

*TOWN OF LENOX*  
*MASSACHUSETTS*

ZONING BYLAW

2011

Adopted Special Town Meeting: April 15, 2008

This edition includes amendments through Special Town Meeting March 24, 2009 Annual Town Meeting May 6, 2010 and Special Town Meeting April 14, 2011.

This Zoning Bylaw is Chapter VI of the "Bylaws (As Amended)  
of the Town of Lenox, Massachusetts"

TOWN OF LENOX, MASSACHUSETTS  
AMENDMENTS TO THE ZONING BYLAW

Amendments adopted at the Annual Town Meeting of February 23, 1973 were approved by the Attorney General on April 10, 1973, the effective date.

Amendments adopted at the Special Town Meeting of September 28, 1973 were approved by the Attorney General on October 29, 1973, the effective date.

Amendments adopted at the Special Town Meeting of November 22, 1974 were approved by the Attorney General on December 13, 1974, the effective date.

The amendment adopted at the Special Town Meeting of December 5, 1975 was approved by the Attorney March 1, 1976, the effective date.

The amendments adopted at the Annual Town Meeting of May 7, 1976 were approved by the Attorney General in August, 1976 and their effective date is May 7, 1976.

The amendments adopted at the Special Town Meeting of February 9, 1977 were approved by the Attorney General by default and their effective date is February 9, 1977. (NOTE: Section 7.4 deleted)

The amendments adopted at the Annual Town Meeting of May 6, 1977 were approved by the Attorney General on August 2, 1977, and their effective date is May 6, 1977. (NOTE: Sections 11.7 and 12.5 deleted)

The amendment adopted at the Special Town Meeting of November 30, 1981 was approved by the Attorney General on March 15, 1982 and its effective date is November 30, 1981.

The amendments adopted at the Annual Town Meeting of May 7, 1982 were approved by the Attorney General on August 12, 1982, and their effective date is May 7, 1982.

The amendments adopted at the Annual Town Meeting of May 6, 1983 were approved by the Attorney General on June 14, 1983 and their effective date is May 6, 1983.

The amendments adopted at the Special Town Meeting of June 8, 1984 were approved by the Attorney General as follows: First Estate Preservation Area Bylaw: January 11, 1985; all other amendments: September 12, 1985. The effective date of all amendments is June 8, 1984.

The amendments adopted at the Special Town Meeting of August 8, 1985 (Second Estate Preservation Area Bylaw) was approved by the Attorney General on August 27, 1985, and its effective date is August 8, 1985.

The amendment adopted at the Special Town Meeting of September 28, 1988 were approved by the Attorney General on November 7, 1988 and their effective date is September 28, 1988.

The amendments adopted at the Annual Town Meeting of May 8, 1993 were approved by the Attorney General on July 28, 1993 and their effective date is May 8, 1993.

The amendments adopted at the Annual Town Meeting of May 5, 1995 were approved by the Attorney General on July 24, 1995 and their effective date is May 5, 1995.

The amendments adopted at the Special Town Meeting of December 16, 1996 were approved by the Attorney General on April 7, 1997 and their effective date is December 16, 1996.

The amendments adopted at the Annual Town Meeting of May 1, 1998, and Special Town Meeting, June 3, 1998, and were approved by the Attorney General on August 7, 1998 and September 4, 1998 and their effective date is May 1, 1998 and June 3, 1998.

The amendments adopted at the Annual Town Meeting of May 5, 2000 were approved by the Attorney General on July 21, 2000 and their effective date is May 5, 2000.

The amendments adopted at the Annual Town Meeting of May 3, 2002 were approved by the Attorney General on October 4, 2002 and their effective date is May 3, 2002.

The amendment adopted at the Annual Town Meeting of May 2, 2003 were approved by the Attorney General on November 13, 2003 and their effective date is May 2, 2003.

The amendment adopted at the Annual Town Meeting of May 6, 2004 were approved by the Attorney General on July 20, 2004 and their effective date is May 6, 2004.

The amendments adopted at the Annual Town Meeting of May 5, 2005 were approved by the Attorney General on August 25, 2005 and their effective date is May 5, 2005.

The amendments adopted at the Annual Town Meeting of May 4, 2006 were approved by the Attorney General on August 28, 2006 and their effective date is May 4, 2006.

The amendments adopted at the Special Town Meeting of April 15, 2008 were approved by the Attorney General on July 23, 2008 and their effective date is April 15, 2008.

The amendments adopted at Town Meeting of May 1, 2008 were approved by the Attorney General On July 21, 2008 and their effective date is May 1, 2008.

The amendments adopted at Special Town Meeting of March 24, 2009 were approved by the Attorney General on July 20, 2009 and their effective date is March 24, 2009.

The amendments adopted at Annual Town Meeting on May 6, 2010 were approved by the Attorney General on June 7, 2010 and their effective date is May 6, 2010.

The amendments adopted at Special Town Meeting on April 14, 2011 were approved by the Attorney General on May 3, 2011 and their effective date is April 14, 2011.

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## **SECTION 1      PURPOSE AND AUTHORITY**

### **1.1    PURPOSE**

These regulations are enacted to promote the general welfare of the Town of Lenox, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town, and to increase the amenities of the town, all as authorized by, but not limited by, the provisions of the Zoning Act, G.L. c. 40A, as amended, and Section 2A of 1975 Mass. Acts 808.

### **1.2    AUTHORITY**

This Zoning By-Law is enacted in accordance with the provisions of the General Laws, Chapter 40A, any and all amendments thereto, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

### **1.3    SCOPE**

For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.

### **1.4    APPLICABILITY**

All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Zoning By-Law. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located.

Where the application of this By-Law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-Law shall control. Nothing herein shall be construed to supersede the provisions of the State Building Code, 780 CMR 1.00, et seq.

### **1.5    ZONING AMENDMENTS**

#### **1.5.1    Initiation**

Any person desiring a zoning amendment shall propose it in writing to the Selectmen for insertion in the warrant of a town meeting, either regular or special.

#### **1.5.2    Brief Written Statement**

If geographic change of a zoning boundary description is proposed, the words of the proposed description change for insertion in the warrant shall be accompanied by a brief written statement of the nature, extent and location in the town of the zoning map change proposed, together with three black-line prints of a diagram to scale showing the area to be changed, stating pertinent dimensions in feet, and also showing ownership and outline of all properties affected by the change.

### **1.5.3 Public Hearing**

On each zoning amendment proposal accepted by the Selectmen for insertion in a town meeting warrant, or on any such proposal inserted in a town meeting warrant by petition as provided by statute, the Planning Board shall hold a public hearing thereon, first causing notice of the time and place of such hearing and of the subject matter, sufficient for identification, to be published in a newspaper of general circulation in the Town of Lenox once in each of two successive weeks, the first publication being not less than fourteen (14) days before the day of such hearing, and by posting such notice in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of such hearing. No amendment shall be adopted until the Planning Board has submitted a final report with recommendations to the Town Meeting or until twenty-one (21) days shall have elapsed after such hearing without the submission of such report. No change of any zoning bylaw shall be adopted except by a two-thirds (2/3) vote of a town meeting.

### **1.5.4 Costs**

The costs of publication and of mailing of notices of hearing shall be paid by the zoning amendment proponents.

## **1.6 SEPARABILITY**

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision herein.

## **SECTION 2      DISTRICTS**

### **2.1 ESTABLISHMENT**

For the purpose of this By-Law, the Town is divided into the zoning districts set forth below:

#### ***RESIDENTIAL DISTRICTS***

R-3A

R-1A

R-30

R-15

#### ***COMMERCIAL DISTRICTS:***

C

C-1A

C-3A

#### ***INDUSTRIAL DISTRICTS:***

I

### **2.2 OVERLAY DISTRICTS**

In addition, the following overlay districts are also hereby established in SECTION 8.0:

Wireless Telecommunications Overlay District:      WTOD

Gateway Mixed Use Development  
Overlay District:      LMUD

Flood Plain Overlay District      FPOD

### **2.3 ZONING MAP**

The location and boundaries of these districts are hereby established as shown on a map entitled "Zoning Map of the Town of Lenox" dated December 12, 1969, as amended, and on file in the office of the Town Clerk, which map, with all explanatory matter thereon, is declared to be a part of this Bylaw.

#### **2.3.1 Amendment**

Any changes or amendments shall be indicated by the alteration of the map referred to herein, and the map thus altered is declared to be a part of the Bylaw thus amended.

#### **2.3.2 Interpretation**

Where a district boundary is indicated as within or parallel to a street, railroad right of way, water course or town municipal boundary, such district boundary shall be construed as the street line or

being parallel to the street line of such street or the centerline of the railroad right-of-way, water course or town municipal boundary.

### **2.3.3 Uncertainty**

Whenever any uncertainty exists as to the exact location of a boundary line, the location of such line shall be determined by the Building Commissioner.

### **2.3.4 Split Lots**

Where a lot is transected by a zoning district boundary, the regulations of the By-law applicable to the larger part of the area of such lot may also at the option of the lot owner be deemed to govern in the smaller part beyond such zoning district boundary but not to exceed thirty (30) linear feet beyond such zoning district boundary, if the smaller part has frontage on an accepted way.

## SECTION 3 USE REGULATIONS

### 3.1 PRINCIPAL USES

Except as provided by law or in this By-law in each district, no building or structure shall be constructed, used or occupied, nor shall land be used or occupied, except for the purposes permitted as set forth in the accompanying Table of Use Regulations.

**Table 3.1– Use Regulations**

Districts	Residential				Commercial			Ind	
	R3A	R1A	R30	R15	C3A	C1A	C	I	
<b>A.</b>	<b>Residential Uses</b>								
1	Detached dwelling on a separate lot by not more than one family	Y	Y	Y	Y	N	N	Y	N
2	One, two family or one duplex dwelling on a separate lot	N	N	N	BA	N	N	BA	N
3	Townhouse	N	N	N	BA	BA	N	N	N
4	<i>Retirement Community - Removed STM 4/15/08</i>								
5	Apartment Building	N	N	N	BA	BA	N	N	N
6	Renting of rooms in a 1 or 2 family dwelling from June 1 through Labor Day	Y	Y	Y	Y	Y	Y	Y	Y
7	Seasonal Bed & Breakfast In-Home Stay/Room Rental (Seasonal): Renting of rooms in a 1 or 2 Family dwelling from Memorial Day weekend through Labor Day and on weekends only through Columbus Day. Limited to 3 guests.	Y	Y	Y	Y	Y	Y	Y	Y
8	Renting of rooms in an existing dwelling to not more than 3 persons.	N	N	BA	BA	BA	BA	BA	N
9	Bed & Breakfast Inn: Renting of rooms in an existing 1 or more family dwelling to 4 to 20 guests	BA	BA	BA	BA	BA	BA	BA	BA
10	Conversion of an existing dwelling to accommodate not more than 6 families	N	N	N	BA	N	N	N	N
11	Open Space Flexible Development	N	PB	N	N	N	N	N	N
12	Dwelling units located above the first story of a non-residential use	N	N	N	BA	N	N	BA	N
13	Nursing home, convalescent home	N	BA	BA	BA	BA	BA	BA	N
14	Extended care nursing facility	N	BA	BA	BA	BA	BA	BA	N
15	Assisted living, congregate care	N	BA	BA	BA	BA	BA	BA	N
16	Residential Inclusionary Development	BA	BA	BA	BA	BA	BA	BA	BA
<b>B.</b>	<b>Institutional, Recreational and Educational Uses</b>								
1	Use of land for religious purposes	Y	Y	Y	Y	Y	Y	Y	Y
2	Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic, or by a religious sect or denomination, or by a nonprofit or for profit educational corporation	Y	Y	Y	Y	Y	Y	Y	Y
3	Cemeteries	BA	BA	N	N	N	N	N	N
4	Recreation facility owned or operated by an agency of town or other government	Y	Y	Y	Y	Y	Y	Y	Y

**Table 3.1– Use Regulations**

Districts		Residential				Commercial			Ind
		R3A	R1A	R30	R15	C3A	C1A	C	I
5	Essential services	BA	BA	BA	BA	BA	BA	BA	BA
6	Municipal Use	BA	BA	BA	BA	BA	BA	BA	BA
7	Private nonprofit libraries	BA	BA	BA	BA	BA	BA	BA	N
8	Private nonprofit museums	BA	BA	BA	BA	BA	BA	BA	N
9	Child care facility	Y	Y	Y	Y	Y	Y	Y	Y
<b>C. Places of Public Assembly</b>									
1	Private membership club or lodge	N	N	N	N	N	N	BA	N
2	Entertainment and recreational facilities operated as a business for gain, according to the use and district regulations in this table provided such use is housed indoors in a sound insulated structure protecting the neighborhood from noise	N	N	N	N	BA	BA	BA	N
3	Bowling Alley	N	N	N	N	BA	BA	BA	N
4	Live Theater	N	N	N	N	BA	BA	BA	N
5	Movie Theater	N	N	N	N	N	BA	N	N
6	Sports facilities such as golf courses, country clubs, tennis clubs, riding stable, riding rings (indoor & outdoor) swimming club	BA	BA	BA	BA	BA	N	N	N
7	Resorts	BA	BA	BA	BA	N	N	N	N
<b>D. Agricultural Uses</b>									
1	Agricultural use, exempt	Y	Y	Y	Y	Y	Y	Y	Y
2	Farm stand, exempt	Y	Y	Y	Y	Y	Y	Y	Y
3	Agricultural use, nonexempt	BA	BA	BA	N	N	N	N	N
4	Farm stand, nonexempt	BA	BA	BA	BA	BA	N	N	N
<b>E. Office And Laboratory</b>									
1	Business, professional or governmental offices	N	N	N	N	Y	Y	Y	Y
2	Clinics or offices for medical, psychiatric or other health services for the examination or treatment of persons as outpatients, including laboratories that are part of such clinic or office	N	N	N	N	N	Y	Y	N
3	Laboratory or research facility for medical, dental, technical, scientific uses and uses accessory to them (but excluding direct services to patients) provided that all uses are in enclosed buildings	N	N	N	N	BA	BA	Y	Y
4	Laboratory or research facility	N	N	N	N	BA	BA	Y	Y
5	Planned unit office or research center	BA	BA	BA	N	BA	BA	BA	N
<b>F. Retail Business &amp; Consumer Service Establishments</b>									
1	Retail establishment	N	N	N	N	N	Y	Y	N
2	Apparel or antiques store or art gallery having a maximum building footprint of 4000 square feet.	N	N	N	N	BA	N	N	N
3	Furniture Store	N	N	N	N	BA	N	N	N
4	Eating place serving food and beverages to be consumed within the building	N	N	N	N	N	Y	Y	BA
5	Outdoor dining (deleted STM 4/14/ 2011)								
6	Planned Unit Comm. Development	N	N	N	N	N	BA	BA	N

