and all requirements thereof shall be met, except as detailed in subsection (5) of these standards.

(3) *Single-Family Dwelling Exemption.* Notwithstanding the foregoing, development of new single-family dwellings or exterior alterations, exterior additions and exterior changes, if made to a single-family dwelling, shall be exempt from the regulations of this Section.

(4) *Additional site plan requirements.* In addition to the site plan requirements of the applicable review section as listed in subsection (2)(d) of this section, the following materials shall be included in the application.

a. Existing and proposed planting, landscaping and screening, which shall show the location, dimension and arrangement of all open spaces and yards, including type and size of planting materials, methods to be employed for screening and proposed grades and a plan for maintenance;

b. Location, type, size and dimension of existing trees, rock masses and other natural features with designations as to which features will be retained;

c. Dimension and location of existing and proposed buildings and structures;

d. Existing topography, including any proposed grade changes;

e. Parking areas and facilities, traffic circulation, driveways, loading areas, access and egress points;

f. Storm drainage, including direction of flow and means of ultimate disposal. Storm-water drainage runoff calculations used for the drainage system design shall be prepared by a Registered Professional Engineer and must support the sizing of all drainage structures and pipes and demonstrate compliance with the Storm-water Management, Design, and Installation Rules (250-RICR-150-10-8) adopted and as amended from time to time by the RI Department of Environmental Management;

g. Provisions for sanitary sewerage and water supply, including fire protection measures;

h. Location of all utilities, signage, outdoor storage and trash disposal areas.

i. Location and description of any proposed disturbance to existing vegetation, or alteration of natural or historic features, which are proposed in relation to temporary access, utility installation, or other aspects of construction, including provisions for site restoration.

(35) *Minimum land area.*

a. A planned unit development shall consist of not less than ~~200,000~~ 50,000 square feet of land area which may be developed into mixed use and commercial units as set forth in article II; and [section 38-131](#)(3); of Foster's Zoning Ordinance.

b. Once a planned unit development has been approved, all land area shown on the plan submitted as part of said planned unit development application, including those areas designated as reserved for future development, shall be dedicated to the development and may not be withdrawn from said development plan or devoted to any other use without the express written consent of the planning board. The board may allow subsequent withdrawal of land from a development, after an appropriate hearing, when such withdrawal will not violate the purpose and intent of this chapter or impair the previously approved plan.

(46) *Uses.*

a. *Generally.*

1. Uses are categorized as "permitted use," "~~administrative development plan review~~", "~~land-development project~~", "~~formal development plan review~~" "special use permit," and "prohibited use." The planning board ~~or administrative officer~~ may, at its sole option, impose conditions ~~on any use proposal, on any development plan approval; on any land development project approval; or on any special-use permit or variance requiring approval under chapter 32 or development plan review. and The zoning board of review may, at its sole option, impose conditions on a special use permit approval.~~

2. Designation as a special use, ~~development plan review use or a land-development project~~ does not constitute an authorization or an assurance that such use will be permitted without conditions within the planned development. Rather, each application for a special use ~~development plan review use or a land-development project~~ shall be evaluated as to its internal consistency with the intent of the proposed GBM development, and its probable effect on the intent of said development, the adjacent property, the neighborhood, and on the town; and may be approved or denied as the findings of fact indicate appropriate.

3. Nothing herein contained shall preclude the planning board ~~or zoning board of review~~ from requiring multiple conditions for a proposal or ~~to condition the from granting of~~ one or more special uses, ~~development plan review uses or land-development project uses~~ upon the implementation or completion of one portion of a project, during the master plan, preliminary plan, and/or final plan review stages of the application for a planned ~~unit~~ development or during the special use permit review of the application, as appropriate. ~~Unless phasing of construction is permitted as referenced in subsection (2)(c) of this section, the development must be completed as a whole according to the final planning board approval for a planned development.~~

4. Items to be considered when evaluating a special use ~~development plan review or land development project~~ include, but are not limited to, the following:

- i. The desired use will not be detrimental to the intent of the planned unit development or to the surrounding area;
- ii. It will be compatible with existing and proposed uses within the planned unit development, as well as neighboring land uses;

- iii. It will not create a nuisance or a hazard in the neighborhood;
- iv. Adequate protection is afforded to the surrounding properties by the use of open space and plantings, or by decorative fencing;
- v. Safe vehicular access and adequate parking are provided, and use of pervious surfaces is encouraged;
- vi. Control of noise, smoke, odors, lighting, and any other objectionable feature is provided;
- vii. Solar rights of the abutters are provided for;
- viii. Architectural compatibility within the development and with the surrounding area is illustrated;
- ix. The proposed conditional use will be in conformance with the purpose and intent of the comprehensive plan and the zoning ordinance of the Town of Foster;
- x. The health, safety, and welfare of the community are protected;
- xi. Shared parking/curb cuts or joint use is encouraged, and for some uses may be required, where it is likely that occupants of a vehicle would visit more than one use within a development before departing;
- xii. Certain parking requirements may be waived, provided that adequate and safe parking is still provided;
- xiii. Applicant shall demonstrate how the development will utilize shared parking, and shall show all calculations for such parking on the proposed site plan as required under the Foster Zoning Ordinance for such parking.

5. Before being granted a special use permit, land-development project or development plan review by the zoning board of review or the planning board, the applicant must show how its application complies with article VII-~~"Special Use Permits and Variances,"~~ of this chapter, section 38-324(d), "Standards for relief—Special use permit" article IX of this chapter, article VIII of this chapter, article V of chapter 32 and/or article VI of chapter 32 in Foster's zoning or subdivision ordinance, whichever is applicable.

b. *Mixed uses.* Nothing contained in this section shall be construed to prevent or discourage the institution or maintenance of two or more uses on any one lot or within any one building in a general business-~~mixed use~~ development and a mix of compatible uses are to be encouraged throughout a general business-~~mixed use~~ development.

~~(5) Expansion of existing uses:~~

~~a. Expansion of a permitted use within the GBM district is allowed. Expansion of a non-conforming use is prohibited.~~

~~b. Expansion of a permitted use within the GBM district shall fall under one of the following tiers:~~

1. Original square foot building footprint of 2,500 square feet or less.

i. Expansion constituting 100 percent or less of the original square foot building footprint shall require a site plan review with the planning board per article IX of Foster's Zoning Ordinance.

ii. Expansion constituting more than 100 percent of the original square foot building footprint shall follow procedures for major land development and major subdivisions per article VI of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable GBM development standards as detailed in subsections (2) through (4).

2. Original square foot building footprint of 7,500 square feet or less and greater than 2,500 square feet.

i. Expansion constituting 75 percent or less of the original square foot building footprint shall require a site plan review with the planning board per article IX of Foster's Zoning Ordinance.

ii. Expansion constituting more than 75 percent of the original square foot building footprint shall follow procedures for major land development and major subdivisions per article VI of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable GBM development standards as detailed in subsections (2) through (4).

3. Original square foot building footprint of 10,000 square feet or less and greater than 7,500 square feet.

i. Expansion constituting 50 percent or less of the original square foot building footprint shall require a site plan review with the planning board per Article IX of Foster's Zoning Ordinance.

ii. Expansion constituting more than 50 percent of the original square foot building footprint shall follow procedures for major land development and major subdivisions per article VI of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable GBM development standards as detailed in subsections (2) through (4).

4. Original square foot building footprint of greater than 10,000 square feet.

i. Expansion constituting 25 percent or less of the original square foot building footprint shall require a site plan review with the planning board per article IX of Foster's Zoning Ordinance.

ii. Expansion constituting more than 25 percent of the original square foot building footprint shall follow procedures for major land development and major subdivisions per article VI of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable GBM development standards as detailed in subsections (2) through (4).

(7) Decision. Development standards for highway commercial approval shall be granted upon the determination of the planning board that the application meets the objectives cited herein. The planning board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and storm-water drainage consistent with the functional requirements of this chapter and Chapter 32 Subdivision Regulations. New building construction or other site alteration shall be designed after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points and other aspects of the development, so as to:

- o Minimize the volume of cut and fill, the number of removed trees six (6) inch caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of storm-water flow increase from the site, soil erosion and threat of air and water pollution;
- o Maximize pedestrian and vehicular safety on the site and egress to and from the site;
- o Minimize obstruction of scenic views from publicly accessible locations;
- o Minimize visual intrusion by controlling the visibility of parking, storage or other outdoor service areas viewed from public ways or premises residentially used or zoned;
- o Minimize glare from headlights and lighting intrusion;
- o Minimize unreasonable departure from the character, materials and scale of buildings in the vicinity, as viewed from public ways and places;
- o Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling or containment of hazardous substances; and
- o Ensure compliance with the provisions of this ordinance, including parking, landscaping, exterior lighting and noise.

