



Town of Phillipston

Zoning Bylaw

Twentieth Revision, May 8, 2019

Town of Phillipston, Massachusetts

ZONING BYLAW

The Following Zoning Bylaw of the Town of Phillipston, Massachusetts is adopted, amended and published in accordance with the provisions of G.L. c.40, §32, and c.40A, §5.

ACCEPTED: A special Town Meeting, March 14, 1975

APPROVED: By an act of The General Court of the Commonwealth of Massachusetts, Chapter 448, of the Acts of 1975.

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Second Revision – Approved October 30, 1978

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TOWN OF PHILLIPSTON ZONING BYLAW

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SECTION 1. PURPOSE

PURPOSE:

The purpose of these Zoning Bylaw is to protect the health and safety of the inhabitants of Phillipston; to secure the proper growth of the Town by encouraging the most appropriate use of the land; to stabilize the value of the land; to maintain the beauty of the Town; to reduce the hazard of fire by regulating the location of buildings; in accordance with the Zoning Act.

SECTION 2. DEFINITIONS

DEFINITIONS: The following terms, unless a contrary meaning is required by the context or is specifically described, shall have the following meaning:

1. **ACCESSORY STRUCTURE:** A structure subordinate to the principal building on the same lot and serving a purpose customarily incidental to the use of the principal building including such structures as tool sheds, garages, swimming pools, whether in or above ground, and other recreational facilities. The term “accessory structure” shall not include barns, or guest houses, and other structures designed for human occupancy, whether or not attached to the principal buildings.
2. **ACCESSORY USE:** The use of a lot or structure for a purpose customarily incidental to the primary use of the property and which is subordinate to the primary use and minor in significance.
3. **AGRICULTURE:** Refer to G.L. c.128 §1A.
4. **ALTERATION:** A change in external form, shape, or size of a building or structure or a change in the use of such building, structure or land.
5. **APPLICANT:** An owner, or his agent or representative who applies, petitions or appeals for a decision from any agent or board referred to herein.
6. **AUTOMOTIVE REPAIR SHOP:** Any premises used for performing such major automotive works as (a) spray painting; (b) reupholstering; (c) body, fender, clutch, transmission, differential axle, spring and frame repairs; (d) major overhauling of engines; and (e) complete recapping or retreading of tires. An automotive repair shop also may perform the functions permitted of an automotive service station.

7. AUTOMOTIVE SERVICE STATION: Any premises used for supplying gasoline and oil, tires, accessories, and services for automobiles, including the making of minor repairs, directly to the motorist consumer and excluding the major overhauling of engines.
8. BUILDING: Any roofed structure, permanently located on the land, used for housing or enclosing persons, animals, or material.
9. BUILDING HEIGHT: The vertical measurement of a building from the main level of the ground surrounding the building to the highest points of the roof excluding chimneys, antennas, water tanks, silos, and similar structures.
10. BUILDING LINE: An imaginary line drawn parallel to the frontage of the lot from one boundary side line to the opposite boundary side line. This line shall be drawn at the point of the building nearest the frontage of the lot.
11. BUILDING (PRINCIPAL): A building in which is conducted the principal use of the lot on which it is situated.
12. CANNABIS CONTROL COMMISSION CCC: The Massachusetts Cannabis Control Commission established by G.L. c. 94G and G.L. c. 10, § 76, or its designee. The Commission has authority to implement the state marijuana laws, which include, but are not limited to, St.2016, c.334 as amended by St. 2017, c. 55, G.L. c.94G, and 935 CMR 500.000.
13. CHILD CARE CENTER: Please refer to G.L. c.15D §1A
14. COMMERCIAL LANDFILL: A landfill operation, as defined in the Regulations of the Massachusetts Department of Public Health (per Chapter 111, Section 150A of the General Laws, as amended) and operated with a profit making objective. Landfill is a method of disposing of compacted solid waste in a manner certain not to endanger public health or public safety and which will neither harbor rodents, flies, or other vermin, or generate fires, smoke or other odors.
15. CONDOMINIUM: A single family attached or detached dwelling unit, with the exclusive right to use and occupy the condominium unit and to use and enjoy the common areas and any other rights and easements appurtenant to the condominium unit. For the purposes of these Zoning Bylaws, condominiums shall be considered the same as two family or multifamily dwellings.

16. DWELLING UNIT: One or more rooms which are arranged, designed or used as living quarters for one family only and which include individual bathrooms and complete permanently installed kitchen facilities.
17. DWELLING: Any building containing one or more “dwelling units”. The term “dwelling unit” shall not include hotels, motels, rooming or nursing homes, trailers, or mobile homes.
18. DWELLING (MULTIFAMILY): Any building designed to be occupied by three or more families living independently of each other.
19. DWELLING (SINGLE FAMILY): A detached building designed to be occupied by a single family and having no party wall or walls in common with an adjacent structure.
20. DWELLING (TWO FAMILY): A detached building designed for two families.
21. EXPANSION: The physical enlargement of a structure in any direction above ground level.
22. FUR FARM: A place for keeping fur-bearing animals for commercial purposes.
23. GARAGE (PRIVATE): A building used for the storage of one or more automotive vehicles owned or used by the owner or tenant of the premises. A private garage is considered an accessory building.
24. GOLF COURSE: as an area of land, including appurtenances structures, buildings, and club house that are used to support the play of golf
25. HOST COMMUNITY AGREEMENT(HCA): An agreement, pursuant to General Laws, Chapter 94G, § 3(d), between a Marijuana Establishment and the Town of Phillipston setting forth the conditions for the operation of a Marijuana Establishment within the Town.
26. HOTEL: A building in which lodging is offered for compensation in more than ten rooms not containing cooking facilities and to which a common lobby provides access.
27. JUNKYARD: An outdoor space used primarily for the storage, exchange or sale of discharged or salvage materials including two or more motor vehicles not in running condition and not being restored to operation, but not including the purchase or storage of used furniture and house-hold equipment, and used or salvaged materials as part of manufacturing operations.
28. KENNEL: One pack or collection of dogs on a single premises whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any shop where dogs

are on sale, and also including every pack or collection of more than four dogs six months old or over owned or kept by a person on a single premises irrespective of the purpose for which they are maintained.

29. LINE (FRONT LOT): The front lot line is the line separating the lot from the street layout line.

30. LINE (REAR LOT): The lot line opposite and most distant from the front lot line.

31. LINE (SIDE LOT): Any lot line not a front or rear lot line.

32. LIVING AREA: The area enclosed by the outside walls of a dwelling and commonly used as living quarters by the occupants excluding heated attached garages, porches, and breezeways.

33. LOT: Except as otherwise provided herein, a parcel of land occupied or intended to be occupied by one building or use, as well as any accessory uses or structures, and which is defined in deed or plan recorded with the Worcester County Registry of Deeds or Worcester Registry District. No land which is within the boundaries of a street, accepted, proposed or dedicated shall be included in determining lot area.

34. LOT AREA: Area within a lot.

35. LOT (BUILDING): A tract of land under separate ownership which is, or can be, occupied by a principal building and the structures and areas accessory to it, having frontage on a street and defined by measurements and/or boundaries in a deed and plan.

36. LOT COVERAGE - that portion of the total lot area which is covered by buildings, structures, and impervious surfaces.

37. LOT DEPTH: The average horizontal distance between the front and rear lot lines.

38. LOT FRONTAGE: A continuous and uninterrupted section of the front lot line.

39. LOT LINE: A division line between adjoining properties or a division line between individual lots.

40. LAYOUT LINE (Street): The line established by the public authority in laying out the street upon which the lot abuts.

41. LIGHT MANUFACTURING : Fabrication, assembly, finishing, packaging, processing or research such that the following criteria are met: (a) no noise, vibration or flashing is perceptible above street noise without instruments at any point more than 350 feet from the premises; (b) smoke density does not exceed #2 of the Ringelmann Scale for more than 10% of the time and at no time exceeds #3 on that scale; (c) all cinders, dust, fumes, gases, odors and electromagnetic interference is effectively confined to the premises.

42. MOBILE HOME OR TRAILER: A structure used as a dwelling unit built on a chassis containing complete electrical, plumbing, and sanitary facilities, including a “manufactured home” as defined in the Manufactured Housing Act, G.L. c.140, §32Q. If the mobile home or trailer is placed on a continuous masonry foundation so as to be immobile it shall nevertheless be considered a mobile home or trailer.

43. MOBILE HOME PARK: Any lot or tract of land upon which three or more mobile homes occupied for dwelling purposes are located, including any building, structures, fixtures, and equipment used in accordance with the Manufactured Housing Act, G.L. c. 140, §§32A-32S .

44. MOTEL: An establishment designed primarily for transient automobile travelers, offering lodging for compensation in four or more units with access to each unit or group of units directly from the outside.

45. NON-CONFORMING USE: Any lawful use or accessory use existing at the time of the enactment or subsequent amendment of this bylaw, and not in conformance to the regulations of this bylaw.

46. OFF-SITE MEDICAL MARIJUANA DISPENSARY (OMMD):

REGISTERED MARIJUANA DISPENSARY (RMD): Also known as a Medical Marijuana Treatment Center, is an entity registered under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible cannabis or marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing cannabis or marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use.

RECREATIONAL MARIJUANA ESTABLISHMENT (RME): A marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, marijuana retailer, independent testing laboratory, marijuana research facility, marijuana transporter, or any other type of licenses marijuana-related business as defined in 935 CMR 500.

47. PARKING SPACE: An area of not less than 200 sq. ft. in a building or on a lot available for parking one motor vehicle, exclusive of passage-way and driveways appurtenant thereto and with free access.

48. PRINCIPAL FLOOR LEVEL: The first floor that contains the primary living quarters.

49. RESIDENTIAL OFFICE OR STUDIO: An office or studio maintained by a person resident on the premises and provided that no person not regularly residing on the premises is employed therein.

50. RETAIL STORE: A business selling commodities directly to the ultimate customer.

51. SIGN: Any writing, pictorial representation, emblem, or other figure of similar character, which (a) is a structure or any part thereof, or is attached to, printed on or in any manner represented on a building, and (b) is used to announce, direct attention to, or advertise, and (c) is visible from outside a building. A sign shall include writing, representation, or other figures of similar character within only when illuminated and located in a window.

52. STANDING SIGN: Any exterior sign that is not attached to a building.

53. STORE: Shall include any establishment, office or place of business.

54. STREET: A public way, or a way shown on a plan approved in accordance with the subdivision control law, or a way in existence on August 16, 2006, and having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the BUILDINGS erected or to be erected thereon. A way that has not been accepted as a public way, and which is shown on a plan approved in accordance with the subdivision control law shall not be deemed a street until it has been constructed to an extent which the Planning Board, in its conditions of approval, specifies as sufficient to provide access to the lots thereon.

55. STRUCTURE: A combination of materials assembled at a fixed location to give support or shelter or for other purposes. Included are buildings, frameworks, sheds, platforms, towers, and similar objects.

56. YARD (FRONT): The space across the full width of the lot and extending from the front line of the building located on such lot to the highway layout line of such lot

57. YARD (REAR): The space across the full width of the lot and extending from the rear foundation line of the building located on such lot to the rear line of such lot.

58. YARD (SIDE): The space extending from the front yard to the rear yard between a building and the adjacent side line of the lot on which said building is located.

59. QUARRYING: An open excavation or pit for the purpose of obtaining stone by cutting, blasting, ripping or hammering.

60. EARTH: The solid part of the planet Earth existing in various forms such as soil, sod, loam, peat, humus, clay, stone, sand or gravel.

SECTION 3. ADMINISTRATION

ADMINISTRATION: This Bylaw shall be administered and enforced by the Building Inspector. A permit shall be required before any building shall be erected or altered, in accordance with the Massachusetts state building code.

1. Applications for permits shall be accompanied by two prints of a plan of the lot, drawn to scale, showing the actual dimensions of the lot, exact locations and size of any existing or proposed buildings, and the streets and ways adjacent to the lot. Applications shall contain such other information as may be required to be supplied on forms provided for that purpose.
2. A building permit shall become void unless construction is commenced within six (6) months of the date of issue and completed within two years of the date of issue or such later time as may be allowed by the granting authority.
3. A building permit shall be required for any accessory building(s), in accordance with the Massachusetts state building code.
4. Any violation of any provision of this Bylaw after receiving notice thereof by the Building Inspector shall be punishable by a fine of not more than \$100.00. Each violation and each day of violation shall constitute a separate offense.

SECTION 4. OFF-STREET PARKING AREA REQUIREMENTS:

Any use, established or expanded following the adoption of this Bylaw, must provide adequate off-street parking area for parking demands created by such use. This parking area shall be either on the same premises as the use it serves, or within 125 feet on a separate parcel. Such parking area may be jointly used with other premises but may not include a municipal parking area. The following

minimums must be met unless reduced by special permit from the Zoning Board of Appeals, upon determination that special circumstances exist so that a lesser requirement shall be adequate for all parking needs created by the proposed expanded use.

<i>A. TABLE OF REQUIREMENTS</i>	
USE	PARKING SPACES REQUIRED PER UNIT OF MEASUREMENT
1. RESIDENTIAL	
a. Single-family	2 for each dwelling unit
b. Two-family	2 for each dwelling unit
c. Motel, Hotel	1 for each sleeping room
2. OFFICES, BANKS, STORES	1 for every 200 sq. feet of area
3. RESTAURANTS, THEATERS, PLACES OF ASSEMBLY	1 for every 3 seats plus 1 for each employee on the largest shift
4. INDUSTRIAL-COMMERCIAL	1 for each 1.2 employees on largest shift
5. HOSPITAL NURSING HOMES AND OTHER HEALTH INSTITUTES	1 for every 2 beds plus 1 for each employee on the largest shift
6. BOWLING	3 for each lane
7. OTHERS	By special permit from the Board of Appeals

B. ENTRANCES & DRIVEWAYS

No entrance or driveway leading to a public way shall be constructed until proper provisions for the disposal of surface water which might otherwise flow onto said public way has been made. Such drainage provision to be approved by the Highway Superintendent.

C. MINIMUM DIMENSIONS OF COMMERCIAL-INDUSTRIAL PARKING SPACES

The minimum dimensions of Commercial-Industrial parking spaces shall be as follows:

- a) space width shall be at least ten (10) feet. Space depth shall be at least twenty (20) feet for all angle parking.
- b) space width shall be at least ten (10) feet. Space depth shall be at least twenty-two (22) feet for parallel parking.

