

ARTICLE 46 To see if the Town will vote to amend Chapter 10 of the General Bylaws, known as the Zoning By-Law, by adding the following clause to Section III, Subsection B, Paragraph 1.f after the words “Accessory use shall not include dwellings”:- “except as otherwise specifically provided in Section III, Subsection A, Paragraph 9” followed by the word “and”;

and

To see whether the Town will vote to amend Chapter 10 of the General Bylaws, known as the Zoning By-Law, by making the following changes to Section III, Subsection A, Paragraph 9 (“Detached One-family dwelling with Temporary Apartment”):

#1. By adding the following two sentences at the beginning of Subparagraph a:

“A temporary apartment is a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities, which is established pursuant to a special permit on the same lot as a detached single-family dwelling and which is contained within that dwelling, existing or enlarged, or attached garage. Any single-family dwelling proposed for the addition of a temporary apartment shall meet the requirements for a single-family dwelling in the zoning district or shall be a legal, non-conforming single-family dwelling with non-conformity(ies) which shall not be exacerbated by the addition of a temporary apartment.”

#2. By striking the first sentence in Subparagraph b (“If the owner(s)-occupant(s) will occupy the principal dwelling quarters, the application for a special permit and the special permit shall specify the names of all the tenants who will occupy the temporary apartment, or, if the owner(s)-occupant(s) will occupy the temporary apartment, the application and the special permit shall specify the names of all the tenants who will occupy the principal dwelling quarters.”) and by removing the period and adding the following clause and sentence after the word “nephew”:-

“or shall be a caregiver or child-care provider to an owner-occupant. A “caregiver” is defined for purposes of this Paragraph as an adult who regularly looks after an elderly, chronically ill or disabled person who needs assistance with activities of daily living; a “child-care provider” is defined for purposes of this Paragraph as an adult who provides child care services as his or her principal occupation.”

#3. By striking the words (“specified in the application for a special permit and in the special permit”) in the first sentence of Subparagraph c and by striking the second sentence of Subparagraph c (“Only the tenants specified in the special permit may reside in the premises, except for newborn or newly adopted children and for a nurse, nurse’s aide, homemaker, or other such person necessary to care for a tenant who is so specified.”) and by substituting the following second sentence in Subparagraph c:-

“Only persons who bear such a relationship to the other tenants, caregivers to other tenants and childcare providers for the children of other tenants are eligible to be tenants, and it shall be a violation of this subparagraph and the special permit issued hereunder for other persons to be tenants.”

#4. By striking the second sentence in Subparagraph d (“These designs shall show: that the temporary apartment will be created without exterior modifications to the dwelling except as may be required for safety; that in the event an additional entrance or egress is so required, it shall be unobtrusively located on the side or rear of the dwelling; that any stairway to the second or third floor shall be enclosed and be unobtrusively located on the rear of the dwelling; and that the dwelling shall retain the appearance of a single-family dwelling.”) and by substituting the following second sentence to Subparagraph d:-

“These designs shall show: the layout of the temporary apartment and the layout of the principal dwelling quarters; calculations of the square footages of each of the two dwelling units; any alterations and any additions to be made to the exterior the dwelling; separate entrances to the two units; enclosure of any new stairway to an upper story unobtrusively within the dwelling; and the preservation of the dwelling’s appearance as a single-family dwelling.”

#5. By striking the last sentence in Subparagraph d (“These designs shall be made part of the special permit so as to specify all permissible alterations for creation of the temporary apartment and the necessary alterations, including removal of kitchen facilities, which will be required to merge the space back into a one-family dwelling upon the expiration of the special permit.”) and by substituting the following sentence:-

“These designs shall be attached to or incorporated into the special permit by reference so as to specify the permissible alterations for the creation of the temporary apartment and further alterations, if any, beyond removal of the stove and refrigerator, which will be needed to merge the temporary apartment and principal dwelling quarters into a single-family dwelling in the event of termination of the special permit.”

#6. By striking the fourth, fifth, sixth and seventh sentences in Subparagraph f (“A temporary apartment shall be entirely contained within the existing dwelling or on the second floor of an attached garage. Garage parking space, which existed within five years before application for a special permit is made, cannot be used as living space in a temporary apartment or the associated principal dwelling quarters. A temporary apartment may not be located in a building which is not part of a dwelling or attached garage. During the period in which a temporary apartment exists in or has been approved for a dwelling, there shall be no enlargement of the dwelling.”) and by substituting the following sentence:-

“A temporary apartment shall be contained within the existing single-family dwelling, in addition to the dwelling and/or an attached garage and may not be located in another building.”

