

ARTICLE TDR: ZONING BY-LAW SECTION 2700
TRANSFER OF DEVELOPMENT RIGHTS BY-LAW AMENDMENT:

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2700. TRANSFER OF DEVELOPMENT RIGHTS

2710. Purpose and Intent. The purpose of this By-law is to allow the development rights from one property (the sending parcel) to be transferred to another property (the receiving parcel) while contemporaneously restricting the sending parcel from future development. The TDR program is consistent with the Carver Master Plan's goals.

The Transfer of Development Rights (TDR) By-law allows for the maintenance of low-density land uses, open spaces, historical features, critical environmental resources, and other sensitive features of the sending parcel to be preserved while providing compensation to the property owner, while also sending development to areas of town with adequate water service and transportation infrastructure for appropriate growth.

The purpose of the sending area is to further the conservation and preservation of natural and undeveloped areas, wildlife, flora, and habitats for endangered species; protection of ground water, surface water, as well as other natural resources; and the preservation of historical, cultural, archaeological, architectural, recreational, community character, and scenic values of Carver. As such, they are areas with one or more of the following attributes: location on a scenic road or vista; aquifer protection land; intact forest areas; significant wildlife habitat as determined through field investigation or designation in datasets like the BioMap2 state dataset or Natural Heritage and Endangered Species program; area in the 100-year Special Flood Hazard Area or 500-year flood hazard area; adjacent to other preserved lands; significant wetland and bog areas; or areas with significant agricultural soils and practices; and areas that can host uses for passive recreation as defined per MGL 301 CMR 5.00.

The purpose the receiving area is to provide opportunity for economic growth; the provision of adequate capital facilities, including transportation, water supply, and solid, sanitary, and hazardous waste disposal facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; and the development of an adequate supply of affordable housing. As such, they are areas with one or more of the following attributes: connection or potential connection to water service; and proximity and access to arterial transportation routes.

27XX DEFINITIONS.

Sending Parcel(s) shall mean land from which development rights may be transferred to a receiving parcel(s).

Receiving Parcel(s) shall mean land that may receive development rights from a sending parcel(s).

Transfer of Development Rights (TDR) shall mean the process by which a development right (house lot) can be severed and transferred from a sending parcel(s) in the mapped designated sending area to a receiving parcel(s) in the mapped designated receiving area.

2720. Applicability. The provisions of Section 2700 shall apply to land identified as follows:

- a. **Sending areas.** Sending areas are those parcels or portions of parcels categorized as sending area on TDR Overlay Map. Any land that falls within the designated sending area on the map is part of the sending area and eligible to generate sending area development credits as part of the TDR program.
- b. **Minimum Sending Area.** A sending area must be a minimum of five acres. These five acres can be comprised of multiple adjacent parcels.

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- c. **Receiving areas.** Receiving areas are those parcels or portions of parcels categorized as receiving area on TDR Overlay Map. Any land that falls within the designated receiving area on the map is part of the receiving area and eligible to receiving development credits as part of the TDR program.
- d. The minimum gross area of a receiving area shall be 5 acres, except for (a) receiving areas in the village district, and (b) receiving areas having frontage on Route 58, which have no minimum area.

27XX. Permitted Uses on Sending and Receiving Parcels

- a. Uses Permitted on Sending Parcels. After development rights have been severed from a sending parcel and transferred to a receiving parcel or into the TDR credit bank, the following uses are the only uses permitted on the parcel:
 - i. Open space conservation.
 - ii. Passive recreation.
 - iii. Agricultural fields and support structures, with the exception of farmland workforce housing, which is not permitted.
- b. Uses Permitted on Receiving Parcels.
 - i. Certain residential uses, limited to:
 - 1. Townhouse dwellings;
 - 2. Condominium dwellings;
 - 3. Multi-family dwellings containing no more than eight dwelling units per building
 - ii. Commercial uses.
 - iii. Mixed-use buildings with residential and commercial uses.
- c. Receiving parcel mixed-use commercial space requirement. In each receiving area development, a minimum of twenty-five percent (25%) and a maximum of sixty six percent (66%) of all new constructed floor area must consist of commercial space. For the purpose of the TDR by-law, commercial space includes office space. This commercial space may be located within a stand-alone building that is fully occupied by commercial uses, or may be located in the same building as residential units. In cases where commercial uses and residential uses are located in the same building, commercial units must be located on the ground floor, with residences on the stor(ies) above.