(8) Post-Approval Modifications. Once Development standards for highway commercial approval have been granted by the planning board, any subsequent changes in which the zoning-enforcement officer has determined will substantially affect or alter the visual appearance of the building facade or roof or will substantially affect or alter traffic flow or modify the site plan, a new application shall be submitted pursuant to this Section.

(9) Expiration. The approval of a plan meeting the development standards for highway commercial approval shall expire pursuant to timeframes provided under the type of review which the plan was reviewed.



ORDINANCE NO. _____

**AN ORDINANCE IN AMENDMENT TO
THE ZONING CODE OF THE TOWN OF FOSTER**

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

ARTICLE VIII. – LAND DEVELOPMENT PROJECTS

Sec. 38-358 – Development standards for Highway Commercial 2 development

Sec. 38-358 – Development standards for Highway Commercial 2 (HC2) development shall be added to provide application and review standards for HC2 developments.

Sec. 38-358. - Development standards for Highway Commercial 2 (HC2) development.

• Secs. 38-358 – 38-385. – Reserved shall be amended to reserve sections 38-360 – 38-385. Development standards for the new HC2 zoning district proposed to be added.

Sec. 38-358. - Development standards for Highway Commercial 2 (HC2) development.

This designation contains nodes for commercial establishments to provide industry and service needs. Residential uses are prevalent in this designation. Commercial uses may include retail, service, office, manufacturing, industrial, and related activities. Residential uses may be single family, multi family, age restricted community, or homeowners association. Agricultural and municipal uses are permitted.

- (1) *Purposes.* The purpose of this Section is to provide individual detailed review of uses and structures which have an impact upon the character of the Town. In this section procedures are provided for the evaluation and approval of new integrated Highway Commercial developments. The regulations are intended to promote developments which are compatible with surrounding areas, and which incorporate buffers or transition areas to reduce potential negative impacts on agricultural or residential areas. The regulations are intended to encourage a mixture of compatible uses to create a sustainable and attractive environment for a variety of trades and businesses. The regulations are intended to be flexible, to allow for innovative design techniques, to accommodate unique land uses, and to encourage creative approaches to development issues.

Foster encourages a coordinated design approach for development within the HC2 district with an emphasis on compatibility with the natural environment and surrounding land uses. This coordinated approach ~~will~~ allow for a sufficient mix of uses and accessory uses to create a self-contained or self-sustained development. It allows for planning of a land development project or development plan review and calculation of densities within the surrounding area in addition to on an individual lot-by-lot basis.

A coordinated design approach should:

- Break up the apparent mass and scale of large structures, and large paved parking areas, in order to ensure that such development is compatible with and does not detract from Foster's character, scale, and sense of place;
- Help integrate multi-use development with its surroundings;
- Encourage a mixture of uses and sizes of structures;
- Meet applicable building and safety codes;
- Not significantly alter the surrounding natural environment;
- Secure an adequate storm water runoff management and soil erosion plan; and

- Preserve significant natural and historic characteristics.

It is anticipated that public officials will have considerable involvement in determining the nature of the development through the development plan review process, which will include consideration and application of aspects of both chapter 32 and chapter 38.

Where the requirements of any part of this section may conflict with any other section of chapter 32 or chapter 38, this section shall prevail as to, or for, the highway commercial development.

(2) *Applicability and procedure.*

a. Highway commercial developments are permitted in HC2 zones as set forth in article III and article IV of this chapter with the approval of and subject to possible conditions and restrictions imposed by the planning board pursuant to this section.

b. No Highway commercial development shall be undertaken, nor any portion of such development be constructed until a plan for such development has been approved by the planning board in accordance with the procedures established by subsection (2)(d) of this section:

~~1. For residential projects, chapter 32 of this ordinance for major land development and major subdivision or for minor land development and minor subdivision;~~

~~2. For new commercial developments, article IX of this chapter.~~

~~3. For expansion of commercial developments, the procedures detailed in subsection (8) of these standards; and;~~

~~4. Additional procedures and requirements set forth herein for Highway Commercial developments, such as environmental impact and design standards specified in subsection (5).~~

c. Compatibility and interrelation of uses within the highway commercial developments and coordination of traffic, parking, storm-water management, security, onsite wastewater treatment systems, storage, architecture, open space, infrastructure, and other needs, as well as the entire development's impact on the surrounding area and roadways. The development shall be considered according to the procedures set forth ~~for major land development and major subdivision, or minor land development and minor subdivision except as detailed in subsection (8) in subsection (2)(d) of these standards~~ this section and approved, if appropriate, and developed as a whole. Phasing of construction may be permitted, as set forth in the land development and subdivision regulations, or as required by the planning board. Improvement guarantees shall be required as set forth in article VIII of the land development and subdivision regulations.

d. ~~Applicants for a highway commercial development u~~Under this section, unless reviewed as a minor land development pursuant to RIGL 45-23-32(19) and Sec. 32-161(3)(ii) or waived pursuant to RIGL 45-23-50(b), an application for commercial or mixed use in the HC2 district shall follow procedures for major land development and major subdivisions or minor land development and minor subdivision (see article VI of chapter 32 for major and article V of chapter 32 for minor) formal or administrative development plan review, according to Sec. 38-191 and either Sec. 38-394 or Sec. 38-395.

An application for a residential use exceeding a single family residence shall be reviewed as minor land development. If the application exceeds the standards for minor land development review, the application shall be reviewed as a major land development. Subdivisions shall be reviewed as minor or major subdivisions depending on the number of buildable lots created, including pre-application meetings;

~~master plan review, preliminary plan review, and final plan review, and all requirements thereof shall be met, except as detailed in subsection (8) of these standards.~~

(3) *Single-Family Dwelling Exemption.* Notwithstanding the foregoing, development of ~~new~~ single-family dwellings or exterior alterations, exterior additions and exterior changes, if made to a single-family dwelling, shall be exempt from the regulations of this Section.

(4) *Additional site plan requirements.* In addition to the site plan requirements of ~~article VI of chapter 32 the applicable review section as listed in subsection (2)(d) of this section~~, the following materials shall be included in the application.

- a. Existing and proposed planting, landscaping and screening, which shall show the location, dimension and arrangement of all open spaces and yards, including type and size of planting materials, methods to be employed for screening and proposed grades and a plan for maintenance;
- b. Location, type, size and dimension of existing trees, rock masses and other natural features with designations as to which features will be retained;
- c. Dimension and location of existing and proposed buildings and structures;
- d. Existing topography, including any proposed grade changes;
- e. Parking areas and facilities, traffic circulation, driveways, loading areas, access and egress points;
- f. Storm drainage, including direction of flow and means of ultimate disposal. Storm-water drainage runoff calculations used for the drainage system design shall be prepared by a Registered Professional Engineer and must support the sizing of all drainage structures and pipes and demonstrate compliance with the Storm-water Management, Design, and Installation Rules (250-RICR-150-10-8) adopted and as amended from time to time by the RI Department of Environmental Management;
- g. Provisions for sanitary sewerage and water supply, including fire protection measures;
- h. Location of all utilities, signage, outdoor storage and trash disposal areas.
- i. Location and description of any proposed disturbance to existing vegetation, or alteration of natural or historic features, which are proposed in relation to temporary access, utility installation, or other aspects of construction, including provisions for site restoration.

(5) *Environmental impact and design standards (EIDS).* The following standards shall be utilized by the planning board to review and evaluate all applications pursuant to this Section. These standards are intended to provide a frame of reference for the applicant in the development of their project and building plans as well as criteria for review by the planning board. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation. The specification of one or more particular architectural styles is not included in these standards. The standards of review outlined in this Section shall also apply to all accessory buildings, structures, signs and other site features, however related to the principal buildings or structures.

- a. *Preservation of Landscape.* The landscape shall be preserved in its natural state, insofar as practicable. Tree and soil removal shall be minimized, and any grade changes shall be consistent with the general appearance of neighboring developed areas. Due regard shall be given to the attractive utilization of the natural features of the area, including trees, woods, streams and ponds. All open areas which cannot be preserved in their natural state shall be replanted as far as practicable with as many trees and plantings as previously existed.