D. LANDSCAPING

All open off-street parking areas for more than four (4) cars located in all districts, shall provide a planting strip from the street line to the parking lot line. Landscape design for the planting strip shall be approved by the Planning Board.

SECTION 5. USE DIMENSIONAL AND INTENSITY REGULATIONS

A. GENERAL

Accept as provided in this Bylaw, no building or structure shall be constructed, and no building, structure or land, or part thereof shall be used for any purposes or in any manner other than for one or more of the uses hereinafter designated as allowed as of right in the district in which such buildings, structure or land is located, or designated as permissible by special permit by said district and so authorized.

In the following table, the letters “Y”, “N”, “SP”, and “PSP” shall indicate the following.

Y	a use permitted as a matter of right, upon compliance with all the applicable provisions of this Bylaw.
N	a prohibited use.
SP	a use permitted only by special permit from the Board of Appeals after a public hearing.
PSP	a use permitted only by a special permit granted by the Planning Board after a public hearing.

Key for districts on the Table of Uses:

RA	Residential-Agricultural
CI	Commercial-Industrial
REC	Recreation

1. The above districts are located and bounded as shown on a map entitled “Zoning Map” on file in the office of the Town Clerk. The Zoning Map with all explanatory matter thereon is hereby made part of this Bylaw.
2. Except when labeled to the contrary boundary or dimension lines shown approximately following or terminating at street center lines, boundary or lot lines or the channel of a stream, are actually those lines; when shown approximately parallel, perpendicular, or radial to such lines, are exactly parallel, perpendicular, or radial thereto. When not located in any other way, boundaries shall be determined by the graphic scale on the map.
3. Where a district boundary line divides any lot or parcel of land in existence at the time the district is established, of the two districts involved, the owner has the right and option of extending the district of his choice fifty (50) feet into the other district.

B. TABLE OF USES

Use Key: Y= permitted SP = special permit only
 N= prohibited PSP = planning board special permit only

<u>USE</u>		<u>DISTRICT</u>		
		RA	CI	REC
1.	RESIDENTIAL			
a.	Single family dwelling	Y	Y	Y
b.	Two family dwelling	Y	Y	Y
c.	Multifamily dwelling	PSP	PSP	N
d.	Residential office or studio or workshop	Y	Y	Y
e.	Accessory Use and Home Occupations	Y	Y	Y

f.	Private garage for storage of more than three vehicles or more than one truck, not to exceed a rating of more than one ton	Y	Y	Y
g.	Manufactured Housing Community	PSP	PSP	N
<u>USE</u>		<u>DISTRICT</u>		
		RA	CI	REC
2.	COMMERCIAL			

a.	Indoor eating places; drugstores, self-service Laundromats; retail stores selling food or alcohol not intended for consumption on the premises, smoking supplies, periodicals, books, stationery, toys, hardware, electrical appliances, sport equipment, art and craft supplies, shoes and clothing; service businesses, including banks, barber, hairdressing and beautician shops, shoe or clothing repair shops, laundry and dry cleaning establishments and electrical appliance repair shops, business and professional offices, storage units.	N	Y	N
b.	Any combination of the above category for which the total floor space exceeds 5,000 sq. ft.	N	SP	N
c.	Hotel, motel, or outdoor eating places	N	Y	N
d.	Automotive repair shop, new or used car or marine craft sales establishment; commercial car wash facilities	N	Y	N
e.	Establishment for the sale of farm and other heavy machinery and vehicles	N	Y	N

f.	Light manufacturing including metal stamping, assembling precision machine shops, and laboratories engaged in research experimental and testing activities	N	Y	N
g.	Mortuaries, funeral homes	N	Y	N
h.	Automotive service station	N	Y	N
i.	Establishment for the sale and storage of building equipment, or supplies not considered to be hardware; warehouses	N	Y	N

j.	Veterinary hospital or pet shop (A special permit for this category automatically grants a special permit for a Class B kennel)	N	SP	N
k.	Wireless Communication Facilities	SP	SP	S
l.	Adult Entertainment Establishments	N	SP	N
m.	All forms of commercial use not specifically mentioned above	N	SP	N
n.	Registered Marijuana Dispensary (RMD)	N	Y*	N
o.	Off-Site Medical Marijuana Dispensary (OMMD)	N	Y*	N
p.	Recreational Marijuana Establishments (RME)	N	Y*	N

* RMDs, OMMDs, and RMEs are allowed by right only in the Commercial Zone on lots having frontage and access along Route 2A/State Road and within 400 feet set back from the front lot line

<u>USE</u>	<u>DISTRICT</u>		
	RA	CI	REC

3.	INDUSTRIAL			
a.	Textile and paper mills, iron, steel and metal foundries, concrete manufacturing and washed sand and gravel plants; sale and storage of concrete products	N	SP	N
b.	Removal, storage and/or sale of sand, gravel, loam, clay or other earth (over 1000 cubic yards in a calendar year)	N	SP	N
c.	Quarrying	N	N	N
d.	All forms of manufacturing, storage and assembly not specifically mentioned above	N	SP	N
USE		DISTRICT		
		RA	CI	REC
4.	INSTITUTIONAL AND PUBLIC			
a.	Church, rectory, parish house or structure for religious use; or school which is sectarian, denominational, public or non-profit	Y	Y	Y

b.	Non-religious, sectarian or denominational, school which is profit making, non-profit library, museum, art gallery	Y	Y	Y
c.	Child Care Center	Y	Y	N
d.	Non-profit building, park, structure or area dedicated to municipal community or governmental use or service	Y	Y	Y
e.	Hospital or nursing home	SP	Y	N

f.	All forms of institutional and public uses not mentioned above or not otherwise protected under G.L. c.40A §3 (the special permit requirement in this catchall provision is not intended to apply to uses protected under G.L. c.40A §3.)	SP	SP	N
USE		DISTRICT		
		RA	CI	REC
5.	<u>SCIENTIFIC RESEARCH & DEVELOPMENT</u>			
a.	Activities connected with scientific research or scientific <u>development or related production</u>	N	Y	N
b.	Accessory use connected with scientific research or scientific development or related production	N	Y	N
6.	<u>AGRICULTURE LIVESTOCK AND FOWL</u>			
a.	Commercial farm, orchard, nursery, or truck garden and building and structures and associated therewith	Y	Y	N
b.	Raising, boarding, breeding or keeping of livestock and fowl for Family use and buildings and structures associated therewith	Y	Y	Y

c.	Commercial raising, boarding, breeding or keeping of livestock and fowl and buildings and structures associated therewith (no special permit required if operation qualifies for protection under G.L. c.40A §3)	SP	Y	N
d.	All forms of agriculture, livestock and fowl uses not mentioned (no special permit required if operation qualifies for protection under G.L. c.40A §3)	SP	SP	SP
7.	<u>DOGS AND CATS</u>			
a.	Class A kennel (4 dogs, 6 months old or over)	SP	SP	SP
b.	Class B kennel (5-10 dogs, 6 months old or over)	SP	SP	N
c.	Class C kennel (11-25 dogs)	N	SP	N
d.	Class D kennel (over 25 dogs, 6 months old or over)	N	SP	N
e.	Dog and cat shelter or refuge (A special permit for this category automatically grants a special permit for a Class B kennel).	N	SP	N
8.	<u>RECREATIONAL</u>			
a.	Parks, campgrounds and facilities for recreation	SP	SP	SP
b.	Indoor places of commercial amusement	N	Y	SP
c.	Outdoor places of commercial amusement	N	Y	SP
d.	Golf Course	SP	Y	SP

e.	Historical sites	Y	Y	Y
f.	Cemetery and operations associated therewith	Y	Y	N
g.	All forms of recreational uses not mentioned above	SP	SP	SP

C. DIMENSIONAL REQUIREMENTS

USE	DISTRICT		
	RA	CI	REC
MINIMUM LOT REQUIREMENTS FOR SINGLE FAMILY DWELLING UNIT			
Area, in square feet	80,000	80,000	80,000
Frontage, in linear feet on a public or private way	200	200	200
MINIMUM LOT REQUIREMENTS FOR DUPLEX DWELLINGS			
Area, in square feet	120,000	120,000	N/A
Frontage, in linear feet on public or private way	225	225	N/A
MINIMUM LOT REQUIREMENTS FOR COMMERCIAL, INDUSTRIAL, INSTITUTIONAL AND PUBLIC BUILDING			
Area, in square feet	40,000	40,000	40,000
Frontage, in linear feet on a public or private way	125	125	125
MINIMUM LOT REQUIREMENTS FOR MULTIFAMILY DWELLING			
Area, in square feet			
Three family dwelling unit	160,000	160,000	N/A
Each additional family unit	40,000	40,000	N/A
Frontage, in linear feet on a public or private way			
Three family dwelling unit	300	300	N/a
Each additional family unit	200	200	N/A

<i>MINIMUM YARD REQUIREMENTS</i>	<i>RA</i>	<i>CI</i>	<i>REC</i>
Front yard: linear feet between any building and the front lot line	35	35	35
Side yard: linear feet between any building and the side lot line	20	20	20
Rear yard: linear feet between any principal building and the rear lot line	35	35	35
<i>MAXIMUM BUILDING</i>			
Coverage of lot in square feet by percent (%)	25	40*	25
Height in feet from ground line	35	50	35

The maximum height given under the residential-agriculture zone refers to dwellings only and shall in no way prevent or limit farm use such as silos or barns, etc.

*The percentages noted above are applicable to industrial or business buildings only, coverage percentages for homes are to be the same as set out in column captioned “RA” Residential-Agricultural.

SECTION 6. SPACE REQUIREMENTS AND DIMENSIONS

No lot used for dwelling purposes shall contain more than one dwelling structure, together with accessory buildings. The following minimum requirements (see intensity of use schedule) for lot frontage, area and open spaces adjacent to building shall be required.

The MAXIMUM HEIGHT of dwelling shall be two and one half stories or thirty-five (35) feet from the ground line excluding chimneys, vents, or ornamental spires, etc.

ACCESSORY BUILDING whether detached or attached to the principal building are subject to the same front and side yard clearances applicable to the principal building. A detached accessory building in a rear yard may be located as close as ten (10) feet to a side or rear lot line but may cover no more than forty percent (40%) of the area of the rear yard.

Every lot used for MULTIFAMILY DWELLING purposes shall conform to the regulations set forth in the intensity of use schedule.

SECTION 7. MINIMUM LANDSCAPING

1. All disturbed or excavated areas shall be landscaped, except the parking and driveway area.

2. Such minimum landscaping shall be completed in a reasonable period of time not to exceed four (4) years from the start of house or building construction.

SECTION 8. ACCESSORY USE and HOME OCCUPATIONS

- A. **PURPOSE:** This section has been adopted to promote the following purposes:
 1. To provide small, additional dwelling units to rent without adding to the number of buildings in the Town, or substantially altering the appearance of the Town;
 2. To enable owners of single-family dwellings larger than required for their present needs, particularly elderly homeowners, to share space and the burdens of home ownership;
 3. To provide additional living space for extended family members.
- B. **SPECIAL PERMIT REQUIRED:** Accessory dwelling units may be allowed by special permit by the Zoning Board of Appeals, which shall terminate either upon transfer of the ownership of the premises or when the owner no longer occupies the premises as his legal residence, and subject to the following considerations.
- C. **PROCEDURES:** An application for a special permit shall be governed by the following procedures:
 1. **Plot Plan:** A plot plan, prepared by a Registered Land Surveyor, of the existing dwelling unit and proposed accessory dwelling unit shall be submitted to the Board of Appeals, showing the location of any septic system and required parking. A mortgage inspection survey, properly adapted, shall be sufficient to meet this requirement.
 2. **Board of Health:** Any special permit application shall be subject to review and approval by the Board of (Title V of the State Environmental Code). Therefore, applicants are encouraged to seek Board of Health review prior to making an application to the Board of Appeals. The Board of Health shall also approve water supply resulting from the proposed accessory dwelling unit as adequate for the proposed construction.
 3. **Affidavit:** Certification by affidavit shall be provided that one of the two dwelling units shall be occupied by the owner of the property at least six months in any calendar year.
- D. **STANDARDS:** Accessory dwelling units shall be subject to the following standards:
 1. **Limit:** Not more than one accessory dwelling unit may be established on a lot. The accessory dwelling unit shall not exceed 33% of the gross living space of the existing or expanded principal structure of 800 square feet, whichever is greater.
 2. **Location:** The accessory dwelling unit may be located in the principal structure or in a detached accessory structure, provided however, that an accessory dwelling unit may be

located in such detached accessory structure only where such detached accessory structure has been in existence for at least ten (10) years.

3. Appearance: The external appearance of the structure in which the accessory dwelling unit is to be located shall not be significantly altered from the appearance of a single-family structure, in accordance with the following:
 - a) Any accessory dwelling unit construction shall not create more than a 15% increase in the gross floor space of the structure;
 - b) Any stairways or access and egress alterations serving the accessory dwelling unit shall be enclosed, screened, or located so that visibility from public ways is minimized;
 - c) Sufficient and appropriate space for at least one (1) additional parking spaces shall be provided by the owner to serve the accessory dwelling unit. Said parking space shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway; and
 - d) All construction and/or renovation shall be performed in accordance with the applicable requirements of the State Building Code.

E. CONDITIONS FOR ISSUANCE AND RENEWAL OF SPECIAL PERMITS: The initial term and subsequent terms of a special permit for an accessory dwelling unit shall terminate upon transfer of the ownership of the premises or when the owner no longer occupies the premises as his or her legal residence. Subsequent special permit issuances for existing accessory dwelling units may be granted after certification by affidavit is made by the applicant to the Zoning Board of Appeals that the accessory dwelling unit has not been extended, enlarged, or altered to increase its original dimensions, as defined in the initial special permit application.

F. DECISION: Special permits for an accessory dwelling unit may be issued by the Zoning Board of Appeals upon a finding that the construction and occupancy of the dwelling unit complies with foregoing provisions and will not be detrimental to the neighborhood in which the lot is located and after consideration of the criteria specified.