2721. Special Permit Requirement. Properties within the designated sending and/or receiving areas may either be developed under existing By- laws and regulations or may file for a Transfer of Development Rights (TDR) Special Permit. A TDR Special Permit shall be required for the determination of sending area development rights and for the approval of receiving area development plan. **The TDR Special Permit requires sending area development potential and receiving area plans to be part of a single application.** ~~The two Special Permits may be combined into one single concurrent Special Permit or may~~

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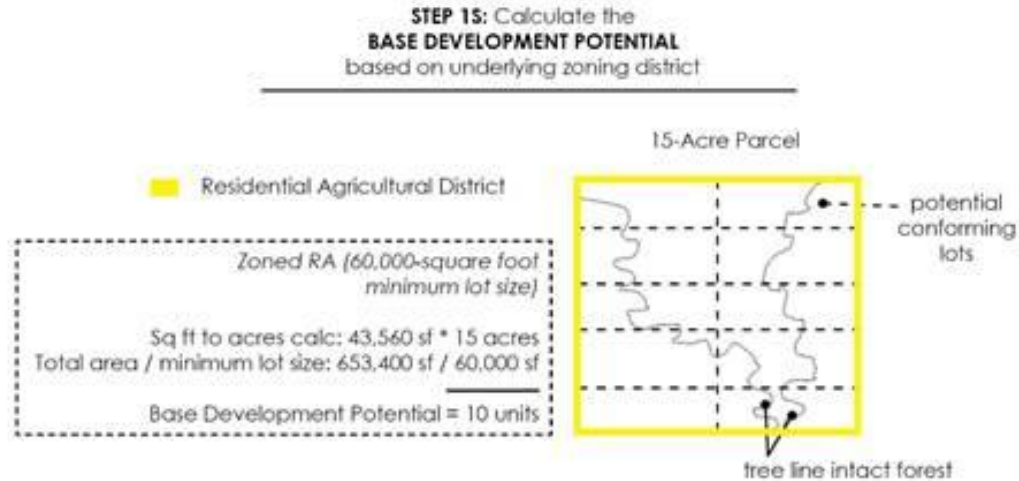
~~be filed separately.~~ The Special Permit shall ~~determination of development rights shall~~ require an **applicant to follow the steps described below, including the preparation of a preliminary** plan submittal for the sending parcel(s). The Planning Board shall be the Special Permit Granting Authority for TDR special permit(s).

2722. Determination of Sending Area Development Credits. The total amount of development credits generated by a particular sending area parcel is a function of (1) the underlying zoning district density regulations; and (2) the TDR multiplier. To establish the development rights available for transfer, the sending parcel(s)'s owner shall undertake the following steps.

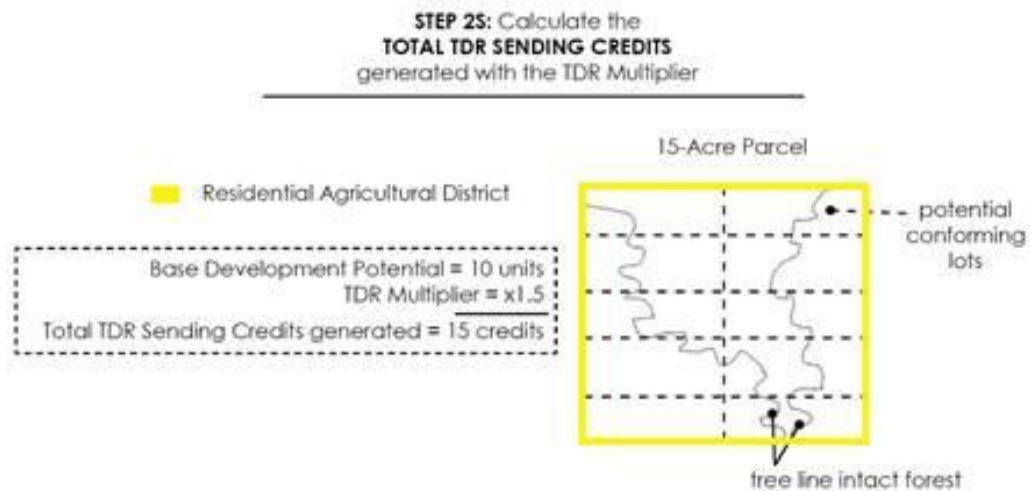
STEP 1S: Determine the base development potential. First the parcel(s) owner shall file a preliminary plan for the sending parcel(s) with the Planning Board. The preliminary plan with supporting information as deemed necessary by the Planning Board shall comply with all existing density and dimensional limitations of the base zoning district in effect at the time of application. The preliminary plan for the sending parcel(s) shall also comply with Planning Board's Rules and Regulations without the need for major waivers. The submitted preliminary plan defines the base development rights of the sending parcels by showing the number of units that could be achieved thereon in compliance with the established zoning district in which the parcel(s) are located.