**Table 3.1– Use Regulations**

Districts		Residential				Commercial			Ind
		R3A	R1A	R30	R15	C3A	C1A	C	I
7	Establishment for manufacture, assembly or packaging of consumer goods	N	N	N	N	N	Y	Y	Y
8	Reserved								
9	Personal service establishment	N	N	N	N	N	Y	Y	N
10	General service or trade establishment	N	N	N	N	BA	Y	Y	N
11	Motel	N	N	N	N	BA	BA	BA	N
12	Mortuary or funeral establishment	N	N	N	N	BA	Y	N	N
13	Store for retail sale of merchandise such as lumber yards and building supply yards wherein merchandise is stored in the open, provided that all merchandise so stored is screened from ground level view from any abutting street or abutting property at the property line where such materials are stored	N	N	N	N	N	Y	N	Y
14	Motor vehicle light service	N	N	N	N	N	SB	N	N
15	Motor vehicle and boat sales, rental and repair; indoors	N	N	N	N	N	Y	BA	N
16	Motor vehicle and boat sales or rental; outdoors	N	N	N	N	N	BA	BA	N
17	Car Washing establishment	N	N	N	N	N	BA	N	N
18	Conversion of existing structures to time sharing or time interval ownership	N	N	N	N	N	BA	BA	N
19	The storage and sale of oxygen and/or propane gas from a bulk storage in which the volume does not exceed 1000 gallons (3,786 liters) & 150 lbs per square inch pressure for the for the expressed purpose of refueling residential oxygen or propane tanks	N	N	N	N	N	BA	BA	N
20	Adult Use	N	N	N	N	N	BA	N	N
<b>G. Industrial Wholesale &amp; Transportation Uses</b>									
1	Laundry & dry cleaning plants	N	N	N	N	N	Y	Y	Y
2	Printing, binding, publishing and related arts & trades	N	N	N	N	N	BA	N	Y
3	Place for manufacturing, assembling or packaging of goods	N	N	N	N	N	N	N	BA
4	Wholesale business & storage in an enclosed structure	N	N	N	N	N	N	N	BA
5	Trucking or freight terminal	N	N	N	N	N	N	N	BA
6	Bus Storage	N	N	N	N	BA	BA	N	BA
7	Collection, treatment, storage, burial, incineration or disposal of radioactive waste, including but not limited to wastes classified as low level radioactive waste	N	N	N	N	N	N	N	N
<b>H. Accessory Uses And General Offstreet Parking</b>									
1	Private garage or offstreet parking for private automobiles registered at the premises	Y	Y	Y	Y	Y	Y	Y	Y
2	Not more than one commercial vehicle per lot and only in a garage	Y	Y	Y	Y	N	N	N	N
3	Privately owned garage for rental purposes	N	N	N	N	BA	BA	BA	Y

**Table 3.1– Use Regulations**

Districts		Residential				Commercial			Ind
		R3A	R1A	R30	R15	C3A	C1A	C	I
4	Off-street parking for commercial vehicles registered at the premises or leased to occupant	N	N	N	N	Y	Y	Y	Y
5	Private greenhouse, tennis court, swimming pool or other similar structure in connection with this off premises occupation provided there is no external change which alters the residential appearance of the building (STM 4/14/2011)	Y	Y	Y	Y	Y	Y	Y	Y
6	The raising or keeping of domestic pets	Y	Y	Y	Y	Y	Y	Y	Y
7	The raising or keeping of animals, other than domestic pets, for use by the residents of the premises, not as a commercial venture, provided that the stable or enclosure for any such animal be not less than 100 feet from any lot line	Y	Y	Y	Y	Y	Y	Y	Y
8	Customary home occupation	Y	Y	Y	Y	Y	Y	Y	Y
9	Office of a resident physician, dentist, attorney at law, architect, engineer, or accountant	BA	BA	BA	BA	BA	Y	Y	Y
10	The use of a portion of a dwelling or accessory building thereto by a resident carpenter, painter, plumber, electrician or mason or by a resident tree surgeon, landscape gardener or similar tradesman for incidental work and indoor storage in connection with this off-premises occupation provided there is no external change which alters the residential appearance of the building	Y	Y	Y	Y	Y	Y	Y	Y
11	Seasonal storage of equipment owned by residents of the premises, such as boats, travel trailers, pickup campers motorized campers, tent trailers provided that at no time will such parked or stored equipment be occupied or used for living, sleeping, or housekeeping purposes. If parked outside of a garage, it shall be parked or stored no closer to the street line than the actual building setback and screened from view	Y	Y	Y	Y	Y	Y	Y	Y
12	Accessory dwelling unit	BA	BA	BA	BA	N	N	N	N
13	Fencing	Y	Y	Y	Y	Y	Y	Y	Y
14	An eating place which is accessory to a permitted use (such as a cafeteria for employee use)	N	N	N	N	BA	N	N	N
15	Seasonal Outdoor Display	N	N	N	N	N	Y	BA	N
16	Drive Through Facilities Fast Food & Drive Through Facilities Other	N	N	N	N	N	BA	N	N
<b>I.</b>	<b>Estate Preservation Area</b>								
1.	Estate Preservation Area	N	BA	N	N	N	N	N	N
2.	Estate Preservation Area Great Estate Inn	N	Y	N	N	N	N	N	N

### 3.1.1 By Right

A use listed in the Table of Use Regulations is permitted as of right in any district under which it is denoted by the letter "Y" subject to such restrictions as may be specified elsewhere in this Bylaw.

### **3.1.2 Special Permit; Board of Appeals**

A use designated in the Table by the letters "BA" may be permitted as a special permit only if the Board of Appeals so determines and grants a special permit therefore as provided in Section 9.4 of this Bylaw subject to such restrictions as are set forth elsewhere in this Bylaw, and such restrictions as said Board may establish.

### **3.1.3 Special Permit: Planning Board**

A use designated in the Table by the letters "PB" may be permitted as a special permit only if the Planning Board so determines and grants a special permit therefore as provided in Section 9.4 of this Bylaw subject to such restrictions as are set forth elsewhere in this Bylaw, and such restrictions as said Board may establish.

### **3.1.4 Special Permit; Board of Selectmen**

A use designated in the Table by the letters "SB" may be permitted as a special permit only if the Board of Selectmen so determines and grants a special permit therefore as provided in Section 9.4 of this Bylaw subject to such restrictions as are set forth elsewhere in this Bylaw, and such restrictions as said Board may establish..

### **3.1.5 Prohibited Uses**

A use designated in the Table by the letter "N" is prohibited. Any use not set forward in the Table is also prohibited.

## **3.2 ACCESSORY USES**

### **3.2.1 General**

Accessory uses and structures shall be permitted or permitted by special permit as set forth in the Table of Use Regulations.

## **3.3 NONCONFORMING USES AND STRUCTURES**

### **3.3.1 Applicability**

This zoning by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning by-law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

### **3.3.2 Nonconforming Uses**

The Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

1. Change or substantial extension of the use; or

2. Change from one nonconforming use to another, less detrimental, nonconforming use.

### **3.3.3 Nonconforming Structures**

The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

1. Reconstructed, extended or structurally changed; or
2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

### **3.3.4 Variance Required**

Except as provided in subsection 3.3.5, below, with regard to single and two-family residential structures, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance from the Board of Appeals; provided, however, the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a special permit from the Board of Appeals.

### **3.3.5 Nonconforming Single and Two Family Residential Structures**

Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following circumstances shall not be deemed to increase the nonconforming nature of said structure as long as such addition does not increase the habitable floor area of the original structure by more than fifty (50%) percent:

1. alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements,
2. alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.
3. alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements.

In the event that the Building Commissioner determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

### **3.3.6 Abandonment or Non-Use**

A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning by-law; provided, however, that such use or structure may be restored to its protected status by special permit from the board of Appeals.

### **3.3.7 Reconstruction after Catastrophe or Demolition**

Any nonconforming structure may be reconstructed after a catastrophe or after demolition in accordance with the following provisions:

1. Reconstruction of said premises shall commence within two years after such catastrophe or demolition.
2. Building(s) as reconstructed shall be located on the same footprint as the original nonconforming structure, shall be only as great in volume or area as the original nonconforming structure. (STM 4/14/2011)
3. In the event that the proposed reconstruction after demolition would (a) cause the structure to exceed the volume or area of the original nonconforming structure or (b) exceed applicable requirements for yards, setback, and/or height or (c) cause the structure to be located other than on the original footprint, a special permit shall be required from the Board of Appeals prior to demolition. (STM 4/14/2011)
4. In the event of a bona fide catastrophe, one may apply for a special permit from the Board of Appeals to allow for reconstruction that would (a) cause the structure to exceed the volume or area of the original nonconforming structure or (b) exceed applicable requirements for yards, setback, and/or height or (c) cause the structure to be located other than on the original footprint. One must apply for the special permit within 24 months of the date of the catastrophe. (STM 4/14/2011)

### **3.3.8 Reversion to Nonconformity**

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

**Section 3.4 removed in accordance with the Attorney General Approval dated July 23, 2008.**

## SECTION 4 DIMENSIONAL REQUIREMENTS

### 4.1 GENERAL REQUIREMENTS

#### 4.1.1 Table of Dimensional Requirements

No building or structure shall be constructed nor shall any existing building or structure be enlarged or altered except in conformance with the Table of Dimensional Requirements as to lot coverage, lot area, land area per dwelling unit, lot width, front, side and rear setbacks, and maximum height of structures except as may otherwise be provided elsewhere herein.

Table 4.1.1– Table of Dimensional Requirements

Requirements	Residential		Commercial			Industrial		
	R-3A	R-1A	R-30	R-15	C-3A	C-1A	C	I
1. Minimum lot size	3 acres	1 acre	30,000 SF	15,000 SF	3 acres	1 acre	5,000 SF	2 acres
2. Minimum lot frontage	200'	150'	125'	85'	300'	200'	75'	200'
3. Minimum lot width at building setback line	200'	150'	125'	85'	300'	200'	(4)	200'
4. Minimum setbacks:								
A. Building or structure (1)								
-Street Line	50'	35'	35'	35'	75' <sup>(5)</sup>	50'	(4)	50'
-Lot line	30'	25'	20'	20'	30'	30'	(4)	25'
-District Boundary Line (2)	30'	25'	20'	20'	50'	50'	(4)	50'
B. Sign Setback					35'	30'	(4)	30'
C. Parking Area Setback					30'	30'	(4)	30'
5. Maximum Building or structure height (3)								
-Stories	2	2	2	2	2	2	2	2
-Feet	35'	35'	35'	35'	35'	35'	35'	35'
6. Maximum building coverage	10%	20%	20%	20%	20%	30%	75%	35%

Footnotes:

(1) On lots abutting streets on more than one side, the front setback requirements shall apply to each of the abutting streets. However, a dwelling need not be set back more than the average of the setbacks of the dwellings on the abutting lots on either side. If a vacant lot exists on one side it shall be considered as a dwelling setback the depth of the required front setback. No fence shall be constructed so as to obstruct intersection view within front setbacks at street intersections.

(2) Where district boundary lines separate residential districts from commercial districts and industrial districts, setback areas shall be planted with screening to protect the residential districts.

(3) These height restrictions shall not apply to chimneys, water towers, skylights and other necessary features appurtenant to buildings which are usually carried above roofs and are not used for human occupancy. The Board of Appeals may allow greater height when permitting Planned Unit Office, Great Estates, Gateway Mixed Use Developments, and uses located in the Commercial Zone. In no instance shall height, not including exemptions as stated above, exceed 50 feet.

Stairways leading to any floor or story above the first floor story shall be located within the walls of the building whenever practicable; otherwise, stairways and fire escapes shall be located on the rear wall in preference to either side wall. In no instance shall a stairway or fire escape be located on any wall fronting on a street.

(4) In view of small and irregular lot sizes, applications for new building will be accepted for consideration based on areas no less than current lot sizes. Fireproof walls on one side to the lot line are permissible if there is at least 15' setback on the other side of the building.

(5) The street line building or structure setback in C-3A may be reduced to a minimum of thirty-five (35) feet by a Special Permit from the Zoning Board of Appeals pursuant to SECTION 6 of this Bylaw if the Board determines that the proposed plan will significantly enhance the aesthetics of the property. (See Section 4.3 - Reduction of Street Line Setback in C-3A.) (S.T.M. 12/16/96)

(6) In the residential zoning districts, one accessory building or one detached garage is allowed on a lot with insufficient area which complies with all current street and lot line setbacks, frontage and setback between building requirements. In the event that the Building Commissioner determines there is not compliance with street or lot line setbacks, frontage or setback between building requirements the Zoning Board of

Appeals may grant a Special Permit for the reduction of these requirements provides that the accessory building or detached garage does not exceed 20 feet in height. (4/14/2011)

(7) In residential zoning districts, a structure is allowed on a lot with insufficient area which complies with the street line setback, lot line setback and frontage requirements. In the event that the Building Commissioner determines there is not compliance with street line setback, lot line setback or frontage requirements, the Zoning Board of Appeals may grant a special permit for the reduction of these requirements. (4/14/2011)

#### **4.1.2 Computation**

1. The land and yard spaces required for any new building or use shall not include any land or area required by any other building or use to fulfill these zoning requirements.
2. Land within the lines of a street on which a lot abuts shall not be counted as part of such lot for the purpose of meeting the area requirements of this Bylaw even though the fee to such land may be in the owners of abutting lots.

#### **4.1.3 Multiple Buildings**

If more than one building (other than a one-, two-, or three-car garage, a tool shed, a greenhouse or a cabana) is lawfully placed on any lot in single or common ownership, the distance between the nearest parts of such buildings shall be not less than twenty (20) feet.

#### **4.1.4 Land Split by Town Line**

When a lot is situated in part in the Lenox and in part in the adjacent municipality, the provisions of this By-law shall be applied to the portion of such lot in Lenox in the same manner as if the entire lot were situated in Lenox

#### **4.1.5 Frontage Required**

No buildings or structures except those of an accessory nature shall be constructed except on a lot fronting on a street.

### **4.2 SPECIAL DIMENSIONAL REQUIREMENTS**

#### **4.2.1 Two-Family House or Duplex.**

No two-family house or duplex dwelling shall be constructed on a lot containing less than 20,000 square feet.

#### **4.2.2 Effect of Eminent Domain**

Any land taken by eminent domain, or conveyed for a public purpose for which the land could have been taken or was taken by eminent domain, shall not be deemed to be transferred in violation of the land area, width, setback, or frontage provisions of the Bylaw.

#### **4.2.3 Commercial Stable, Golf Course, Country Club, Swimming Club**

1. No building or structure or developed area, except in Commercial 3-A, shall be less than 200 feet from any lot line.'
2. No commercial stable or commercial riding ring shall be allowed on a lot less than five acres in area.

### **4.3 REDUCTION OF STREET LINE SETBACK IN C-3A**

#### **4.3.1 Special Permit Required**

The street line building or structure setback in C-3A may be reduced to a minimum of thirty-five (35) feet by a special permit from the Zoning Board of Appeals if the Board determines that the proposed plan will significantly enhance the aesthetics of the property.

#### **4.3.2 Submittals**

The applicant shall submit a detailed landscape plan prepared by a registered landscape architect or professional engineer at a scale of 1" = 40'. The proposed plan must be consistent with all other applicable provisions of this By-law.