G. HOME OCCUPATIONS:

- a. Home Occupations As of Right: Businesses or professions incidental to and customarily associated with the principal residential use of premises may be engaged in as an accessory used by a resident of that dwelling, provided however, that all of the following conditions shall be satisfied:

- 1) The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto, which has been in existence for at least five (5) years, without extension thereof.
 - 2) No person not a member of the household shall be employed on the premises in the home occupation.
 - 3) The home occupation shall not serve clients, customers, pupils, salespersons, or the like on the premises.
 - 4) There shall be no sign, exterior display, no exterior storage of materials, and no other exterior indication of the home occupation, or other variation from the residential character of the premises.
 - 5) No disturbance shall be caused, nor shall the home occupation use or store hazardous materials in quantities greater than associated with normal household use.
 - 6) Traffic generated shall not exceed volumes normally expected in a residential neighborhood.
- b. Home Occupations By Special Permit: Businesses or professions incidental to and customarily associated with the principal residential use of premises may be engaged in as an accessory use by a resident of that dwelling upon the issuance of a special permit by the Planning Board, provided however that all of the following conditions shall be satisfied:
- 1) All of the requirements of Sections 4 & 5
 - 2) Not more than one (1) person who is not a member of the household shall be employed on the premises in the home occupation.
 - 3) An unlighted sign of not more than six (6) square feet may be permitted. The visibility of exterior storage of materials and other exterior indications of the home occupation, or other variation from the residential character of the premises, shall be minimized through screening and other appropriate devices.
 - 4) Parking generated by the home occupation shall be accommodated off-street, other than in a required front yard.
 - 5) No disturbance shall be caused. The use or storage of hazardous materials in quantities greater than associated with normal household use shall be subject to design requirements to protect against discharge to the environment.

SECTION 9. SIGNS OR SIGN LIGHTS

With the exception of municipal or governmental signs and lights, no signs or lights shall be erected, installed or maintained except in accordance with the provisions of this section.

1. PERMITTED SIGNS:

- a. Each family residing on the premises may have two signs not exceeding an area of four square feet, indicating the name of the owner or occupant.
- b. An accessory use or home occupation may be indicated by the use of not more than two signs, provided that a single sign shall not exceed an area of six (6) square feet. If two signs are erected the area of each shall not exceed four (4) square feet. Two signs back to back shall be considered one sign.
- c. A driveway entrance or exit may be indicated by the use of not more than two signs of not more than two (2) square feet each. A church, school, library or other public building may erect a single- or double-faced sign not to exceed an area of twenty-four (24) square feet.
- d. The sale, lease or rental of a building or lot may be advertised by the use of not more than two signs, provided that any single sign shall not exceed twelve (12) square feet and if two signs are erected neither shall exceed six (6) square feet. Two signs back to back shall be considered one sign.
- e. During the construction of a building, a stand sign may be erected on the premises to identify the building, the owner, the contractors, the architects, the engineers but such sign shall not exceed thirty-two (32) square feet or ten (10) feet in any one dimension. Such sign shall be removed promptly after completion of the building or project.
- f. The sale of products or services may be advertised by off-premises signs not exceeding thirty-two (32) square feet each. Provided that a valid permit has been granted by the Mass. Outdoor Advertising Board in accordance with G.L. c.93, §§29-33.
- g. Stores or other uses may advertise goods sold or services rendered on the premises by a single sign not exceeding forty (40) square feet, or two signs not exceeding thirty-two (32) square feet each.
- h. Gasoline stations and garages may be allowed one permanent oil company trademark sign in addition to a name sign, plus the customary lubrication, washing and other service signs displayed in the positions to which they apply and one "A Frame" or easel-type sign at the property frontage. So-called specialty signs may be permitted on the side or heads of gasoline pumps only. Each sign use is subject to the review of the Building Inspector for compliance with explicit standards.
- i. Unshielded sign illumination, including flood lighting which results in high intensity light shining onto any sign or adjoining property shall be prohibited.

2. MAINTENANCE OF SIGNS:

Any sign which is dangerous, unsafe or unsightly shall be repaired and made safe, or be removed by the owner, leaser, agent or occupant of the building, land or property upon which it is located.

SECTION 10. SWIMMING POOLS

All private outdoor swimming pools having a capacity of 24 inches deep or more shall be subject to the following requirements:

1. Such pools shall be completely surrounded at all times by a fence or wall not less than four (4) feet in height above grade. The pool wall itself may serve as a fence for an above-ground pool if any ladder or steps accessing the pool is capable of being secured, retracted or removed so as to prevent access.
2. Every such fence or wall shall be so constructed in compliance with 3109.4.1.3 and 3109.4.1.4 of the International Building Code, as adopted by the Commonwealth of Massachusetts.
3. All gates or doors opening through such enclosure shall be of not less than four feet in height and shall be equipped with a self-closing and self-latching device located at least (4) four feet above the under-lying ground and inaccessible from the outside to small children. Every such gate or door shall be kept locked at all times when the swimming pool is not in use, and any ladders shall be removed.
4. Such pools must observe all yard requirements as they apply to structures. Permits are required from the Building Inspector and from the Board of Health for their erection.
5. All permanent electrical installations installed at any outdoor swimming pool for any purposes what-ever shall be installed by a competent licensed electrician only. Before any use, all permanent electrical installations shall be required to pass an inspection by the Wiring Inspector.

SECTION 11. MOBILE HOMES, TRAILERS, AND CAMPERS

A. GENERAL

1. No person shall occupy or permit to be occupied, for either residential or business purposes, a trailer or mobile home except in a duly licensed Manufactured Housing Community as defined by state law. A camper or travel trailer may be occupied in a duly licensed campground campsite.

The Board of Appeals may, however, after a public hearing, grant a temporary permit for a trailer or mobile on property not licensed as a mobile home park or campsite for a period not to exceed one (1) year if said board is satisfied that the proposed trailer or mobile home will be replaced within that period by a permanent structure for residential use.

2. Campers may be regularly stored within a structure and a single camper may be regularly stored outdoors accessory to a permitted use in any district, provided that it is not within a required front yard setback or within 5 feet of a side or rear lot line, except when loading or unloading. Mobile homes may only be stored within a mobile home park.

B. MOBILE HOME PARKS (MANUFACTURED HOUSING COMMUNITIES):

Mobile home parks shall conform to the following minimum requirements:

1. Parcel minimum of ten acres.
2. Each mobile home plot shall have an area of not less than 10,000 sq. ft. inclusive of parking and exclusive of access drives.
3. Mobile homes shall not be closer to each other or other structures than twenty-four feet laterally.
4. Each plot shall be serviced with water, electricity, and sanitary drainage suitable for permanent connection.
5. No mobile home shall be placed within 100 feet of a street line, or 100 feet of any other lot line.

A condition for Board of Appeals approval of a Special Permit for a mobile home park shall be that the park be developed and operated in accordance with a site plan which has been reviewed by the Planning Board. Such site plan shall include, but not be limited to, designated plots, trailer stands, vehicular access, automobile parking facilities, and water and sewer systems.

C. COMMERCIAL CAMPING

Commercial campgrounds shall conform to the following minimum requirements:

1. Parcel minimum of ten acres.
2. Each camp site plot shall have an area of not less than 2,000 square feet, inclusive of parking and exclusive of access drives.
3. If each camp site is not serviced with water and sanitary drainage, common sanitary facilities shall be provided.
4. No unit for overnight occupancy shall be placed within 100 feet of a street line, or 60 feet of any other lot line.

SECTION 12. EARTH REMOVAL

A. GENERAL PROVISION

The excavation in any one calendar year of more than 1000 cubic yards of soil, sod, loam, peat, humus, clay, stone, sand, or gravel (herein “earth”) shall not be permitted in the residential-agricultural (RA) zone or the recreational (REC) zone except when incidental to and in connection with the construction of a structure or incidental to the grading of contiguous property. Such excavation shall be permitted in the commercial industrial (C-I) zone only after obtaining a special permit from the Zoning Board of Appeals (ZBA). In addition, earth removal in excess of 100 cubic yards in a calendar year relative to the construction of a subdivision shall not be permitted in any zone until a subdivision definitive plan has been approved by the Planning Board and a special permit from the Zoning Board of Appeals has been obtained.

B. EXEMPTIONS

1. Excavations incidental to the construction of building for which all other permits have been issued, or installation of walks, driveways, septic systems, swimming pools or other accessory uses or changes in use to such buildings.
2. Any continuous, legally permitted earth removal activities in actual operation at the time this Bylaw is adopted may continue until abandoned or discontinued for a twenty-four consecutive months. However, the following conditions apply to existing operations:
 - a. The depth of excavation shall not be allowed below five (5) feet above maximum high water table.

- b. The earth removal operation shall be contained within the current property limits of such operation on the effective date of this bylaw. Expansion to additional property must be authorized by a new permit.
- c. Where current earth removal operations are closer than 100 feet to abutters' property lines or to a public way, no further expansion shall be permitted unless specifically authorized by the Zoning Board of Appeals pursuant to its finding under G.L. c.40A §6 and Section 14.1.
- d. Unless the Zoning Board of Appeals deems it infeasible, operations may not leave slopes with a grade steeper than two (2) foot horizontal to a one (1) foot vertical (2:1), and reforestation and/or reseeding of the excavated area should be completed within one (1) year after ceasing the operations.

C. APPLICATION AND PROCEDURE

1. An application for an Earth Removal Permit shall be accompanied by a plan describing the premises and the proposed operation. The plan shall be prepared by a registered Land Surveyor or Engineer showing property lines, current names and addresses of all abutters, name and address of the operator, name and address of land owner, existing contours at five (5) foot intervals in the area which the excavation will take place and surrounding areas; natural features such as wetlands, flood plain, ground water elevation; a topographical map showing drainage facilities, existing and final grades, an erosion-sediment control plan and proposed restoration.
2. The maximum water table elevation shall be determined by test pits and soil borings created during the months of April and May. A log of all borings shall be included, taken to the depth of the proposed excavation.
3. Consulting fees and expenses incurred by the Zoning Board of Appeals relative to the Earth Removal Application shall be processed pursuant to G.L. c.44, §53G.
4. The Conservation Commission shall perform a complete review of the proposed operation as the first step in the application review process and provide a written and verbal report of its findings and recommendations to the Zoning Board of Appeals at the public hearing on the application.
5. Upon receipt of the application for an earth removal permit, a public hearing shall be conducted by the Zoning Board of Appeals within sixty-five (65) days following the filing of the receipt of the application in accord with Chapter 40A. The applicant as well as other town

departments, abutters, to the proposed site, and other interested individuals shall have the opportunity for public questioning and comment at this hearing.

6. The Conservation Commission, who is charged with enforcing the Wetlands Protection Act, may make any comments or, if it has jurisdiction, orders of conditions relating to the WPA.

D. SECURITY REQUIREMENT

A performance bond in an amount determined by the Zoning Board of Appeals shall be filed with the Town Treasurer assuring satisfactory performance of the requirement of the bylaw and of such other conditions as may be imposed in the permit. No performance bond or other security shall be released in whole or in part unless and until the Zoning Board of Appeals determines that all the conditions of the permit have been satisfied.

E. PERMIT FOR EARTH REMOVAL

1. All permits shall conform to the minimum restoration and performance standards contained herein and such other conditions as the Zoning Board of Appeals may deem necessary. No permit for earth removal shall be issued for more than five (5) years duration and may, at the discretion of the Zoning Board of Appeals, be renewed thereafter. All subsequent permits expire on December 31st.
2. Said permit shall allow the working of up to five (5) acres at any one time, the specific amount of area to be determined by the Zoning Board of Appeals. Upon completion of the earth removal operation on each permitted parcel and substantial restoration of said parcel according to the restoration standards and permit conditions, application may be made to the Zoning Board of Appeals for additional area. This procedure shall be followed until the operation is completed.
3. Compliance Review – The Zoning Board of Appeals shall discuss and review the permit annually. Said board, or its designated agent, shall have the authority to inspect the operation at any point of the operation, and at reasonable hours after obtaining consent of the property owner or an administrative search warrant before any entry into the property.
4. Before granting a permit, the Zoning Board of Appeals shall give due consideration to the location of the proposed earth removal and its effect on natural resources, including but not limited to the recharge of the water table. No permit shall be issued if the Zoning Board of Appeals determines that there is reasonable expectation that such earth removal will:
 - a. Endanger general health, safety, or welfare or constitute a public nuisance, or

- b. Result in detriment to the normal use of adjacent property by reason of objectionable noise, dust, erosion, vibration, or other objectionable factors.
5. In determining the effect upon the town, the Zoning Board of Appeals may require that independent consultants be retained (fees for which to be paid by the applicant) for hydrological testing, noise analysis, general review of engineering plans submitted, or for other analyses deemed necessary.

F. PERFORMANCE STANDARDS

1. The Zoning Board of Appeals may set conditions including, but not limited to the following:
 - a. Duration of the permit
 - b. Specific days and hours of the days when operation is permitted
 - c. Hours during which vehicles may be permitted to enter or leave the premises
 - d. Drainage
 - d. Restoration
2. The following standards of operation shall apply to every permitted operation:
 - a. No excavation shall be closer than 100 feet to a public way or to adjacent property lines unless approved by the Zoning Board of Appeals. Natural vegetation shall be left and maintained on the undisturbed land for screening noise and reduction of dust.
 - b. No areas shall be excavated so as to cause accumulation of standing water.
 - c. No earth shall be removed closer to the maximum high water table than five (5) feet. This level shall be related to a permanent monument on the property and shall be indicated on the topographical plan.
 - d. Hours of operation shall be between 7:00 AM and 5:00 PM on weekdays (Monday to Friday) only. However, the Zoning Board of Appeals may alter hours and days of operation if it determines the public good will be served.
 - e. No earth removal operation shall create excessive amounts of dust or allow roads leading to or from a site to become excessively dust producing. All access roads leading to public ways shall be treated or paved with suitable material to reduce dust for a distance of 200 feet back from the public way. The operator shall clean up any spillage or tracking of earth onto the public way. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing onto the public way or nearby property.
 - f. Prior to any excavation or earth removal, adequate siltation basins shall be constructed to prevent the run off of silted water from the site. Drainage shall not lead directly into streams or ponds nor shall drainage from access roads drain directly onto public ways.