- b. Relation of Buildings to Environment. The proposed development shall be related harmoniously to the terrain and to the use, scale and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed building. The Planning Board may require a modification in massing so as to reduce the effect of shadows on abutting property, public open space or streets.
- c. Open Space. All open space shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing the site or overlooking it from nearby properties.
- d. Circulation, Traffic Impact and Alternative Means of Transportation. With respect to vehicular and pedestrian circulation and traffic, including entrances, ramps, walkways, drives and parking, special attention shall be given to location, number and function of access points to the public streets (especially in relation to existing traffic flow, traffic controls and mass transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, the arrangement, safety and convenience of both vehicle parking areas and the effect thereof upon the use and enjoyment of proposed buildings and structures and the neighboring properties, and the traffic impact of the proposed development on nearby public and private streets.
- e. Storm-water Drainage and Erosion Control. Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system, and so as to minimize any adverse impact upon nearby “downstream” properties. Storm-water shall be removed from all roofs, canopies and paved areas in a manner complying with the Storm-water Management, Design, and Installation Rules (250-RICR-150-10-8) adopted and as amended from time to time by the RI Department of Environmental Management.
- f. Surface water in all paved areas shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic and will not create puddles in the paved area. Erosion and sediment controls must be implemented to prevent any negative impacts during construction or other land disturbance activities. Permanent post-development erosion controls must be implemented and maintained where necessary.
- g. Advertising Features. The size, location, design, color texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from the use and enjoyment of proposed buildings and structures and the surrounding properties and must comply with Sign and Lighting ordinances.
- h. Special Features. Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties. All towers, antennas and poles shall be sited, designed and sized to have minimal visual impact on nearby properties.
- i. Safety. With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation and maximize accessibility by fire, police and other emergency personnel and equipment. Insofar as practicable, all exterior spaces and interior public and semi-public spaces shall be designed to minimize the fear and probability of personal harm or injury by increasing the potential surveillance by neighboring residents and passersby of an accident or attempted criminal act. Traffic to and from any facility shall not cause safety hazards or increased congestion in nearby residential neighborhoods.

- j. Heritage. With respect to the Town's heritage, removal or disruption of historic, traditional or significant uses, structures or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties. Applicants shall follow the requirements of RIGL 23-18-11 and RIGL 23-18-11.1 where applicable.
- k. Microclimate. With respect to the localized climatic characteristics of a given area, any development which proposes new structures, new hardsurface ground coverage or the installation of machinery which emits heat, vapor or fumes, shall endeavor to minimize, insofar as practicable, any adverse impact on light, air and water resources or on noise and temperature levels of the immediate environment.
- l. Energy Efficiency. To the maximum extent reasonably practicable, proposals shall utilize energy-efficient technology and renewable energy resources and shall adhere to the principles of energy-conscious design with regard to orientation, building materials, shading, landscaping and other elements. Efforts shall be made to harmonize energy-related components with the character of the building and its surroundings and to prevent adverse effects on the energy consumption of neighboring structures and on the environment.
- m. Detrimental Effects. No proposed facility shall be detrimental to the health, safety or welfare of persons working or living in the neighborhood, or by reason of danger of fire or explosion, environmental pollution, corrosion, toxic or noxious fumes, gas, smoke, soot, dust, odors, noise or vibrations or other hazards.
- n. Nearby Properties. Nearby properties shall be protected against detrimental uses on the site.
- o. Air Quality. Any use whose emissions are such as to cause it to be classified as a major new stationary source of air pollution, as defined by the Environmental Protection Agency (EPA) under the Clean Air Act, and any use required to apply to the Rhode Island Department of Environmental Management under 250-RICR-120-05-0 et. al. or to EPA under Section 112 of the Clean Air Act for permission to emit asbestos, benzene, beryllium, mercury, vinyl chloride, or radionuclides shall be permitted only upon determination by the Planning Board that compliance with the requirements of those agencies is assured, and that health and safety are adequately protected.
- p. Plants and Animals. Location and design shall not cause avoidable damage to wildlife habitats or corridors, or to any plant species listed on the Rhode Island Natural Heritage List established by the Rhode Island Natural History Survey (for plants, animals, natural communities, and natural heritage areas (as provided by Rhode Island Geographic Information Systems)), or to any tree with more than a twenty-four (24) inch trunk diameter one (1) foot above grade. An application for a special use permit or development plan review must include documentation to the planning board of having consulted with Rhode Island Department of Environmental Management and the Rhode Island Natural Heritage Survey regarding these considerations, and that the proposed site either contains no such habitats or materials, or that all feasible efforts to avoid, minimize or compensate for damage have been reflected in the development proposal.
- q. Vibration. Except for blasting and other activities within the jurisdiction of the RI Fire Safety Code Board of Appeal and Review, no use shall be allowed which produces vibration at or beyond the boundaries of the premises exceeding two-thirds (2/3) the blasting and seismograph limitations established by RIGL 23-28.28-9 et. al. for three (3) minutes or more in any hour between 7:00 am and 9:00 pm or for thirty (30) seconds or more in any hour between 9:00 pm and 7:00 am.

- r. Electrical Disturbances. No EMF emission shall be permitted which adversely affects the operation of any equipment on other properties.
- s. Historic and Archaeological Sites. Location and design shall not cause avoidable damage or impairment to the historic or archaeological value of buildings on sites recorded on the Rhode Island Register of Historic Places. An application for a special permit shall submit documentation that either the site does not contain or impact such buildings or sites, or that any potential damage or impairment has been effectively mitigated.
- t. Solid Waste. Each development must document arrangements for satisfactory disposal of tree stumps and debris resulting from construction and must make permanent arrangement for satisfactory on-site storage of refuse pending its removal, such storage to be screened from public view, secure from vermin, birds or other animals, and located to present minimal hazard in the event of fire and minimal threat to water quality in the event of container failure.
- u. Water Quality. Each development must document arrangements for adequate safeguards for protecting the integrity of groundwater quality.

(6) *Minimum land area.*

- a. A planned development shall consist of not less than 200,000 square feet of land area which may be developed into a combination of uses on multiple lots, a mixed use development, commercial, or residential units as set forth in section 38-131(4); of this chapter.
- b. Once a planned development has been approved, all land area shown on the plan submitted as part of said planned development application, including those areas designated as reserved for future development, shall be dedicated to the development and may not be withdrawn from said development plan or devoted to any other use without the express written consent of the planning board. The board may allow subsequent withdrawal of land from a development, after an appropriate hearing, when such withdrawal will not violate the purpose and intent of this chapter or impair the previously approved plan.

(7) *Uses.*

a. Generally.

1. Uses are categorized as "permitted use", "administrative development plan review", "land-development project", "formal development plan review", "special-use permit" and "prohibited use." The planning board or administrative officer may, at its sole option, impose conditions ~~on any approved use;~~ on any development plan approval; on any land development project approval; on any special-use permit proposal ~~and/~~ or on any variance approval under chapter 32 or development plan review.

2. Designation as a special-use development plan review use or ~~as~~ a land-development project ~~use~~ does not constitute an authorization or an assurance that such use will be permitted without conditions within the planned development. Rather, each application for a special-use development plan review use or a land-development project use shall be evaluated as to its internal consistency with the intent of the proposed HC2 development, and its probable effect on the intent of said development, the adjacent property, the neighborhood, and on the town; and may be approved or denied as the findings of fact indicate appropriate.

3. Nothing herein contained shall preclude the planning board from requiring multiple conditions for a proposal or ~~to~~ from granting one or more special uses, development plan review uses or land-development project uses during the master plan, preliminary plan, and/or final plan review stages of the application for a planned development or during the review of the application, as appropriate. Unless phasing of construction is permitted as referenced in subsection (2)(c) of this section, the development must be completed as a whole according to the final planning board approval for a planned development.

4. Items to be considered when evaluating a land development project or development plan review include, but are not limited to, the following:

- i. The desired use will not be detrimental to the intent of the planned development or to the surrounding area;
- ii. It will be compatible with existing and proposed uses within the planned development, as well as neighboring land uses;
- iii. It will not create a nuisance or a hazard in the neighborhood;
- iv. Adequate protection is afforded to the surrounding properties by the use of open space and plantings, or by decorative fencing;
- v. Safe vehicular access and adequate parking are provided, and use of pervious surfaces is encouraged;
- vi. Control of noise, smoke, odors, lighting, and any other objectionable feature is provided;
- vii. Solar rights of the abutters are provided for;
- viii. Architectural compatibility within the development and with the surrounding area is illustrated;
- ix. The proposed conditional use will be in conformance with the purpose and intent of the comprehensive plan and the zoning ordinance of the Town of Foster;
- x. The health, safety, and welfare of the community are protected;
- xi. Shared parking/curb cuts or joint use is encouraged, and for some uses may be required, where it is likely that occupants of a vehicle would visit more than one use within a development before departing;
- xii. Certain parking requirements may be waived, provided that adequate and safe parking is still provided;
- xiii. Applicant shall demonstrate how the development will utilize shared parking and shall show all calculations for such parking on the proposed site plan as required under the Foster Zoning Ordinance for such parking.