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Example:



STEP 2S: Apply the TDR multiplier. The base development rights (number of units) of the sending parcel(s) as established by the Planning Board from the Preliminary Plan shall be multiplied by 1.5, and this increased amount shall be the number of development rights available under a potential TDR application. Fractions of a unit shall be rounded down. For example, if the base development rights equal 10 units, $10 \times 1.5 = 15$ units available for a TDR application. If the base development rights equal 15 units, $15 \times 1.5 = 22.5$, which is rounded down to 22 units.



The Planning Board shall note the importance of the sending parcel in the Sending lot(s) Special Permit decision. The Planning Board shall note the total number of development rights generated by the sending area.

2724. Subsequent to the issuance of a certificate of development rights to the owner of a sending parcel(s), and prior to the approval of a transfer of the development rights to a receiving parcel(s), said certificate shall be assignable as a matter of right by a recordable document from the assignor to the

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~~assignee. The assignee shall, within fourteen (14) days of recordation of an assignment, transmit to the Planning Board a certified copy of the same, in order to enable the Planning Board to keep current its certificate ledger. The assignment of a certificate of development rights shall not be deemed to be a transfer of those development rights.~~

2725. Sending area land preservation requirements. Any lot or lots from the sending parcel(s) deemed to qualify for a transfer of development rights must, prior to any utilization of transferred development rights on a receiving parcel(s), be permanently and wholly restricted from future development by way of a permanent conservation restriction in accordance with Massachusetts General Law Chapter 184, Section 31-33, as most recently amended, running in favor of the Town or non-profit organization, the principal purpose of which is conservation of open space, or by being donated to the Town of Carver for conservation purposes or by being conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space, and any other purposes set forth by the Planning Board. Draft restriction(s) or donation language on the sending lot(s) shall be submitted to the Planning Board with the application. The Planning Board shall require the restriction or donation language on the sending parcel(s) to be recorded at the Plymouth County Registry of Deeds/Land Court prior to the issuance of any building permit on the receiving parcel(s). On property which will be protected by way of a conservation restriction, a management plan(s) shall be provided to the Planning Board, which describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with best management practices. Applicants cannot claim a portion of unused development potential on a sending area as a TDR credit. To qualify as a sending area, a parcel must remain wholly in a natural state.

2726. All instruments implementing the Transfer of Development Rights shall be recorded in the manner of a deed(s) at the Plymouth County Registry of Deeds for both the sending and, when identified, the receiving parcel(s). The instrument evidencing such TDR's shall specify the map and lot numbers of the sending and receiving parcel(s).

2727. The Carver Town Assessor shall be provided by applicant, all pertinent information required by such Assessor to value, assess and tax the respective parcels at their fair market value as enhanced or diminished by the TDR's. This information shall include both the sending parcel(s) and, when identified, the receiving parcel(s) and shall be obtained from the clerk of the Plymouth County Registry of Deeds.

2728. The record owner of the sending parcel(s) or the receiving parcel(s) shall, within thirty days of the expiration of the appeal period from the special permit decision authorizing TDR's (or within thirty (30) days of the date on which the disposition of any such appeal is filed in the Town Clerk's office), record at the Registry of Deeds the special permit decision. Evidence of said recording shall be transmitted to the Planning Board within twenty (20) days of the recording of the special permit document with the Registry of Deeds. Evidence to the Planning Board shall include the date of recording and the deed book and page at which the recording can be located.