- g. All wood and brush from tree clearing must be removed or chipped. Wood chips may remain on the site if uniformly scattered. Chips may be stored in mounds of no greater than 100 cubic yards if the mounds are removed in 30 days. No trees are to be buried on the site. Stumps shall be disposed of in accordance with state and local regulations, and as directed by the Board of Health, Conservation Commission and/or independent consultant.
- h. No earth removal operation shall create damage to town roads which provide access to the earth removal operation especially during critical seasons or weather related periods of the year (e.g. springtime “mud season”, excessive rains, etc.). The earth removal operation may receive an order to temporarily cease earth hauling activity over said roads until the weather, season, and/or conditions have sufficiently abated in order to avert damage to town roads. The Highway Superintendent shall routinely inspect all access roads throughout the duration of the earth removal operation, and shall have the authority to judge when the operation may be halted and when it may resume. A verbal order followed within 48 hours with written notice by the Highway Superintendent may be issued to the property owner to cease and desist operations. Following the issuance of a cease and desist order, operations may not resume unless the Highway Superintendent authorizes resumption in writing or resumption is permitted by a Court of competent jurisdiction.

G. RESTORATION STANDARD

1. Following expiration or withdrawal of a permit, or upon cessation of operations, all land shall be graded leaving no slopes with a grade steeper than a three (3) foot horizontal to a one (1) foot vertical (3:1). A 4:1 ratio is preferred for erosion control and shall be required in sensitive areas.
2. Topsoil shall be spread or left over the disturbed area to a minimum depth of no less than four (4) inches. This soil shall be treated with three (3) tons of lime per acre and 1,000 pounds of 10-10-10 fertilizer per acre and seeded with a grass or legume mixture as prescribed by the Zoning Board of Appeals.
3. Trees and shrubs species, as prescribed by the Zoning Board of Appeals, will be planted in order to provide screening, natural beauty, and to reduce erosion. The planted area shall be protected from erosion during the establishment period using best management practices for erosion and sediment control, as described in the DEP “Massachusetts Stormwater Handbook.”

4. Final restoration work must be completed within sixty (60) days after the termination/expiration of an Earth Removal Permit or by the first of June if the permit is terminated or expires between December first and March thirty-first.

SECTION 13. NON-CONFORMING BUILDING AND USES

1. Any lawful pre-existing use of any structure or land or both may be continued although non-conforming in use, with the provisions of this Bylaw, but no such lawfully non-conforming use shall be changed, extended or enlarged in any manner except as permitted by the Board of Appeals. Any pre-existing non-conforming structure may be expanded up to twenty-five percent, except as otherwise expressly provided herein, or for a greater percentage with the approval of the Board of Appeals, of the existing space, provided the lot on which it is located has the same area and frontage requirements for the district in which the use would be permitted and further provided all off-street parking and yard requirements are met.
2. If any lawful pre-existing non-conforming use of any structure or land or both is changed to a conforming use it shall not thereafter be put into any non-conforming use.
3. If any lawful pre-existing non-conforming use of land or of a structure is not used or is discontinued for a period of three years or more, such land or structure thereafter shall not be used or developed except in accordance with the terms of the By-law governing the zoning district in which such property is located. If any lawful pre-existing non-conforming use of land or a structure is not used for a period of three years, such land or structure shall be deemed abandoned and thereafter shall not be used or developed except in accordance with the terms of the Bylaw governing the zoning district in which such property is located.
4. Any non-conforming building or structure destroyed or damaged by fire, flood, lightning, wind or other natural cause may be restored only to the extent of its former non-conforming use and status, providing that before a building permit be issued plans for the restored building and the site be reviewed with the Planning Board, and further providing that all work of restoration be completed within a period of not more than two years from the date of such destruction of damage.

SECTION 14. BOARD OF APPEALS

There shall be a Board of Appeals, which Board shall act as the Permit Granting Authority and Special Permit Granting Authority under the provisions of these Bylaws, consisting of three members and two associate members to be appointed in accordance with G.L. c.40A, §§12, 14.

The Board shall annually, within thirty days after the appointment of the member whose term shall commence with that year, elect a chairman and a clerk.

No member shall be removed except for cause by the appointing authority and only after written charges are made and a public hearing held.

Vacancies shall be filled in the same manner as appointments.

1. APPEALS: To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws, or by any person aggrieved by any order or decision of the inspector of buildings or other administrative official in violation of any provision of the Zoning Law.
2. VARIANCES: To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this Bylaw where, owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the appellant and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw, but not otherwise.
3. POWER TO GRANT USE VARIANCES: The Board of Appeals may grant a variance for a use not otherwise permitted in the District in which the land or structure is located.
4. APPLICATION FOR SPECIAL PERMITS: No special permit shall be issued until a public hearing has been held, commencing within sixty-five (65) days after the effective date of filing of a special permit application. All such applications shall be filed with the Town Clerk who shall forthwith transmit the application to the Special Permit Granting Authority retaining a copy thereof for his files. The effective date of filing shall be the date of such filing with the Town Clerk.
5. TIME LIMIT OF SPECIAL PERMITS: The exercise of all building or special permits shall be commenced within one year after the date of the filing of the action, which shall not include such time required to pursue or await the determination of an appeal referred to in G.L. c.40A §17.

6. **REVIEW OF SPECIAL PERMIT APPLICATIONS:** All applications for Special Permits shall be submitted to and reviewed by one or more of the following as the Board of Appeals shall determine (1) Board of Health (2) Planning Board and (3) Conservation Commission. The reviews may be held jointly and the reviewing agencies who desire to make recommendations shall forward a written copy thereof to the permit granting authority and to the applicant within thirty-five (35) days of receipt of application. Said reports may be supplemented by further reports as deemed advisable as a result of matters brought out at the hearing.

SECTION 15. AMENDMENTS

Please see M.G. L. c.40A §5 relative to the process for amending this Zoning Bylaw.

SECTION 16. SEVERABILITY

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.

SECTION 17. FLOODPLAIN DISTRICT

I. STATEMENT OF PURPOSE

The purposes of the Floodplain District are to:

1. Ensure public safety through reducing the threats of life and personal injury;
2. Eliminate new hazards to emergency response officials;
3. Prevent the occurrence of public emergencies resulting from water quality, contamination and pollution due to flooding;
4. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5. Eliminate costs associated with the response and cleanup of flooding conditions;
6. Reduce damage to public and private property resulting from flooding waters.

II. EXISTING REGULATIONS

All development in the district including structural and non-structural activities whether permitted by right or by special permit must be in compliance with the following:

- 780 CMR 2102.0, of the Massachusetts State Building Code which addresses floodplain and coastal high hazards areas;
- 310 CMR 10.00, Wetlands Protection, Department of Environmental Protection (DEP);
- 302 CMR 6.00, Inland Wetland Restriction, DEP;
- 310 CMR 15, Title 5, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP,

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

III. DEFINITIONS FOR FLOODPLAIN SECTION

- 1) AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A130, AE, A99, VO or VI-30, VE or V.
- 2) BASE FLOOD means that flood having a one percent chance of being equaled or exceeded in any given year.
- 3) DISTRICT means floodplain district.
- 4) FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.
- 5) FLOOD HAZARD BOUNDARY MAP (FHBM) means an official map of a community issued by FEMA where the boundaries of the flood have been designated as Zone A.
- 6) FLOOD INSURANCE STUDY means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

- 7) FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.
- 8) LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of National Flood Insurance Program (NFIP) Regulations 60.3.
- 9) MANUFACTURED HOME means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles.
- 10) MANUFACTURED HOME PARK OR SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- 11) NEW CONSTRUCTION means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community.
- 12) ONE-HUNDRED-YEAR FLOOD see "Base Flood".
- 13) REGULATORY FLOODWAY see "Floodway"
- 14) SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood-related erosion hazards, and shown on an Flood Hazard Boundary Map (FHBM) as Flood Insurance Rate Map (FIRM) as Zone A, AO, A1-30, AE, A99, AH.
- 15) STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.
- 16) SUBSTANTIAL IMPROVEMENT means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this

definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

- 17) ZONE A (un-numbered A Zone) means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.
- 18) ZONE A1 – A30 and ZONE AE means the 100-year floodplain where the base flood elevation has been determined.
- 19) ZONE AH and ZONE AO means the 100-year floodplain with flood depths of 1 to 3 feet.
- 20) ZONE A99 means areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

IV. FLOODPLAIN DISTRICT BOUNDARIES AND BASE FLOOD ELEVATION DATA

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated on the Phillipston Flood Insurance Rate Map (FIRM) issued by FEMA for the administration of the NFIP dated July 16, 1984 as Zone A, AE, AH, AO, A1-30, A99 and the Federal Emergency Management Agency Flood Boundary & Floodway Map dated July 16, 1984, both maps which indicate the 100-year regulatory floodplain. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance study booklet dated January 16, 1984. The FIRM, Floodway Maps and Flood Insurance Study booklet are incorporated herein by reference and are on file with the Planning Board, Building Inspector, and Conservation Commission.

V. FLOODWAY DATE

In “A” Zones (i.e. un-numbered A Zones), the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. In Zones A1-30 and AE, along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvement, or other development shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood. In Zones A1-30 and AE, along watercourses that have a regulatory floodways designated on the Phillipston FIRM and Flood Boundary Floodway Maps, encroachments are prohibited in the

regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

VII. PERMITTED USES

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
2. Forestry and nursery uses.
3. Outdoor recreational uses, including fishing, boating, play areas, etc.
4. Conservation of water, plants, wildlife.
5. Wildlife management areas, foot, bicycle, and/or horse paths.
6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
7. Buildings lawfully existing prior to the adoption of these provisions.

VII. USE REGULATIONS

The Floodplain District is established as an overlay district to all other districts. All developments, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with G.L. c.131, § 40 and with the requirements of the Massachusetts State Building Code pertaining to construction in the floodplains (currently Section 2102).

1. Within Zones AH and AO on the FIRM, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures will be required.
2. Existing contour intervals of site and elevations of existing structures must be included on the plan proposal.
3. There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health,

Town Engineer, and Building Inspector for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

VIII. NOTIFICATION OF FLOODWAY ALTERATION

Notify, in a riverine situation, the following of any alteration or relocation of a watercourse:

- Adjacent Communities

- NFIP State Coordinator
Massachusetts Office of Water Resources
100 Cambridge Street
Boston, MA 02202

- NFIP Program Specialist FEMA Region I, Room 462
J.W. McCormack Post Office & Courthouse Boston, MA 02109

SECTION 18. WIRELESS COMMUNICATION FACILITIES

I. Purpose

The purpose of these regulations include: 1) minimizing adverse impacts of wireless communications towers, antennas, and facilities (hereafter referred to as “WCF”) on adjacent properties and residential neighborhoods, 2) minimizing the overall number and height of such facilities to only what is essential, 3) to promote shared use of existing facilities thereby reducing the need for new facilities, 4) to regulate the siting of towers in an effort to aid the provision of communication services, 5) discourage discrimination amongst competing providers, and 6) to protect the health, safety and promote the general welfare of the citizenry of the Town of Phillipston. This section does not apply to satellite dishes and antennas used solely in residential application.

II. General Requirements

No wireless communication facility shall be erected or installed except when in compliance with the provisions contained in the Phillipston Zoning Bylaw Any subsequent proposed extension in the height, addition of cells, antenna or panels, or construction of a new or replacement facility shall require a new special permit and subject to the notice and hearing requirements of G.L. c.40A, §§11 and 15. However, no new special permit is required for co-location of new transmission equipment, or removal or replacement of existing equipment on an existing facility where the Building Inspector finds that such modification does not substantially change the physical dimensions of the facility.

Notwithstanding any provision to the contrary in this section, wireless communication antennas or panels may be mounted on or attached to existing structures providing they are properly screened and are finished in a manner designed to be consistent with the exterior of the structure.

WCF's shall be suitably screened from abutters and residential neighborhoods.

In all cases, approval of radio link equipment shall be conditioned upon the agreement of the applicant to reasonably cooperate with other WCF service providers in permitting co-location of antennas or panels on said structure on commercially reasonable terms, unless: 1) there are structural or other limitations making such an arrangement unfeasible, 2) the proposed facilities would impair existing communications.

The permit holder shall remove structures within six (6) months of cessation of use, and the site shall be restored to its original condition. Failure to use a structure for one (1) year shall be deemed cessation of use.

SECTION 19. COMMERCIAL AND INDUSTRIAL SITE PLAN REVIEW

I. Purpose

The purpose of this Section and any Site Plan Review Regulations adopted or amended by the Planning Board is to establish uniform procedures and requirements for Commercial and Industrial Site Plan Review.

II. Site Plan Review Regulations

The Planning Board may adopt and amend Site Plan Review Regulations by a concurring vote of three of its members after a public hearing.

III. Scope of Planning Board Review

Site Plan Review establishes criteria for the layout, scale, appearance, safety, and environmental impacts of commercial or industrial developments in an attempt to integrate commercial and industrial projects into the community. Therefore, in reviewing a site plan, the Planning Board shall consider the following:

- a) convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements;
- b) adequacy of the methods of disposal for sewage, refuse, and other wastes resulting from the uses permitted on the site;
- c) methods of drainage for surface water;

- d) adequacy of space for off-street loading and unloading;
- e) adequacy of parking provisions;
- f) lighting;
- g) landscaping;
- h) screening;
- i) roadway construction;
- j) signage;
- k) utilities; and
- l) alternative energy

IV. Uses and Structures Requiring Site Plan Review.

The following Commercial and Industrial uses and structures shall require Site Plan Review by the Planning Board:

- a) New construction of a single structure or a group of structures in common ownership that contain 5,000 square feet or more in Gross floor area of commercial space.
- b) Re-construction, exterior alteration or expansion of any existing structure or a group of structures in common ownership that contains 5,000 square feet or more gross floor area of commercial space.
- c) Any use or change in use of any structure or group of structures in common ownership that require 10 or more parking spaces under the Zoning Bylaw, or the construction, reconstruction, alteration or expansion of a stand-alone parking area that has 10 or more parking spaces.
- d) Any new industrial use, new commercial use or change in use to commercial or industrial use.
- e) Any structure or use that includes a drive-through or drive-up feature.
- f) Any grading or re-grading of land, or disturbance of land, of more than 1 acre.

V. Application and Plan Requirements

Applications for Site Plan Review shall be submitted to the Planning Board on the forms approved by the Planning Board and shall contain the information required by this Section and any Site Plan Review Regulations that may be adopted by the Planning Board. Any plan submitted in connection with a Site Plan Review application must conform to these requirements.

VI. Contents of an Application

An application that lacks information or is incomplete in any manner may be rejected or delayed. It is the responsibility of the applicant to assure the accuracy and completeness of all information submitted to the Planning Board as part of the application. The applicant shall be responsible for

factually supporting all points relied upon in the application including references or methodologies used in design calculations.

