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TO: Members of the Board of Selectmen  
Members of the Planning Board  
CC: Kevin Sweet, Town Administrator  
Michelle Sokolowski, Town Clerk  
Richard Asmann, Building Inspector  
FR: Lisa L. Mead, Town Counsel  
RE: Zoning in the Industrial District  Transcription Error in Zoning Bylaw Handout  
DA: May 15, 2013

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Reference is made to the above captioned matter. In that connection, I have been requested to render an opinion with regard to what uses are allowed in the Industrial District, which is the underlying zoning district for the property located at 129 Parker Street. Additionally, as part of that process, I have been requested to render an opinion with regard to the use known as "Garden Apartments" in the Zoning Bylaw, in the Industrial District. The issue concerning the "Garden Apartment" use has arisen in response to an inquiry from the Chair of the Finance Committee, who has brought to the Town's attention that what was passed as part of the recodification of the Zoning Bylaw on October 26, 2011, does not appear to be what is printed in the "Protective Zoning By-Laws" handout provided to the public by the Town ("Handout").

**A. Garden Apartments**

In answering the foregoing question concerning the ability to construct Garden Apartments in the Industrial District I have reviewed the "Handout," my notes from the Special Town Meeting of October 26, 2011 (the "STM"), the report prepared by the Town Clerk to the Attorney General of the STM which was sent to the Attorney General on November 22, 2013 and the Attorney General's approval letter dated March 15, 2012. I have determined that, in fact, the Table of Uses which was presented at Town Meeting in Article 2, and which appears as Appendix A in Section 3.1.2 of the proposed Zoning Bylaw, has an "N" alongside the use entitled Garden Apartment, in the Industrial District. (See Exhibit A.) Further amendments to the Zoning Bylaw in Article 3 of the warrant did not amend this provision of the Table of Uses. (See Exhibit B.)

The Attorney General approved the zoning changes on March 15, 2012, making the approved zoning amendments effective as of October 26, 2011. After this date, members of the Planning Board along with Planning Board staff created the Handout for the general use of the Town and the public. In the Handout, it appears as though, for organizational purposes, the headings on the columns in the Table of Uses were changed. Apparently, in that process, when moving the columns around, a mistake was made with regard to classification of the use "Garden Apartment" in the Industrial District and the designation was changed from "N" to "Y." That, of course, is not what was approved by

the Town Meeting on October 26, 2011 and, subsequently, by the Attorney General on March 15, 2012. (See Exhibit C.)

The question, then, is which controls? There can be no doubt, in my opinion, that the Zoning Bylaw effective in the Town is that which was adopted by the Town Meeting on October 26, 2011. “No zoning ordinance or by-law or amendment thereto shall be adopted or changed except. . . by a two-thirds vote of a town meeting. . .” G.L. c. 40A, § 5, ¶ 5. Allowing the Handout to control would be tantamount to an administrative fiat which would open the door to untold abuses. See Cherkes v. Town of Westport, 393 Mass. 9, 11 (1984) (“bylaws that are adopted as an exercise of zoning powers must meet the procedural requirements of the Zoning Enabling Act”). The transcription error that occurred in the reorganization and reformatting of the Zoning Bylaw, suggesting that “Garden Apartments” are permitted as-of-right in the Industrial District, does not make it so. The version of the Zoning Bylaw adopted by the STM and thereafter approved by the Attorney General is that which became effective on the date of said STM, see G.L. c. 40A, § 5, ¶ 8, and which continues in full force and effect today. See, e.g., Mayo v. Inhabitants of the Town of West Springfield, 260 Mass. 594, 596-98 (1927) (where the town clerk was not required “to spread upon the records. . . [the text of] a bylaw adopted at a town meeting. . . to copy [it] or to make [it] a part of the record,” it being sufficient that he or she “record all votes at [the] town meeting” which records “are conclusive in relation to all business therein recorded”).