#7. By striking clauses 1-6 in Subparagraph g. (“A special permit for a detached one-family dwelling with temporary apartment shall terminate by reason of any of the following events: 1. Sale of the premises. 2. Residence by a tenant not named in the special permit, except for newborn or newly adopted children or for a nurse, nurse’s aide, homemaker, or other such person necessary to care for a tenant who is so named in the special permit. 3. Residence of a boarder or lodger in either the temporary apartment or in the principal dwelling quarters. 4. Failure of an owner or owners with at least a 50% ownership interest in the dwelling to have his/her/their primary residence in the dwelling. 5. Violation of any other term of the special permit which is not cured within two weeks of notice of the violation, mailed to the assessed owner by certified mail, return receipt requested. 6. The expiration of four (4) years from the date on which the special permit was granted, or the expiration of four (4) years from the date on which the special permit may have been extended.”) and by substituting the following clauses 1 - 6 in Subparagraph g.:

“g. A special permit for a detached one-family dwelling with temporary apartment shall terminate by reason of any of the following events:

1. Sale of the premises, provided, however, that the Building Commissioner shall approve a new 4-year term of the special permit for new owner(s)-occupant(s) with at least a 50% ownership interest who have made written request to the Building Commissioner in which the new owner(s)-occupant(s) ask for a new term of the special permit, acknowledge the requirements in the special permit and agree to comply with those requirements and the requirements in this Paragraph during the new term.
2. Failure of an owner or owners with at least a 50% ownership interest in the premises to have his, her or their primary residence (as determined for voting and state tax purposes) in either the principal dwelling quarters or the temporary apartment during the course of any calendar year, provided that temporary absences of up to six (6) months shall be permissible.
3. Residence by one or more ineligible tenants.
4. Residence by a boarder or lodger in either the temporary apartment or the principal dwelling quarters.
5. Violation of any other term of the special permit which is not cured within thirty (30) days of notice of the violation, mailed to the assessed owner by certified mail, return receipt requested.

6. The expiration of four (4) years from the date on which the special permit was granted, or the expiration of four (4) years from the date of a new term, provided that the Building Commissioner shall approve a new 4-year term upon written request in which the owner(s)-occupant(s) with at least a 50% ownership interest: request a new term of the special permit; certify that he/she/they are qualified owner(s)-occupant(s) and that their tenants are all eligible as provided herein; and agree to comply with the requirements of the special permit and this Paragraph during the new term. The Building Commissioner may approve a new term for a special permit which has expired (within 60 days after the date of expiration) if the Building Commissioner believes that there is reasonable cause to do so.

#8. By striking the clause (“and thereafter any extension of the special permit”) and subsequent comma in Subparagraph k.

#9. By striking Subparagraph l (“For the purposes of this paragraph a temporary apartment is defined as a separate living area within a detached one-family dwelling fitted to be occupied by tenants independent of the occupants of the principle dwelling quarters as regards preparation of food.”)

10. By adding the text of the existing Paragraph as it would be amended after inclusion of the foregoing amendments with the introductory sentence:- “As so amended, Section III, Subsection A, Paragraph 9 would read:-“

Milton Zoning Bylaw Appendix: Special Permit 1 (Section III, Subsection A, Paragraph 9)

SPECIAL PERMIT 1: Detached One-family Dwelling with Temporary Apartment

Section III, Subsection A, Paragraph 9

The Board of Appeals shall not issue a special permit for a detached one—family dwelling with a temporary apartment except upon the following conditions which shall be in writing and part of the special permit:

- a. A temporary apartment is a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities, which is established pursuant to a special permit on the same lot as a detached single-family dwelling and which is contained within that dwelling, existing or enlarged, or attached garage. Any single-family dwelling proposed for the addition of a temporary apartment shall meet the requirements for a single-family dwelling in the zoning district or shall be a legal, non-conforming single-family dwelling with non-conformity (ies) which shall not be exacerbated by the addition of a temporary apartment. The applicant(s) for the special permit must be the owner(s) of the one—family dwelling in which the temporary apartment is proposed. During the effective dates of a special permit hereunder, an owner or owners with at least a 50% ownership interest in the dwelling, shall have his/her/their primary residence either in the temporary apartment or in the principal dwelling quarters. The application shall specify whether the owner(s)—occupant(s) will dwell in the temporary apartment or in the principal dwelling quarters. For the purposes of this paragraph, "principal dwelling quarters" shall mean the portion of a one— family dwelling not included in a temporary

apartment.