5. Before being granted a special-use permit, land development project or ~~a~~ development plan review ~~is approved~~ by the zoning board of review or the planning board, the applicant must show how its application complies with article VII of this chapter, article IX Site Plan Review of this chapter, article VIII of this chapter, article V of chapter 32 or article VI of chapter 32 in Foster's zoning and/or subdivision ordinance, Sec. 38-359 Land Development Projects in this chapter whichever is applicable.

b. Mixed uses. Nothing contained in this section shall be construed to prevent or discourage the institution or maintenance of two or more uses on any one lot or within any one building in a highway commercial development. A development plan review application for two commercial uses or operations in the same building or on the same lot shall be accompanied by a use variance application. A mix of compatible uses are to be encouraged throughout a highway commercial development. The institution or maintenance of two or more uses on any one lot or within any one building is permitted as approved by Rhode Island Department of Environmental Management based on the soils.

~~(8) Expansion of existing uses; changes of use:~~

~~a. Expansion of a permitted use within the HC2 district is allowed. Expansion of a nonconforming use is prohibited.~~

~~b. Expansion of a permitted use commercial use within the HC2 district shall fall under one of the following tiers:~~

~~1. Original square foot building footprint of 2,500 square feet or less:~~

~~i. Expansion between 75 and 100 percent of the original square foot building footprint shall follow procedures for minor land development and minor subdivisions per article V of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable HC2 development standards as detailed in subsections (2) through (4)~~

~~ii. Expansion constituting more than 100 percent of the original square foot building footprint up to ten thousand (10,000) square feet shall follow procedures for minor land development and minor subdivisions per article V of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable HC2 development standards as detailed in subsections (2) through (4).~~

~~iii. Expansion constituting more than 100 percent of the original square foot building footprint exceeding ten thousand (10,000) square feet shall require a site plan review with the planning board per article IX of this chapter.~~

~~2. Original square foot building footprint of 7,500 square feet or less and greater than 2,500 square feet:~~

~~i. Expansion between 51 and 75 percent of the original square foot building footprint up to ten thousand (10,000) square feet shall follow procedures for minor land development and minor subdivisions per article V of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable HC2 development standards as detailed in subsections (2) through (4).~~

~~ii. Expansion between 51 and 75 percent of the original square foot building footprint exceeding ten thousand (10,000) square feet shall require a site plan review with the planning board per article IX of this chapter.~~

~~iii. Expansion constituting more than 75 percent of the original square foot building footprint up to ten thousand (10,000) square feet shall follow procedures for minor land development and minor subdivisions per article V of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable HC2 development standards as detailed in subsections (2) through (4).~~

~~iv. Expansion constituting more than 75 percent of the original square foot building footprint exceeding ten thousand (10,000) square feet shall require a site plan review with the planning board per article IX of this chapter.~~

~~3. Original square foot building footprint of 10,000 square feet or less and greater than 7,500 square feet:~~

~~i. Expansion between 25 and 50 percent of the original square foot building footprint shall follow procedures for minor land development and minor subdivisions per article V of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable HC2 development standards as detailed in subsections (2) through (4).~~

~~i. Expansion constituting more than 50 percent of the original square foot building footprint shall require a site plan review with the planning board per article IX of this chapter.~~

~~4. Original square foot building footprint of greater than 10,000 square feet.~~

~~i. Expansion constituting 25 percent or less of the original square foot building footprint shall follow procedures for minor land development and minor subdivisions per article V of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable HC2 development standards as detailed in subsections (2) through (4).~~

~~ii. Expansion between 25 and 50 percent of the original square foot building footprint shall follow procedures for minor land development and minor subdivisions per article V of Foster's Land Development and Subdivision Regulations and shall be subject to the applicable HC2 development standards as detailed in subsections (2) through (4).~~

~~iii. Expansion of greater than 50 percent of the original square foot building footprint shall require a site plan review with the planning board per article IX of this chapter.~~

~~5. Changes of use.~~

~~i. Changes of use shall require a site plan review with the planning board per Article IX of this chapter.~~

~~6. Expansion of multifamily residential structure.~~

~~i. Expansion of any multifamily residential structure of nine (9) units or less shall be reviewed as a minor land development project pursuant to Sec. 32-161.~~

~~ii. Expansion of any multifamily residential structure of ten (10) or more units shall be reviewed as a major land development pursuant to article VI of chapter 32.~~

(98) *Decision.* Development standards for highway commercial approval shall be granted upon the determination of the planning board that the application meets the objectives cited herein. The planning board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and storm-water drainage consistent with the functional requirements of this chapter and Chapter 32 Subdivision Regulations. New building construction or other site alteration shall be designed after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points and other aspects of the development, so as to:

- Minimize the volume of cut and fill, the number of removed trees six (6) inch caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of storm-water flow increase from the site, soil erosion and threat of air and water pollution;
- Maximize pedestrian and vehicular safety on the site and egress to and from the site;
- Minimize obstruction of scenic views from publicly accessible locations;

- Minimize visual intrusion by controlling the visibility of parking, storage or other outdoor service areas viewed from public ways or premises residentially used or zoned;
- Minimize glare from headlights and lighting intrusion;
- Minimize unreasonable departure from the character, materials and scale of buildings in the vicinity, as viewed from public ways and places;
- Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling or containment of hazardous substances; and
- Ensure compliance with the provisions of this ordinance, including parking, landscaping, exterior lighting and noise.

~~(409)~~ *Post-Approval Modifications.* Once Development standards for highway commercial approval have been granted by the planning board, any subsequent changes in which the zoning-enforcement officer has determined will substantially affect or alter the visual appearance of the building façade or roof or will substantially affect or alter traffic flow or modify the site plan, a new application shall be submitted pursuant to this Section.

~~(410)~~ *Expiration.* The approval of a plan meeting the development standards for highway commercial approval shall expire pursuant to timeframes provided under the type of review which the plan was reviewed.

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ORDINANCE NO. _____
**AN ORDINANCE IN AMENDMENT TO
 THE ZONING CODE OF THE TOWN OF FOSTER**

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

ARTICLE IX. – ~~SITE-DEVELOPMENT PLAN REVIEW AND REVIEW OF SITE PLANS~~

Sec. 38-386 – Requirements and purpose of article.

- Sec. 38-386 – Requirements and purpose of article shall be amended to meet RIGL:

Every applicant for a ~~use variance or a special use permit~~ land development project or development plan review under this chapter ~~and for all commercial and industrial development under the town subdivision regulations~~ must submit a site plan for review. The town planner shall coordinate and manage the site plan review process, evaluate the environmental impact of proposed projects, and otherwise assist the planning board ~~and zoning board of review~~ with respect to site plan review.

Site plan review and approval of subdivisions is governed by the town's subdivision regulations. The purpose of the site plan review process is to ensure that the ~~zoning board of review~~ planning board has before it sufficient information to determine whether a ~~variance or special use permit~~ land development project or development plan review will promote the health, safety and general welfare of the community and will conform to the intent and requirements of this chapter.



ORDINANCE NO. _____

AN ORDINANCE IN AMENDMENT TO
THE ZONING CODE OF THE TOWN OF FOSTER

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

Chapter 38 – ZONING

ARTICLE IX – ~~SITE DEVELOPMENT PLAN REVIEW~~ **AND REVIEW OF SITE PLANS**

Sec 38-394: Site plan for commercial and industrial development shall be amended to come into compliance with RIGL:

Sec. 38-394 – ~~Formal Site Development p~~ **Plan Review** for commercial and industrial development.

(a) *Purpose.* The purpose of this section is to ensure the orderly development and integration of commercial, industrial and institutional projects into the community; provide for erosion control and stormwater management; prevent surface water and groundwater pollution; minimize traffic hazards; mitigate nuisances caused by noise, dust or lights; and protect and enhance the ecology and physical appearance of the community.