2729. The record owner of the sending parcel(s) shall, prior to the issuance of any building permit for the receiving parcel(s) and only after discussion and written agreement with the Planning Board, record at the Registry of Deeds either: a Conservation Restriction as defined by M.G.L. c. 184 §31-33, running in favor of the Town or non-profit organization, the principal purpose of which is conservation of open space, prohibiting in perpetuity the construction, placement, or expansion of any new or existing structure or other development on said sending parcel(s); or a transfer of the deed of said sending parcel(s) to a nonprofit organization, the principal purpose of which is conservation of open space, or by being donated to the Town of Carver for conservation purposes. Evidence of said recording shall be transmitted to the Planning Board indicating the date of recording and the deed book and page number at which the recording can be located. The grant of the special permit to transfer development rights shall be expressly conditioned upon evidence of the recordation of such restriction or donation prior to the issuance of any building permit for the receiving parcel.

2730. Approval of Receiving Area Development Plan. To establish the development potential available on a receiving parcel(s), the owner shall follow the following steps to calculate the receiving area

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maximum development potential. After calculations are complete, the owner shall submit a development plan(s) for the receiving parcel(s). The development plan shall conform to all regulations applicable in the zoning district in which the receiving area is located, except density and dimensional requirements.

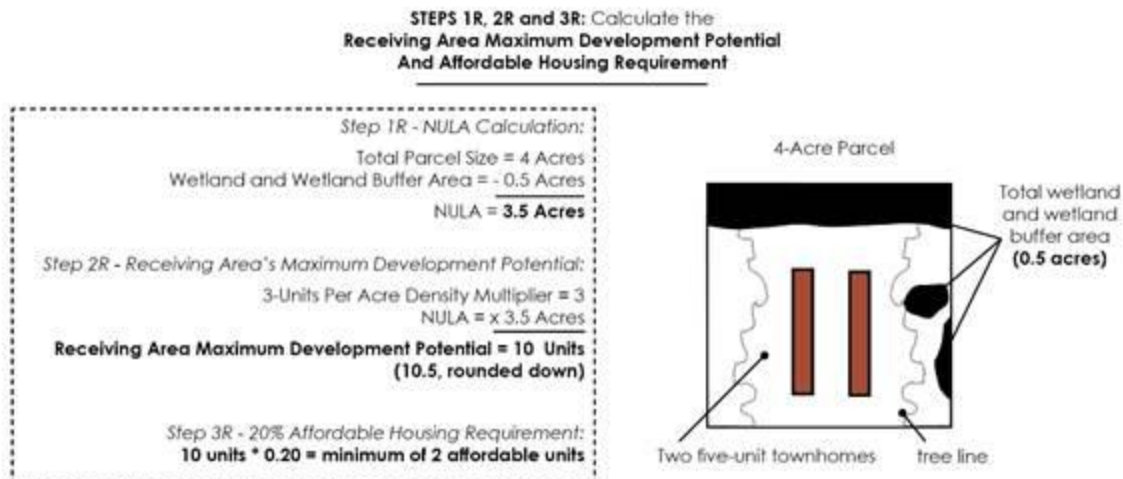
STEP 1R: Establish the Net Usable Land Area. The receiving area's maximum development potential shall be established through a Net Usable Land Area (NULA) Plan for the entire receiving area(s), which shall be submitted to the Planning Board. The NULA is established by subtracting all water bodies, wetlands, marshes, bogs and land within a sixty-five (65) foot wetland buffer area around these regulated lands. The remaining upland area is the NULA.

STEP 2R: Establish the receiving area's maximum development potential. The receiving area's maximum development potential is equal to three (3) times the NULA. The resultant figure is the number of units that can be developed on the receiving parcel(s). Fractions of a unit shall be rounded down. The total number of units allowed on the receiving parcel is equal to the receiving area maximum development potential calculation, with the exception of bonuses for any Exceptional Housing Need Overage as described below.