b. At least one of the tenants living in the premises during the term of the special permit must bear one of the following relationships to at least one of the owner(s)—occupant(s) or to a spouse, a former spouse, or a deceased spouse of an owner—occupant: mother, father, stepmother, stepfather, child, stepchild, grandparent, grandchild, aunt, uncle, niece, nephew or shall be a caregiver or child-care provider to an owner-occupant. A "caregiver" is defined for purposes of this Paragraph as an adult who regularly looks after an elderly, chronically ill or disabled person who needs assistance with activities of daily living; a "child-care provider" is defined for purposes of this Paragraph as an adult who provides child care services as his or her principal occupation

c. Each of the tenants shall bear at least one of the following relationships to each of the other tenants: spouse, child, parent, stepchild, stepparent, brother, sister, stepbrother, or stepsister. Only persons who bear such a relationship to the other tenants, caregivers to other tenants and childcare providers for the children of other tenants are eligible to be tenants, and it shall be a violation of this subparagraph and the special permit issued hereunder for other persons to be tenants.

d. In the application for a special permit, the applicant(s) shall submit a design in adequate detail showing the layout of the temporary apartment and specifying all changes required to be made to the existing dwelling for such apartment; the applicant(s) shall submit a further design in adequate detail showing the incorporation of the temporary apartment into the principal dwelling quarters upon expiration of the special permit. These designs shall show: the layout of the temporary apartment and the layout of the principal dwelling quarters; calculations of the square footage of each of the two dwelling units; any alterations and any additions to be made to the exterior of the dwelling; separate entrances to the two units; enclosure of any new stairway to an upper story unobtrusively within the dwelling; and the preservation of the dwelling's appearance as a single-family dwelling. The designs shall also show that the temporary apartment can be readily and inexpensively incorporated into the principal dwelling quarters upon expiration of the special permit. These designs shall be attached to or incorporated into the special permit by reference so as to specify the permissible alterations for the creation of the temporary apartment and further alterations, if any, beyond removal of the stove and refrigerator, which will be needed to merge the temporary apartment and principal dwelling quarters into a single family dwelling in the event of termination of the special permit.

e. The lot on which a detached one—family dwelling with temporary apartment is located shall be of adequate size and configuration to permit the increased use without adverse impact on neighboring properties. The application for the special permit shall specify the location and amount of parking necessary to meet the needs of the occupants of the principal dwelling quarters and the occupants of the temporary apartment. Additional parking which may be required on account of the increased use shall be partially screened from neighboring properties by such planting as may be deemed adequate by the Board of Appeals. In no event shall creation of a temporary

apartment reasonably require that more than five vehicles be garaged or maintained accessory to a one—family dwelling with a temporary apartment, and no more than five vehicles shall be garaged or maintained accessory to such dwelling at any time during existence of the apartment.

f. The one—family dwelling in which a temporary apartment is located shall be of adequate size for the uses of both the temporary apartment and the principal dwelling quarters. The temporary apartment shall not contain in excess of eight hundred (800) square feet of floor area or one—third of the floor area of the dwelling, whichever is less. There shall be no more than two (2) bedrooms in a temporary apartment. ' A temporary apartment shall be contained within the existing single-family dwelling, an addition to the dwelling and/or an attached garage and may not be located in another building. During the period a temporary apartment exists, there shall be no boarders or lodgers in the principal dwelling quarters or in the temporary apartment.

g. A special permit for a detached one—family dwelling with temporary apartment shall terminate by reason of any of the following events:

1. Sale of the premises, provided, however, that the Building Commissioner shall approve a new 4-year term of the special permit for new owner(s)-occupant(s) with at least a 50% ownership interest who have made written request to the Building Commissioner in which the new owner(s)-occupant(s) ask for a new term of the special permit, acknowledge the requirements in the special permit and agree to comply with those requirements and the requirements in this Paragraph during the new term.
2. Failure of an owner or owners with at least a 50% ownership interest in the premises to have his, her or their primary residence (as determined for voting or state tax purposes) in either the principal dwelling quarters or the temporary apartment during the course of any calendar year, provided that temporary absences of up to six (6) months shall be permissible.
3. Residence by one or more ineligible tenants.
4. Residence by a boarder or lodger in either the temporary apartment or the principal dwelling quarters.
5. Violation of any other term of the special permit which is not cured within thirty (30) days of notice of violation, mailed to the assessed owner by certified mail, return receipt requested.
6. The expiration of four (4) years from the date on which the special permit was granted, or the expiration of four (4) years from the date of a new term, provided that the Building Commissioner shall approve a new 4-year term upon written request in which the owner(s)-occupant(s) with at least a 50% ownership interest: request a new term of the special permit; certify that he/she/they are qualified

owner(s)-occupant(s) and that their tenants are all eligible as provided herein; and agree to comply with the requirements of the special permit and this Paragraph during the new term. The Building Commissioner may approve a new term for a special permit which has expired (within 60 days after the date of expiration) if the Building Commissioner believes that there is reasonable cause to do so.