Although a disadvantaged resident, developer or other individual who relied upon the Handout or other unintentional misrepresentation of the provisions of the Zoning Bylaw might object to its enforcement, the Town is not accountable to them for its error. “As a matter of law, even if a governmental unit does mislead a party into false reliance by misstatement of the law or by action, the government cannot be estopped from subsequent enforcement of the correct law. Estoppel theories generally do not apply against the government. . . [and] Massachusetts law does not treat municipal estoppel with any favor.” Bentley v. Board of Appeals of Carlisle, 75 Mass. App. Ct. 1104, 1105 (2009) (citations omitted); see also Cullen v. Building Inspector of North Attleborough, 353 Mass. 671, 675 (1968) (“[t]he right of the public to have the zoning bylaw properly enforced cannot be forfeited by the action of its officers”).

For the reasons set forth above, it is my opinion that “Garden Apartments” are not permitted in the Industrial District, according to the Zoning Bylaw adopted by the STM on October 26, 2011, regardless of such contrary information as may be found in the Handout or elsewhere.

### **B. Allowed Uses in the Industrial District**

The question then comes, what uses are in fact allowed in the Industrial District. The following uses are allowed by right in the Industrial District:

- Municipal Facilities
- Use of land or structures for religious purposes

- Child care center
- Use of land or structures for educational purposes or land owned or leased by the commonwealth or its political subdivisions
- Public transportation facility
- Agricultural, exempt
- Farm stand, exempt
- Nonprofit recreational use, passive
- Business or professional office
- Bank or financial institution
- Car wash
- Supermarket
- Fitness Club
- Research Laboratory with incidental manufacturing
- Manufacturing, light manufacturing, development or engineering
- Parking areas or garages for use by employees, customers, visitors
- Warehousing
- Screened storage, accessory buildings and accessory uses
- Garaging incidental to any industrial use
- Mini or self storage facility
- Ground mounted solar photovoltaic facility
- Solar photovoltaic facility mounted on a building
- Emerging energy technology
- Hydroelectric power generation
- Overnight outdoor parking of one commercial vehicle, as an accessory use
- Overnight outdoor parking of more than one commercial vehicle, as an accessory use
- Overnight outdoors parking of one or more commercial vehicles, as an accessory use
- Accessory nonresidential uses
- Seasonal and Charitable sales, as an accessory use
- Recreational use, as an accessory use

The following uses are allowed with a special permit from the Planning Board, the Board of Appeals or Board of Selectmen where indicated:

- Essential services - PB
- Wireless telecommunications towers and facilities - PB
- General of personal service establishment – BA
- Veterinarian office or animal hospital 0 PB
- Kennel, commercial - PB
- Adult entertainment – SB
- Body Art Establishments – PB
- Kennel, private, as an accessory use– BA
- Drive in or drive through facility as an accessory use – PB

In addition to the foregoing, a lot in the Industrial District must meet the following minimum dimensional requirements:

Area:	40,000 sq ft
Frontage:	150 ft
Width:	120 ft
Front Set Back:	50 ft*
Side Set Back:	30 ft*
Rear Set Back:	30 ft*
Max Lot Coverage	
By building	35%
Max Bldg Height	40 ft
Min % of Lot Area	
Landscape open	30%
Located in front yd	10%

The above represents and overview of the allowed uses along with the dimensional requirements for the Industrial District based upon the zoning which was passed at the October 26, 2011 Special Town Meeting.\*\* I have not set forth the definitions for each use, but same can be found in section 11.0 of the Protective Zoning Bylaw.

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\* Increase by 70 feet when abutting a residential district. At least 40 feet of any or all such yards abutting a residential district shall be landscaped open space with screening.

\*\* This opinion does not review the uses allowed in a Neighborhood Overlay District which is applicable to 129 Parker Street, as any such proposed uses and plan would need to be approved by the Town Meeting.

**EXHIBIT A**

# TABLE OF USE REGULATIONS

1. Residential Use	S-1	S-2	GR	B	CB	HC/I	I	GA	O
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PRINCIPAL USE									
<b>2. Governmental, Institutional and Public Service Uses</b>	<b>S-1</b>	<b>S-2</b>	<b>GR</b>	<b>B</b>	<b>CB</b>	<b>HC/I</b>	<b>I</b>	<b>GA</b>	<b>O</b>
Municipal facilities	PB	PB	PB	Y	Y	Y	Y	N	PB
Use of land or structures for religious purposes	Y	Y	Y	Y	Y	Y	Y	Y	Y
Child care center	Y	Y	Y	Y	Y	Y	Y	Y	Y
Cemetery	BA	BA	BA	BA	N	N	N	N	N
Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y	Y	Y	Y	Y	Y	Y	Y	Y
Essential services	PB	PB	PB	PB	PB	PB	PB	PB	PB
Wireless telecommunications towers and facilities	N	N	N	PB	PB	PB	PB	N	N
Public market	N	N	N	N	Y	Y	N	N	N
Public transportation facility	N	N	N	Y	Y	Y	Y	N	N