A complete application for Site Plan Review shall include the following items:

1. Application Form

A properly completed “Application for Site Plan Approval” the form of which shall be provided by the Board and available at the Town Clerk’s office.

2. Plans

Five full size copies of the application form and plan shall be submitted. Five (or more) reduced size (11” x 17”) copies of the final, approved plan shall be required. Each copy of the plan shall be folded so that it will fit neatly into a letter-sized folder. A copy shall also be submitted in electronic format.

Plans shall be legibly drawn to detail fully and explain adequately the intentions of the Applicant. Site plans shall be prepared by a Registered Professional Engineer and a Registered Surveyor at a scale of one inch equals forty feet. All plans shall include a reasonable numbering system with an appropriate title block containing a Planning Board I.D. block of 3 inch by 3 inches, North arrow, and legend identifying any representative symbols used on the sheet.

The plans shall include, at a minimum, the following information described in (a) through (r) below:

- (a) **Use Descriptions**
Detailed description of the existing and proposed use. The Applicant shall declare whether the facility in question is expected to generate, store, use or dispose of hazardous materials or wastes.
- (b) **Certified Abutters List**
A list of abutters and abutters to abutters that are defined, taken from the most recent tax list of the Town and certified by the Town Assessor.
- (c) **Other Permits and Variances**
List and copies of variances, permits, and special permits, if any, issued for the existing use by other Town Boards or State and Federal agencies, and a list of any variances or permits required to complete the proposed work and/or for the proposed use.
- (d) **Recorded Plans**
A copy of the most recently recorded plan(s) for the lot(s) on which the work will take place bearing the book number(s), page number(s), and date(s) of recording(s) or registration(s).

(e) Support Documentation

Documentation shall be provided that adequately addresses each of the following:

i. Vehicular and pedestrian movement-

A traffic impact study shall be required in all applications where the proposed uses will, in the opinion of the Board, be likely to produce an additional 30 trip ends per peak hour (A.M. or P.M. or weekend, whichever is higher based on average figures) or an average of 400 additional trip ends per weekday based on the most recent edition of the Institute of Transportation Engineers' publication "Trip Generation". If the proposed uses are not listed in said publication, the Board may approve the use of trip generation rates for another listed use that is similar in terms of traffic generation to the proposed use(s). If no such listed use can be found, then a study prepared by a Registered Professional Engineer experienced and qualified in traffic engineering shall be submitted. Said traffic study shall examine the following:

ii. Existing traffic conditions including roadway geometries, traffic volumes, safety delays and levels of service for streets and intersections (whether in Phillipston or another town) affected by the proposed uses.

iii. Projected traffic conditions including trip generation, trip distribution, volume to capacity ratios, and levels of service for existing streets and intersections (whether in Phillipston or another town) affected by the proposed project at the time of anticipated completion and five (5) years beyond anticipated completion, taking into consideration the impacts of other previously approved projects and projects pending approval on the same streets. Approach and departure route assignments shall be based on existing traffic patterns, minimum time paths, or market studies. Trip generation for the proposed uses shall be based on average statistics from Trip Generation as above and must include both A.M. and P.M. peak hours, weekend peaks if applicable, as well as average total daily trips. Any anticipated reduction in trips due to special characteristics of the proposed uses must be fully explained and documented. Sight distances for turning movements to and from the site must be analyzed using American Association of State Highway and Transportation Officials (AASHTO) standards. The adequacy of vehicular queuing storage at the site entrances shall also be demonstrated. The impact of any planned phasing of the project shall be discussed.

iv The means of providing safe and convenient pedestrian movement within the site and in relation to adjacent streets, property or improvements shall be fully discussed and shown on the site plan.

iv. Waste Disposal Facilities-

The type and location of any solid waste disposal facilities shall be shown and described. Dumpsters shall be screened with a stockade fence not less than 6 feet in height, four sides and gated.

The perimeter outline of any existing or proposed on-site sewage disposal systems including any required reserve areas shall be shown. The type of sewage disposal system shall be identified by a simple notation. Actual design and construction specifications for a sewage disposal system are not required, although the Applicant is required to provide proof of compliance with the Board of Health's regulations for on-site septic disposal prior to final approval of the site plan. The proposed location of the sewer main running from any building to the sewage disposal system must be shown. If a sewage system other than an on-site sewage disposal system is to be used, the location of any sewer main to be installed on the property in question must be shown and adequate capacity at the off-site system demonstrated. If the proposed development includes the construction of a sewage treatment plant, then the location of the plant and the sewer main to serve the facility in question must be shown.

v. Methods of Drainage for Surface Water-

Storm drainage runoff calculations used for the drainage system design must be prepared by and display the seal of a Registered Professional Engineer. These calculations shall be based on a recognized standard method (usually the Rational Formula or Soil Conservation Service Method). The calculations shall contain a written summary explaining the rationale of the design so that a lay person can understand the basic design approach and its validity for the site in question. Furthermore, the calculations shall be fully documented, including copies of charts or other reference sources to make review possible. The pre and post-development runoff rates shall be provided. The use of computer generated reports is acceptable, so long as the source of the software is identified.

Calculations shall be provided to support the sizing of all drainage structures and pipes. The system design shall not result in serious flood hazards during a 100-year storm. If the site plan includes a "Reserve Parking Area," the storm drainage system for this area shall be included in these calculations.

Location and types of storm water drainage facilities, including notes on the construction materials of any pipes, culverts, catch basins or any other system component, shall be included. Sufficient information relating to placement of the drainage system components (rim and invert elevations, pipe slopes, amount of cover, etc.) shall be shown so that the operation of the system can be evaluated. Any

drainage ponds intended to be constructed shall be shown, fully dimensioned. If a “Reserve Parking Area” is proposed, the plan shall show the storm water drainage structures intended for construction should the Reserve Parking Area be built in the future.

A typical detail of proposed catch basin, diversion box, emergency slide gate, manhole, headwall, retaining wall, walkway, sub-drain, waterway, leaching basin, drainage pond, or other similar structure, if any, must be shown. Pre-cast catch basins must show gas traps and construction joints sealed with a minimum of one (1) inch butyl-rubber gastight sealant or equivalent caulking material.

vii Off-Street Loading and Unloading-

All provisions for off-street loading and unloading shall be shown on the plan. A detailed description of the loading/unloading needs of the proposed use shall be provided and shall include at a minimum: the number of deliveries/departures expected per day; the size and type of vehicles loading/unloading at the site; the type of goods, materials being loaded/unloaded. Location of loading/unloading areas at the site and access/egress to/from the site shall be show on the plan.

viii. Parking Provisions-

Parking shall be provided as required under Section 4 of the By-law. A parking plan shall include the number of employees on each shift.

All parking facilities shall be shown with proper dimensions. Parking spaces must be identified as either standard sized, handicapped, or small-car parking spaces.

A typical detail of each type of parking space to be used on the site showing the dimensions of the “Parking Stall Length and Line” and the “Width of Parking Stall” so that compliance with the parking area design standards of the Zoning Bylaw is evident.

ix. Lighting-

Outdoor Lighting Structures – The location of any existing or proposed outdoor lighting facilities shall be shown.

All parking areas which are proposed to be illuminated shall provide an illumination level of at least one foot candle at ground level. All illumination shall be shielded so as to not shine directly onto a public or private way or onto any property in a residential district.

x. Landscaping-

Landscaping information shall be shown on a separate plan sheet or sheets. In addition to showing landscape treatments planned for the site, a Landscape Plan shall include general site features such as lot lines, existing and proposed structures, parking areas, curbs, walkways, loading areas, land contours, water bodies, wetlands, streams, ledge outcroppings and large boulders so that it may be easily related to the other plans. Any area intended to meet parking lot landscaping area requirements of the Zoning Bylaw shall be fully dimensioned and its area noted so that compliance with the Zoning Bylaw may be determined. The screening of parking areas facing public ways and residential zones or uses shall be required. The Landscape Plan shall contain the following:

- a. Planting Table – The botanical and common name of each species, its height (at planting), its spread (at maturity) and the quantity intended to be planted shall be listed in a table along with the symbols used to represent the plans on the plan.
 - b. Landscaping Details – A typical detail of a tree well, tree planting, and specialty planting area, if applicable, shall be shown.
 - c. Limits of Work – Any area where existing conditions may reasonably be expected to be disturbed during construction shall be shown and identified on the Landscape Plan.
 - d. Perimeter of Trees – The perimeter of any existing wooded areas on the site shall be shown. Existing wooded areas intended for preservation shall be noted. The location, size, and proposed fate of any existing trees larger than 16 inches in diameter shall be shown.
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- xi. Screening-
Appropriate landscaping and fencing buffers to protect neighboring properties from lighting and noise and to restrict public access to the adjacent properties is required.
 - xii. Roadway Construction-
Roadway construction shall be in accordance with the Planning Board’s Rules and Regulations regulating the subdivision of land and the Town’s General Bylaws, Article VIII, Section 2.
 - xiii. Signage-
The outline or footprint of any existing or proposed signage shall be shown on the site plan. The final disposition of existing signage shall be noted. Each sign shall also be fully described on a separate sheet. Said description shall include, at a minimum,

dimensions, materials of which it/they is/are to be constructed, and how and where they are to be displayed, etc. All signage must conform to the Bylaw. The outline or footprint of any existing shall be shown and their final disposition must be noted.

xiv. Utilities-

- a. The location of any underground storage tanks for fuel or other chemical storage, including the tank types, capacities, and conditions shall be shown. If existing underground storage tanks are present at the site, their location, size, capacities, type and date of installation shall be given.
- b. The locations and type of existing and proposed water services to serve the facility (including abandoned wells) shall be shown. If the site is to utilize an on-site well, its proposed location must be shown in addition to its setbacks from any building, structure, or sewage disposal system. The location of wells servicing the site on abutting properties shall be shown on the plan. If public water services are to be utilized, then the water main which will service the site must be shown and identified.
- c. All fire hydrants on the site or off the site but within 500 feet of the principal building on the site shall be shown. If no fire hydrants are located within 500 feet of the principal building on the site, then a note shall appear clearly explaining how the Applicant will provide fire protection to the site. The location of any proposed municipal fire alarm boxes or other warning systems and any proposed fire lanes shall be clearly shown and identified. Any underground conduit for municipal fire alarm connections shall be shown.
- d. The locations and type of any other underground utilities including, but not limited to, electric, gas, telephone, or cable television services shall be shown and identified. Any emergency power facilities shall also be shown.

xv. General Site Characteristics-

All lot lines and boundaries of the site, with ownership of abutting properties, including properties across the street or right-of-way from the land affected by the site plan, shall be indicated; access and utility easements; all required setbacks for buildings, structures. All zoning district boundaries shall be shown.

Any special site features including, but not limited to, stone walls, fences, wells, historic structures, and historic buildings shall be indicated.

xv. Natural Site Characteristics

All site features, including but not limited to, flood plains, waterways, drainage courses, and ledge outcroppings shall be indicated.

Existing and proposed contours of the land shown at two-foot intervals. Topography shall be referenced to the National Geodetic Vertical Datum of 1929 with the location and elevation of the starting bench mark plus at least two additional temporary bench marks on the site.

Location and results of any field tests to determine the maximum groundwater elevation shall be indicated.

All wetlands and wetland buffer area boundaries shall be shown.

xvii. Site Improvements-

Tabulations: A table shall show the legal requirements (minimums, maximum) of the zoning district (where applicable), existing conditions (where applicable) and the proposed site conditions for the following characteristics: lot size, total lot coverage, open space, percent wetlands, percent flood plain, developable site area, front yards, side yards, rear yard, any buffers, building height, minimum distance to groundwater, pre and post-developmental runoff rates and groundwater recharge, net floor area and the number of parking spaces (including numbers of reserve parking, handicapped, and small car spaces) with supporting calculations. The table shall give the percentage of reserved parking spaces with respect to the total number of spaces provided.

xviii. Plan Notes-

Plan notes shall be provided that: (1) forbid the use of fill containing hazardous materials, (2) require the marking of the limits of working in the field before the start of construction or site clearing, (3) require the cleaning of catch basins, sumps and storm water basins following construction and annually thereafter, (4) restrict the hauling of earth to or from the site to the hours between 7 a.m. and 5 p.m. on weekdays if earth materials are to be removed from or brought to the site, (5) describe materials to be used in the construction of impermeable surfaces such as sidewalks and driveways (as a minimum, the Board requires 12 inches of gravel and three inches of bituminous concrete paving laid in two courses).

xix. Earth Removal Calculations-

Calculations for determining the amount of Earth to be removed or the amount of fill to be brought to the site shall be prepared by and show the seal of a Registered Professional Engineer.

xx. Water Balance Calculations-

A yearly hydrologic water balance calculation for pre- and post-development conditions based on annual precipitation that quantifies evapotranspiration, runoff, recharge and septic flow shall be included. Compliance with applicable portions of the Bylaw, if any, shall be demonstrated.

xxi. Building Elevations-

The front, sides and rear elevations of each building shall be shown at an appropriate scale, generally not less than one-eighth (1/8) inch equals one (1) foot.

xxii. Phasing-

If the project is to be built in phases, a plan or series of plans showing specific limits of construction for each phase and detailing the work to be accomplished in each phase shall be provided. Interim curbing and landscaping shall be shown as needed between phases.

xxiii. Locus Plan-

A locus plan showing an area a minimum of one mile diameter at a scale of one inch equals 1200 feet. Major streets, buildings, brooks, streams, rivers and other landmarks shall be shown on the locus plan with sufficient clarity to be easily discernible.

xxiv. Design Certifications-

Each plan sheet shall show the seal of a Registered Professional Engineer, Registered Land Surveyor, Registered Landscape Architect, Registered Professional Architect, or some combination of these as appropriate to the data on the sheet.

xxv. Other-

The plan shall show the following, where applicable:

(i) Clear identification of each area intended to be used as OPEN SPACE on the site with the square footage of each such area shown. A separate sheet may be necessary to show these areas adequately.

(ii) Sidewalks with a note on the construction materials to be used.

(iii) All driveway entrances dimensioned so that compliance with the access requirements of the General Bylaws may be determined. The size of the largest truck expected to use the site shall be noted. All the drives and entrances must be designed to accommodate the designated size of truck. The smallest size for the

design shall be the SU-30 design vehicle so that fire trucks may maneuver on the site.

(iv) Intersections and driveway entrances on other lots within 75 feet of the site with the distance between driveways dimensioned.

(v) Areas intended for open (outdoor) storage with identification label and dimensions.