#### **4.3.3 Findings**

The Board's findings shall take into account the following criteria:

1. Overall quality of the plan including design and materials;
2. Consistency of materials and design elements (stone walls, for instance) with the historic character of the Town of Lenox;
3. Landscape treatment of parking areas;
4. Location and landscaping of signs on the site;
5. Integration into the existing terrain and surrounding landscape;
6. Enhancement of scenic views or unique features from the roadway or other publicly accessible locations;
7. Preservation of unique or sensitive natural or historic features;
8. Minimizing of changes to existing trees, other vegetation or soils;
9. Maximizing retention of open space; and
10. Screening of objectionable features from neighboring properties and the roadway.

**SECTION 5 GENERAL REGULATIONS**

**5.1 OFF-STREET PARKING AND LOADING REQUIREMENTS**

**5.1.1 General**

No building or structure shall be erected or enlarged unless the off-street parking and loading space requirements are provided as specified in this section. For the purpose of this section an enlargement of any building shall require the provision of off-street parking for the existing building as if it were newly constructed.

**5.1.2 Location**

Required off-street parking facilities or loading bays shall be provided on the same lot as the principal use they are designed to serve, except as may be provided elsewhere in this Bylaw.

**5.1.3 Spaces**

Each required car space shall be not less than nine (9) feet in width and twenty (20) feet in length exclusive of drives and maneuvering space and the total area of any parking facility for more than five (5) cars shall average at least three hundred (300) square feet per car exclusive of driveways.

**5.1.4 Multiple Uses**

Unless otherwise set forth herein, where one building is used for more than one use, parking requirements shall be computed for each use. For example, a motel with a restaurant would be required to provide parking for both rental units and for seating capacity of the restaurant; a professional office in a residence must provide the space for office use in addition to the residential requirement.

**5.1.5 Required Spaces**

Uses shall provide parking spaces in accordance with the following table. Where the computation of required parking spaces results in a fractional number, only the fraction of one-half (1/2) or more shall be counted as one (1).

**Table 5.1.5– Parking Space Quantity Requirements**

<b>Principal Use</b>	<b>Number of Spaces</b>
One and two family dwellings	2 spaces per dwelling unit
Apartments	2 spaces per dwelling unit
Rooming House	2 spaces plus 1 space for each rental unit over 1
Motels, Resorts	1 space for each sleeping room, plus 2 spaces for employees, plus 1 space for each 250 square feet of floor space for public functions
Permitted office in residence	4 spaces plus 1 space for each nonresident employee
Retail business and consumer service establishment	1 space for each 300 square feet of gross floor area
Restaurants, theaters and other places of assembly	1 space for each three seats

**Table 5.1.5– Parking Space Quantity Requirements**

<b>Principal Use</b>	<b>Number of Spaces</b>
Bowling alleys	2 spaces for each alley
Offices	1 space for each 300 square feet of gross floor area
Mortuary; funeral establishment	Minimum of twenty (20) off-street parking spaces shall be provided.
Warehouses and other commercial or industrial buildings	1 space for each 1,000 square feet of gross floor area

### **5.1.6 Shared Parking**

To the extent feasible, parking areas shall be shared with adjacent uses. This may be accomplished by access via a common driveway serving adjacent lots or premises; or, access via an existing side street; or, access via a cul-de-sac or loop road shared by adjacent lots or premises.

1. Up to fifty percent (50%) of the parking spaces serving a building may be used jointly for other uses not normally open, used or operated during similar hours. The applicant must show that the peak parking demand and principal operating hours for each use are suitable for a common parking facility.
2. The satellite parking spaces will be used solely by the employees and, where practicable, clients of the commercial use;
3. The off-site parking spaces shall be located to adequately serve the proposed use and shall be within six hundred (600) feet of the building served for clients of the commercial use.
4. A written agreement defining the joint use acceptable to the SPGA of the common parking facility shall be executed by all parties concerned and approved by the Zoning Board of Appeals as part of the special permit process. Such agreement shall be recorded at the Berkshire Registry of Deeds.
5. Any subsequent change in land uses for which the shared parking proposal was approved, and which results in the need for additional parking spaces, shall require a new special permit application under this subsection.

### **5.1.7 Reduction of Parking Requirements**

Any parking requirements for a development may be modified by a Special Permit granted by the Zoning Board of Appeals pursuant to SECTION 9 of the Zoning Bylaws upon determination that specific circumstances render a lesser provision adequate for all parking needs.

### **5.1.8 Parking Design Standards**

*The following standards shall apply to all parking facilities.*

1. A minimum of eighty percent (80%) of the required parking area shall be located to the side or rear of the structure. No parking shall be permitted within the required front

setback of any building.

2. All off-street parking areas with a capacity in excess of 35 spaces shall be paved. All off-street parking facilities with a capacity of 35 spaces or fewer shall be paved unless covered with a surfacing material meeting the following specifications:
  - a. Surface course to be minimum 8" thick compacted gravel - type B. Layers to be 4" lifts maximum. Sub-base - rolled and suitable to the Superintendent of Public Works. Areas unsuitable to be excavated and replaced with road stone and re-rolled.
  - b. Parking facilities for more than thirty-five (35) cars which will be used only from 1 June to 31 October need not be paved if a grass cover satisfactory to the Superintendent of Public Works is used on top of the required gravel base.
  - c. Parking spaces accompanying uses by right in residential districts shall be exempt from the above surfacing requirements.
3. In C-3A and C-1A Districts, the minimum dimensions for off-street parking spaces, exclusive of drives and maneuvering spaces, shall be as follows:

**Table 5.1.8 – Parking Space Dimensional Requirements**

<b>Space</b>	<b>Equivalent 90° Width</b>	<b>Minimum Equivalent 90° Depth</b>	<b>Vertical Clearance</b>	<b>Angle of Parking</b>	<b>Aisle Width</b>
Regular	8 ½ feet	19 feet	7 ½ feet	60°	22 feet
Handicapped	12 feet	20 feet	7 ½ feet	60°	22 feet

4. Off-street parking facilities shall have maneuvering areas and appropriate means of vehicular access to a street and shall be so designed as not to constitute a nuisance, hazard, or unreasonable impediment to traffic.
5. Curb cuts on town ways shall comply with the following standards:
  - a. The maximum width of a curb cut shall be 34 feet measured at the property line except that the ZBA may increase the maximum width to 60 feet if it finds that a larger curb cut is needed to accommodate commercial vehicles; and a larger curb cut is demonstrated not to cause danger to vehicles or pedestrians using the town way and vehicles entering and exiting the property; and the property will not generate traffic which will lower levels of service on the town way or at any nearby intersection below a level of service C at peak hour.
  - b. No more than 1 curb cut per lot. The ZBA may allow an additional curb cut if it finds that an additional curb cut would materially improve safety for vehicular traffic or pedestrians using the site or traveling on adjacent public ways, or a secondary curb cut for emergency vehicular access only is desirable and the cut shall be secured for that purpose.

- c. Sight distances for curb cut locations shall be based on the standards established by the American Association of State Highway officials (ASSHO) in effect on May 1, 1988, as amended.

### **5.1.9 Driveways**

Driveways from town ways shall comply with the following standards:

1. The minimum traveled width for a one-way driveway shall be twelve (12) feet. The minimum traveled width for a two-way driveway shall be twenty-four (24) feet.
2. No curb cut shall be located closer than 25 feet to a street or road intersection or within 15 feet of a crosswalk.

### **5.1.10 Layout of Off-Street Parking Facilities**

Any parking facility located within a structure, unless it is completely underground, must conform to the yard requirements for the zoning district in which it is located. Setbacks for on-grade open parking facilities shall be provided as follows:

1. No on-grade open parking space shall be located within ten (10) feet of that portion of a building wall containing windows or rooms at basement or first story levels habitable or occupiable by people. However, on-grade open parking spaces serving 1, 2, or 3 family dwellings may be located within five (5) feet of that portion of such building wall.
2. No on-grade open parking space or driveway shall be located within 30 feet of any side or rear property line.
3. The area between the required parking setback line and the building or lot line shall be landscaped and maintained in accordance with the requirements of Subsections 5.1.12 and 5.1.16.
4. In an C-3A district, no part of any parking facility or internal roadway shall be located within 30 feet of a residential district or of an open space district, a park or public recreation area or within 50 feet of the right-of-way of Route 7/20.
5. All roads, streets, sidewalks and other public rights-of-way and all landscaped areas shall be protected from vehicular overhang by wheel bumpers, curbs or other suitable method.
6. Off-Street parking facilities shall be marked so as to indicate clearly the space to be occupied by each vehicle, in accordance with the dimensions specified above, and including directional arrows and traffic signs as necessary for traffic control. Such markings shall be maintained so as to be plainly visible.

### **5.1.11 Drainage, Surfacing and Maintenance**

All sections of off-street parking facilities which are paved according to the requirements of this subsection shall be graded, surfaced and maintained to the satisfaction of the Town Board of Public Works to the extent necessary to prevent nuisance of dust, erosion, or excessive water flow onto any public way or onto another lot.

### **5.1.12 Maintenance**

Off-street parking areas shall be kept plowed, clean and free from rubbish and debris. All fences, barriers, walls, landscaping and lighting shall be maintained and kept repaired or replaced with facilities satisfying the requirements of this Section.

### **5.1.13 Snow Storage**

Parking areas shall have a designated area(s) to place snow. This snow storage area shall be adjoining or reasonably near the parking area and shall be of a size to hold a reasonable amount of snow as may be generated from the parking area after a heavy snowfall. In addition to or in lieu of providing a storage area, the Town Board of Public Works may approve a procedure for trucking snow from the area.

### **5.1.14 Lighting**

Off-street parking facilities which are used at night shall be provided with adequate lighting installed and maintained in such a manner so as not to reflect or cause glare on abutting or facing residential premises nor cause reflection or glare which adversely affects safe vision of operators of vehicles moving on nearby streets. A recommended standard for lighting is a minimum intensity of one (1) foot candle on the entire surface of the parking facility.

### **5.1.15 Screening**

Off-street parking facilities containing thirty-five or more spaces and not in a structure shall be effectively screened from abutting streets and lots. However, such screening shall not obstruct vehicle sight distances, entrances and exits. Screening shall meet the following requirements:

1. A strip at least five (5) feet in width of densely planted shrubs or trees which are at least three (3) feet high at the time of planting and are of a type that may be expected to form within three years after the time of planting a continuous, unbroken, year-round visual screen.
2. For rear and side yards only, a wall, barrier, or fence of uniform appearance. Such wall, barrier, or fence may be opaque or perforated provided that not more than fifty percent (50%) of the face is open. The wall, barrier or fence shall be at least four (4) feet and not more than six (6) feet in height.
3. The screening as required in this subsection shall be located so as not to obstruct vehicle sight distances, entrances and exits. Such screening shall not be higher than two (2) feet within thirty (30) feet of an intersection or ten (10) feet of a driveway.
4. Every effort shall be made to retain existing trees. Removal of any tree exceeding six (6) inch caliper to accommodate construction of a parking facility is discouraged.
5. Perimeter landscaping required for screening may include a landscaped yard area otherwise required.
6. Screening shall be continuously maintained so as to effectively serve the purpose for which it is intended. No advertising devices of any kind shall be allowed on or in screening.

7. Screening shall be continuous except for required access.
8. Screening requirements may be waived in the following cases:
  - a. If said parking facility is already effectively screened by an existing building, wall, fence or hedge on an adjoining lot and within five feet of the common property line, screening shall not be required so long as such adjoining screening is maintained.
  - b. If said parking facility is already effectively screened by a natural terrain feature or change in grade.
  - c. If said parking facility abuts another parking facility under different use or ownership, a landscaped planting strip at least 5 feet in width may be used in lieu of screening along the common property line.

### **5.1.16 Landscaping**

For the purpose of this section, landscaping shall consist of any of the following or a combination thereof: grass, ground covers, shrubs, vines, hedges, or trees; and non-living durable material commonly used in landscaping, such as but not limited to rocks, pebbles or wood chips, but excluding asphalt or concrete. Required screening elements as specified above may be allowed in perimeter landscaped areas. On-grade, open facilities which contain thirty-five or more parking spaces shall be landscaped in accordance with the following requirements:

1. At least fifteen percent (15%) of the interior area of the parking facility shall be landscaped. This does not include perimeter planting provided for beautification or to satisfy screening requirements.
2. Each planting area shall be at least twenty-five (25) square feet in area and have no dimensions less than five (5) feet.
3. Each planting area shall contain at least one tree and the facility as a whole shall contain at least one tree for every ten parking spaces.
4. Trees used to satisfy parking lot landscaping requirements shall be a minimum of three (3) inch caliper at planting and shall be suitable for location in parking lots.
5. The trees required for the landscaping of on-site parking areas - whether such trees are coniferous or deciduous, flowering or non-flowering - should be tolerant of environmental conditions, able to screen parking areas by virtue of their size, form, density of foliage and spread, and easy to maintain. A suggested list of trees which meet these criteria is:

Coniferous. Botanical name (common name)

Pinus Strobus (Eastern White Pine); Tsuga Canadensis (Canadian Hemlock); Pinus Resinosa (Red Pine); Picea Glauca (White Spruce); Picea Abies (Norway Spruce); Picea Pungens Glauca Kosteriana (Blue Spruce); Picea Rubens (Red Spruce).

Deciduous. Botanical name (common name)

Fagus Grandifolia (American Beech); Acer Platanoides (Norway Maple); Acer rubrum (Red Maple); Acer saccharum (Sugar Maple); Fraxinus Americana (White Ash); Fraxinus Pennsylvanica (Green Ash); Thuja Occidentalis (Eastern Arborvitae); Quercus palustris (Pin Oak); Quercus rubra (Red Oak); Tilia cordata greenspire (Littleleaf Linden); Tilia Europaea (Common Linden); Ulmus Americana (American Elm).

6. Existing healthy trees shall be preserved wherever possible.
7. Existing and new trees shall be protected by bollards, high curbs or other barriers sufficient to prevent damage.
8. Extensive unbroken paved areas in large on-grade open parking facilities shall not be permitted. In parking lots containing 35 or more spaces, a row shall contain no more than 15 contiguous parking spaces without a densely planted landscaped buffer of at least the dimensions of one space.
9. No regular certificate of occupancy shall be issued unless an inspection by the Building Commissioner establishes that the landscaping meets the requirements provided herein. Pending issuance of a regular certificate of occupancy, a temporary certificate may be issued for such period as the Building Commissioner may designate but no longer than six months. All landscaping covered under this section shall be continuously maintained so as to effectively serve the purpose for which it was intended.

#### **5.1.17 Bicycles**

Bicycle parking spaces shall be located near the entrance of the use being served and within view of pedestrian traffic, if possible, and shall be sufficiently secure to reasonably reduce the likelihood of bicycle theft.

#### **5.1.18 Loading Bays**

Each loading bay shall be not less than ten (10) feet in width and thirty-five (35) feet in length exclusive of drives and maneuvering space, and all required bays, drives and maneuvering space shall be located entirely on the lot with direct access to the building intended to be served.