If the Building Commissioner has cause to believe that one of the foregoing events, numbered 2-5, has occurred, he shall schedule a hearing by the Board of Appeals for a determination whether such an event has occurred and shall give notice of the time, place, and reason for the hearing to the assessed owner(s) of the property by certified mail, return receipt requested, mailed at least two weeks before the hearing. At the hearing, the Building Commissioner or a designee shall specify the basis of his belief that one of the events has occurred, including information provided by third persons, who also may speak at the hearing. The holder of the special permit shall then have the burden of convincing the Board of Appeals that no event terminating the special permit has occurred. Unless the Board of Appeals is convinced that no such event has occurred, it shall formally revoke the special permit which shall thereupon terminate.

h. Following sale of the premises, expiration of the term of the special permit or revocation of the special permit by the Board of Appeals, there shall be no further use or occupancy of the temporary apartment separately from the principal dwelling quarters. The temporary apartment shall be incorporated with the principal dwelling quarters within sixty (60) days from the date of sale, from the date of revocation of the special permit, or from the date of expiration of the special permit, whichever occurs first. Extension of a special permit may be denied solely on the basis of prior lack of cooperation of an owner with the Building Commissioner's reasonable efforts to ascertain whether the conditions, limitations, and safeguards of the special permit were being met from time to time during the term of the special permit. Uncured violation of a condition of a special permit shall be continuing cause for its termination, whether or not notice of violation has been or might have been given at a prior time.

i. A temporary certificate of occupancy shall be issued by the Building Commissioner prior to any use of a temporary apartment pursuant to a special permit under this paragraph. Upon termination of the special permit, such temporary certificate of occupancy shall also terminate. Following termination of the special permit, after giving reasonable notice, the Building Commissioner shall inspect the premises to determine whether the temporary apartment has been incorporated into the principal dwelling quarters. Failure to so incorporate the temporary apartment into the principal dwelling quarters or to give the Building Inspector access to inspect such incorporation shall be cause for the Building Commissioner to terminate the certificate of occupancy for the dwelling.

j. For the purpose of this bylaw, each fortnight that an apartment is maintained in a one—family dwelling without compliance with this paragraph (or other provision making the use legal) shall be deemed a separate violation subject to the penalty specified in Section XI. Following termination of a special permit, failure to give the Building Commissioner access to inspect, upon reasonable notice, incorporation of the

temporary apartment into the principal dwelling quarters shall be a violation of this paragraph; for the purpose of this bylaw, each fortnight during which access is so denied shall be deemed a separate violation subject to the penalty specified in Section XI.

k. After issuance of a special permit under this paragraph, the Board of Appeals shall send copies of the special permit , and any termination of the special permit, to the Building Commissioner and to the Board of Assessors. Annually, the holder of a special permit under this paragraph shall advise the Building Commissioner that the temporary apartment is in conformity with the special permit.

Submitted by Citizens Petition. The following is a list of the first ten citizens who signed the petition:

Sean P. Fahy	202 Old Farm Road
Margaret T. Oldfield	397 Hillside Street
Kevin G. Keating	28 Harland Street
Teresa A. Kelly	132 Whittier Road
Brian Michael Bunn	139 Adams Street
Judith A. George	52 Ford Ranch Road
Michael E. Kelly	132 Whittier Road
Carol M. Stocker	291 Hillside Street
Robert C. Sweeney	156 Whittier Road
Jennifer Ann Creedon	139 Adams Street

RECOMMENDED that the Town vote to amend Chapter 10 of the General Bylaws, known as the Zoning By-Law, by adding the following clause to Section III, Subsection B, Paragraph 1.f after the words “Accessory use shall not include dwellings”:- “except as otherwise specifically provided in Section III, Subsection A, Paragraph 9” followed by the word “and”;

and

that the Town vote to amend Chapter 10 of the General Bylaws, known as the Zoning By-Law, by making the following changes to Section III, Subsection A, Paragraph 9 (“Detached One-family dwelling with Temporary Apartment”):

#1. By adding the following two sentences at the beginning of Subparagraph a:

“A temporary apartment is a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities, which is established pursuant to a special permit on the same lot as a detached single-family dwelling and which is contained within that dwelling, existing or enlarged, or attached garage. Any single-family dwelling proposed for the addition of a temporary apartment shall meet the requirements for a single-family dwelling in the zoning district or shall be a legal, non-conforming single-family dwelling with non-conformity(ies) which shall not be exacerbated by the addition of a temporary apartment.”