(b) *Review of plan required.* ~~Formal development plan review consists of two (2) stages of review, preliminary and final. The administrative officer may combine the approval stages, providing requirements for both stages are met by the applicant to the satisfaction of the administrative officer. Preliminary Plan applications shall be reviewed by the Planning Board and shall require a public hearing following notice requirements pursuant to RIGL 45-23-42, Sec. 32-50(b) and Sec. 38-38(b). Final plan approval shall be delegated to the Administrative Officer. The Administrative Officer will report its actions in writing to the permitting authority at its next regular meeting, to be made part of the record. The Planning Board shall be permitted to request assistance in review of plan from the Technical Review Committee.~~

~~Except for commercial expansion and/or construction which is reviewed under the provisions of Sec. 32-161(3)(ii) and except for any change in use at the property where no extensive construction of improvements are sought which may be reviewed under the provisions of Sec. 32-161(3)(ii) or which may be waived pursuant to RIGL 45-23-50(b), and except for any enlargement in size or construction of any building or change in use at the property for a use categorized in Sec. 38-191 as Administrative Development Plan Review pursuant to Sec. 38-395, No zoning certificate or building permit shall be issued for any commercial building or other commercial construction in any zone of the town, or for any institutional use in an GBM or NC HC2 zone, until a site development plan review of the proposed construction has been conducted by the planning board.~~

~~In addition, any use in the GBM, NC or MI zone which requires a special use permit shall be subject to a site review by the planning board before a public hearing is held by the zoning board of review. It review of plans shall also be required for any construction or enlargement in size of any building which exceeds the provisions of Sec. 32-161(3)(ii) and is not categorized in Sec. 38-191 as Administrative Development Plan Review pursuant to Sec. 38-395 or change in use or change in use or actual use of any building including accessory structures at the property where no extensive construction of improvements are sought of any building including accessory structures and the~~

application is not reviewed under the provisions of Sec. 32-161(3)(ii) and is not waived pursuant to RIGL 45-23-50(b) and is not categorized in Sec. 38-191 as Administrative Development Plan Review pursuant to Sec. 38-395. Site

Development plan review is not required for repairs or alterations to existing buildings or structures, provided that such work does not increase the floor area of any building or structure and does not change the actual use thereof. As part of the site Formal Development plan review process, the design of proposed buildings may be reviewed to determine compatibility with the site and with section 5.1 of the town's comprehensive plan.

(c) Meeting with town planner Preapplication conference. Prior to submission of the formal plan, an applicant for a commercial Formal site Development Plan review shall may make an appointment to meet with the town planner and/or the zoning-enforcement officer to confirm the need for such review, and for informal discussion of the project and site review application requirements and procedure. If requested by the applicant or municipality, the planning board may conduct a preapplication conference at an open meeting.

(d) Site plan requirements. All site plans shall be prepared by a registered architect or engineer. Six copies of the site plan, drawn at a scale no smaller than one inch equals 40 feet, shall be submitted electronically showing the following information unless waived by the planning board. The application fee shall be \$100.00. The site plan requirements are the same for both the preliminary and final plan. Only one application fee is required:

(1) Name of the proposed development and names and addresses of the developer and property owners, name of the registered architect or engineer designing the plan and his associated stamp of registration.

(2) Sheet size = 24" x 36" (electronic)

(3) Locus map at a scale of one inch equals 1,000 feet.

(4) Date, north arrow, graphic scale, contours at two-foot intervals and where slopes are three percent or less at one-foot contour intervals.

(5) Boundary line, dimensions, zoning classification and area of lot or tract; abutting property owners within 400 feet; and lot and plat numbers Zoning boundaries shall be shown on the site plan as they affect the parcel. Adjacent zone districts within four hundred feet also shall be indicated. Such features shall be shown on a separate map or as a keep map on the detail map itself, abutting property owners within 400 feet and lot and plat numbers should also be marked.

(6) Location and general exterior dimensions of existing structures and signs.

(7) Existing and proposed sewers, water mains, culverts and other underground appurtenances within and adjacent to the lot or tract, pipe sizes, grades, manholes and locations.

(8) Distance on all sides between buildings and property lines as measured on the site. If such distances are within 50 feet of a required setback, that property line must be verified via Class I Boundary Survey.

(89) Building use including number of employees and/or number of units; e.g., beds, offices and/or employees.

(910) Location, arrangement and dimensions of automobile parking spaces, width of aisles, width of bays and angle of parking.

(~~1011~~) Location, arrangement and dimensions of off-street loading spaces.

(~~112~~) Location and dimensions of vehicular drives; entrances and exits; acceleration and deceleration lanes; and location and dimension of pedestrian entrances, exits, walks and walkways.

(~~1213~~) Location, widths and names of all existing or prior platted roads, railroad and utility rights-of-way, parks and other public open spaces, permanent buildings and structures, houses or permanent easements, and section and municipal boundary lines, within 400 feet of the development.

a) Location of existing rock outcrops, general soil types, high points, vistas, watercourses, depressions, ponds, marshes, wetlands, wooded areas and stands of major trees (twelve-inch caliper or over), flood plain designations as shown on the Flood Insurance Rate Maps for the town, and other significant existing features including previous flood elevations of watercourses, pond and marsh areas as determined by survey.

b) If any area falls within a flood zone other than Zone X as delineated on the Flood Insurance Rate Maps, the area will be shown and base elevations (if known) shown.

(~~1314~~) Method of solid waste disposal and screening of refuse areas.

(~~1415~~) Location, type, intensity of illumination and height of all outdoor lighting fixtures, including sketches as appropriate to indicate the visual impact on the surrounding area and the general character of the community in order to eliminate sky glare and glare onto adjoining properties.

(~~1516~~) Location, design, and exterior dimensions of proposed principal and accessory buildings and signs.

(~~1617~~) Finished grades, slopes, banks and ditches.

(~~1718~~) Landscaping retained and created showing botanical name, location and approximate size of plantings and screen plantings.

(~~1819~~) Location, height and materials of walls and fences.

(~~1920~~) An architectural rendering of plans or building elevations indicating exterior building design.

~~(2021)~~ Total floor area of structures and ground coverage of each proposed building and structure and impervious surfaces (parking areas, etc.) shall be identified and measured as a percentage of lot covered coverage by each building or structure.

~~(2122)~~ The stages, if any, to be followed in the construction of the development, if it is to be developed in sections.

~~(2223)~~ Accompanying information shall include:

- a. Soil erosion and stormwater runoff control plans in accordance with the erosion and sediment control regulations of [chapter 26](#).
- b. A report by the state department of environmental management as to the suitability of the soil and design of individual sewage disposal. [The location of the ground water table in the vicinity of any proposed septic field.](#)
- c. Location and extent of any wetlands and approval of state agencies for alteration of, or construction within, wetland areas, determination of special flood hazard requirements.
- d. Summary of existing and proposed easements, restrictions and covenants placed on the property.

~~(e) Applications requesting relief from the zoning ordinance.~~

~~(i) Applications under this chapter which require relief which qualifies only as a modification under Sec. 38-321 shall proceed by filing an application under this section and a request for a modification to the zoning-enforcement officer. If such modification is granted the application shall then proceed to be reviewed by the administrative officer pursuant to the applicable requirements of Sec. 38-395. If the modification is denied or an objection is received as set forth in Sec. 38-321, such application shall proceed under unified development plan review pursuant to Sec. 38-325 and Sec. 32-46.~~

~~(ii) Applications under this section which require relief from the literal provisions of the zoning ordinance in the form of a variance or special-use permit, shall be reviewed by the planning board under unified development plan review pursuant to Sec. 38-325 and Sec. 32-46, and a request for review shall accompany the preliminary plan application.~~

~~(f) Certification. The application shall be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days or within fifteen (15) days if no street creation or extension is required, and/or unified development review is not required, according to the provisions of § 45-23-36(b). The running of the time period set forth in this section will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.~~

~~(e) Action on commercial and industrial site plans – not requiring zoning board action. Action on commercial and industrial site plans not requiring zoning board of review action shall be as follows:~~

(1) Within 45 days of the receipt of a complete site plan for a commercial or industrial use, the planning board will schedule a public hearing. At least seven days prior to the hearing, the planning board shall give written notice of the time and place of such hearing, by certified mail, to the applicant and to persons owning land abutting the site. The board shall also publish, in a newspaper of general circulation in the town, a notice of such hearing.

(2) The planning board shall review the site plan for compliance with all articles of this chapter. The applicant shall be advised of any required changes and/or additions to comply with the requirements of this section. The planning board will approve, subject to modifications, or disapprove the site plan. Within 30 days after the date of the close of the public hearing, including the adjourned date thereof, the board shall notify the applicant in writing of its decision stating its reasons if the plan is disapproved.

(g) Timeframes for decision.