PRINCIPAL USE									
4. Business Uses	S-1	S-2	GR	B	CB	HC/I	I	GA	O
State club	BA	BA	BA	BA	BA	N	N	N	N
Retail business	N	N	N	Y	Y	N	N	N	N
Business or professional office	N	N	N	Y	Y	Y	Y	N	N
Bank or financial institution	N	N	N	Y	Y	Y	Y	N	N
Medical office	N	N	N	Y	Y	Y	N	N	N
Clinic and healthcare facility, with ancillary uses	N	N	N	N	N	Y	N	N	N
General or personal service establishment	N	N	N	Y	Y	BA	BA	N	N
Funeral home	BA	BA	BA	Y	Y	N	N	N	N
Theater, halls, clubs, or other places of entertainment	N	N	N	BA	BA	N	N	N	N
Hotels, motels	N	N	N	BA	N	N	N	N	N
Restaurants or other food service uses not including fast food restaurants	N	N	N	Y	Y	N	N	N	N
Fast food restaurants	N	N	N	PB	PB	N	N	N	N
Motor vehicle light service	N	N	N	PB	PB	N	N	N	N
Motor vehicle repair or body work	N	N	N	PB	PB	N	N	N	N
Motor vehicle sales, new or used	N	N	N	PB	N	PB	N	N	N
Car wash	N	N	N	PB	N	N	Y	N	N
Lumber, feed, ice establishments	N	N	N	Y	N	N	N	N	N
Wholesale distribution facility	N	N	N	PB	N	N	N	N	N
Printing shops	N	N	N	Y	Y	Y	N	N	N
Veterinarian office or animal hospital	N	N	N	PB	PB	PB	PB	N	N
Kennel, commercial	N	N	N	PB	N	N	PB	N	N
Adult entertainment	N	N	N	N	N	N	SB	N	N
Body Art Establishments	N	N	N	PB	N	N	PB	N	N

PRINCIPAL USE									
5. Industrial Uses	S-1	S-2	GR	B	CB	HC/I	I	GA	O
Research laboratories, w / incidental assembly or manufacturing	N	N	N	N	N	Y	Y	N	N
Manufacturing, light manufacturing, development or engineering	N	N	N	N	N	Y	Y	N	N
Parking areas or garages for use by employees, customers, visitors	N	N	N	N	N	Y	Y	N	N
Warehousing	N	N	N	N	N	Y	Y	N	N
Screened storage, accessory buildings and accessory uses	N	N	N	N	N	Y	Y	N	N
Garaging incidental to any industrial use	N	N	N	N	N	Y	Y	N	N
Mini or self storage facility	N	N	N	PB	N	Y	Y	N	N
Wholesale business	N	N	N	Y	Y	Y	N	N	N
Ground mounted solar photovoltaic facility	N	N	N	N	N	N	Y	N	N
Solar photovoltaic facility mounted on building	N	N	N	N	N	Y	Y	N	N
Emerging energy technology	N	N	N	N	N	Y	Y	N	N
Hydroelectric power generation	N	N	N	N	N	Y	Y	N	N



**EXHIBIT B**





date of this amendment shall require the issuance of a special permit by the Planning Board, except those exempt by statute. This provision shall apply in a new building replacing any existing building which has been razed.

**9.6.4 Vehicle Trip Reduction.** Any application for site plan review or a special permit within the HC/I District shall be accompanied by a vehicle trip reduction plan to promote traffic management for employees. Such plan shall include shuttle service to the nearby MBTA stations, bicycle racks and facilities, showers for employees, and other trip reduction measures that provide incentives to employees.