#### **5.1.19 Loading Standards.**

Adequate off-street loading facilities and space must be provided to service the needs created by new structures, additions to existing structures, or changes in use in existing structures. Facilities shall be so sized and arranged that no vehicles need back onto or off of a public way, or be parked on a public way while loading, unloading or waiting in queue. In addition loading facilities shall be located so as to not interfere with internal traffic circulation.

## **5.2 SIGNS**

### **5.2.1 General**

No signs or advertising devices of any kind or nature shall be erected on any premises or affixed to the outside of any structure or be visible from the outside of any structure in the Town except as specifically permitted, except that in a commercial or industrial district permanent professional

lettering or logo identifying the occupancy will be permitted on doors or windows. A permit is required for all new signs or alterations of existing signs in Residential, Commercial, and Industrial Districts. The Building Commissioner is the official who issues sign permits, except as specifically provided hereafter.

1. The Selectmen may issue a permit for any sign of a permanent nature on public land. (STM 4/14/2011)
2. All signs in the Historic District except as provided here must be approved by the Historic District Commission.

### **5.2.2 Dimensions**

In determining the dimensions of signs, the area shall be determined by measuring from the top of the topmost display elements, and from exterior side to exterior side of display elements and including in such measurements any blank or open area between display elements. Display elements include any letters, words, trademarks, medallions, symbols or other devices intended to advertise or indicate the name of the premises or the products or services available thereat. Signs having a backing strip shall be measured at the extreme dimensions of such backing.

1. Two similar signs back to back so as to face opposite directions shall be considered one sign and area requirements shall be determined from the measurement of one side only. Likewise, two signs may be oriented at a maximum of 90° to one another and still be considered one sign.

### **5.2.3 General Standards**

1. All signs shall be stationary and shall contain no visible moving parts. Signs producing noise and/or odors or vapors are prohibited.
2. There shall be no temporary special promotion signs, banners, streamers, or placards erected, suspended, posted or affixed in any manner outdoors or on the exterior of any building in a Business District except by special permission of the Selectmen. Temporary shall mean no more than two weeks.
3. No sign shall be hung from any other sign.

### **5.2.4 Signs in All Districts**

The following signs are permitted in all districts.

1. One "For Sale" or "For Rent" sign, not more than three (3) square feet in signboard area and which advertises for sale or for rent only the premises on which the sign is located.
2. One Building Contractor's sign (which may include subcontractor and architectural information) on a building while actually under construction, not exceeding six (6) square feet in signboard area.
3. The Zoning Board of Appeals in granting a Special Permit or Variance may issue a permit

for a sign which does not conform to the requirements of the district in which it is located. On the premises with a non-conforming use the Zoning Board of Appeals may issue a permit for a sign which does not conform to the requirements of the district in which it is located.

4. For churches and institutions, signs shall be governed by the provisions of the district in which they are located except that in any district two bulletin or announcement boards or identification signs up to ten (10) square feet in size are permitted.
5. Directional signs limited to the name of the business on public property or on private property not contiguous with the advertiser's lot may be erected by special permission of the Selectmen, and if within the Historic District by the Historic District Commission. Such signs shall not exceed six (6) square feet of signboard area and shall be so placed or hooded that the light shall not be noxious or offensive to the neighborhood. (STM 4/14/2011)
6. In Commercial Districts, temporary signs not exceeding 1/12th of the permitted sign area in size may be affixed (not hung) to a permitted sign or to a building. This includes signs advertising "Sale", "Grand Opening", "Clearance" and the like.

### 5.2.5 Signs in Residential Districts

The following signs are permitted in Residential Districts.

1. One non-illuminated sign which displays the street number, name of the occupant or the premises or both, not exceeding three (3) square feet in area, or not more than two signs, not exceeding two (2) square feet in area each. Such sign may be attached to a building or may be on a rod or post not more than four (4) feet high and not less than three (3) feet from any lot line.

### 5.2.6 Signs in Commercial and Industrial Districts

In Commercial and Industrial Districts, signs shall relate to the premises on which they are located and shall only identify the occupancy of such premises or advertise the articles or services available within such premises. Illuminated signs are permitted. The following signs are permitted in Commercial and Industrial Districts.

**Table 5.2.6 – Commercial and Industrial District Sign Requirements**

<b>District</b>	<b>Number</b>	<b>Size</b>	<b>Location</b>
C	See 5.2.8	12 sq. ft.	On building, 6" maximum projection
C	1 per lot	36 sq. ft.	Free standing, planned unit commercial development only, setback to be determined
C	1 per occupancy See 5.2.8 in lieu of 12 sq. ft. sign on building	6 sq. ft.	Two-faced sign from building or on free standing post; any portion of sign must be 12" back of any property line.
C-1A	1 per occupancy	24 sq. ft.	On building, 12" maximum projection
C-1A	1 per lot	36 sq. ft.	Free standing, 25' setback
C-3A	1 per occupancy	36 sq. ft.	On building, 12" maximum projection

**Table 5.2.6 – Commercial and Industrial District Sign Requirements**

<b>District</b>	<b>Number</b>	<b>Size</b>	<b>Location</b>
C-3A	1 per lot	36 sq. ft.	Free-standing, 35 ft. setback
I	1 per occupancy	24 sq. ft.	On building, 12” maximum projection
I	1 per lot	36 sq. ft.	Free standing, 1.5’ setback

### **5.2.7 Entrance and Exit Signs in Commercial and Industrial Districts**

The following signs designating entrance and exit are permitted:

C - 6" x 12"

All other districts except Residential - 8" x 24"

### **5.2.8 Other Signs Permitted in Commercial and Industrial Districts**

Each occupant in a Commercial or Industrial District is permitted one sign affixed parallel to the exterior face of the building fronting upon a public street and also one sign affixed parallel to the exterior face of the building fronting upon a parking lot if there is an entrance from the parking lot leading to the occupant's premises. Multiple occupants having a common entrance are restricted to group listings on a single sign.

### **5.2.9 Free-standing Signs**

In C-1A and C-3A and Industrial Districts where a free-standing sign is permitted, the top edge of any such free-standing sign shall not be higher than twenty (20) feet vertical measure above the average level of the ground between the supports of each sign. Any such free-standing sign may not be nearer to lot lines than setbacks given in Table 5.2.6. Maximum dimension for a free-standing sign in any direction is sixteen (16) feet.

### **5.2.10 Signs in Historic District**

Signs in the Historic District which the Building Commissioner determines have met the requirements of the zoning bylaw must then be submitted to the Historic District Commission for approval before a permit can be issued by the Building Commissioner for the erection of said sign.

## **5.3 LIGHTING**

### **5.3.1 General**

Lighting shall conform with the following standards.

### **5.3.2 Sign Lighting**

1. Sign lighting shall be continuous, not intermittent nor flashing, nor changing.
2. Sign illumination is permitted only between the hours of seven (7:00) o'clock in the morning and eleven (11:00) o'clock in the evening, except that signs of retail business and consumer service establishments may be illuminated during any hours these establishments are open to the public.

3. For the safety of pedestrians and vehicles at night, the preferred type of lighting for signs is direct illumination from a shielded light source (in compliance with the standards described in 5.3.3, below). Any illumination provided for signs shall be white only. Internally-lit signs with opaque backgrounds and glowing translucent letters may be permitted. Individual solid metal letters with internal lighting tubes that back-light the wall in a “halo” effect may also be allowed.

### **5.3.3 Outdoor Lighting**

1. Any private outdoor lighting fixture newly installed or replaced shall be shielded at the source so as not to produce a strong direct light beyond the property boundaries. The light level at the lot line shall not exceed 0.2 foot-candles, measured at ground level.
2. No private outdoor light shall be located at a height greater than twenty-five (25) feet.

## **5.4 DRAINAGE AND EROSION CONTROL**

### **5.4.1 Applicability**

Any religious purpose, educational purpose, or use requiring a special permit or variance which permits the construction of more than ten (10) new dwelling units, or any religious purpose, educational purpose, motel, nursing home, planned unit commercial development, resort, office building, or industrial use which:

1. is located on 25 acres or more of land, and/or
2. results in more than 20,000 square feet of ground floor area and paved parking area

shall be subject to the regulations set forth below.

### **5.4.2 Submittals**

The applicant shall submit with its application for a certificate of occupancy, building permit, special permit, or variance the following information:

1. a plan of the tract and adjacent and downstream areas showing proposed drainage facilities together with a statement showing the impact of storm water runoff on adjacent downstream surface water bodies and flood plains.
2. a plan for control of erosion and sedimentation both temporary and permanent measure prepared by a professional engineer, which shall include the following:
  - a. a plan map showing property lines, wetlands, stream courses, water bodies, location of areas to be stripped of vegetation, location of areas to be regraded, the contour data including existing and proposed grades.
  - b. a schedule of operations, to show the sequence and timing of major improvement phases such as clearing, grading, paving, installation of drainage features, and the like.

- c. seeding, sodding, or revegetation plans and specifications for all unprotected or unvegetated areas.
- d. a map showing the location, design and timing of structural sediment-control measures, such as diversions, waterways, grade stabilization structures, debris basins, and the like.
- e. the calculations used in designing erosion-control structures.
- f. a description of procedures to be followed to maintain sediment-control measures, including the manner in which sediment removed from control structures will be disposed of.

### 5.4.3 Standards

Performance standards shall conform to those described in the "Guidelines for Soil and Water Conservation in Urbanizing Areas of Massachusetts", (USDA, Soil Conservation Service, 1975).

1. The applicant shall demonstrate that adequate provisions have been made for the provision of surface water according to the following standards; catch basins and culverts shall be built in conformity with specifications of the Superintendent of Public Works on both sides of any roadway on continuous grades at intervals of not more than 400 feet, at low points and sags in any roadway, and near the corners of the roadway at intersecting streets.
2. The applicant may be required by the Board of Public Works and its Superintendent to carry away by pipe or open ditch any spring or surface water that may exist either previous to or as a result of the development. Such drainage facilities shall be located in the road right-of-way, where feasible, or in perpetual unobstructed easements of appropriate width shown on the plan.
3. A culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area.
4. The Board of Public Works and its Superintendent shall approve the design and size of the facility based on anticipated runoff from a "twenty-five year frequency" storm under conditions of total potential development permitted by the zoning bylaw in the watershed. A lesser frequency storm calculation may be allowed where downstream flooding problems are minimal. In any event, the Soil Conservation Service Modified Soil Cover Complex Method will be used to determine runoff.
5. The applicant's engineer shall also study the effect of the existing downstream drainage facilities outside the area of development. This study shall be reviewed by the Board of Public Works and the Superintendent of Public Works and where it is anticipated that the additional runoff incident to the development will overload the existing downstream drainage facility. The Zoning Board of Appeals shall not approve the development, nor

shall the Building Commissioner issue a building permit or certificate of occupancy until provision has been made for the improvement of said conditions.

#### **5.4.4 Security**

A completion bond or covenant shall be required for improvements in the proposed development.

A bond shall be sufficient to cover the costs of accomplishing the erosion and sedimentation control measures.

## **SECTION 6 SPECIAL REGULATIONS**

### **6.1 MOTELS, INNS, HOTELS,**

#### **6.1.1 General Requirements**

1. Each rental unit shall contain not less than two hundred (200) square feet of habitable floor area.
2. Each motel site shall be provided with not more than two (2) motor vehicle driveways for each abutting street which shall intersect the abutting street or streets at ninety (90) degrees.

#### **6.1.2 Special Requirements**

1. Except in Commercial C districts, no motel shall be constructed on a lot having less than two hundred (200) feet frontage and less than 90,000 square feet lot size. If a larger lot size is specified for the district in which the motel is proposed, such larger lot size is required.
2. Except in Commercial C districts, there shall be 3,000 square feet of land area for each motel unit. The minimum acreage requirement may be included in calculating this land area.
3. On each lot used for motel purposes, except in Commercial C districts, there shall be provided front, rear and side yards each not less than fifty (50) feet in depth. If a larger setback is specified for the district for which the use is proposed, the larger setback is required.
4. Except in Commercial C districts, a space not less than 20 feet wide shall be maintained open with grass, bushes, flowers, or trees all along each side lot line, rear lot line and front lot line, except for entrance and exit driveways and such open space shall not be built upon nor paved, nor used for parking.

### **6.2 SEASONAL OUTDOOR DISPLAYS**

#### **6.2.1 Outdoor Displays; C1A District**

Outdoor displays may be allowed by right from May 15 to October 15. Such displays:

1. shall be established in a orderly manner with a high level of design quality so as to not adversely impact surrounding uses;
2. shall be in an area, parallel to the front of the building in which the principal use is located, of no more than fifty percent (50%) of the front facade of such building, and;
3. shall not be in those areas designated for zoning purposes as front, side or rear yards, or on public or private streets or ways, or parking spaces, or traffic lanes, or on public sidewalks,

and where there are private sidewalks, four (4) feet of the sidewalk width remain unencumbered;

4. shall be a maximum of six (6) feet in height;
5. shall not have additional signs except as otherwise provided herein;
6. shall be located outdoors only during regular business hours; and
7. shall be of the type that is displayed or sold in the ordinary and customary operations of the principal use.

### **6.2.2 Outdoor Displays; Commercial (C) District**

Outdoor displays may be allowed by special permit from May 15 to October 15. Such displays:

1. shall be established in a orderly manner with a high level of design quality so as to not adversely impact surrounding uses;
2. shall be in an area, parallel to the front of the building in which the principal use is located, of no more than fifty percent (50%) of the front façade of such building; and
3. shall not be in those areas designated for zoning purposes as front, side or rear yards, or on public or private streets or ways, or parking spaces, or traffic lanes, or on public sidewalks, and where there are private sidewalks, four (4) feet of the sidewalk width remain unencumbered;
4. shall be a maximum of six (6) feet in height;
5. shall not have additional signs except as otherwise provided herein;
6. shall be located outdoors only during regular business hours; and,
7. shall be of the type that is displayed or sold in the ordinary and customary operations of the principal use. The assembly or packaging of consumer goods including food and beverage products may be allowed in the Commercial District provided that not more than 10% of the outdoor display area is devoted to this operation.

### **6.3 OUTDOOR DINING** (Deleted STM 4/14/ 2011)

## **6.4 PLANNED UNIT COMMERCIAL DEVELOPMENT**

### **6.4.1 General Requirements**

1. A mall or other form of walkway, interrupted by parking areas, shall be provided to link together the various stores and service outlets in the planned unit commercial development.

2. The minimum lot size for a planned unit commercial development shall be seven (7) acres except in Commercial C where the minimum lot size required shall be 40,000 square feet.
3. In examining an application for a Planned Unit Commercial Development, the Board of Appeals shall pay particular attention to on-site traffic mitigation measures such as shared highway access, joint driveways, good internal traffic access to adjacent parcels, shared parking. The Board of Appeals shall consider landscaping.

#### **6.4.2 Special Requirements**

1. In the Commercial District the Board of Appeals may allow for residential uses to exist in combination with retail business and consumer services as part of the entire Planned Unit Commercial Development. Residential uses shall not be located on the first floor of a structure when developed in combination with commercial or retail uses.