#2. By striking the first sentence in Subparagraph b (“If the owner(s)-occupant(s) will occupy the principal dwelling quarters, the application for a special permit and the special permit shall specify the names of all the tenants who will occupy the temporary apartment, or, if the owner(s)-occupant(s) will occupy the temporary apartment, the application and the special permit shall specify the names of all the tenants who will occupy the principal dwelling quarters.”) and by removing the period and adding the following clause and sentence after the word “nephew”:-

“or shall be a caregiver or child-care provider to an owner-occupant. A “caregiver” is defined for purposes of this Paragraph as an adult who regularly looks after an elderly, chronically ill or disabled person who needs assistance with activities of daily living; a “child-care provider” is defined for purposes of this Paragraph as an adult who provides child care services as his or her principal occupation.”

#3. By striking the words (“specified in the application for a special permit and in the special permit”) in the first sentence of Subparagraph c and by striking the second sentence of Subparagraph c (“Only the tenants specified in the special permit may reside in the premises, except for newborn or newly adopted children and for a nurse, nurse’s aide, homemaker, or other such person necessary to care for a tenant who is so specified.”) and by substituting the following second sentence in Subparagraph c:-

“Only persons who bear such a relationship to the other tenants, caregivers to other tenants and childcare providers for the children of other tenants are eligible to be tenants, and it shall be a violation of this subparagraph and the special permit issued hereunder for other persons to be tenants.”

#4. By striking the second sentence in Subparagraph d (“These designs shall show: that the temporary apartment will be created without exterior modifications to the dwelling except as may be required for safety; that in the event an additional entrance or egress is so required, it shall be unobtrusively located on the side or rear of the dwelling; that any

stairway to the second or third floor shall be enclosed and be unobtrusively located on the rear of the dwelling; and that the dwelling shall retain the appearance of a single-family dwelling.) and by substituting the following second sentence to Subparagraph d:-

“These designs shall show: the layout of the temporary apartment and the layout of the principal dwelling quarters; calculations of the square footages of each of the two dwelling units; any alterations and any additions to be made to the exterior the dwelling; separate entrances to the two units; enclosure of any new stairway to an upper story unobtrusively within the dwelling; and the preservation of the dwelling’s appearance as a single-family dwelling.”

#5. By striking the last sentence in Subparagraph d (“These designs shall be made part of the special permit so as to specify all permissible alterations for creation of the temporary apartment and the necessary alterations, including removal of kitchen facilities, which will be required to merge the space back into a one-family dwelling upon the expiration of the special permit.”) and by substituting the following sentence:-

“These designs shall be attached to or incorporated into the special permit by reference so as to specify the permissible alterations for the creation of the temporary apartment and further alterations, if any, beyond removal of the stove and refrigerator, which will be needed to merge the temporary apartment and principal dwelling quarters into a single-family dwelling in the event of termination of the special permit.”

#6. By striking the fourth, fifth, sixth and seventh sentences in Subparagraph f (“A temporary apartment shall be entirely contained within the existing dwelling or on the second floor of an attached garage. Garage parking space, which existed within five years before application for a special permit is made, cannot be used as living space in a temporary apartment or the associated principal dwelling quarters. A temporary apartment may not be located in a building which is not part of a dwelling or attached garage. During the period in which a temporary apartment exists in or has been approved for a dwelling, there shall be no enlargement of the dwelling.” and by substituting the following sentence:-

“A temporary apartment shall be contained within the existing single-family dwelling, an addition to the dwelling and/or an attached garage and may not be located in another building.”