(i) Preliminary plan. Unless the application is reviewed under unified development review, the permitting authority will approve, deny, or approve with conditions, the preliminary plan within sixty-five (65) days of certification of completeness, or within any further time that is agreed to by the applicant and the permitting authority.

(ii) Final Plan. For formal development plan approval, the permitting authority shall delegate final plan review and approval to the administrative officer. The officer will report its actions in writing to the permitting authority at its next regular meeting, to be made part of the record. Final plan shall be approved or denied within forty-five (45) days after the certification of completeness, or within a further amount of time that may be consented to by the applicant, in writing.

(h) Failure to act. Failure of the planning board to act within the period prescribed constitutes approval of the preliminary plan and a certificate of the administrative officer as to the failure to act within the required time and the resulting approval shall be issued on request of the application.

(i) Vested rights. Approval of development plan review shall expire two (2) years from the date of approval unless, within that period, a plat or plan, in conformity with approval, and as defined in this act, is submitted for signature and recording as specified in Sec. 32-48. Validity may be extended for an additional period upon application to the planning board, upon a showing of good cause. Construction shall start within twelve (12) months of the date of recording. Construction shall be completed within sixty (60) months of the date of recording.

(j) Modifications and changes to plans.

(1) Minor changes, which shall be limited to changes made in correction of error on the preliminary plan or changes requested by the Planning Board at the stage of preliminary plan review may be approved administratively, by the administrative officer, whereupon final plan approval may be issued. The changes may be authorized without an additional planning board meeting, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not

prohibit the administrative officer from requesting recommendation from either the technical review committee or planning board. Denial of the proposed change(s) shall be referred to the planning board for review as a major change.

(2) Major changes shall include any change exceeding a minor change or any change to the final plan not recommended by the planning board at the preliminary plan stage. Major changes apply to plans approved at any stage. Major changes may be approved only by the Planning Board and must follow the same review and hearing process required for approval of preliminary plans, which shall include a public hearing.

(3) The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer determines that there has been a major change to the approved plans.

~~(f)~~ *Performance standards.* The following criteria are to be used by the planning board in judging applications for site plan reviews and shall serve as minimum requirements for approval of the site plan. The site plan shall be approved, unless, in the judgment of the planning board, the applicant is not able to meet one or more of the following standards. In all instances, the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence necessary to complete the application. These standards shall apply to both the preliminary and final plan.

(1) *Landscape.* The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of the soil and retaining existing vegetation during and after construction. After construction is completed, landscaping shall be installed according to the landscaping design shown on the site plan that will define, soften or screen the appearance of the off-road parking areas from the public right-of-way and abutting properties and/or structures in order to enhance the design or buildings or site, and to minimize the encroachment of the proposed use on neighboring land uses.

(2) *Visual relationship of buildings.* Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of buildings and such natural features such as slope, soil type and drainageways.

(3) *Vehicular access.* The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and control of access points, including site distances, turning lanes and traffic signalization when required by existing and projected flow on the municipal road systems. Provisions shall be made providing and maintaining safe and convenient emergency vehicle access to all buildings and structures on the site at all times. The development shall not impose unreasonable burdens on the circulation system of the town. Town roads inadequate to handle the volume of traffic generated by the development shall be improved by the applicant to provide safe passage. The developer may be required to provide a traffic impact report prepared by a certified traffic engineer if there are unusual safety concerns such as inadequate sight distance or a history of traffic accidents in the area proposed for development.

(4) *Parking and circulation.* The layout and design of all means of vehicular and pedestrian circulation, including walkways, interior drives and parking areas, shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas and arrangement and use of parking areas.

(5) *Stormwater runoff and erosion control.* Adequate provisions shall be made for stormwater runoff so that removal of surface water shall not adversely affect neighboring properties, downstream water quality, soil erosion or the storm drainage system. Whenever possible, onsite absorption of runoff waters shall be utilized to minimize discharges from the site. Provisions will be made to control erosion during and after construction. Reference is made to the state erosion and sediment control handbook.

(6) *Existing utilities.* The development shall not impose unreasonable burdens on sewers, sanitary and storm drains, water lines or other public utilities.

(7) *Advertising features.* The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures shall be compatible with the design of the proposed buildings and structures and surrounding properties and conform with article VI of this chapter.

(8) *Special features of the development.* Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utilities, buildings and similar structures shall have sufficient setbacks and screening to provide an audiovisual buffer sufficient to minimize their adverse impact on other land uses within the development area and surrounding properties.

(9) *Exterior lighting.* All exterior lighting shall be designed to minimize impact on neighboring properties. All exterior lighting shall be directed downward, and incorporate full cutoff fixtures to reduce light pollution, utilizing fixtures meeting the criteria of the ISA International Dark Sky Association, and shielded from directing light on abutting properties.

(10) *Municipal services.* The development will not have an unreasonable impact on the municipal road system, fire department, police department, solid waste program, schools, open spaces, recreational programs and facilities, and other municipal services and facilities.

(11) *Water pollution.* In making this determination, it shall at least include the elevation of the land above sea level and its relation to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal and other DEM approved discharge; the slope of the land and its effect on effluents; the aquifer and aquifer recharge areas; the availability of streams for surface runoff; and the applicable federal, state and local laws, ordinances, codes and regulations.

(12) *Air pollution.* The use of the site shall not reduce the ambient air quality. In making this determination, the applicant shall consult federal and state authorities to determine air quality laws and regulations.

(13) *Water supply.* Sufficient water must be available for reasonably foreseeable needs of the development and not cause any unreasonable burden on the existing water supply if this supply is utilized.

(14) *Sewage disposal.* Adequate sewage waste disposal must be provided.

(15) *Unique areas.* There must not be any undue adverse affect on the scenic or natural beauty of the areas, aesthetics, historic sites, or rare and irreplaceable natural areas.

(16) *Capacity*. The applicant has adequate financial and technical capacity to meet the above standards.

(17) *Waterbodies*. Whenever the proposed development is situated, in whole or in part, within 300 feet of any pond, lake, river or other freshwater wetland, it will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water. There will be no disturbance of soil within 100 feet of the outer edge of a wetland.

(g) *General provisions*. General provisions concerning site plans for ~~commercial and industrial~~ Formal Development Plan review are as follows:

(1) The planning board may waive, ~~by majority vote, site plan approval requirements or any specific provisions thereof for any change in use, and construction of an addition or accessory building to any other principal building, provided that the use is subordinate and customarily incidental to the principal use and provided that:~~

~~a. Such building area does not exceed 25 percent of the existing buildings or 1,500 square feet, whichever is less.~~

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~~b. Such building does not exceed one story.~~

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~~c. Such building conforms to all requirements of the district in which it is located or any other requirements in this chapter.~~

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~~d. No site improvements are intended, required or will result from such building including, but not limited to, the development of additional parking spaces.~~

~~e. The change of actual use does not affect existing circulation, drainage, landscaping, buffering, lighting or other considerations of site plan review, requirements for development plan approval where there is a change in use or occupancy and no extensive construction of improvements is sought. The waiver may be granted only by a decision by the planning board finding that the use will not affect existing drainage, circulation, relationship of buildings to each other, landscaping, buffering, lighting, and other considerations of development plan approval, and that the existing facilities do not require upgraded or additional site improvements. The application for a waiver of development plan approval review shall include documentation, as required by the planning board, on prior use of the site, the proposed use, and its impact.~~

(2) The planning board may grant waivers of any design standards applicable to a project or any of the requirements found in this section in the best interest of good planning practice and/or design as evidenced by consistency with the comprehensive plan and this chapter. The administrative officer is authorized to grant waivers of any design standards applicable to a project or any of the requirements found in this section in the best interest of good planning practice and/or design as evidenced by consistency with the comprehensive plan and this chapter.

(23) The planning board may require the filing of a performance bond or the execution of a conditional agreement with the municipality by the applicant.

(34) All construction performed under the authorization of a building permit issued for development within the scope of this chapter shall be in conformance with the approved site plan.