### **6.5 PLANNED UNIT OFFICE OR RESEARCH CENTER**

#### **6.5.1 Planned Unit Office or Research Center; Residential Districts**

A planned unit office or research center shall consist of a building or a group of physically interrelated buildings where the main function is the processing, compilation or analysis of records or data; research activity in the physical or social sciences; applied research in product development. No manufacturing shall be permitted. Minimum lot size for a planned unit office or research center in a residential district shall be fifteen (15) acres. Maximum percentage of building coverage to lot size shall be five (5%) percent. In examining an application for a planned unit office or research center, the Board of Appeals shall pay particular attention to the landscape provisions of the proposal and to the adequacy of streets and highways at the locus of the proposed development.

#### **6.5.2 Planned Unit Office or Research Center; Commercial Districts**

A planned unit office or research center shall consist of a building or a group of physically interrelated buildings where the main function is the processing, compilation or analysis of records or data; research activity in the physical or social sciences; applied research in product development. Accessory manufacturing and processing shall be permitted. Minimum lot size for a planned unit office or research center in a commercial district shall be three (3) acres. Maximum percentage of building coverage to lot size shall be twenty-five (25%) percent, except that the following additional building coverage may be permitted if the Board of Appeals finds that the additional coverage will not result in undue adverse impacts, and that the applicant has provided the specified desirable features as permanent parts of the development.

1. Bonus for providing on-site traffic mitigation measures such as shared highway access, joint driveways, good internal traffic access to adjacent parcels and shared parking, as deemed appropriate by the Board of Appeals as part of their findings during the Special Permit Review process: five percent (5%).
2. Bonus for parcels of over fifteen (15) acres which are submitted under a single special permit application and which incorporate traffic mitigation measures: five percent (5%).

In examining an application for a planned unit office or research center, the Board of Appeals

shall pay particular attention to the landscape provisions of the proposal and to the adequacy of streets and highways at the locus of the proposed development.

## **6.6 RESORTS**

### **6.6.1 General Requirements**

1. A resort shall have a minimum of 15 acres of land area.
2. A buffer area of 200 feet shall be maintained between the resort activity area and abutting property lines. The purpose of this area is to prevent unreasonable intrusion of the resort activity upon abutting properties. Therefore, no resort activity of any kind shall take place within this area. Further the character of the area shall be one in which natural tree or shrub growth has been retained or formal planting has been provided or an attractive type of fabricated screening has been installed to achieve the stated effect.

## **6.7 EDUCATIONAL AND RELIGIOUS USES**

### **6.7.1 General Requirements**

Any non-municipal educational use or any religious use is subject to the following regulations:

1. Maximum building height - 2 stories or 35 feet.
2. Maximum building coverage - 4%.
3. Setback - two hundred (200) feet buffer surrounding the property to be kept undeveloped except for entrance and exit roadways.
4. Major access roads and major parking areas subject to frequent use day or night shall be paved. Major roads are to be eighteen (18) feet wide and shall not exceed a 7 1/2 % grade.
5. Parking areas shall be screened as provided in 5.1.15
6. Parking areas shall be within three hundred (300) feet of the building to be served.

### **6.7.2 Parking Requirements**

- |                                   |   |
|-----------------------------------|---|
| 1. Places of assembly             | 1 space for every three (3) seats   |
| 2. Classrooms and/or dormitories: |   |
| Grades 1-10:                      | 1 space for each staff member;  |
| Grades 10-12:                     | 1 space for each staff member plus 1 space for every two students.              |
| College:                          | 1 space for each staff member plus two (2) spaces for every three (3) students. |

### **6.7.3 Special Requirements**

Any property located in the Commercial C-Zone or Residential R-15 Zone used primarily for

religious purposes shall be exempt from the provisions of this Section 6.7.

## **6.8 ADULT ENTERTAINMENT USES**

### **6.8.1 Purpose and Intent**

The purpose and intent of this section is to address and mitigate the secondary effects of the adult uses and businesses referenced herein. The provisions of this section are not intended to impose a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. Also, the provisions of this section are not intended to restrict or deny access by adults to adult uses and to sexually oriented matter or material protected by the Constitution of the United States of America and of 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. Neither is it the purpose or intent of this section to legalize the sale, rental, distribution, or exhibition of obscene or other illegal matter or materials.

It is also the purpose of this section to address and mitigate the secondary effects of the adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in the Town. All of said secondary impacts are adverse to the health, safety, and general welfare of the Town of Lenox and its inhabitants.

### **6.8.2 Special Permit**

No adult use shall be allowed except by a Special Permit granted by the Board of Appeals. Said Board may impose such conditions as it deems appropriate for the protection of public health, safety, and welfare in any district permitting such use. Said Special Permit shall only be issued following a public hearing held within sixty-five (65) days after filing of an application with the Board of Appeals, a copy of which shall forthwith be given to the Town Clerk by the applicant.

### **6.8.3 Location**

An adult use shall be prohibited in all zoning districts except in the C-1A Zone. An adult use may not be located within four hundred (400) feet of

1. a boundary line of a residential zoning district;
2. any other adult bookstore or adult motion picture theater; or
3. any establishment licensed under the provisions of Chapter 138, §12.

The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult use is to be located to the nearest boundary line of a residential zoning district or to the nearest property line of any of the other designated uses set forth above.

#### **6.8.4 Requirements**

1. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
2. No adult entertainment use shall be allowed to display for advertisement or other purpose 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 glass or other like transparent material any sexually explicit figures or words as defined in M.G.L. Chapter 272, §31.
3. No adult entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
4. No adult entertainment use shall be allowed within a building containing other retail, consumer or residential uses.
5. No adult entertainment use shall be allowed within a shopping center, shopping plaza or mall.
6. The proposed adult entertainment use shall comply with the off-street parking requirements set forth in Section 5.1.
7. No adult entertainment use shall have any flashing lights visible from outside the establishment.
8. No adult entertainment use shall have a freestanding accessory sign.
9. No adult entertainment use shall be established prior to submission and approval of a site plan by the Board of Appeals. The site plan shall depict all existing and proposed buildings, parking spaces, driveways, service areas and other open uses. The site plan shall show the distances between the proposed adult entertainment use and the boundary of the nearest residential zoning district and the property line of each of the uses set forth in Section 6.8.3.

#### **6.8.5 Application**

The application for a Special Permit for an Adult Use shall include the following information:

1. name and address of the legal owner of the proposed establishment;
2. name and address of all persons having a lawful ownership, equity or security interest in the proposed establishment;
3. a sworn statement that neither the applicant, owner, nor any person having a lawful ownership, equity or security interest in the proposed establishment has been convicted of violating the provisions of Massachusetts General Laws Chapter 119, §63 or Chapter 272, §28;

4. name and address of the manager of the proposed establishment;
5. proposed provisions for security;
6. number of employees; and
7. proposed physical layout of the interior of the proposed establishment.

#### **6.8.6 Conditions**

The special permit granting authority may impose reasonable conditions, safeguards and limitations on time or use of any special permit granted shall be personal to the applicant, shall not run with land and shall expire upon sale or transfer of the subject property.

#### **6.8.7 Expiration**

A special permit to conduct an adult entertainment use shall expire after a period on one calendar year from its date of issuance and shall be renewable for successive two-year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon the public safety factors applied at the time that the original special permit was granted, and that a site plan is submitted to, and approved by the Board of Appeals as set forth above.

### **6.9 BED AND BREAKFAST ESTABLISHMENTS**

#### **6.9.1 Bed & Breakfast In-Home Stay/Room Rental**

The following requirements shall apply:

1. Establishment limited to not more than three (3) guests;
2. Parking must be off street, on premises, with one (1) space per room rented and one (1) per owner.
3. No other uses except for customary home occupation shall be permitted on the property.
4. No additions or external modifications may be made to the property for lodging use.
5. A certificate of occupancy required and premises shall be subject to annual inspection.

#### **6.9.2 Bed & Breakfast Inn**

1. Lodging for four (4) to twenty (20) guests.
2. Parking must be off street, on premises, with one space per room rented and one per owner.
3. No other uses except for customary home occupation permitted on the property.
4. No external additions to be made to property for lodging use. External modifications for access and safety are permitted but such modification shall be designed for minimum impact on abutters.

5. Requires a special permit, which is subject to review.
6. Certificate of occupancy required. Subject to annual inspection.
7. Property must be served by town water and sewer.
8. Except in the commercial district, an open space not less than 20 feet wide shall be maintained along each lot line with grass bushes, flowers or trees to provide a buffer.

## 6.10 ESTATE PRESERVATION AREA

### 6.10.1 Purpose

The purpose of this Estate Preservation Area is to encourage the preservation and restoration of the original features and character of buildings inherited from the estate system of the turn of the century and the open space, vistas, stonework, gardens and recreation facilities associated with the original buildings. Use flexibility and a density bonus system are the means by which these objectives shall be encouraged.

### 6.10.2 Special Permit

The Zoning Board of Appeals may allow, by Special Permit, the development of an Estate Preservation Area, as prescribed herein, upon determination that such development will preserve and protect qualifying buildings and open space and settings associated with such buildings and subject to further restrictions as may be imposed by the Zoning Board of Appeals in accordance with this bylaw.

### 6.10.3 Eligibility

A property/building qualifies as an Estate Preservation Area if, and only if, the property/building is included in the following list:

**Table 6.10.3 – List of Estates**

Property Name	Building Name	Map/Parcel No.	Street Address
Bellefontaine	Mansion (Excluding Dorm and Gym Addition) Plus Gatehouse	7-43	Kemble St.
Belvoir Terrace	Main Building (Excluding Kitchen Wing)	12-4	Cliffwood St.
Blantyre	Main Building	4-75	East St.
Cranwell (Wyndburst) (Coldbrooke)	Cranwell Hall (Excluding West Wing) Wickham Hall, Berchman's Hall	3-55	Lee Rd.
Ethelwynde	Main Building	12-2	Yokun Ave.
Elms (Windsor Mtn.)	Main Building (Excluding Dining Hall Wing) (Groton Place)	11-1	West St.
Shakespeare & Co. Springlaw	Clipston Grange Frelinghusen Cottage (Bassett Hall) Springlawn (Schmerhorn Hall)	7-22/7-22-5	Kemble St.
Wayside (Lenox Club)	Main Building	12-3	Yokun Ave.

(Note that Town sewer is readily accessible to all.) All of the estate buildings in the above list are Category 1 buildings hereafter defined.

#### **6.10.4 Designation**

The applicant shall designate in its application hereafter referred to, the particular Category #1 building(s) to be preserved ("Designated Building"), and the area of land to be included in the Estate Preservation Area ("Designated Area") which area need not be the entire area listed above but shall contain at least 25 acres and 75% of the land, whichever is greater, listed above and shall include the Designated Building.

#### **6.10.5 Division**

Division of a Designated Area into separate parcels by reason of public ways or multiple ownership shall not prevent the qualification of an area that otherwise complies with the requirements set forth herein.

#### **6.10.6 Requirements**

The development of an estate Preservation Area as provided for herein may be permitted subject to the following requirements:

1. preservation and rehabilitation of the original exterior features, character and structural integrity of Category #1 buildings inherited from the estate system of the turn of the century and the open space, vistas, stonework, gardens, and other historic landscape features and recreation facilities associated with Category #1 buildings. The Zoning Board of Appeals shall refer to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1982), as amended, for guidance;
2. acreage of not less than 25 acres;
3. connection to the town sewer;
4. water for domestic purposes is available, and water mains shall satisfy equivalent subdivision standards;
5. town water when available will be connected for fire protection;
6. all driveways are constructed and maintained to a standard at least equal to the contemporary requirements of a subdivision road, except that the Zoning Board of Appeals may waive requirements for width of layout and traveled way, paving, monuments, sign posts, trees, sidewalks and curbing;
7. off-street parking is screened from abutters and adjoining streets;
8. preservation of Designated Buildings and associated features and installation of driveways, services, and soil and erosion control measures shall be secured by a completion bond and/or covenant approved as to form and substance by the Zoning Board of Appeals and manner of execution by Town Counsel. Preservation of the Designated Buildings(s) and associated features must be secured as above set forth prior to the

commencement of any development permitted by this Section. Development and rehabilitation may proceed in stages, and if so, the required bond or covenant shall be similarly staged;

9. unless required by the building code, no new buildings shall be erected within two hundred (200) feet of a Designated Building;
10. no new structure or building shall be permitted on the land lying between a Category 1 Building and its corresponding street address as listed above unless located more than 1500 feet from any Category 1 Building.

#### **6.10.7 Health Clinics**

An Estate Preservation Area may include health clinics provided that:

1. a buffer area up to two hundred (200) feet wide, as determined by the Zoning Board of Appeals, is maintained between activity areas and off premises neighbors; and
2. at least one hundred fifty (150) feet of frontage and twenty-five (25) acres of land are allocated to this use. (Activity areas as used herein means areas of activity which would be intrusive to off premises neighbors.)

#### **6.10.8 Multifamily Uses**

An Estate Preservation Area may include any mix of single family dwelling units, apartments and townhouses if the following requirements are satisfied:

1. frontage of one hundred fifty (150) feet plus an additional five (5) feet of frontage for each apartment, single family dwelling unit or townhouse unit;
2. a buffer area up to two hundred (200) feet wide as determined by the Zoning Board of Appeals, is maintained between off premises neighbors and on premises activity areas which would be intrusive to such neighbors.
3. the density required for apartments, townhouses and single family dwelling units in an Estate Preservation Area varies according to the distribution of dwelling units across these three building categories.

CATEGORY #1:	buildings listed on the list of eligible estates herein
CATEGORY #2:	buildings constructed prior to July 1, 1983, which are not listed herein
CATEGORY #3:	buildings constructed or to be constructed after 1 July 1983 and not listed herein (see Table 6.10.3)

THE REQUIRED LAND AREA PER DWELLING UNIT IS:

CATEGORY #1:	1 acre
CATEGORY #2:	2 acres
CATEGORY #3:	3 acres

4. Density for apartments, townhouses and single family dwelling units may be greater than these requirements depending on the area of permanently dedicated open space. In order to qualify, a perpetual restriction ("Restriction") of the type described in General Laws, Chapter 184, Section 31 (including future amendments thereto and corresponding provisions of future laws), running to or enforceable by the Town shall be recorded with respect to such land. Such Restriction need not grant rights of access or use to the public for land so dedicated but shall provide that the open space shall be retained in perpetuity for one or more of the following uses: conservation; passive recreation; golf course; or other use determined by the Zoning Board of Appeals to be similar in character and protection to the above.

To determine the Open Space Density Bonus ("Bonus"), the acreage of the property shall be increased by one (1) acre for each two (2) acres of land so dedicated (including any area of flood plain, wetland, and required buffers so dedicated). A bonus calculated in the same manner shall be available in the event of a conveyance of the fee in such land to the Town.

Open space shall include any part of the Designated Area designated by the applicant as the area to be used for the purposes listed above. The Bonus shall not be available until the Restriction has been recorded in the Registry of Deeds.

#### **6.10.9 Combined Uses**

A combination of uses, including any use permitted in an R-1A zone by right and by special permit and herein, may be permitted, subject to the density and other requirements herein set forth.