#7. By striking clauses 1-6 in Subparagraph g. (“A special permit for a detached one-family dwelling with temporary apartment shall terminate by reason of any of any of the following events: 1. Sale of the premises. 2. Residence by a tenant not named in the special permit,

except for newborn or newly adopted children or for a nurse, nurse's aide, homemaker, or other such person necessary to care for a tenant who is so named in the special permit. 3. Residence of a boarder or lodger in either the temporary apartment or in the principal dwelling quarters. 4. Failure of an owner or owners with at least a 50% ownership interest in the dwelling to have his/her/their primary residence in the dwelling. 5. Violation of any other term of the special permit which is not cured within two weeks of notice of the violation, mailed to the assessed owner by certified mail, return receipt requested. 6. The expiration of four (4) years from the date on which the special permit was granted, or the expiration of four (4) years from the date on which the special permit may have been extended.”) and by substituting the following clauses 1 - 6 in Subparagraph g.:

“g. A special permit for a detached one-family dwelling with temporary apartment shall terminate by reason of any of the following events:

- 1. Sale of the premises, provided, however, that the Building Commissioner shall approve a new 4-year term of the special permit for new owner(s)-occupant(s) with at least a 50% ownership interest who have made written request to the Building Commissioner in which the new owner(s)-occupant(s) ask for a new term of the special permit, acknowledge the requirements in the special permit and agree to comply with those requirements and the requirements in this Paragraph during the new term.**
- 2. Failure of an owner or owners with at least a 50% ownership interest in the premises to have his, her or their primary residence (as determined for voting and state tax purposes) in either the principal dwelling quarters or the temporary apartment during the course of any calendar year, provided that temporary absences of up to six (6) months shall be permissible.**
- 3. Residence by one or more ineligible tenants.**
- 4. Residence by a boarder or lodger in either the temporary apartment or the principal dwelling quarters.**
- 5. Violation of any other term of the special permit which is not cured within thirty (30) days of notice of the violation, mailed to the assessed owner by certified mail, return receipt requested.**
- 6. The expiration of four (4) years from the date on which the special permit was granted, or the expiration of four (4) years from the date of a new term, provided that the Building Commissioner shall approve a new 4-year term upon written request in which the owner(s)-occupant(s) with at least a 50% ownership interest: request a new term of the special permit; certify that he/she/they are qualified owner(s)-occupant(s) and that their tenants are all eligible as provided herein; and agree to comply with the requirements of the special permit and this Paragraph during the new term. The Building**

Commissioner may approve a new term for a special permit which has expired (within 60 days after the date of expiration) if the Building Commissioner believes that there is reasonable cause to do so.

#8. By striking the clause (“and thereafter any extension of the special permit”) and subsequent comma in Subparagraph k.

#9. By striking Subparagraph l (“For the purposes of this paragraph a temporary apartment is defined as a separate living area within a detached one-family dwelling fitted to be occupied by tenants independent of the occupants of the principle dwelling quarters as regards preparation of food.”)

10. By adding the text of the existing Paragraph as it would be amended after inclusion of the foregoing amendments with the introductory sentence:- “As so amended, Section III, Subsection A, Paragraph 9 would read:-“

**Milton Zoning Bylaw Appendix: Special Permit 1 (Section III, Subsection A, Paragraph 9)
SPECIAL PERMIT 1: Detached One-family Dwelling with Temporary Apartment
Section III, Subsection A, Paragraph 9**

The Board of Appeals shall not issue a special permit for a detached one—family dwelling with a temporary apartment except upon the following conditions which shall be in writing and part of the special permit:

a. A temporary apartment is a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities, which is established pursuant to a special permit on the same lot as a detached single-family dwelling and which is contained within that dwelling, existing or enlarged, or attached garage. Any single-family dwelling proposed for the addition of a temporary apartment shall meet the requirements for a single-family dwelling in the zoning district or shall be a legal, non-conforming single-family dwelling with non-conformity (ies) which shall not be exacerbated by the addition of a temporary apartment. The applicant(s) for the special permit must be the owner(s) of the one—family dwelling in which the temporary apartment is proposed. During the effective dates of a special permit hereunder, an owner or owners with at least a 50% ownership interest in the dwelling, shall have his/her/their primary residence either in the temporary apartment or in the principal dwelling quarters. The application shall specify whether the owner(s)—occupant(s) will dwell in the temporary apartment or in the principal dwelling quarters. For the purposes of this paragraph, "principal dwelling quarters" shall mean the portion of a one— family dwelling not included in a temporary apartment.