STEP 3R: Calculate the Affordable Housing Requirement. **For any receiving area development of five or more units, a** minimum of 20% of the housing units constructed in a receiving area that generated from the application of TDR credits onto the receiving area shall qualify as affordable housing for low- and moderate-income households as qualified and required per Massachusetts Chapter 40B regulations.

Unit calculations are rounded down to the nearest whole number.

Example:



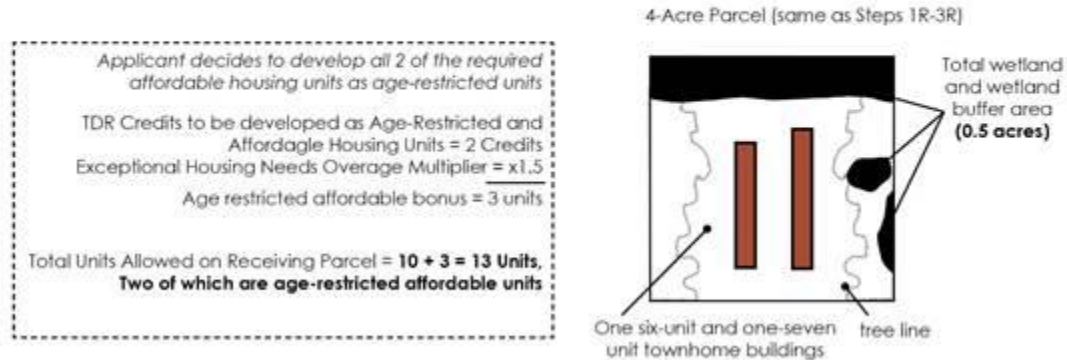
27AB. Exceptional Housing Needs Overages. In one instance, it is possible for the total number of units on a receiving area parcel(s) to exceed the receiving area maximum development potential figure. Developments that add to Caver's supply of housing for seniors generate additional development potential overages on a receiving area parcel.

Each transferred TDR credit that is to be used in the receiving area for either affordable housing that meets the requirements of Massachusetts Chapter 40B regulations that is also age-restricted housing may be multiplied by 1.5, allowing for additional TDR credit units to be applied and increasing the overall maximum permitted on the receiving parcel(s). Fractions of a unit shall be rounded down. Units constructed as a result of this allowed overage consume TDR sending credits, and cannot be constructed in absence of enough sending credits to cover the additional units.

Example:

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EXCEPTIONAL HOUSING NEEDS OVERAGE (optional) Apply **MULTIPLIER FOR AFFORDABLE AND AGE-RESTRICTED** **TRANSFER CREDITS (1.5X)**