#### **6.10.10 Application Requirements**

The application for development of an Estate Preservation Area shall be submitted to the Zoning Board of Appeals together with the following plans and supporting materials, copies of which shall also be submitted to the Planning Board and to the Lenox Historical Commission:

1. a written statement containing the following:
  - a. how the development accomplishes the purposes set forth in this Section;
  - b. the applicant's designation of the building or buildings (Designated Building) and the land area (Designated Area), all as provided for herein;
  - c. the intended open space portions of land;
  - d. the method of preservation and maintenance of the Designated Buildings.
2. plan of the Designated Area showing location, boundaries, northpoint, date, scale, legend size of property, wetlands, water bodies, wooded areas, and other significant natural features and owners of record.
3. preliminary site development plans showing proposed and existing streets, drives, parking areas, recreation areas, walks, paved areas, utilities, open space, plantings, screened

landscaping, and other improvements, existing and proposed system of drainage including adjacent existing natural waterways, existing and proposed topography at a suitable contour level as required by the Zoning Board of Appeals, and the locations and outlines of proposed and existing buildings together with preliminary architectural drawings for proposed buildings.

4. the plans shall be prepared by a registered land surveyor and/or a registered civil engineer whose seal shall appear on the plans.
5. a tabulation of proposed and existing buildings by type, size, ground coverage, and a summary showing the percentages of the Designated Area to be occupied by buildings, parking, and other paved vehicular areas, and the amount of open space.
6. calculations showing compliance with 6.10.8
7. good quality recent photographs sufficient to document the existing conditions of the Designated Buildings. Photographs must:
  - a. show all exterior elevations and distinctive exterior architectural details;
  - b. show at least one (1) view of each Designated Building in its setting;
  - c. be labeled to include property name, what is shown, and date of photograph;
  - d. be large enough to show architectural details clearly.

#### **6.10.11 Ownership and Development in Stages**

Provided that the Restriction described herein has been recorded, ownership of the land and/or buildings constructed and maintained may be in different ownership.

1. It is contemplated that the development of an Estate Preservation Area may proceed in stages, and application therefore may be made in one or several applications, provided, if more than one application is made, the first such application will provide the overall preliminary plan of development.

#### **6.10.12 Release**

The election permitted by this Section is permissive but if made, shall not be revoked subsequent to the issuance of any building permits for dwelling units available because of the Bonus, nor subsequent to the recording of the Restriction, except with the approval of the Zoning Board of Appeals, which shall release the Restriction on behalf of the Town.

#### **6.10.13 Great Estate Inn**

The purpose of this section is to encourage the preservation and restoration of the Great Estate buildings and land inherited from the estate system of the early 1900s by the allowance of limited uses by right. In furtherance of the public purposes set forth in Section 1.1 and Section 6.10.1 of the Lenox Zoning Bylaw, the preservation and restoration of the Great Estates buildings and land will encourage the most appropriate use of land throughout the Town, increase the amenities of the Town by encouraging the preservation and restoration of historic properties, and increase the

economic viability of these Great Estates, which will benefit the general welfare of the Town by increasing amenities available to the inhabitants and visitors, as well as increasing employment and tax revenue.

The Great Estate properties as listed in Section 6.10.3 of the Lenox Zoning Bylaw are unique properties, distinguishable in character from other properties located in the R-1A zone in that they all have unique historic buildings with important open spaces, vistas, gardens and landscaping which were constructed as Great Estates in the early 1900s on at least twenty-five acres of land and connected to town sewer.

Accordingly, notwithstanding any contrary provisions of Section 6.10, an Estate Preservation Area may include by right a Great Estate inn, which is defined as an inn use located in an existing Category #1 building, at its current height with the existing setbacks and nonconforming driveways, limited to twenty rooms for transient guests, and also to be used for indoor and outdoor events (“Great Estate Inn”). Historic exterior features and historic character of a Category #1 building in which a Great Estate Inn is located shall be preserved. “Events” are defined as social and cultural gatherings. Outdoor events shall be limited to one hundred seventy-five (175) persons. All interior and exterior building plans for the conversion of the Category #1 building to a Great Estate Inn shall be submitted to the building inspector and the Planning Board.

The following shall require a special permit from the Zoning Board of Appeals:

1. Outdoor events for more than one hundred seventy-five (175) persons.
2. Outdoor amplified music.
3. A restaurant open to non-guests of the Great Estate Inn.

The criteria for issuance of a special permit are set forth in Section 9.4.2 of this Zoning Bylaw.

## **6.11 PERSONAL WIRELESS SERVICE FACILITIES AND TOWERS**

### **6.11.1 Purpose**

The purposes of this Personal Wireless Service Facilities and Towers Bylaw are to:

1. Preserve the character and appearance of the Town while simultaneously allowing Adequate Personal Wireless Services to be developed;
2. Protect the scenic, historic, environmental, and natural or man-made resources of the community;
3. Provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of Personal Wireless Service Facilities and Towers;
4. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify Personal Wireless Service Facilities and Towers;

5. Preserve property values;
6. Locate Towers so that they do not have negative impacts, such as, but not limited to, visual blight, attractive nuisance, noise and falling objects, on the general safety, welfare and quality of life of the community;
7. Require owners of Personal Wireless Service Facilities and Towers to configure them so as to minimize and mitigate the adverse visual impact of the Facilities and Towers; and
8. Require the clustering, sharing and camouflaging of personal wireless service facilities and Towers.

### **6.11.2 Consistency with Federal Law**

These regulations are intended to be consistent with The Telecommunications Act of 1996 in that: a) they do not prohibit or have the effect of prohibiting the provision of Personal Wireless Services; b) they are not intended to be used to unreasonably discriminate among providers of functionally equivalent Services; c) they do not regulate Personal Wireless Services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated Services and Facilities comply with the FCC's regulations concerning such emissions.

1. Any decision by the SPGA to deny an Application for a Special Permit under this Article shall be in conformance with SEC. 332 [47 U.S.C. 332] (7)(B)(ii),(iii) of the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

### **6.11.3 Definitions**

ACT - The Telecommunications Act of 1996.

ADEQUATE COVERAGE - Coverage is considered to be "adequate" within that area surrounding a Base Station where the predicted or measured median field strength of the transmitted signal for at least 75% of the covered area is greater than -95 dbm. It is acceptable for there to be holes within the area of Adequate Coverage where the signal is less than -95 dbm, as long as the signal regains its strength to greater than -95 dbm further away from the Base Station. For the limited purpose of determining whether the use of a Repeater is necessary or desirable, there shall be deemed not to be Adequate Coverage within said holes. The outer boundary of the area of Adequate Coverage, however, is that location past which the signal does not regain a strength of greater than -95 dbm.

ADEQUATE CAPACITY - Capacity is considered to be "adequate" if the Grade of Service is p.05 or better for a worst case day in a preceding month, based on the Erlang B Tables, prior to the date of Application; or as measured using direct traffic measurement of the Personal Wireless Service Facility in question for existing Facilities requesting Major Modification, and where the call blocking is due to frequency contention at the antenna(s).

ANTENNA - A device which is attached to a Tower, or other structure, for transmitting and receiving electromagnetic waves.

BASE STATION - The primary sending and receiving site in a wireless telecommunications network.

**CHANNEL** - The segment of the radiation spectrum from an Antenna which carries one signal. An Antenna may radiate on many Channels simultaneously.

**COMMUNICATION EQUIPMENT SHELTER** - A structure located at a Base Station designed principally to enclose equipment used in connection with Personal Wireless Service transmissions.

**DBM** - Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt.

**EMF** - Electromagnetic Frequency Radiation

**FACILITY SITE** - The location within a Wireless Telecommunications Overlay District leased by one or more Personal Wireless Service Providers and upon which one or more Personal Wireless Service Facility(s) and required landscaping are located.

**FACILITY/TOWER SPECIAL PERMIT (F/TSP)** - The Special Permit required to be obtained in order to install any Tower or Personal Wireless Service Facility or for any Major Modification Of An Existing Facility within the Wireless Telecommunications Overlay District.

**FCC** - Federal Communications Commission. The Government agency responsible for regulating telecommunications in the United States.

**FCC 96-326** - A Report and Order which sets new national standards for emissions of Radio Frequency emissions from FCC-regulated transmitters. This Report And Order is now contained within Title 47 Regulations, Section 1, §1.1307.

**GRADE OF SERVICE** - A measure of the percentage of calls which are able to connect to the Base Station, during the busiest hour of the day. Grade of Service is expressed as a number, such as p.05 - which means that 95% of callers will connect on their first try. A lower number (p.04) indicates a better Grade of Service.

**HERTZ** - One hertz is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

**MAJOR MODIFICATION OF AN EXISTING FACILITY** - Any change, or proposed change in power input or output, number of Antennas, change in Antenna type or model, repositioning of Antenna(s), change in number of Channels per Antenna above the maximum number approved under an existing Special Permit. Also any increase, or proposed increase in dimensions of an existing and permitted Tower or other structure designed to support Personal Wireless Service transmission, receiving and/or relaying antennas and/or equipment.

**MAJOR MODIFICATION OF AN EXISTING REPEATER** - Any removal of or change in location of any Repeater(s) from the Repeater Site(s) for which a Special Permit has been received.

**MONITORING** - The measurement, by the use of instruments in the field, of the radiation from a Site as a whole, or from individual Personal Wireless Service Facilities, Towers, Antennas or Repeaters.

**MONITORING PROTOCOL** - The testing protocol, initially the Cobbs Protocol, which is to be used to monitor the emissions from existing and new Personal Wireless Service Facilities and Repeaters upon adoption of this Article. The SPGA may, as the technology changes, require, by written regulation, the use of other testing protocols. A copy of the Monitoring Protocol shall be on file with the Board of Selectmen and the Town Clerk.

**MONOPOLE** - A single self-supporting vertical pole with below grade foundations.

**PERSONAL WIRELESS SERVICES** - Commercial Mobile Services, unlicensed wireless services, and common carrier wireless exchange access services. These services include: cellular services, personal communications services (PCS), Specialized Mobile Radio Services, and Paging Services.

**PERSONAL WIRELESS SERVICE FACILITY (or FACILITY)** - All equipment (excluding any Repeaters) with which a Personal Wireless Service Provider broadcasts and receives the radio-frequency waves which carry their services and all locations of said equipment or any part thereof. This Facility may be sited on one or more Towers or structure(s) owned and permitted by another owner or entity.

**PERSONAL WIRELESS SERVICE PROVIDER** - An entity, licensed by the FCC to provide Personal Wireless Services to individuals or institutions.

**RADIATION PROPAGATION STUDIES OR RADIAL PLOTS** - Computer generated estimates of the radiation emanating from Antennas or Repeaters sited on a specific Tower or structure. The height above mean sea level, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tool for determining whether a site will provide Adequate Coverage for the Personal Wireless Service Facility proposed for that Site.

**REPEATER** - A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive Adequate Coverage directly from a Base Station.

**REPEATER SITE** - The location within the Town of Lenox leased by one or more Personal Wireless Service Providers and upon which one or more Repeater(s) and required camouflage or screening are located.

**REPEATER SPECIAL PERMIT (RSP)** - The Special Permit required to be obtained in order to install any Repeater, or for Major Modification Of An Existing Repeater within the Town of Lenox.

**SPECIAL PERMIT GRANTING AUTHORITY (SPGA)** - The Zoning Board of Appeals (ZBA) shall be the SPGA for this Article.

**TELEPORT** - A multi-user commercial facility utilizing satellite dishes of greater than 2.0 meters in diameter designed to uplink to communications satellites for transmission of data.

**TOWER** - A lattice structure or framework, or Monopole that is designed to support Personal Wireless Service transmission, receiving and/or relaying antennas and/or equipment.

**WIRELESS TELECOMMUNICATIONS OVERLAY DISTRICT (WTOD)** - Specific area(s), determined by engineering analysis to contain sites where Adequate Service may be provided to the Town of Lenox, which, at the same time, have the potential of reducing or mitigating negative impacts in accordance with Section 6.11.1 of this bylaw. The Overlay District is defined in Section 8.3 of this Bylaw.

#### **6.11.4 Exempted Wireless Telecommunications Uses**

This Article specifically exempts the following wireless telecommunications facilities: police, fire, ambulance and other emergency dispatch; citizens band radio. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, are exempt, provided that (1) the tower is not used or licensed for any commercial purpose; and (2) the tower shall be removed upon loss or termination of said FCC license. No Personal Wireless Service Facility or Repeater shall be considered exempt from this Article for any reason whether or not said Facility or Repeater is proposed to share a Tower or other structure with such exempt uses.

#### **6.11.5 Provision of Independent Consultants**

Upon submission of an Application for any Special Permit under this Article, the Applicant shall pay a review fee determined by the SPGA, consisting of reasonable costs to be incurred by the SPGA for the employment of independent consultants.

1. These Consultants shall each be qualified professionals with a record of service to municipalities in one of the following fields: a) telecommunications engineering, b) structural engineering, c) monitoring of electromagnetic fields, and, if determined necessary by the SPGA, d) other relevant fields of experience as determined by the SPGA.
2. The SPGA shall select the Independent Consultant(s) after consultation with the Planning Board, the Board of Health, and the Conservation Commission, each of which shall propose a list of qualified candidates.

#### **6.11.6 Prohibition of Teleports.**

There shall be no Teleport(s) within the Town of Lenox.

#### **6.11.7 Eligible Locations**

1. Towers and Personal Wireless Service Facilities shall be located only within Wireless Telecommunications Overlay District(s) within the Town of Lenox.
2. Repeaters may be located within these District(s), but are also allowed in the rest of the Town by Special Permit.

#### **6.11.8 Access**

Access shall be provided to the Tower or Facility or Repeater Site by a roadway which respects

the natural terrain, does not appear as a scar on the landscape and is approved by the SPGA and the Chiefs of all emergency services in the Town to assure emergency access at all times. Consideration shall be given to design which minimizes erosion, construction on unstable soils and on steep slopes.

### **6.11.9 Special Permit Required**

No Personal Wireless Service Facility, Tower, or Repeater shall be erected, constructed, or installed or undergo Major Modification without first obtaining a Special Permit from the SPGA in accordance with the requirements set forth herein. One or both of two kinds of Special Permits are required; a) A Facility/Tower Special Permit (henceforth F/TSP) for new Facility/Tower construction (or Major Modification Of An Existing Facility); b) A Repeater Special Permit (henceforth RSP) for Repeater(s) to be mounted on an existing, or newly permitted, Tower or structure (or Major Modification Of An Existing Repeater). If Applicant is applying for both Permits, they shall be submitted and examined concurrently.

1. For Personal Wireless Service Facilities or Towers a F/TSP is required. Applicant must submit all information required in Section 6.11.11 and 6.11.12.
2. For all Repeaters proposed for installation, an RSP is required. An RSP may be applied for by an Applicant who is currently applying for a F/TSP under this Article, or by an Applicant who has previously received a F/TSP under this Article or by an entity which is providing Personal Wireless Services to the Town of Lenox from a base station outside the Town. Applicant must submit all information required in Section 6.11.