b. At least one of the tenants living in the premises during the term of the special permit must bear one of the following relationships to at least one of the owner(s)—occupant(s) or to a spouse, a former spouse, or a deceased spouse of an owner—occupant: mother, father, stepmother, stepfather, child, stepchild, grandparent, grandchild, aunt, uncle, niece, nephew or shall be a caregiver or child-care provider to

an owner-occupant. A "caregiver" is defined for purposes of this Paragraph as an adult who regularly looks after an elderly, chronically ill or disabled person who needs assistance with activities of daily living; a "child-care provider" is defined for purposes of this Paragraph as an adult who provides child care services as his or her principal occupation

c. Each of the tenants shall bear at least one of the following relationships to each of the other tenants: spouse, child, parent, stepchild, stepparent, brother, sister, stepbrother, or stepsister. Only persons who bear such a relationship to the other tenants, caregivers to other tenants and childcare providers for the children of other tenants are eligible to be tenants, and it shall be a violation of this subparagraph and the special permit issued hereunder for other persons to be tenants.

d. In the application for a special permit, the applicant(s) shall submit a design in adequate detail showing the layout of the temporary apartment and specifying all changes required to be made to the existing dwelling for such apartment; the applicant(s) shall submit a further design in adequate detail showing the incorporation of the temporary apartment into the principal dwelling quarters upon expiration of the special permit. These designs shall show: the layout of the temporary apartment and the layout of the principal dwelling quarters; calculations of the square footage of each of the two dwelling units; any alterations and any additions to be made to the exterior of the dwelling; separate entrances to the two units; enclosure of any new stairway to an upper story unobtrusively within the dwelling; and the preservation of the dwelling's appearance as a single-family dwelling. The designs shall also show that the temporary apartment can be readily and inexpensively incorporated into the principal dwelling quarters upon expiration of the special permit. These designs shall be attached to or incorporated into the special permit by reference so as to specify the permissible alterations for the creation of the temporary apartment and further alterations, if any, beyond removal of the stove and refrigerator, which will be needed to merge the temporary apartment and principal dwelling quarters into a single family dwelling in the event of termination of the special permit.

e. The lot on which a detached one—family dwelling with temporary apartment is located shall be of adequate size and configuration to permit the increased use without adverse impact on neighboring properties. The application for the special permit shall specify the location and amount of parking necessary to meet the needs of the occupants of the principal dwelling quarters and the occupants of the temporary apartment. Additional parking which may be required on account of the increased use shall be partially screened from neighboring properties by such planting as may be deemed adequate by the Board of Appeals. In no event shall creation of a temporary apartment reasonably require that more than five vehicles be garaged or maintained accessory to a one—family dwelling with a temporary apartment, and no more than five vehicles shall be garaged or maintained accessory to such dwelling at any time during existence of the apartment.

f. The one—family dwelling in which a temporary apartment is located shall be of adequate size for the uses of both the temporary apartment and the principal dwelling

quarters. The temporary apartment shall not contain in excess of eight hundred (800) square feet of floor area or one—third of the floor area of the dwelling, whichever is less. There shall be no more than two (2) bedrooms in a temporary apartment. ' A temporary apartment shall be contained within the existing single-family dwelling, an addition to the dwelling and/or an attached garage and may not be located in another building. During the period a temporary apartment exists, there shall be no boarders or lodgers in the principal dwelling quarters or in the temporary apartment.

g. A special permit for a detached one—family dwelling with temporary apartment shall terminate by reason of any of the following events:

- 1. Sale of the premises, provided, however, that the Building Commissioner shall approve a new 4-year term of the special permit for new owner(s)-occupant(s) with at least a 50% ownership interest who have made written request to the Building Commissioner in which the new owner(s)-occupant(s) ask for a new term of the special permit, acknowledge the requirements in the special permit and agree to comply with those requirements and the requirements in this Paragraph during the new term.**
- 2. Failure of an owner or owners with at least a 50% ownership interest in the premises to have his, her or their primary residence (as determined for voting or state tax purposes) in either the principal dwelling quarters or the temporary apartment during the course of any calendar year, provided that temporary absences of up to six (6) months shall be permissible.**
- 3. Residence by one or more ineligible tenants.**
- 4. Residence by a boarder or lodger in either the temporary apartment or the principal dwelling quarters.**
- 5. Violation of any other term of the special permit which is not cured within thirty (30) days of notice of violation, mailed to the assessed owner by certified mail, return receipt requested.**
- 6. The expiration of four (4) years from the date on which the special permit was granted, or the expiration of four (4) years from the date of a new term, provided that the Building Commissioner shall approve a new 4-year term upon written request in which the owner(s)-occupant(s) with at least a 50% ownership interest: request a new term of the special permit; certify that he/she/they are qualified owner(s)-occupant(s) and that their tenants are all eligible as provided herein; and agree to comply with the requirements of the special permit and this Paragraph during the new term. The Building Commissioner may approve a new term for a special permit which has expired (within 60 days after the date of expiration) if the Building Commissioner believes that there is reasonable cause to do so. If the Building Commissioner has cause to believe that one of the foregoing events, numbered 2-5, has occurred, he shall schedule a hearing by the Board of Appeals for a**