**9.6.5 Parking.** The following minimum parking requirements shall be substituted for those set forth in Section 6.1.5:

- |   |   |  |
|---|---|--|
| * | Nonresidential parking  | 2 spaces per 1000 sq. ft. gross flow area                            |
| * | Multifamily, garden apartment, hotel, motel, extended stay, live/work dwelling unit | 1 space per dwelling unit or room for independent lease or occupancy |

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**Item 5. Amend the Zoning Map by adding the following parcel to the Health Care Industrial Zoning District:**

Map 14, Lot 272

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**Item 6. Add the following new definitions to Section 11:**

**Brewery with ancillary food service:** An establishment that brews beer for sale and distribution to the public, including ancillary tavern and restaurant facilities for service on the premises, subject to the provisions of G.L. 138.

**Live/work dwelling unit:** A structure or portion of a structure that combines a commercial, manufacturing, or artistic activity with a residential living space for the owner or occupant and that person's household.

**OR WHAT IT WILL DO IN RELATION THERETO.**

**SPONSORED BY:** Planning Board  
**APPROPRIATION:** None  
**FINCOM RECOMMENDATION:** No Recommendation

**The following action was taken:**

**Voted: Yes 245, No 41 (191 needed for a 2/3 vote) to amend the Protective Zoning Bylaw in 1. Table A, the Table of Use Regulations, make the changes as noticed in Item 1 of Article 3 of the warrant for the HC/I District.**

**2. Add the following new entries to Table A, the Table of Use Regulations, Categories, Residential Use, Agricultural and Outdoor Uses and Business Uses, as noticed in Item 2 of Article 3 of the warrant.**

**3. Add a new Section 4.3.2 as noticed in Item 3 of Article 3 of the warrant.**

**4. Add a new Section 9.6 entitled "Health Care Industrial District" as noticed in Item 4 of Article 3 of the warrant.**

**5. Item 4. Section 9.6.2 reduce retail space allowance from 15% to 10 %, change restaurants from 10% to 4%**

**6. Item 4, Section 9.6.2. add the following language; Restaurants shall contain at least 5,000 square feet of gross floor area. Retail shall contain at least 10,000 square feet of gross floor area, but not more than 50,000 square feet. Supermarket shall contain at least 20,000 square feet of gross floor area. Any establishment of or use resulting in any of the uses set forth above shall require site plan approval from the Planning Board in accordance with Section 10.5**

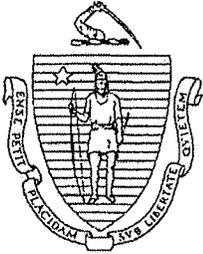
**7. Add the new definitions as printed in Item Six (6) of Article Three (3) of the warrant to Section Eleven (11) of Protective Zoning Bylaw.**

**The Finance Committee made no recommendation**

**The Planning Board recommended.**

**This article was voted by a secret ballot as required per Town By-Law.**

# **EXHIBIT C**



MARTHA COAKLEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
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March 15, 2012

Michelle L. Sokolowski, Town Clerk  
195 Main Street  
Maynard, MA 01754

**RE: Maynard Special Town Meeting of October 26, 2011 – Case # 6192**  
**Warrant Article # 4 (General)**  
**Warrant Articles # 2, 3, and 6 (Zoning)**

Dear Ms. Sokolowski:

Articles 2, 3, and 6 - We approve the amendments to the Town by-laws adopted under these Articles on the warrant for the Maynard Special Town Meeting that first convened on October 26, 2011.

On February 24, 2012, the Attorney General elected to proceed under the provisions of Chapter 299 of the Acts of 2000 (which amends G.L. c. 40, § 32) by giving notice of defects in the procedure of adopting the by-law amendments voted under the above articles. You have certified in materials dated March 13, 2012, that the notice was posted and published in accordance with the provisions of Chapter 299, and that no claims were filed with the Office of the Town Clerk within 21 days of publication. For this reason, the Attorney General is authorized by Chapter 299 to waive the defect in her review of the amendments submitted to her for approval under G.L. c. 40, § 32.

Article 4 - We approve the amendments to the Town by-laws adopted under this Article on the warrant for the Maynard Special Town Meeting that first convened on October 26, 2011.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MARTHA COAKLEY  
ATTORNEY GENERAL

*Margaret J. Hurley*

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