~~(4) Change of approved site plan. If the applicant wants to make an amendment to an approved site plan, a written request shall be submitted to the planning board. If, in the opinion of the planning board, a requested change is sufficiently substantial, the planning board shall require the submission of any amended site plan. The procedure for the consideration of such written request or of such amended site plan shall be the same as that for consideration of a site plan under subsections (c), (d) and (e) of this section.~~

~~(5) Site plan procedure. Each applicant for site plan approval shall file an electronic submission with the town clerk administrative officer six copies of the proposed site plan, 24 inches by 36 inches in size at a scale no smaller than one inch equals 40 feet; the required application form; and a \$75100.00 application fee.~~

~~(m) Appeal. A decision under this section shall be considered an appealable decision pursuant to § 45-23-71.~~

~~(n) Extension or enlargement. The planning board may not extend or enlarge a Formal Development Plan approval except by granting a new Formal development plan approval.~~

~~(o) Special conditions. In granting a preliminary plan, or in making any determination upon which it is required to pass after public hearing under this chapter, the board may apply such special conditions that may, in the opinion of the board, be required to promote the intent and purposes of this chapter. Failure to abide by any special conditions attached to a grant shall constitute a zoning violation. Such special conditions shall be based on competent credible evidence on the record, shall be incorporated into the decision, and may include, but are not limited to, provisions for:~~

~~(1) Minimizing adverse impact of the development upon other land, including the type, intensity, design and performance of activities;~~

~~(2) Controlling the sequence of development, including when it must be commenced and completed;~~

~~(3) Controlling the duration of use or development and the time within which any temporary structure must be removed;~~

~~(4) Ensuring satisfactory installation and maintenance of required public improvements;~~

~~(5) Designating the exact location and nature of development; and~~

~~(6) Establishing detailed records by submission of drawings, maps, plats or specifications.~~

~~(p) Uses in HC2 District. Any use reviewed as a formal development plan which is located in the HC2 district shall be subject to all applicable subsections listed under Sec. 38-358, including, but not limited to Sec 38-358(5) Environmental Impact and Design Standards.~~

~~(q) Commencement of construction/project. Construction/project shall start within twelve (12) months of the date of recording. Construction shall be completed within sixty (60) months of the date of recording.~~

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ORDINANCE NO. _____

AN ORDINANCE IN AMENDMENT TO
THE ZONING CODE OF THE TOWN OF FOSTER

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

Chapter 38 – ZONING

ARTICLE IX – SITE PLAN REVIEW

Sec 38-395: Administrative development plan review for commercial and industrial development shall be added to come into compliance with RIGL:

ARTICLE IX. – SITE PLAN REVIEW

Sec. 38-395. Administrative Development Plan Review

(a) Purpose. The purpose of this section is to ensure the orderly development and integration of commercial, industrial and institutional projects into the community; provide for erosion control and stormwater management; prevent surface water and groundwater pollution; minimize traffic hazards; mitigate nuisances caused by noise, dust or lights; and protect and enhance the ecology and physical appearance of the community.

(b) Review of plan required. Administrative Development Plan Review consists of one stage of review. Administrative Development Plan Review applications shall be reviewed by the Administrative Officer. The Administrative Officer shall be permitted to request assistance in review of plan from the technical review committee.

Except for commercial expansion and/or construction which is reviewed under the provisions of Sec. 32-161(3)(ii) and except for any change in use at the property where no extensive construction of improvements are sought which may be reviewed under the provisions of Sec. 32-161(3)(ii) or which may be waived pursuant to RIGL 45-23-50(b), and except for any enlargement in size or construction of any building or change in use at the property for a use categorized in Sec. 38-191 as Formal Development Plan Review pursuant to Sec. 38-394, no zoning certificate or building permit shall be issued for any commercial building or other commercial construction in any zone of the town, or for any institutional use in a GB or HC2 zone, until a development plan review of the proposed construction has been conducted by the Administrative Officer.

In addition, review of plan is required for any construction or enlargement in size of any building which exceeds the provisions of Sec. 32-161(3)(ii) and is not categorized in Sec. 38-191 as Formal Development Plan Review pursuant to Sec. 38-394 or change in use at the property where no extensive construction of improvements are sought of any building including accessory structures and the application is not reviewed under the provisions of Sec. 32-161(3)(ii) and is not waived pursuant to RIGL 45-23-50(b) and is not categorized in Sec. 38-191 as Formal Development Plan Review pursuant to Sec. 38-394.

Development plan review is not required for repairs or alterations to existing buildings or structures, provided that such work does not increase the floor area of any building or structure and does not change the actual use thereof. As part of the Administrative Development Plan Review process, the design of proposed buildings may be reviewed to determine compatibility with the site and with the Town's comprehensive plan.

(c) *Preapplication conference.* Prior to submission of the formal plan, an applicant for Administrative Development Plan review may make an appointment to meet with the town planner and/or the zoning-enforcement officer to confirm the need for such review, and for informal discussion of the project and site review application requirements and procedure. If requested by the applicant or municipality, the planning board may conduct a preapplication conference at an open meeting.

(d) *Site plan requirements.* All site plans shall be prepared by a registered architect or engineer. One copy of the site plan, drawn at a scale no smaller than one inch equals 40 feet, shall be submitted electronically showing the following information unless waived by the administrative officer. The application fee shall be \$100.00.

(1) Name of the proposed development and names and addresses of the developer and property owners, name of the registered architect or engineer designing the plan and associated stamp of registration.

(2) Sheet size = 24" x 36" (electronic)

(3) Locus map at a scale of one inch equals 1,000 feet.

(4) Date, north arrow, graphic scale, contours at two-foot intervals and where slopes are three percent or less at one-foot contour intervals.

(5) Zoning boundaries shall be shown on the site plan as they affect the parcel. Adjacent zone districts within four hundred feet also shall be indicated. Such features shall be shown on a separate map or as a keep map on the detail map itself, abutting property owners within 400 feet and lot and plat numbers should also be marked.

(6) Location and general exterior dimensions of existing structures and signs.

(7) Existing and proposed sewers, water mains, culverts and other underground appurtenances within and adjacent to the lot or tract, pipe sizes, grades, manholes and locations.

(8) Distance on all sides between buildings and property lines as measured on the site. If such distances are within 50 feet of a required setback, that property line must be verified via Class I Boundary Survey.

(9) Building use including number of employees and/or number of units; e.g., beds, offices and/or employees.

(10) Location, arrangement and dimensions of automobile parking spaces, width of aisles, width of bays and angle of parking.

(11) Location, arrangement and dimensions of off-street loading spaces.

(12) Location and dimensions of vehicular drives; entrances and exits; acceleration and deceleration lanes; and location and dimension of pedestrian entrances, exits, walks and walkways.

(13) Location, widths and names of all existing or prior platted roads, railroad and utility rights-of-way, parks and other public open spaces, permanent buildings and structures, houses or permanent easements, and section and municipal boundary lines, within 400 feet of the development.

a) Location of existing rock outcrops, general soil types, high points, vistas, watercourses, depressions, ponds, marshes, wetlands, wooded areas and stands of major trees (twelve-inch caliper or over), flood plain designations as shown on the Flood Insurance Rate Maps for the town, and other significant existing features including previous flood elevations of watercourses, pond and marsh areas as determined by survey.

b) If any area falls within a flood zone other than Zone X as delineated on the Flood Insurance Rate Maps, the area will be shown and base elevations (if known) shown.

(14) Method of solid waste disposal and screening of refuse areas.

(15) Location, type, intensity of illumination and height of all outdoor lighting fixtures, including sketches as appropriate to indicate the visual impact on the surrounding area and the general character of the community in order to eliminate sky glare and glare onto adjoining properties.

(16) Location, design, and exterior dimensions of proposed principal and accessory buildings and signs.

(17) Finished grades, slopes, banks and ditches.

(18) Landscaping retained and created showing botanical name, location and approximate size of plantings and screen plantings.

(19) Location, height and materials of walls and fences.

(20) An architectural rendering of plans or building elevations indicating exterior building design.

(21) Total floor area of structures and ground coverage of and impervious surfaces (parking areas, etc.) shall be identified and measured as a percentage of lot coverage.

(22) The stages, if any, to be followed in the construction of the development, if it is to be developed in sections.

(23) Accompanying information shall include:

a. Soil erosion and stormwater runoff control plans in accordance with the erosion and sediment control regulations of chapter 26.

b. A report by the state department of environmental management as to the suitability of the soil and design of individual sewage disposal. The location of the ground water table in the vicinity of any proposed septic field.

c. Location and extent of any wetlands and approval of state agencies for alteration of, or construction within, wetland areas, determination of special flood hazard requirements. The location of the ground water table in the vicinity of any proposed septic field.

d. Summary of existing and proposed easements, restrictions and covenants placed on the property.

(e) Applications requesting relief from the zoning ordinance.

(i) Applications under this chapter which require relief which qualifies only as a modification under Sec. 38-321 shall proceed by filing an application under this section and a request for a modification to the zoning-enforcement officer. If such modification is granted the application shall then proceed to be reviewed by the administrative officer pursuant to the applicable requirements of this section. If the modification is denied or an objection is received as set forth in Sec. 38-321, such application shall proceed under unified development plan review pursuant to Sec. 38-325 and Sec. 32-46 and shall be elevated to Formal Development Plan Review.