### **6.11.10 Adequate Coverage, Adequate Capacity, and Justification of Need for F/TSP**

1. The Applicant shall provide written documentation of any Facility Site(s) in Lenox, and any sites in abutting towns located within eight miles of any boundary of the Town of Lenox, in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. For each such Facility Site, it shall demonstrate with written documentation that this Facility Site is not already providing, or does not have the potential by adjusting the Site, to provide Adequate Coverage and/or Adequate Capacity to the Town of Lenox. The documentation shall include, for each Facility Site listed;
  - a. the exact Tower location (in Longitude and Latitude, to degrees, minutes, seconds);
  - b. ground elevation above mean sea level at the Tower location;
  - c. height of Tower or structure;
  - d. type, manufacturer and model number of Antennas;
  - e. Antenna gain;
  - f. height of Antennas on Tower or structure;
  - g. output frequency;

- h. number of channels;
- i. power input; and
- j. maximum power output per channel.

Potential adjustments to these existing Facility Sites, including changes in Antenna type, orientation, gain, height or power output shall be specified. Radial Plots from each of these Facility Sites, as they exist, and with adjustments as above, shall be provided as part of the Application.

2. Applicant shall demonstrate with written documentation that they have examined all existing Facility Sites located in Lenox and in any sites in abutting towns located within eight miles of any boundary of the Town of Lenox, in which Applicant has no legal or equitable interest, whether by ownership, leasehold or otherwise to determine whether those existing Facility Sites can be used to provide Adequate Coverage and/or Adequate Capacity to the Town of Lenox. The documentation shall include, for each existing Facility Site examined:

- a. the exact Tower location (in Longitude and Latitude, to degrees, minutes, seconds);
- b. ground elevation above mean sea level at the Tower location;
- c. height of Tower or structure;
- d. type, manufacturer and model number of proposed Antennas;
- e. proposed Antenna gain;
- f. height of proposed Antennas on Tower or structure;
- g. proposed output frequency;
- h. proposed number of channels;
- i. proposed power input; and
- j. proposed maximum power output per channel.

Radial Plots from each of these existing Facility Sites, configured as documented above, shall be provided as part of the Application.

3. Applicant shall demonstrate with written documentation that they have analyzed the feasibility of Repeaters in conjunction with all existing Facility Sites listed in compliance with Section 6.11.10 (1) & (2) (above) to provide Adequate Coverage and/or Adequate Capacity to the Town of Lenox. Radial Plots of all Repeaters considered for use in conjunction with these Facility Sites shall be provided as part of the Application.

### **6.11.11 Required Documentation for F/TSP**

The Applicant shall include reports prepared by one or more professional engineers, which shall demonstrate that the Personal Wireless Service Facility and Tower comply with all applicable standards of the Federal and State governments. Specifically:

1. Copies of all submittals and showings pertaining to: FCC licensing; Environmental Impact Statements; FAA Notice of Construction or Alteration; Aeronautical Studies; and, all data, assumptions and calculations relating to service coverage and power levels regardless of whether categorical exemption from Routine Environmental Evaluation under the FCC rules is claimed.
2. Copies of all information submitted in compliance with requirements of Massachusetts Department of Public Health, 105 CMR 122 nonionizing Radiation limits for: the general public from non-occupational exposure to electromagnetic fields, employees from occupational exposure to electro-magnetic fields, and exposure to microwave ovens, or any revisions thereof as the Department of Public Health may, by written notice, create.
3. The exact legal name, address or principal place of business and phone number of the Applicant. If any Applicant is not a natural person, it shall also give the state under which it was created or organized.
4. The name, title, address and phone number of the person to whom correspondence or communications in regard to the application are to be sent. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the Applicant.
5. Name, address, phone number, and written consent to apply for this permit, of the owner of the property on which the proposed Personal Wireless Service Facility and/or Tower shall be located, or of the owner(s) of the Tower or structure on which the proposed Personal Wireless Service Facility shall be located.
6. The documentation shall include, for each Facility Site listed, the exact Tower or Repeater location (in Longitude and Latitude, to degrees, minutes, seconds) and by street address or Pole number (if applicable), ground elevation above mean sea level at the Tower or Repeater location and proposed height of Tower or structure.
7. Required Plans and engineering plans, prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts. (Note: survey plans shall also be stamped and signed by a Professional Land Surveyor registered in Massachusetts.) Plans shall be on 24" x 36" sheets, on as many sheets as necessary, and at scales which are no smaller (i.e. no less precise) than listed below in Sections 6.11.12 and 6.11.13. Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision dates, scale(s), and original seal and signature of the P.E. and other professionals who prepared the plan.

### **6.11.12 Required Site Plan for F/TSP**

Applicant shall, as part of its application, provide the SPGA with the following Site Plan. The

Site Plan shall show Facility Site layout, grading and utilities at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) showing the entire vicinity within a 400' radius of the Tower site with topography drawn with a minimum of 2' (0.6 meter) contour interval. The Site Plan must have been completed, on the ground, by a Professional Land Surveyor within two years prior to the application date. The Site Plan shall show:

1. Existing utilities, property lines, existing buildings or structures, stone walls or fence lines, wooded areas, individual trees with diameters greater than 12" within a 200' radius from the base of the proposed Tower (labeled with their current heights).
2. The boundary of any wetlands or floodplains or watercourses, and of any bodies of water within 200' from the Tower or any related facilities or access ways or appurtenances.
3. Proposed Tower location and any appurtenances, if any, and any accessory building (Communication Equipment Shelter or other). Indicate property boundaries of the Overlay District and setback distances to the base(s) of the Tower and to the nearest corners of each of the appurtenant structures to those boundaries, and dimensions of all proposed improvements.
4. Indicate proposed spot elevations at the base of the proposed Tower and at the base of any guy wires, and the corners of all appurtenant structures.
5. Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and whether underground or above ground.
6. Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.
7. Any direct or indirect wetlands alteration proposed.
8. Detailed plans for drainage of surface and/or sub-surface water; plans to control erosion and sedimentation both during construction and as a permanent measure.
9. Plans indicating locations and specifics of proposed screening, landscaping, ground cover, fencing, etc; any exterior lighting or signs.
10. Plans of proposed access driveway or roadway and parking area at the Facility Site. Include grading, drainage, traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.

#### **6.11.13 Other Required Plans for F/TSP**

Applicant shall, as part of its application, provide the SPGA with the following Plans. The Plans, elevations, sections and details shall be at appropriate scales but no smaller than 1" = 10'.

1. Two cross sections through proposed Tower drawn at right angles to each other, and showing the ground profile to at least 100 feet beyond the limit of clearing. Indicate

proposed spot elevations at the base of the proposed Tower. Dimension the proposed height of tower above average grade at Tower Base. Indicate the maximum allowable structural height of the Tower after addition of any modular sections. Show all proposed antennas, including their location on the Tower.

2. Details of typical Tower foundation, including cross sections and details. Show all ground attachments, specifications for anchor bolts and other anchoring hardware.
3. Detail proposed exterior finish and camouflage of the Tower. Indicate relative height of the Tower to the tops of surrounding trees as they presently exist.
4. Illustration of the modular structure of the proposed Tower indicating the heights of sections which could be removed or added in the future to adapt to changing communications conditions or demands.
5. Structural Professional Engineer's written description of the proposed Tower structure and its capacity to support additional Antennas or other communications facilities at different heights and the ability of the Tower to be shortened if future communications facilities no longer require the original height.
6. A description of Available Space on the tower, providing illustrations and examples of the type and number of Personal Wireless Service Facilities which could be mounted on the structure.
7. Proposed Communications Equipment Shelter with Floor Plans, elevations and cross sections at a scale of no smaller than  $1/4" = 1'$  (1:48) of any proposed appurtenant structure, including representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.
8. Proposed Equipment Plan with such plans, elevations, sections and details at appropriate scales but no smaller than  $1" = 10'$  indicating:
  - a. Number of Antennas and Repeaters (if any), as well as the exact locations of all Repeaters (if any) located on a map as well as by Degrees, minutes and seconds of Latitude and Longitude.
  - b. Mounting locations on Tower or structure, including height above ground.
  - c. Antenna type(s), manufacturer(s), model number(s).
  - d. For each Antenna, the Antenna gain and Antenna radiation pattern.
  - e. Number of channels per Antenna, projected and maximum.
  - f. Power input to the Antenna(s).
  - g. Power output, in normal use and at maximum output for each Antenna and all

Antennas as an aggregate.

- h. Output frequency of the Transmitter(s).
9. Balloon Test. Within 35 days of submitting an Application, Applicant shall arrange to fly, or raise upon a temporary mast, a three foot diameter brightly colored balloon at the maximum height and at the location of the proposed Tower. The dates, (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised, by the Applicant, at 7 and 14 days in advance of the first test date in a newspaper with a general circulation in the Town of Lenox. The Applicant shall inform the SPGA and the Planning Board, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours sometime between 9:00 am and 5:00 pm of the dates chosen.

#### **6.11.14 Application Requirements for RSP**

The use of Repeaters to assure Adequate Coverage, or to fill holes within areas of otherwise Adequate Coverage, while minimizing the number of required Towers is permitted and encouraged. An Applicant who has received, and is in compliance with a current F/TSP under this Article, or an entity which is providing Personal Wireless Services to the Town of Lenox from a base station outside the Town, may apply for a RSP. Applicants shall provide the following information:

1. the exact location (in Longitude and Latitude, to degrees, minutes, seconds), as well as by street address or Pole number (if applicable)
2. ground elevation,
3. type, manufacturer and model number of proposed Repeater,
4. height of proposed Repeater above ground,
5. proposed output frequency,
6. proposed number of channels,
7. proposed power input and
8. proposed maximum power output per channel
9. Radial Plots from any proposed Repeater(s), configured as documented above, shall be provided as part of the Application.
10. Name, address, phone number, and written consent to apply for this permit, of the owner of the property on which the proposed Repeater shall be located, and of the owner(s) of the Tower or structure on which the proposed Repeater shall be located.

11. Proposed Repeater Site layout, grading and utilities at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) showing the entire vicinity within a 300' radius of the Repeater site with topography drawn with a minimum of 2' (0.6 meter) contour interval.
12. Proposed Repeater location and any appurtenances, if any, and any accessory building (Communication Equipment Shelter or other). Indicate property boundaries of abutters within 300' of the Repeater, and dimensions of all proposed improvements.
13. Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.
14. Plans of any proposed access driveway or roadway and parking area at the Repeater site. Include grading, drainage, traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.

#### **6.11.15 General Requirements for F/TSP**

1. A Special Permit shall not be granted for a Tower to be built on speculation. If Applicant is not simultaneously installing a Personal Wireless Service Facility on the Tower, it shall provide a copy of its existing lease/contract with a Personal Wireless Service Provider. Said Provider shall provide all necessary data to comply with the terms of this Article, as a part of Applicant's application for a F/TSP or the Special Permit shall not be granted.
2. Applicant shall provide a written, irrevocable commitment valid for the duration of the existence of the Tower, to rent or lease Available Space for co-location on the Tower at fair-market prices and terms, without discrimination to other Personal Wireless Service Providers.
3. Tower(s) shall minimize, to the extent feasible, adverse visual impacts on the environment. The SPGA may impose reasonable conditions to ensure this result, including, but not limited to, requiring the use of camouflage, painting, lighting standards and screening.
4. There shall be no clearing at a distance in excess of 25 feet in radius from the base of the Tower except where the access drive is located.
5. Fencing: The area around the Tower and Communication Equipment Shelter(s) shall be completely fenced for security within an area no greater than 25 feet in radius from the base of the tower, and to a height of six feet, and gated. Use of razor wire is not permitted.
6. Signs: There shall be no signs, except the following. A sign no greater than two (2) square feet indicating the name of the Personal Wireless Service Facility's owner(s) and a 24 hour emergency telephone number shall be posted adjacent to the entry gate. In addition, No Trespassing or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of this bylaw.
7. Communication Equipment Shelters and Accessory Buildings shall be designed to be architecturally similar and compatible with each other, and shall be no more than 12 feet

high. The buildings shall be used only for the housing of equipment related to this particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.

8. New Towers shall be the lesser of (a) 105 feet (measured from ground level to the highest point on the Tower), or (b) the minimum height determined by the independent consultant(s) to provide the applicant Adequate Coverage from the Personal Wireless Service Facility(s) proposed for use on the Tower.
9. Towers shall be located at least one and one half times their maximum structural height within the outer boundary of any Wireless Telecommunications Overlay District(s).
10. Tower Finish: The SPGA shall have the right to determine the type of construction of the Tower(s) (either monopole or lattice), as well as the type(s) of camouflage, painting, or finish. The SPGA may require Tower(s) to resemble or mimic a native coniferous species of tree to minimize their adverse visual impact.
11. Tower(s) must be placed to minimize visual impacts.
12. All network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of Personal Wireless Service Providers licensed to provide services to the Town of Lenox and surrounding areas.
13. If primary coverage (greater than 50%) from proposed Personal Wireless Service Facility is outside Lenox, then the permit may be denied unless the Applicant demonstrates to the satisfaction of the SPGA that the Applicant is unable to locate within the Town which is primarily receiving service from the proposed Facility.
14. Unless required by the Federal Aviation Administration, no night lighting of Towers, or the Personal Wireless Service Facility, is permitted, except for manually operated emergency lights for use only when operating personnel are on site.
15. No Tower or Personal Wireless Service Facility that would be classified as a hazard to air navigation, as defined by the Federal Aviation regulations (Title 14 CFR) is permitted.
16. No Tower or Personal Wireless Service Facility with the exception of Repeaters shall be located within any of the following prohibited areas:
  - a. Massachusetts or federally regulated wetland;
  - b. Massachusetts Certified Vernal Pool;
  - c. The habitat of any State-listed Rare or Endangered Wildlife or Rare Plant Species;

- d. Within 100' horizontally from any Massachusetts regulated wetland;
  - e. Within 200' horizontally of the Outer Riparian Zone of any river or perennial stream;
  - f. Within 500' horizontally from any Historic District or property listed or eligible to be listed on the state or federal Register of Historic Places;
  - g. Within 500' horizontally from any known archaeological site.
17. No Repeater shall be located closer than 50' to an existing Dwelling Unit, nor less than 25' above ground.
  18. The SPGA may require the use of screening, painting or camouflage to reduce the visual impacts of Repeaters.
  19. Repeaters shall be located so as to have the least possible impact on the views of the residents of the Town of Lenox.

#### **6.11.16 Decision**

In addition to the findings required by the Bylaw in Section 9.4, the SPGA shall, in consultation with the Independent Consultant(s), make all of the applicable findings before granting the Special Permit, as follows:

1. That Applicant is proposing to locate its Personal Wireless Service Facility or Tower (other than Repeaters) within a Wireless Telecommunications Overlay District;
2. That Applicant is not able to use Existing Towers/Facility Sites in or around the Town of Lenox, either with or without the use of Repeaters, to provide Adequate Coverage and/or Adequate Capacity to the Town of Lenox;
3. That proposed Personal Wireless Service Facility/Tower or Repeater will not have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources;
4. That the Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the Towers and Facilities; and
5. That the proposal shall comply with FCC 96-326 and any and all other applicable FCC regulations, regarding emissions of electromagnetic radiation and that the required Monitoring program is in place and shall be paid for by the Applicant.