(vi) Erosion and sedimentation control measures with a brief written description of the methods used shall be included.

xxvi. Additional Information-

The Application may contain whatever additional information the Applicant deems necessary to inform the Board properly about the development including legal opinions, copies of deeds, historical data, studies and reports.

xxvii. Waiver-

An Applicant for Site Plan Review may request a waiver from one or more requirements of this Section of the Bylaw. Any such request shall be submitted to the Planning Board, in writing, at the time of filing the Application. The request shall clearly identify the specific subsection for which the waiver is requested and the reason(s) for the request.

The Planning Board may grant a waiver from one or more requirements of this Section of the Bylaw if it finds that the specific information for which the waiver is sought is irrelevant to the project that is the subject of the Application and that the waiver is consistent with the intent of the Bylaw.

Any requests for waivers shall be reviewed by the Planning Board at the public hearing held for consideration of the Application. A waiver shall be granted only by an affirmative vote of three (3) members of the Planning Board.

SECTION C. FILING PROCEDURES

1. Consent by Owner to Application

Anyone may file an Application for Site Plan Review provided that the property owner of record has signed the Application, thereby granting his/her consent to the filing of the Application.

2. Application Fees

Any Application shall be incomplete unless accompanied by a fee to cover the expenses incurred by the Board in reviewing and processing the Application. The fee is not refundable even if the Application is withdrawn. The fee shall be submitted in check form and made payable to the Town of Phillipston. The fee is that which the Planning Board may, by regulation, set from time to time. An advertising fee for the public hearing shall also be submitted with the Application. A separate check for the advertising fee shall be made out to the Town of Phillipston.

(a) Additional Review Fee Deposits

So that the Planning Board may make the findings required under this Section and insure that the public safety will be protected, the Planning Board may hire outside traffic, engineering, legal, or planning consultants to review an Application. To cover the cost of these reviews, the Planning Board may require the applicant to pay for any needed technical assistance pursuant to G.L. C. 44, Sec. 53G at the time of submission or at any appropriate time in the review process. The amount of the fee deposit shall reflect the anticipated consultant fee(s) plus ten (10) percent. An additional fee may be charged if significant impacts or problems are found during the review. Any amount of the fee deposited that is remaining after issuance of a building permit(s) for the proposed construction, plus any remaining accrued interest, shall be repaid to the Applicant or the Applicant's successor in interest. The Applicant may choose the consultant for any such review from a pre-approved list maintained by the Planning Board. Otherwise, the Planning Board shall choose the consultant.

(b) Appeal from the Selection of the Consultants

The Applicant may appeal from the selection of an outside review consultant to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications of an educational degree in or related to the field at issue or a related field. The Applicant must specify the specific grounds that the Applicant claims constitute a conflict of interest or a failure to meet minimum professional requirements.

3. Submission to the Planning Board

The Applicant shall submit the complete Application to the Town Clerk and five (5) copies to the Planning Board at a regularly scheduled meeting of the Board. The Town Clerk shall certify the date and time of the filing. The Applicant may request and shall be entitled to a written receipt for the materials submitted.

Information submitted after the initial filing of the Application may not be accepted except at the public hearing. If significant information that was not included in the Application is presented at the public hearing, the hearing may be continued to allow for review of the new material. At least five (5) copies of any additional materials submitted at the hearing shall be given by the Applicant to the Clerk of the Board at the hearing.

4. Review of Application

The Planning Board shall transmit a copy of the Application to ensure full and qualified review of the Application. Thirty (30) days will be provided for such reviews; failure to submit comments, except by an independent consultant, on the Application within that time period shall be deemed an approval by the reviewing party. The Planning Board shall provide to the Applicant upon request a copy of any comments or recommendations received.

5. Site Plan – Additional Information

The Planning Board may request such additional information as it deems necessary in connection with a Site Plan Review. This may include, but not be limited to: traffic studies; legal opinions; copies of documents; historical data; geological, soil, groundwater, and/or other analyses and reports from the Conservation Commission, Board of Health, Building Inspector, Highway Department, Fire Department.

SECTION D. PUBLIC HEARING

1. Public Hearing Notice

The Planning Board shall set the date, time and place of the public hearing, which shall be held within sixty-five days of the Application filing date.

A notice of the hearing shall be sent by mail to all Parties in Interest, as defined by G.L. C. 40A, Section 11, at least fourteen (14) days prior to the date of the public hearing. Such notice shall contain:

- a. name of the Applicant,
- b. a description of the area or the premises including street address, if any, or other adequate identification of the location such as Assessors Map number and parcel number,
- c. date, time and place of the hearing,
- d. the subject matter of the hearing, and
- e. the nature of the action requested.

Notice of said hearing shall be published twice in a newspaper of general circulation within the Town and the first notice of the hearing shall appear no less than fourteen days prior to the date set for the hearing.

2. Public Hearing Presentation

An Applicant may appear on his/her own behalf or be represented by an agent or attorney. It is the responsibility of the Applicant or the agent of the Applicant to present the Application to the

Planning Board and to the public. In the absence of an appearance, the Planning Board may decide the matter using the information it has received.

Presentation of the Application by the Applicant should not exceed ten (10) minutes in duration except for good reason. The Applicant may be requested to answer questions raised by the Planning Board or the public.

The Planning Board shall retain any evidence that has been introduced at the hearing for reference in its deliberations on the case.

In no case may the Planning Board allow new evidence to be admitted after the close of the public hearing.

3. Withdrawal of Application

Any Application for site plan approval submitted hereunder may be withdrawn without prejudice by notice in writing to the Planning Board before the notice of public hearing is published or mailed, whichever occurs first, pursuant to Section D-1 above. Withdrawal of any Application thereafter requires Planning Board approval.

4. Time Period of Deliberation

The Planning Board shall make its Decision and file the Decision with the Town Clerk on each Application for Site Plan Review within ninety (90) days of the close of the public hearing, unless such Application has been withdrawn from consideration as set forth in Section D-3 above, or as the time may be extended as set forth below.

(a) Continuation and Extension

The period within which the Planning Board shall make its Decision and file the Decision with the Town Clerk may be extended for a defined period of time by written agreement between the Planning Board and the Applicant. If the Board determines that the Application is inadequate for the Board to make a finding, the Board may, at its discretion, continue the hearing to a later date to permit the Applicant to submit a revised application. Such a continuation may not automatically extend the 90-day period within which the Board must make its Decision and file the Decision with the Town Clerk, unless the extension is agreed upon in writing by both the Board and the Applicant and such agreement is filed with the Town Clerk.

5. Decision

The Planning Board may reject a site plan that fails to furnish adequate information required by this Section. The Board may impose reasonable conditions in connection with the site plan approval (even at the expense of the Applicant). The Board may also reject a site plan that, although proper in

form, may be so intrusive on the needs of the public in one regulated aspect or another that rejection by the Board would be tenable.

The concurring vote of three (3) of the five (5) members of the Planning Board shall be necessary to decide in favor of approving, approving with conditions or denying the Application.

The Planning Board shall file its Decision with the Town Clerk within ninety (90) days following the close of the public hearing and send a copy to the Applicant by certified mail. The Planning Board shall also send a notice of its decision to the property owner, Parties in Interest, and those who have requested such notice at the public hearing.

(a) Provision of Security

The Planning Board may require in its Decision that security be posted with the Town in such form and amount as is required by the Board to secure the satisfactory completion of all or any part of the work authorized under the site plan approval. The form of security may be generally as allowed under G.L. chapter 41, sect. 81-U.

6. Recording of Decision

The Applicant must record the Decision. The Recording shall be conducted in the Worcester County District Registry of Deeds or the Land Court, as may be applicable. A copy of the recorded Decision, certified by the Registry of Deeds, must be submitted to the Planning Board and the Building Commissioner before issuance of a building permit or the start of any work for which Site Plan Review is approved. The site plan approval is not effective unless so recorded.

7. Appeal of Decision

Any person aggrieved by a Decision of the Planning Board, whether or not previously a party to the proceeding, may appeal the Decision in accordance with G.L. Chapter 40A, §17, and can be appealed once the building inspector has taken action on a related building permit application.

8. Time Limit for Approval

Any site plan approval granted by the Planning Board shall lapse within two years from the date of filing of the Decision of the Planning Board with the Town Clerk unless substantial use for construction under the approval has begun, except for good cause, or if the Planning Board has specified a shorter time period in the Decision. A reasonable extension of said time may be granted by the Board where good cause is shown. Any request to the Board for such an extension of time must be submitted to the Planning Board and a copy thereof to the Town Clerk at least thirty (30) days before the date when the site plan approval is due to lapse. Failure to submit such a request shall constitute just cause for the Planning Board to deny the requested time extension.

9. Limitation of the Decision

The approval of a site plan constitutes approval only under the pertinent sections of the Bylaw. Other permits or approvals required by other governmental boards, agencies, or bodies having jurisdiction shall not be assumed or implied. The Planning Board may condition any site plan approval hereunder on satisfactory demonstration of compliance with the requirements of other governmental bodies having jurisdiction prior to the start of any work on the site, the issuance of a building permit, or any other appropriate step in the development process.

10. Amending an Approved Site Plan

A previously approved site plan may be amended by written request to the Planning Board or on the Planning Board's own motion. The Planning Board shall determine whether any request for further alterations to a site constitutes a minor amendment or if such request should be considered a new application requiring a public hearing. The Planning Board may amend an approved site plan without a new public hearing provided that the amendment is not significant to the public interest and is consistent with the purpose and intent of the Bylaw. A fee may be charged, as set by the Planning Board in its regulations, for such amendment.

11. Deviation from an Approved Plan

Any deviation from an approved site plan without prior approval of the Planning Board shall constitute a violation of the Bylaw.

SECTION 20. ADULT ENTERTAINMENT ESTABLISHMENTS

I. Purpose:

The purpose of this section is to serve the compelling public interest of preventing the concentration of adult entertainment establishments because of their adverse impacts on the business climate and quality of life of the Town and on the property values of near-by residential and commercial properties, and in response to studies demonstrating their effect on generating crime and blight. Similarly, it is not the intent of this bylaw to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that are protected by the Constitution of the United States or the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute, or exhibit such matter or materials.

II. Definitions:

- 1) Adult Bookstore: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other material which are distinguished or

characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c 272 §31.

2) Adult Motion Picture Theater: An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L., c272 §31.

3) Adult Paraphernalia Store: An establishment having as a substantial or significant portion of its stock, devices, objects, tools, or toys which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c 272 §31.

4) Adult Video Store: An establishment having as a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c 272 §31.

5) Establishment Which Displays Live Nudity for its Patrons: Any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in G.L. c. 272, §31.

III. Special Permit for Adult Uses:

No special permit shall be granted for any Adult Bookstore, Adult Motion Picture Theater, Adult Paraphernalia Store, Adult Video Store, or Establishment Which Displays Live Nudity for its Patrons, unless the following conditions are satisfied:

- 1.) No Adult Bookstore, Adult Motion Picture Theater, Adult Paraphernalia Store, Adult Video Store, or Establishment Which Displays Live Nudity for its Patrons may be located less than:
 - (a) One thousand (1,000) feet from a school, library, church or other religious use, child care facility, park, playground, or recreational areas where large numbers of minors regularly travel or congregate.
 - (b) Five hundred (500) feet from another adult entertainment establishment.
- 2) Distance shall be measured between the closest points of the lot lines of the uses or zoning district boundaries.

- 3) No special permit shall be issued to any person convicted of violating the provisions of M.G.L. c. 119 §63 or M.G.L. c. 272 §28.
- 4) No adult entertainment use shall be allowed to display for advertisement or other purposes any signs, placards or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through the glass or other like transparent material any sexually explicit figures or words as defined in M.G.L. Chapter 272 §31.
- 5) The Planning Board shall require that any such permit granted shall be personal to the applicant, shall not run with the land, and shall expire upon the sale, transfer, or assignment of the building or license or upon sale or transfer of the property.

IV. Use Standards:

Adult entertainment establishments are hereby allowed by right, only in the Commercial Zone on lots having frontage and access along Rte 2A/State Road and within 400 feet set back from the front lot line.

IV. Submittal Requirements:

In addition to the submittal requirements for Site Plan Approval as detailed in Section 19, special permit applications for approval under this Section shall contain the following information:

1. Name and address of the legal owners of the establishment and property, as well as the manager of the proposed establishment.
2. Proposed security precautions detailing how the property will be policed to avoid unruly and/or illegal activities from taking place.
3. The external and internal physical layout of the premises, including measures to protect adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features.
4. Full description of the intended nature of the business.

SECTION 21. REGISTERED MARIJUANA DISPENSARY (RMD) AND OFF-SITE MEDICAL MARIJUANA DISPENSARY (OMMD), AND RECREATIONAL MARIJUANA ESTABLISHMENTS (RME)

Section I. Purpose

The purpose of this bylaw is to allow for the siting of state-licensed Marijuana Establishments in appropriate locations in accordance with applicable state laws and regulations regarding adult use/recreational and medical marijuana, including G.L. c. 94G, G.L. 941, 935 CMR 500.00, 105 CMR 725.00, 935 CMR 501 and 935 CMR 502, or any successor statutes or regulations thereto, to impose reasonable safeguards to govern the time, place and manner of marijuana establishments for medical and recreational use to ensure public health, safety, well-being and mitigate against undue impacts on the Town and its residents.

Section II. Definitions

Where not expressly defined in the Definitions Section of this Zoning Bylaw, terms used in this bylaw shall be interpreted as defined in G.L. c. 94G and G.L. c. 941 and regulations promulgated and/or incorporated thereunder, and otherwise by their plain language.

Section III Requirement and Conditions

In addition to the standard requirements for uses permitted by the Commercial Site Plan Review, as set forth in Section 19 of this By-law, the following shall also apply to all medical and recreational marijuana establishments ("Marijuana Establishments"):

1. Use
 - a) Any type of Marijuana Establishment may only be involved in the uses permitted by its definition and may not include other businesses or services.
 - b) No marijuana shall be smoked, eaten, topically applied or otherwise consumed or ingested within the premises.
 - c) The hours of operation shall be set by the Planning Board, but in no event shall a Marijuana Establishment other than a Marijuana Retailer be open to the public, and no sale or other distribution of marijuana shall occur upon the premises or via delivery from the premises of a Marijuana Retailer between the hours of 8:00 p.m. and 8:00 a.m.
 - d) No Marijuana Establishment may commence operation prior to its receipt of all required permits and approvals including, but not limited, to its Final License from the Department of Public Health or Cannabis Control Commission, as applicable.
2. Physical Requirements
 - a. All aspects of the any Marijuana Establishment, except for the transportation of product or materials, relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the business.
 - b. No outside storage is permitted.