determination whether such an event has occurred and shall give notice of the time, place, and reason for the hearing to the assessed owner(s) of the property by certified mail, return receipt requested, mailed at least two weeks before the hearing. At the hearing, the Building Commissioner or a designee shall specify the basis of his belief that one of the events has occurred, including information provided by third persons, who also may speak at the hearing. The holder of the special permit shall then have the burden of convincing the Board of Appeals that no event terminating the special permit has occurred. Unless the Board of Appeals is convinced that no such event has occurred, it shall formally revoke the special permit which shall thereupon terminate.

h. Following sale of the premises, expiration of the term of the special permit or revocation of the special permit by the Board of Appeals, there shall be no further use or occupancy of the temporary apartment separately from the principal dwelling quarters. The temporary apartment shall be incorporated with the principal dwelling quarters within sixty (60) days from the date of sale, from the date of revocation of the special permit, or from the date of expiration of the special permit, whichever occurs first. Extension of a special permit may be denied solely on the basis of prior lack of cooperation of an owner with the Building Commissioner's reasonable efforts to ascertain whether the conditions, limitations, and safeguards of the special permit were being met from time to time during the term of the special permit. Uncured violation of a condition of a special permit shall be continuing cause for its termination, whether or not notice of violation has been or might have been given at a prior time.

i. A temporary certificate of occupancy shall be issued by the Building Commissioner prior to any use of a temporary apartment pursuant to a special permit under this paragraph. Upon termination of the special permit, such temporary certificate of occupancy shall also terminate. Following termination of the special permit, after giving reasonable notice, the Building Commissioner shall inspect the premises to determine whether the temporary apartment has been incorporated into the principal dwelling quarters. Failure to so incorporate the temporary apartment into the principal dwelling quarters or to give the Building Inspector access to inspect such incorporation shall be cause for the Building Commissioner to terminate the certificate of occupancy for the dwelling.

j. For the purpose of this bylaw, each fortnight that an apartment is maintained in a one—family dwelling without compliance with this paragraph (or other provision making the use legal) shall be deemed a separate violation subject to the penalty specified in Section XI. Following termination of a special permit, failure to give the Building Commissioner access to inspect, upon reasonable notice, incorporation of the temporary apartment into the principal dwelling quarters shall be a violation of this paragraph; for the purpose of this bylaw, each fortnight during which access is so denied shall be deemed a separate violation subject to the penalty specified in Section XI.

k. After issuance of a special permit under this paragraph, the Board of Appeals shall send copies of the special permit, and any termination of the special permit, to the Building Commissioner and to the Board of Assessors. Annually, the holder of a special

permit under this paragraph shall advise the Building Commissioner that the temporary apartment is in conformity with the special permit.

COMMENT: The Warrant Committee supports Article 46 which would amend the Town's existing zoning provision allowing temporary apartments for family members in homeowners' homes. The temporary apartment bylaw (Zoning Bylaw Section III.A.9) was adopted in 1992. One of its purposes was to enable elderly homeowners to stay in their homes with the assistance of family. Since adoption of the bylaw there have been criticisms of some of its provisions as being unnecessarily stringent. The proposed amendments address these criticisms without substantial change to the substance of the bylaw, except that the proposed changes would allow a temporary apartment to be in an addition to a home or in an attached garage and except that the proposed changes would allow caregivers to the homeowners or child care providers to the homeowners to be tenants. The current special permit procedure would be retained, but certain administrative procedures would be amended among which are elimination of the requirement that tenants be specifically named in the permit and new provisions for renewal of the permit by a qualifying homeowner or transfer of the permit on sale without the expense of a new hearing before the Board of Appeals. The article also makes clear that, when and if the permit for a temporary apartment ends, there will be no burdensome requirements for structural changes to the home. The proposed changes are reasonable and will benefit qualifying homeowners, especially elderly homeowners. The Warrant Committee acknowledges that there is an on-going discussion with respect to "accessory dwelling units" (which are much more broadly defined than temporary apartments) and does not believe that making the desirable changes proposed in this article should negatively impact that discussion.