(ii) Applications under this section which require relief from the literal provisions of the zoning ordinance in the form of a variance or special-use permit, shall be reviewed by the planning board under unified development plan review pursuant to Sec. 38-325 and Sec. 32-46, and shall be considered Formal Development Plan Review applications, not to be reviewed under this section.

(f) Certification. The application shall be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days or within fifteen (15) days if no street creation or extension is required, according to the provisions of § 45-23-36(b). The running of the time period set forth in this section will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(g) Review stages – Administrative Development Plan review. Administrative development plan review consists of one stage of review. The review shall be limited to the site plan requirements listed in subsection (d) of this section and the performance standards listed in subsection (k) of this section. The administrative officer shall only be authorized to grant waivers from these two subsections if the requirements listed in either of these subsections are deemed by the Technical Review Committee to not be relevant to the application.

(h) Timeframes for decision. An application shall be approved, denied, or approved with conditions within twenty-five (25) days of the certificate of completeness or within any further time that is agreed to in writing by the applicant and administrative officer.

(i) Failure to act. Failure of the administrative officer to act within the period prescribed constitutes approval of the preliminary plan and a certificate of the administrative officer as to the

failure to act within the required time and the resulting approval shall be issued on request of the application.

(j) *Vested rights.* Approval of development plan review shall expire two (2) years from the date of approval unless, within that period, a plat or plan, in conformity with approval, and as defined in this act, is submitted for signature and recording as specified in Sec. 32-48. Validity may be extended for an additional period upon application to the administrative officer, upon a showing of good cause. Construction shall start within twelve (12) months of the date of recording. Construction shall be completed within sixty (60) months of the date of recording.

(k) *Performance standards.* The following criteria are to be used by the planning board in judging applications for site plan reviews and shall serve as minimum requirements for approval of the site plan. The site plan shall be approved, unless, in the judgment of the planning board, the applicant is not able to meet one or more of the following standards. In all instances, the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence necessary to complete the application. These standards shall apply to both the preliminary and final plan.

(1) *Landscape.* The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of the soil and retaining existing vegetation during and after construction. After construction is completed, landscaping shall be installed according to the landscaping design shown on the site plan that will define, soften or screen the appearance of the off-road parking areas from the public right-of-way and abutting properties and/or structures in order to enhance the design or buildings or site, and to minimize the encroachment of the proposed use on neighboring land uses.

(2) *Visual relationship of buildings.* Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of buildings and such natural features such as slope, soil type and drainageways.

(3) *Vehicular access.* The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and control of access points, including site distances, turning lanes and traffic signalization when required by existing and projected flow on the municipal road systems. Provisions shall be made providing and maintaining safe and convenient emergency vehicle access to all buildings and structures on the site at all times. The development shall not impose unreasonable burdens on the circulation system of the town. Town roads inadequate to handle the volume of traffic generated by the development shall be improved by the applicant to provide safe passage. The developer may be required to provide a traffic impact report prepared by a certified traffic engineer if there are unusual safety concerns such as inadequate sight distance or a history of traffic accidents in the area proposed for development.

(4) *Parking and circulation.* The layout and design of all means of vehicular and pedestrian circulation, including walkways, interior drives and parking areas, shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas and arrangement and use of parking areas.

(5) *Stormwater runoff and erosion control.* Adequate provisions shall be made for stormwater runoff so that removal of surface water shall not adversely affect neighboring properties, downstream water quality, soil erosion or the storm drainage system. Whenever possible, onsite absorption of runoff waters shall be utilized to minimize discharges from

the site. Provisions will be made to control erosion during and after construction. Reference is made to the state erosion and sediment control handbook.

(6) Existing utilities. The development shall not impose unreasonable burdens on sewers, sanitary and storm drains, water lines or other public utilities.

(7) Advertising features. The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures shall be compatible with the design of the proposed buildings and structures and surrounding properties and conform with article VI of this chapter.

(8) Special features of the development. Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utilities, buildings and similar structures shall have sufficient setbacks and screening to provide an audiovisual buffer sufficient to minimize their adverse impact on other land uses within the development area and surrounding properties.

(9) Exterior lighting. All exterior lighting shall be designed to minimize impact on neighboring properties. All exterior lighting shall be directed downward, and incorporate full cutoff fixtures to reduce light pollution, utilizing fixtures meeting the criteria of the ISA International Dark Sky Association, and shielded from directing light on abutting properties.

(10) Municipal services. The development will not have an unreasonable impact on the municipal road system, fire department, police department, solid waste program, schools, open spaces, recreational programs and facilities, and other municipal services and facilities.

(11) Water pollution. In making this determination, it shall at least include the elevation of the land above sea level and its relation to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal and other DEM approved discharge; the slope of the land and its effect on effluents; the aquifer and aquifer recharge areas; the availability of streams for surface runoff; and the applicable federal, state and local laws, ordinances, codes and regulations.

(12) Air pollution. The use of the site shall not reduce the ambient air quality. In making this determination, the applicant shall consult federal and state authorities to determine air quality laws and regulations.

(13) Water supply. Sufficient water must be available for reasonably foreseeable needs of the development and not cause any unreasonable burden on the existing water supply if this supply is utilized.

(14) Sewage disposal. Adequate sewage waste disposal must be provided.

(15) Unique areas. There must not be any undue adverse affect on the scenic or natural beauty of the areas, aesthetics, historic sites, or rare and irreplaceable natural areas.

(16) Capacity. The applicant has adequate financial and technical capacity to meet the above standards.

(17) Waterbodies. Whenever the proposed development is situated, in whole or in part, within 300 feet of any pond, lake, river or other freshwater wetland, it will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water. There will be no disturbance of soil within 100 feet of the outer edge of a wetland.

(l) General provisions. General provisions concerning site plans for Administrative Development Plan review are as follows:

(1) The administrative officer may waive requirements for development plan approval where there is a change in use or occupancy and no extensive construction of improvements is sought and where the waiver is approved by the technical review committee. The waiver may be granted only by a decision by the administrative officer finding that the use will not affect existing drainage, circulation, relationship of buildings to each other, landscaping, buffering, lighting, and other considerations of development plan approval, and that the existing facilities do not require upgraded or additional site improvements. Such findings are required to be approved by the technical review committee. The application for a waiver of development plan approval review shall include documentation, as required by the administrative officer, on prior use of the site, the proposed use, and its impact.

(2) The administrative officer, with the approval of the technical review committee may grant waivers of any design standards applicable to a project or any of the requirements found in this section in the best interest of good planning practice and/or design as evidenced by consistency with the comprehensive plan and this chapter.

(3) The administrative officer may require the filing of a performance bond or the execution of a conditional agreement with the municipality by the applicant.

(4) All construction performed under the authorization of a building permit issued for development within the scope of this chapter shall be in conformance with the approved site plan.

(5) Site plan procedure. Each applicant for site plan approval shall file with the administrative officer an electronic submission of the proposed site plan and a \$100.00 application fee.

(m) Appeal. A decision under this section shall be considered an appealable decision pursuant to § 45-23-71.

(n) Extension or enlargement. The administrative officer may not extend or enlarge an Administrative Development Plan approval except by granting a new Administrative development plan approval.

(o) Special conditions. In granting an administrative development plan, the administrative officer may apply such special conditions that may, in the opinion of the board, be required to promote the intent and purposes of this chapter. Failure to abide by any special conditions attached to a grant shall constitute a zoning violation. Such special conditions shall be based on competent credible evidence on the record, shall be incorporated into the decision, and may include, but are not limited to, provisions for:

(1) Minimizing adverse impact of the development upon other land, including the type, intensity, design and performance of activities;

(2) Controlling the sequence of development, including when it must be commenced and completed;

(3) Controlling the duration of use or development and the time within which any temporary structure must be removed;

(4) Ensuring satisfactory installation and maintenance of required public improvements;

(5) Designating the exact location and nature of development; and

(6) Establishing detailed records by submission of drawings, maps, plats or specifications.

(p) *Uses in HC2 District.* Any use reviewed as an administrative development plan which is located in the HC2 district shall be subject to all applicable subsections listed under Sec. 38-358, including, but not limited to Sec 38-358(5) Environmental Impact and Design Standards. In such instances, the administrative officer shall obtain an advisory recommendation from the technical review committee.

(q) *Commencement of construction/project.* Construction/project shall start within twelve (12) months of the date of recording. Construction shall be completed within sixty (60) months of the date of recording.

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