- c. No Marijuana Retailer shall have a gross floor area open to the public in excess of 2,500 square feet.
 - d. Ventilation — all Marijuana Establishments shall be ventilated in such a manner that no:
 - i) Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere; and/or
 - ii) Odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Marijuana Establishment or at any adjoining use or property.
 - e. Signage shall be displayed on the exterior of the Marijuana Establishment's entrance in plain sight of the public stating that "Access to this facility is limited to individuals 21 years or older." in text two inches in height. All other signage must comply with all other applicable signage regulations in the Zoning By-law, as well as 105 CMR 725.00, 935 CMR 500, 935 CMR 501 and 935 CMR 502.
3. Location
- a. Marijuana Establishments are allowed by right, only in the Commercial Zone, on lots having frontage and access along Rte. 2A/State Road and within 400 feet set back from the front lot line.
 - b. No Marijuana Establishment shall be located on a parcel which is within five hundred (500) feet (to be measured in a straight line from the nearest point of each property line) of a parcel occupied a public or private elementary, junior high, middle, vocational or high school, college, junior college, university, or child care facility or any other use in which children commonly congregate in an organized ongoing formal basis.
 - c. No Marijuana Retailer shall be located on a parcel which is within five hundred (500) feet (to be measured in a straight line from the nearest point of the property line in question to the nearest point of each property line) of a parcel occupied by another Marijuana Retailer.
4. Reporting Requirements
- a. Prior to the commencement of the operation or services, the Marijuana Establishment shall provide the Fire Department, Police Department, and Building Department with the names, phone numbers and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facility identified as contact persons to whom one can provide notice if there are operating problems associated with the Marijuana Establishment. All such contact information shall be updated as needed to keep it current and accurate.
 - b. The local Building Inspector, Board of Health, Police Department, Fire Department and Planning Board shall be notified in writing by the Marijuana Establishment facility owner/operator/ manager:
 - i. A minimum of 30 days prior to any change in ownership or management of that establishment; and

- ii. A minimum of 12 hours following a violation or potential violation of any law or any criminal or potential criminal activities or attempts of violation of any law at the establishment.
 - c. Permitted Marijuana Establishments shall file an annual written report to, and appear before, the Planning Board no later than January 31st of each calendar year, providing a copy of all current applicable state licenses for the facility and/or its owners and demonstrate continued compliance with the conditions of the Commercial Site Plan Review.
 - d. The owner or manager of a Marijuana Establishment is required to respond by phone or email within twenty-four hours of contact by a duly-authorized Town official concerning their Marijuana Establishment at the phone number or email address provided to the Town as the contact for the business.
5. Issuance/Transfer/Discontinuance of Use
- a. Commercial Site Plan Reviews shall be issued to the Marijuana Establishment owner.
 - b. Commercial Site Plan Reviews shall be issued for a specific type of Marijuana Establishment on a specific site/parcel.
 - c. Commercial Site Plan Review shall be non-transferable to either another Marijuana Establishment owner or another site/parcel.
 - d. Commercial Site Plan Review shall have a term limited to the duration of the applicant's ownership/control of the premises as a Marijuana Establishment, and shall lapse/expire if:
 - i. the Marijuana Establishment ceases operation (not providing the operation or services for which it is permitted), and/or
 - ii. registration/license by the Department of Public Health or Cannabis Control Commission expires or is terminated.
 - e. The Marijuana Establishment shall notify the Zoning Enforcement Officer and Planning Board in writing within 48 hours of such lapse, cessation, discontinuance or expiration or revocation.
 - f. A Marijuana Establishment shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state registration/license or ceasing its operation.

Section IV. Application Requirements

In addition to the standard application requirements for Commercial Site Plan Review, such applications for Marijuana Establishments shall include the following:

- 1) 1.The name and address of each owner of the Marijuana Establishment facility/operation;
- 2) A copy of an approved and fully executed Host Community Agreement;

- 3) A copy of its Provisional Certificate of Registration from the Department of Public Health, if applicable;
- 4) If the Marijuana Establishment will be operated in conjunction with an approved RMD, a copy of its registration as an RMD from the Massachusetts Department of Public Health in accordance with 105 CMR 725.000 or from the Cannabis Control Commission in accordance with 935 CMR 500 and 935 CMR 502;
- 5) Proof of Liability Insurance Coverage or Maintenance of Escrow as required in 935 CMR 500, 935 CMR 501, and/or 935 CMR 502, as applicable;
- 6) Evidence that the Applicant has site control and right to use the site for a Marijuana Establishment in the form of a deed or valid purchase and sales agreement or, in the case of a lease a notarized statement from the property owner and a copy of the lease agreement;
- 7) A notarized statement signed by the Marijuana Establishment organization's Chief Executive Officer and corporate attorney disclosing all of its designated representatives, including officers, directors, shareholders, partners, members, managers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of all such responsible individual persons;
- 8) In addition to what is normally required in a Commercial Site Plan Review, details showing all exterior proposed security measures for the Marijuana Establishment including lighting, fencing, gates and alarms, etc. ensuring the safety of employees and patrons and to protect the premises from theft and other criminal activity;
- 9) A detailed floor plan identifying the areas available and functional uses (including square footage);
- 10) All signage being proposed for the facility;
- 11) A pedestrian/vehicular traffic study to establish the Marijuana Establishment's impacts at peak demand times;
- 12) A management plan including a description of all activities to occur on the site, including all provisions for the delivery of marijuana and related products to the Marijuana Establishment or off-site direct delivery to patients;
- 13) Individual written plans which, at a minimum comply with the requirements of 105 CMR 725.000, 935 CMR 500, 935 CMR 501 and 935 CMR 502, as applicable, relative to the Marijuana Establishment's:
 - a. Operating procedures;
 - b. Marketing and advertising;
 - c. Waste disposal;
 - d. Transportation and delivery of marijuana or marijuana products;
 - e. Energy efficiency and conservation; and
 - f. Security and alarms.

Section V. Findings

In addition to the standard findings for Commercial Site Plan Review, the Planning Board must also find all of the following:

- 1) That the Marijuana Establishment is designed to minimize any adverse visual or economic impact on abutters and other parties in interest;
- 1) That the Marijuana Establishment demonstrates that it will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with the applicable state laws and regulations;
- 2) That the applicant has satisfied all of the conditions and requirements of this Section and other applicable sections of this by-law;
- 3) That the Marijuana Establishment provides adequate security measures to ensure that no individual participant will pose a direct threat to the health and safety of other individuals, and that all operations of the facility, including storage, cultivation, and delivery are adequately secured on-site and via delivery;
- 4) That the Marijuana Establishment adequately addresses issues of traffic demand, circulation flow, parking and queuing, particularly at peak periods at the facility, and its impact on neighboring uses.

SECTION 22. Large-Scale Ground-Mounted Solar Photovoltaic Installations

I. Purpose and Applicability.

The purpose of this bylaw is to promote the creation of new large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

This section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

II. Definitions

1. Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 40 kW DC.

2. On-Site Solar Photovoltaic Installation: A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.
3. Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).
4. Solar Photovoltaic Array: an arrangement of solar photovoltaic panels.

III. Use Standards.

Large-Scale Ground-Mounted Solar Photovoltaic Installations are hereby allowed by Special Permit in the Commercial (CI), Residential (R) and the Residential/Agricultural (RA) Districts.

IV. General Standards

- 1) Permit Granting Authority. It is hereby established under this bylaw that the Planning Board will be the permit granting authority under this section.
- 2) Site Plan Review and Special Permit Requirements. Ground-mounted large scale solar photovoltaic installations with 40 kW or larger of rated nameplate capacity shall undergo either Site Plan Review or Special Permit review process contingent on the location of proposed project prior to construction, installation or modification as provided in this section. Projects that are subject to the Site Plan Review provision of this bylaw shall be acted upon by the Planning Board within 180 days from the time of the initial approved application submittal.
- 3) General
All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.
- 4) Required Documents
Pursuant to the special permit or site plan review process, the project proponent shall provide the following documents:
 1. A site plan showing:
 - a. Property lines and physical features, including roads, for the project site;
 - b. Proposed changes to the landscape of the site, grading, vegetation, exterior lighting, screening vegetation or structures;

- c. Drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
 - d. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - e. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
 - f. Name, address, and contact information for proposed system installer;
 - g. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
 - h. The name, contact information and signature of any agents representing the project proponent; and
 - i. Documentation of actual or prospective access and control of the project site;
 - j. An operation and maintenance plan;
2. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
 3. Proof of liability insurance; and
 4. Description of financial surety that satisfies Section 16.
 5. Waiver. The Planning Board may waive documentary requirements as it deems appropriate.
 6. Compliance with Laws, By-laws and Regulations.

The construction and operation of all large scale solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

7. Utility Notification

No large-scale ground-mounted solar photovoltaic installation shall be constructed until written evidence has been given to the Planning Board and a Utility Company has been informed and has an agreement in hand, of the solar photovoltaic installation owner or

operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

IV. Building Permit.

No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

1. Fees.

At the time of an application submittal an Administration Fee will be required. A Review Fee will be determined by the Planning Board before the Public Hearing by acquiring an estimate from the peer review engineer and other professionals as appointed by the Planning Board to review the project, whose fees shall be paid by the applicant pursuant to G.L. C. 44, Section 53G.

V. Design Standards

1. Dimension and Density Requirements. Large-scale Solar Energy Systems shall comply with all dimensional standards within Intensity Requirements section of the Zoning Bylaw. Setback requirements from all streets and property lines shall be 100 feet.
2. Lighting. Lighting of solar photovoltaic installations shall be consistent any state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.
3. Signage. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.
4. Screening/ Buffer Requirement. If permitted by special permit in residential districts, the entire perimeter of the project shall have a vegetated buffer that will screen the view of the Large-Scale Ground-Mounted Solar Photovoltaic Installation. The buffer must be sufficiently dense to block the view of the Large-Scale Ground Mounted Solar Photovoltaic Installation and appurtenant structures from all dwellings abutting the property. All Large-Scale Solar photovoltaic installations in the Solar Overlay District shall be required, as a condition of Site Plan approval, to install a vegetative buffer that will screen the view of the 44 Large-Scale Ground-Mounted Solar Photovoltaic Installation from the boundary of any

abutting residential premises and from the boundary of an abutting residential district and/or farm and forest district.

5. Utility Connections. Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

VI. Safety, Emergency Services and Environmental Standards

1. Emergency Services. The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the fire chief. Upon site plan approval, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
2. Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large – scale ground-mounted solar photovoltaic installation. The applicant will implement Best Management Practices (BMPs) to help manage storm water per the Zoning Bylaw requirements for Low Impact Development.

VII. Accessory Buildings.

All appurtenant structures to large- scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, and open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

1. Operation and Maintenance Plans

The project applicant shall submit a plan for the operation and maintenance of the installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

- a. The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to,

painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

2. Modifications

- a. Any material or equipment modification to a Solar Energy Collection System installation made after approval of the site plan shall require a modification of the approval.
- b. The Planning Board shall review each site plan at five-year intervals, and may, after public notice and hearing, modify the approved plan to ensure the public safety and compliance with the town bylaws and regulations. Said review will be initiated by the applicant, or any subsequent owner.

VIII. Abandonment

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than two years without the written consent of the Planning Board. The Utility Company shall have the right of first refusal as to whether they will choose to assume responsibility for the solar operation. If the Utility Company chooses to forgo the operation and the owner or operator of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning; the town may enter the property, after receipt of the appropriate court order, and physically remove the installation. As a condition of the special permit or site plan approval, the property owner shall agree to allow the town to enter onto the property for purposes of removing an abandoned large-scale solar installation. The cost of removal will be charged to the property owner as a tax lien pursuant to G.L. c. 139, Section 3A.

IX. Financial Surety.

Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety through the Planning Board. The form of surety that is acceptable to the Planning Board shall cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

X. Severability

If any section or provision of this bylaw is found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the validity of any other section or provision of this Bylaw.

The Planning Board may grant waivers to any provision of this Section of the Bylaw after a public hearing.

SECTION 23. Wind Energy Systems

I. Purpose.

The purpose of this bylaw is to minimize the impacts of wind turbines on the character of neighborhoods, property values, scenic, historic, and environmental resources of the Town and to protect health and safety while allowing wind energy.

II. Applicability.

This section applies to all utility-scale, on-site wind facilities, and small wind energy systems, proposed to be constructed after the effective date of this section. This section also includes building integrated wind systems, and physical modifications to existing wind facilities that materially alter the type, configuration, location or size of such facilities or other equipment.

III. Definitions

1. Utility-Scale Wind Facility: A commercial wind facility, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.
2. On-Site Wind Facility: A wind project, which is located at a commercial, industrial, agricultural, institutional, or public facility that will generate electricity on-site.
3. Small Wind Energy System (SWES): All equipment, machinery and structures utilized in connection with the conversion of kinetic energy of wind into electrical power. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, which will have a height not to exceed than 79 feet to the maximum tip height.
4. Large Wind Energy System (LWES): All equipment, machinery and structures utilized in connection with the conversion of kinetic energy by wind into electrical power. This

includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, which will have a height greater than 79 feet maximum tip height.

5. **Building-Integrated Wind Energy Facility:** A wind energy facility shall be considered to be building-integrated if it is designed to be permanently mounted on a building or other inhabitable structure. This definition applies to wind turbines of any capacity that are designed to be operated in direct contact with a building. This definition also covers, for the purposes of this zoning provision, other wind energy facilities primarily used for land-based applications which may be permanently mounted and operated on a building.
6. **Height:** The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height. This measure is also commonly referred to as the maximum tip height (MTH).
7. **Rated Nameplate Capacity:** The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a nameplate on the equipment.
8. **Special Permit Granting Authority (SPGA):** The special permit granting authority shall be the planning board for the issuance of special permits to construct and operate wind facilities.
9. **Substantial Evidence:** Such evidence as a reasonable mind might accept as adequate to support a conclusion.
10. **Wind Energy Facility:** All of the equipment, machinery and structures together utilized to convert wind to electricity. This includes, but is not limited to, developer-owned electrical equipment, storage, collection and supply equipment, service and access roads, and one or more wind turbines.
11. **Wind Monitoring or Meteorological Tower:** A temporary tower equipped with devices to measure wind speeds and direction, used to determine the potential wind power that might be generated at the site.
12. **Wind turbine:** A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.
13. **Building Inspector:** The inspector of buildings, building commissioner, or local inspector, or, if there are none in a town, the board of selectmen, or person or board designated by local bylaw charged with the enforcement of the Zoning Bylaw.