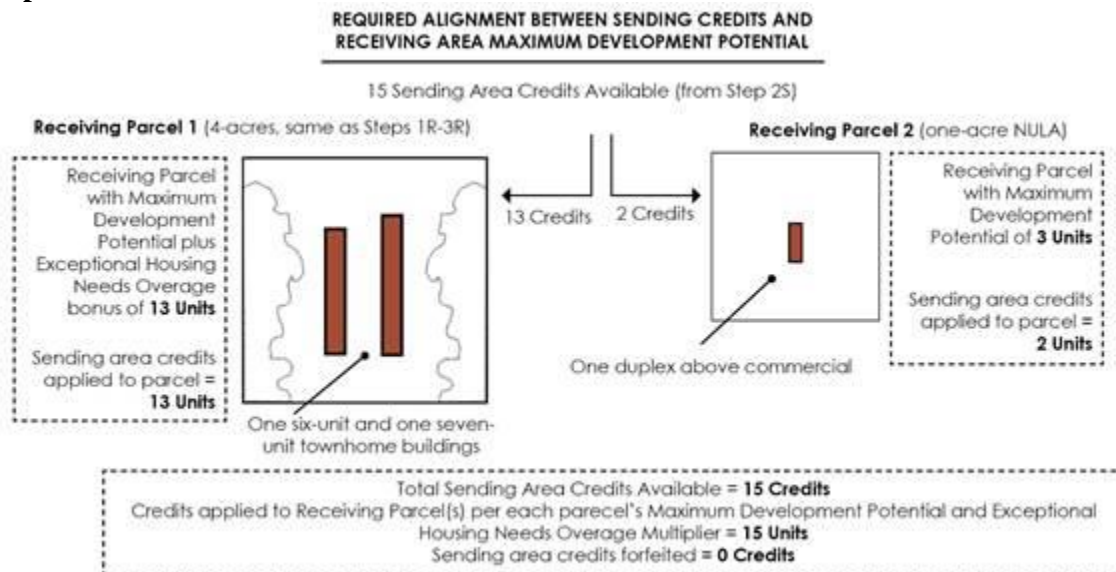


27BB: Development Credits Equalization

The calculation of total sending area credits is a separate process from the determination of the maximum number of units that can be placed on a receiving parcel, the process for which is outlined below.

If the number of credits generated by a sending parcel(s) is less than or equal to the maximum number of units that can be placed on a receiving parcel in the current TDR project under review, the sending area credits can be transferred to the receiving parcel in question. If, however, the number of credits generated by a sending parcel exceeds the maximum number of units that can be placed on a receiving parcel in a current TDR project under review, the exceeding number of credits will be forfeited. Multiple receiving parcels can be proposed to accommodate sending area credits, but the maximum development potential calculated must be respected and not exceeded for each receiving parcel that is part of an individual TDR project special permit process.

Example:



27XX: Dimensional Standards and Parking Requirements

The following Dimensional Standards shall apply:

Frontage: 40'

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Front Setback: 30' from street layout line or edge of pavement, whichever is less

Rear Setback: 25' to property line or edge of pavement (if alley access is used), whichever is less.

Side Setback: 25' to property line or edge of pavement (if alley access is used), whichever is less.

Route 58 Setback: 40' (notwithstanding the foregoing)

Building to Building Setback: One-half (1/2) of the sum of the heights of the buildings, provided that the Fire Chief certifies that there is adequate fire access to all sides of each building.

Height: 35' or 3.5 stories (subject, however, to Footnote 8 in Section 2320)

The Planning Board shall have the authority to negotiate with the applicant to modify the dimensional standards the least amount required in order to ensure that the proposed development can fit on the receiving area parcel so that the receiving area maximum development potential and all allowed unit overages can be accommodated on the receiving parcel.

The Planning Board shall have the authority to modify the number of parking spaces otherwise required by Section 3300 if one or more of the units are age-restricted.

The Receiving Area Development Plan shall show all existing legal restrictions, easements or limitations on development. The receiving parcel(s) shall have public water and public septic services available or said services shall be provided as part of the TDR special permit development approval. Packaged treatment plans can meet this requirement.

2750. TDR Special Permit Criteria. A TDR special permit may be granted by the Planning Board for the receiving parcel(s) upon its written determination that the benefits of the proposed transfer of development rights to the receiving parcel(s) outweigh the detrimental impacts of the development in the receiving area, the surrounding neighborhood, and the Town. The Board shall review and establish the positive finding for each of the following criteria:

- a. The development complies with the Carver Master Plan and Open Space and Recreation Plan;
- b. The development preserves or provides one or more of the following: water source protection land; intact forest areas; significant wildlife habitat as determined through field investigation or designation in datasets like the BioMap2 state dataset or Natural Heritage and Endangered Species program; area in the 100-year Special Flood Hazard Area or 500-year flood hazard area; adjacency to other preserved lands; significant wetland areas; significant agricultural soils and practices; or scenic vistas;
- c. The development provides adequate water and sanitary facilities;
- d. The development design is appropriate to the natural topography, soils and other characteristics of the site and to the visual character of its surroundings;
- e. Projected traffic generation from development onto local roads and intersections is within the capacity of the road network and does not create any safety concerns. If deemed necessary by the Planning Board a traffic study and/or mitigation improvements may be required to address capacity, safety and access management issues;
- f. The design and layout of streets, parking and loading of the development is acceptable to the Planning Board.

2760. Governance: Special permit applications and decisions shall be governed by the filing and public hearing requirements set forth in M.G.L. c. 40A, §.9. The Planning Board as S.P.G.A. shall have the ability to adopt rules and regulations governing the granting of special permits following the procedures set forth in MGLc.40A.