14. Building Permit: A building permit is a required approval of a project by a building inspector which is consistent with the local, state and federal building codes. In addition, the permit must meet the criteria set forth under the local zoning bylaws regarding wind energy systems.
15. Agriculture: Farming‘ or agriculture‘ shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquaculture, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

IV. General Requirements for all Wind Energy Facilities

1. Exemptions. Wind turbines constructed, reconstructed, or renovated for the primary purpose of agriculture shall be considered a structure pursuant to MGL, c. 40A, §3 and, therefore, shall be exempt from this by-law.
2. Compliance with Laws, Bylaws and Regulations. The construction and operation of all such proposed wind energy facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.
3. Fees. The Planning Board will require fees to cover the costs of outside consultants, to be deposited in advance with the Town, in accordance with the provisions of MGL c. 44, § 53G. Such fees will be deposited in a separate account, and any amounts remaining in said account after the completion of the associated project will be refunded to the applicant or successor, in accordance with these rules and said state law. When the expense of such consultants exceeds the currently available funds in the 53G account, the applicant is required to provide such additional and appropriate funds within 14 days of notification by the Board of the required amount.
4. Proof of Liability Insurance. The applicant shall be required to provide evidence of liability insurance in an amount, and for duration, sufficient to cover loss or damage to persons and property occasioned by the operation, maintenance or failure of the facility. Insurance in a reasonable amount determined and approved by owner’s insurance company shall be in force prior to construction. Annual proof of said insurance shall be filed with the Town Clerk.

5. **Site Control.** At the time of its application for a special or building permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structure for human habitation, or inconsistent or interfering use, within the setback areas.
6. **Utility Notification.** No site plan for the installation of a wind energy facility shall be approved until evidence has been given that the electric utility company that operates the electrical grid where the facility is to be located has been informed of the customer's intent to install an interconnected customer-owned generator, and copies of site plans showing the proposed location have been submitted to the utility for review.

No installation of a wind energy facility shall commence and no interconnection shall take place until an Interconnection Agreement pursuant to applicable tariff and consistent with the requirements for other generation has been executed with the utility. Off-grid systems shall be exempt from this requirement, unless they are proposed to be located within setback distance from the sideline of an existing utility Right of Way (ROW).

V. Small Wind Energy System Requirements

1. **Building Permit.** No small wind energy system (SWES) shall be erected, constructed, installed or modified as provided in this section without first obtaining a building permit from the Building Inspector. All such wind energy systems shall be constructed and operated in a manner that will minimize adverse visual, safety and environmental impacts. The construction of a small wind facility shall be permitted in any zoning district, subject to the issuance of a permit and provided that the use complies with all requirements set forth in sections F, G and H set forth herein.
2. **Application Process & Requirements.** The building permit application shall be accompanied by the following documents:
 - a. A plot plan showing:
 - i. Property lines and physical dimensions of the subject property within 500 feet of the wind turbine from the proposed tower location;
 - ii. Location, dimensions, and types of existing major structures on the property;

- iii. Location of the proposed wind system tower, foundations, guy anchors and associated equipment;
 - iv. The right-of-way of any public road that is contiguous with the property;
 - v. Location of all existing above ground or overhead gas or electric infrastructure, including Critical Electric Infrastructure, and utility rights of way (ROW) and easements, whether fully cleared of vegetation or only partially cleared, within 500 feet of the site parcel;
 - vi. Location and approximate height of tree cover;
3. Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed).
 4. One or three line electrical diagram detailing wind turbine, associated components, and electrical interconnection methods, with all NEC (National Electric Code) and applicable Massachusetts Electric Code Amendment-compliant disconnects and overcurrent devices.
 5. Name, address, phone number and signature of the applicant, as well as all co applicants or property owners, if any.
 6. The name, contact information and signature of any agents representing the applicant.
 7. A plan for maintenance of the small wind energy facility.

VI. Large Wind Energy System (LWES) Requirements

1. **Special Permit.** No large wind turbine or tower may be erected, constructed, installed or modified without first obtaining a Special Permit from the Special Permit Granting Authority (SPGA). The SPGA under this bylaw shall be the Planning Board. A LWES may be permitted in any zoning district, provided that the use is maintained and complies with all requirements set forth herein and any conditions ascribed to any specific project. No Special Permit shall be granted unless the SPGA determines that all such wind energy systems shall be constructed and operated in a manner that minimizes adverse visual, safety, and environmental impacts.
2. **General.** All plans and maps shall be prepared, stamped and signed by a professional Engineer licensed to practice in Massachusetts.

VII. Waivers

1. The Planning Board may waive strict adherence to the provisions of this Section of this Bylaw if it finds that the safety and well-being of the public will not be adversely affected by such a waiver. For each waiver granted, the Planning Board will make a written record indicating that the proposed tower meets the purpose of this bylaw.
2. All requests for waivers shall be made in writing on a separate sheet (or sheets) of paper and be attached to the site plan review special permit application and be presented at the time of the initial application.
3. Requests for waivers shall indicate the section number and the reason the applicant needs the waiver along with any documentation to support the request.
4. The Planning Board will grant requests for waivers only upon a majority vote. Each request shall be voted on separately. The applicant shall have the right to withdraw the request at any time prior to the actual vote. Once a request for a waiver is withdrawn it may not be presented again for a period of one (1) year.
5. Requests for more than three waivers, including, in the case of an amendment or renewal, any waivers previously granted for the existing or any predecessor permits, will indicate to the Planning Board that a new special permit application for the project will be required.

VIII. Application Requirements. An application and plans shall be filed under the provision set forth in the Zoning Bylaw Special Permit Section 5. Plans shall include the following:

1. Site boundaries and access road
2. Tower location, including guy wires, if any, tower height and blade length.
3. Setbacks from property boundaries.
4. Buildings within 500 feet of the proposed tower.
5. Abutters.
6. View lines from the middle of each abutter's property line, including a view from each street shown, beginning at true North and continuing clockwise.
7. Topography.
8. Fencing and landscaping.
9. Areas to be cleared of vegetation and trees.
10. Historic sites.
11. Wetlands (pond, lake, marsh, swamp, bog, etc.) within 100 feet of the proposed area.
12. Rivers, streams or brooks within 200 feet of the proposed area.
13. Habitats for endangered species,

14. A locus map showing lot dimensions and all abutting street locations.
15. Name, address, phone number and signature of the applicant, as well as all co applicants or property owners, if any;
16. The name, contact information and signature of any agents representing the applicant; and
- 17) A storm water management plan showing best design practices per Section 17. Low Impact Development.
- 18) A maintenance plan for the wind energy facility.
- 19) Reports that:
 - a. Describe the wind turbine, tower and the technical, economic and practical reasons for the tower design, and the need for the tower at the proposed location.
 - b. Demonstrate to the satisfaction of the Planning Board that the location of the wind turbine and tower is adequate and that the size and height is the minimum necessary for the purpose.
 - c. Show other feasible sites, including existing sites, if any
 - d. Demonstrate that the wind turbine and tower complies with these regulations and all applicable standards of the federal and state governments.
 - e. Provide the specifications of the wind turbine and tower.

IX. Notification.

Permits for Large Wind Energy Systems (LWES) shall be granted in accordance with the procedure for notice hearings, decisions and appeals set forth in Phillipston Zoning Bylaw All additional abutters within one half mile are also to be notified of the hearings.

X. Decision. See Section V.A. for specific information.

XI. Lapse

Permits granted hereunder shall lapse within one year if substantial progress has not been made unless satisfactory reasons have been provided to the SPGA.

XII. Modifications

A substantial modification to approved plans will apply if:

- 1). The applicant requests the terms of the Special Permit be altered, or, 2) The applicant requests adding equipment, alters the height or location and or exterior appearance of the original design, or
- 3) SPGA will consider modification if good cause is shown.

Modifications shall be granted in accordance with the procedure for notice hearings, decisions and appeals set forth in Phillipston Zoning Bylaw and MGL c.40A, §§ 9 and 11.

XIII. Renewals

Existing special permits under this bylaw shall not require the resubmission unless there has been a substantive change in the information or conditions reviewed for existing special permit, and provided further that a complete application for renewal of the permit is submitted prior to the expiration of the existing permit.

XIV. Term of Special Permit.

A special permit issued for a wind facility shall be valid for twenty (20) years, unless extended or renewed. The time period may be extended or the permit renewed by the SPGA upon satisfactory operation of the facility. Request for renewal must be submitted at least 180 days prior to expiration of the special permit. Submitting a renewal request shall allow for continued operation of the facility until the special permit granting authority acts. At the end of that period (including extensions and renewals), if the permit is not renewed the wind facility shall be removed as required by this section.

XV. Design Standards

1. Appearance, Color and Finish. Color and appearance shall comply with Federal Aviation Administration (FAA) safety requirements. Colors and surface treatment of the installation shall minimize visual disruption, for example, by using non-reflective dark muted colors against land, and lighter colors against the sky, without graphics or other decoration. However, visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 10 feet from the ground.
2. Lighting. Wind turbines shall be lighted only if required by the FAA. Lighting of other parts of the wind energy facility, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Except as required by the FAA, lighting of the wind energy facility shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.
3. Signage. Signs on wind energy facilities shall comply with the Town's sign by-law (Section VI.A.). The following signs shall be required:
 - a) Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger.

- b) Educational signs providing information about the facility and the benefits of renewable energy.

Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.

XVI. Utility Connections.

Reasonable efforts, as determined by the SPGA, shall be made to place all developer-owned utility connections from the wind energy facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Utility owned electrical equipment required for utility interconnections may be above ground, if required by the utility provider.

XVII. Appurtenant Structures.

All appurtenant structures to wind energy facilities shall be subject to applicable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and contained within the turbine tower whenever technically and economically feasible. Whenever reasonable, structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

XVIII. Height

For a Large Wind Energy System (LWES) the maximum height shall be determined by the Planning Board and /or according to manufacturer recommendation, not to exceed FAA Regulations.

XIX. Safety and Environmental Standards

1. Emergency Services

The applicant shall provide a copy of the project summary, electrical schematic, and site plan to the police and fire departments, and/or the local emergency services entity designated by the local government, as well as the local electrical utility company. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan. All means of disconnecting the wind energy facility shall be clearly marked. The applicant or facility owner shall identify a responsible person for public inquiries or complaints throughout the life of the project.

2. Unauthorized Access

Wind energy facilities shall be designed to prevent unauthorized access. For instance, the towers of wind turbines shall be designed and installed so that step bolts or other climbing features are not readily accessible to the public and so that step bolts or other climbing features are not installed below eight (8) feet above the ground. Electrical equipment shall be locked where possible.

XX. Setbacks

1. SWES and LWES may not be sited within:

- a) a distance equal to one and one-half (1.5) times the maximum tip height (MTH) of the wind turbine from buildings, critical infrastructure, including Critical Electric Infrastructure and above-ground natural gas distribution infrastructure, or private or public ways that are not part of the wind energy facility;
- b) a distance equal to three (3.0) times the maximum tip height (MTH) of the turbine from the nearest existing residential or commercial structure, or
- c) a distance equal to one and one-half (1.5) times the maximum tip height (MTH) of the turbine from the nearest property line, and private or public way.
- d) The permit granting authority may increase the setbacks due to any public safety impacts.
- e) Shadow/Flicker. Wind energy facilities shall be sited in a manner that minimizes shadowing or flicker impacts.
- f) Sound. The wind facility and associated equipment shall conform to the provisions of the Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the Permit Granting Authority agree that those provisions shall not be applicable. A source of sound will be considered to be violating these regulations if the source: (1)Increases the broadband sound level by more than 10 dB (A) above ambient, or (2)Produces a pure tone condition when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest inhabited structure. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards, if required by the permit granting authority. The permit granting authority, in consultation with the DEP, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

XXI. Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind energy facility or otherwise prescribed by applicable laws, regulations, and bylaws, and subject to existing easements, restrictions and conditions of record. For storm water infrastructure measures, LID will be used and incorporated into the design.

XXII. Monitoring and Maintenance

1. Wind Energy Facility Conditions

- a) The applicant shall maintain the wind energy facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, emergency braking (stopping) and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for any access road(s), unless accepted as a public way.
- b) If a LWES or SWES is designated a safety hazard by the Zoning Enforcement Officer, the owner shall correct the hazard or remove the WES within ninety (90) days.

XXIII. Abandonment or Decommissioning

1. Removal Requirements

Any wind energy facility which has reached the end of its useful life or has been abandoned shall be removed. The owner/operator shall physically remove the facility no more than 150 days after the date of discontinued operations. The applicant shall notify the SPGA by certified mail of the proposed date of discontinued operations and plans for removal.

Decommissioning shall consist of:

- a) Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
- b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The SPGA may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

2. Abandonment. Absent notice of a proposed date of decommissioning or written note of extenuating circumstances, the wind energy facility shall be considered abandoned when the facility fails to operate for more than two years without the written consent of the SPGA.

If the applicant fails to remove the facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town

may enter the property, after receipt of an appropriate court order, and physically remove the facility. As a condition of the special permit or site plan approval, the property owner shall agree to allow the town to enter onto the property for purposes of removing an abandoned facility. The cost of removal will be charged to the property owner as a Lien.

XXIV. Financial Surety

Surety for Removal Applicants for utility-scale large wind energy facilities shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal or failure to maintain, in the event the town must maintain or remove the facility and remediate the landscape, in an amount and form determined to be reasonable by the SPGA, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, or as determined by a peer review engineer.

Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a certified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

An initial bond or other form of security as may be approved, shall be posted for a LWES unless they are used solely for commercial agricultural use pursuant to MGL, c. 40A, §3. Such bond or other form of surety shall cover maintenance and construction costs. An annual maintenance bond shall be posted for the access road (if applicable), site (if applicable) and tower(s) in an amount to be approved by the SPGA. Failure to post an approved bond and/or provide proof of insurance shall be grounds to revoke the special permit.

XXV. Severability.

If any portion of this bylaw is declared to be invalid, the remainder shall continue to be in full force and effect.