#### **6.11.17 Monitoring and Evaluation of Compliance**

It shall be a condition of any Special Permit granted under this bylaw that:

1. Pre-testing: After the granting of a Special Permit and before Applicant's Personal Wireless Service Facilities begin transmission, the applicant shall pay for an Independent Consultant, hired by the Town, to Monitor the background levels of EMF radiation, around the proposed Facility Site and/or any Repeater locations to be utilized for

Applicant's Personal Wireless Service Facilities. The Independent Consultant shall use the Monitoring Protocol. A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the Board of Selectmen, the Planning Board, the Board of Health, the Building Commissioner and the Town Clerk, in order to determine the Tower and Facility's or Repeater's radio frequency emissions and their compliance with FCC regulations.

2. Initial Test: The Applicant shall, after the granting of a Special Permit and within 30 days of the date that Applicant's Personal Wireless Service Facility(s) or Repeater(s) begin(s) transmission, pay for an Independent Consultant, hired by the Town, to Monitor the levels of EMF radiation, around the proposed Facility and/or Repeater Site(s). The Independent Consultant shall use the Monitoring Protocol. A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the Board of Selectmen, the Planning Board, the Board of Health, the Building Commissioner and the Town Clerk.
3. Ongoing Monitoring: It shall be a condition of any Special Permit granted under this bylaw that, in order to determine ongoing compliance with FCC regulations, after transmission begins, the owner(s) of any Personal Wireless Service Facility(s) or Repeater(s) located on any Facility or Repeater Site shall pay for an Independent Consultant, hired by the Town, to conduct testing and Monitoring of EMF radiation emitted from said Site, and to report results of said Monitoring, as follows:
  - a. There shall be routine annual Monitoring of emissions by the Independent Consultant using actual field measurement of radiation, utilizing the Monitoring Protocol. This Monitoring shall measure levels of EMF radiation from the Facility Site's primary Antennas as well as from Repeater Site(s) (if any). A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the Board of Selectmen, the Planning Board, the Board of Health, the Building Commissioner and the Town Clerk.
  - b. Any Major Modification of Existing Facility, or the activation of any additional permitted channels, shall be cause for new Monitoring in accordance with Sections 6.11.17 - 2 & 3 above.
4. Excessive Emissions: Should the Monitoring of a Facility or Repeater Site reveal that the Site exceeds the FCC 96-326 standard, or any other applicable FCC standard, then the owner(s) of all Facilities utilizing that Site shall be so notified. The owner(s) shall submit to the SPGA and the Building Commissioner a plan for the reduction of emissions to a level that complies with the FCC 96-326 standard and any and all other applicable FCC regulations within 10 business days of notification of non-compliance. That plan shall reduce emissions to the applicable FCC standard within 15 days of initial notification of non-compliance. Failure to accomplish this reduction of emission within 15 business days of initial notification of non-compliance shall be a violation of the Special Permit and subject to penalties and fines as specified in Section 9.2.3 of the Bylaw. Such fines shall be payable by the owner(s) of the Personal Wireless Service Facilities with Antennas on the Facility Site, until compliance is achieved.

5. **Structural Inspection:** It shall be a condition of the Special Permit that, Tower owner(s) shall pay for an Independent Consultant (a licensed professional structural engineer), hired by the Town, to conduct inspections of the Tower's structural integrity and safety. Towers shall be inspected every five years. A report of the inspection results shall be prepared by the Independent Consultant and submitted to the Board of Selectmen, the Planning Board, the Board of Health, the Building Commissioner, and the Town Clerk. Any Major Modification of Existing Facility which includes changes to Tower dimensions or antenna numbers or type shall require new structural inspection.
6. **Unsafe Structure:** Should the inspection of any Tower reveal any structural defect(s) which, in the opinion of the Independent Consultant render(s) that Tower unsafe, the following actions must be taken. Within 10 business days of notification of unsafe structure, the owner(s) of the Tower shall submit a plan to remediate the structural defect(s). This plan shall be initiated within 10 days of the submission of the remediation plan, and completed as soon as reasonably possible. Failure to accomplish this remediation of structural defect(s) within 10 business days of initial notification shall be a violation of the Special Permit and subject to penalties and fines as specified in 9.2.3 of the Bylaw. Such fines shall be payable by the owner(s) of the Tower, until compliance is achieved.

#### **6.11.18 Removal Requirements**

Any Personal Wireless Service Facility or Repeater which ceases to operate for a period of one year shall be removed. Cease to operate is defined as not performing the normal functions associated with the Personal Wireless Service Facility or Repeater and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the Facility or Repeater Site shall be remediated such that all Personal Wireless Service Facility or Repeater improvements which have ceased to operate are removed. If all Facilities on a Tower have ceased to operate, the Tower shall also be removed, and the Facility or Repeater Site, including any access road(s) which lead to that Facility or Repeater Site from the main access road, shall be revegetated. If all Facility or Repeater Sites have ceased to operate, the owner of the last Personal Wireless Service Facility or Repeater to leave the site shall revegetate the access road in its entirety. Existing trees shall only be removed with the written permission of the SPGA, and only if the SPGA determines such removal of trees to be necessary to complete the required removal of Personal Wireless Service Facility(s) or Repeater(s).

#### **6.11.19 Performance Guarantee**

Applicant shall, as a condition of the Special Permit:

1. Post an initial cash bond in a reasonable amount determined and approved by the SPGA. This bond shall be in force to cover the costs of the remediation of any damage to the landscape which occurs during the clearing of the Site; and to cover the cost of the removal of the Tower or Facility or Repeater from the Site, and remediation of the landscape, should the Facility or Repeater cease to operate.
2. Post a maintenance bond for the access road(s), site(s) and tower(s) in amounts approved by the SPGA.

#### **6.11.20 Fees and Insurance**

1. Towers, Personal Wireless Service Facilities and Repeaters shall be insured by the

owner(s) against damage to persons or property. The owner(s) shall provide a Certificate of Insurance to the Selectmen's Office on an annual basis. The Town of Lenox shall be an additional named insured.

2. A schedule of fees for Personal Wireless Service Facility, Tower and Repeater permitting and renewal, any Monitoring of emissions and inspection of structures, and any other fees shall be established by the SPGA pursuant to M.G.L. c. 40A, Section 9. This schedule may be amended from time to time.

### **6.11.21 Expiration and Renewal**

All Special Permits granted under this section shall be granted for five years with the SPGA retaining the option, at their discretion, to renew said Special Permit for additional five year period(s), if the SPGA determines that the Tower and/or Facility and/or Repeater so permitted shall have been and shall remain in compliance with all terms and conditions of this bylaw and of any conditions placed upon the original Special Permit at the time of granting.

## **6.12 DRIVE-THROUGH FACILITIES**

### **6.12.1 Purpose**

The purpose of this section is to protect the safety, public health, convenience and general welfare of the inhabitants of the Town of Lenox by providing detailed review of the design and layout of drive-through facilities, which have a substantial impact upon the character of the town and upon traffic, utilities and services therein.

### **6.12.2 Powers and Administrative Procedures**

The Zoning Board of Appeals is hereby designated the Special Permit Granting Authority (SPGA) for drive-through plan approval. After notice and public hearing and after due consideration of the reports and recommendations of other town boards, commissions and or departments, the SPGA may grant such a permit. The SPGA shall also impose, in addition to any applicable conditions specified in this section, such applicable conditions as the SPGA finds reasonably appropriate to improve the site design, traffic flow, safety and otherwise serve the purposes of this section. Such conditions shall be imposed in writing and the applicant may be required to post a bond or other surety for compliance with said conditions in an amount satisfactory to the SPGA.

### **6.12.3 Applicability**

This section applies to all uses identified as requiring a special permit for drive-through facilities in the Table of Uses and Section 3.1 regarding the C1-A District.

### **6.12.4 Site Plan Review**

Any proposed drive-through facility shall be subject to site plan review in accordance with the requirements as set forth in Section 9.5, herein.

### **6.12.5 Traffic Impact Study**

1. A detailed traffic impact analysis in accordance with professional engineering standards is required for any special permit or site plan approval application containing a drive-through facility for fast food. The SPGA may require a traffic impact study for other drive-through facilities. A registered professional engineer experienced and qualified in traffic

engineering shall prepare the traffic impact study.

2. A proposed mitigation plan must be included: A plan (with supporting text) to minimize traffic and safety impacts through such means as physical design and layout concepts, or other appropriate means; and an interior traffic and pedestrian circulation plan designed to minimize conflicts and safety problems. Measures shall be proposed to achieve the following post development standards: All streets and intersections to be impacted by the project shall have the same level of service or better than predevelopment conditions. The SPGA must determine that the mitigation is satisfactory.

#### **6.12.6 Standards**

1. There must be a minimum of two hundred (200) feet between curb cuts unless reduced by the SPGA in those instances when the reduction may be granted without detriment to the public good and without substantially derogating from the intent and purpose of this section.
2. The width of any curb cut shall not exceed twenty-five (25) feet, unless the traffic impact study identifies the need for a larger curb cut and the requirement is increased by the SPGA.
3. Curb cuts must be sufficiently setback from intersections and directional restrictions (i.e. right-in/right-out only and/or a restrictive median) must be provided as required by the Board.
4. A system of joint use driveways and cross access easements shall be established wherever feasible and the proposed development shall incorporate the following:
  - a. A service drive or cross access corridor extending the width of the parcel;
  - b. Sufficient width to accommodate two-way travel lanes;
  - c. Stub-outs and other design features to make it visually obvious that the abutting properties may be tied in to provide cross-access via a service drive.
5. Developments that provide service drives between properties may be permitted a ten (10) percent reduction in the required number of parking spaces. If information can be provided to show that peak demand periods of development with shared parking or a service drive connection are not simultaneous, the number of required parking spaces may be reduced by twenty (20) percent.
6. Drive-through facilities-fast food, shall provide a minimum of eight (8) stacking spaces (within the site) before the order board. The facility shall provide another four (4) stacking spaces between the order board and the transaction window. If the facility has two (2) transaction windows the four (4) stacking spaces may be spilt between each of the windows. An additional stacking space shall be provided adjacent to the last transaction windows within the site.

7. Drive-through facilities-Other: Number of stacking spaces to be at the discretion of the Board.
8. Each stacking space shall be a minimum of twenty (20) feet in length and ten (10) feet in width along straight portions. Stacking spaces and stacking lane shall be a minimum of twelve (12) feet in width along curved segments.
9. Stacking lanes shall be delineated from traffic aisles, other stacking lanes and parking areas with striping, curbing, landscaping and/or the use of alternative paving materials or raised medians.
10. Entrances to stacking lane(s) shall be clearly marked and a minimum of twenty (20) feet from the curb cut measured at the property line.
11. Stacking lanes shall be designed to prevent circulation congestion, both on site and on adjacent public streets. The circulation shall: separate drive-through traffic from site circulation; not impede or impair access into or out of parking spaces; not impede or impair vehicle or pedestrian traffic movement; and minimize conflicts between pedestrian and vehicular traffic. Stacking lanes shall not interfere with required loading and trash storage areas and loading or trash operations shall not impede or impair vehicle movement within stacking lanes. If said separate stacking lane is curbed an emergency by-pass or exit shall be provided.
12. Any outdoor service facilities (including service lane, menu boards, speakers, etc.) for drive-through facilities fast food shall be a minimum of two hundred (200) feet from the property line of a residential use. Any outdoor service facilities (including service lane, menu boards, speakers, etc.) for drive-through facilities-other shall be 3 minimum of fifty (50) feet from the property line of a residential use. For any drive-through facility, a landscaped buffer and solid wooden panel fence must be provided along side and rear yards directly adjacent to residential uses to screen the abutting residential use. The landscaped buffer must be a minimum of twenty (20) feet.
13. Menu boards shall be a maximum of thirty (30) square feet, with a maximum height of six (6) feet and shall be shielded from any public street and residential properties.
14. A leveling area shall be provided having a minus one percent grade for a distance of thirty (30) feet measured from the nearest exterior line of the intersecting street, to the point of vertical curvature.
15. When a drive-through is proposed on a property with an historic building, the architectural character defining exterior elements of historic building shall be preserved. Signage should be compatible with the historic character of the building.
16. Noise levels generated by all operations, including but not limited to noise emanating from speakers from the resultant establishment(s), shall not increase the broadband sound level by more than ten (10) dB(A) above the ambient levels measured at the property line by the Board of Health or its designee.

### **6.12.7 Compliance**

1. No building permit shall be issued by the Building Commissioner and no construction or site preparation shall be started, until the special permit decision approving a drive-through facility has been filed with the Town Clerk.
2. An as-built plan, certified by a registered professional land surveyor or engineer shall be submitted to the Building Commissioner before the issuance of a permanent occupancy permit.
3. No permanent occupancy permit shall be issued for any building/drive-through facility subject to this section unless such building and all its related facilities have been completed according to the approved site/drive-through plan.
4. Any changes in the approved site/drive-through plan, or in the activity to be conducted on the site shall be submitted to the SPGA for review and approval pursuant to all requirements of this section.
5. The SPGA may, in appropriate cases as it determines, impose further restrictions upon the development or parts thereof as a condition to granting the approval.

## **SECTION 7 SPECIAL RESIDENTIAL REGULATIONS**

### **7.1 APARTMENT AND TOWNHOUSE BUILDINGS**

#### **7.1.1 General Requirements**

1. No apartment project shall be constructed unless it has town water and town sewer and has the required frontage on an accepted public way.
2. All parking must be screened from abutters and from street line.
3. The front setback area shall be maintained open with grass, bushes, trees, or flowers all along its length except for those areas where it is crossed by driveways or walkways.
4. A buffer area of 200 feet shall be maintained between buildings, accessory uses or outdoor activity areas and any abutting property used or zoned for a residence or nursing home.

#### **7.1.2 Decision**

The Zoning Board of Appeals in reviewing an application for an apartment building (or buildings) shall consider the following factors:

1. Possible drainage problems;
2. Driveway entrances and exits;
3. Underground wiring;
4. Traffic provisions for storage of refuse, equipment, carriages, bicycles;
5. Retention of trees as buffer zones or for aesthetic purposes;
6. Usable open space or recreation area;
7. Location of buildings within area; and
8. Design of buildings in relation to neighborhood.

#### **7.1.3 R-15 or C-3A Districts**

No apartment or townhouse building shall be constructed in an R-15 or C-3A district unless it meets the following minimum requirements:

- |            |   |
|------------|---|
| 1. 3 units | 120' frontage, 120' width at building setback |
| 4 units    | 125' frontage, 125' width at building setback |
| 5 units    | 130' frontage, 130' width at building setback |
| 6 units    | 135' frontage, 135' width at building setback |

Where more than 6 units are proposed, an additional 5' of frontage per unit and an

additional 5' of width at building setback shall be required.

2. There shall be at least 10,000 square feet of land area for each apartment unit and 15,000 square feet of land are for each townhouse.
3. No apartment building in an R-15 district shall contain more than six units.
4. Buildings on the same lot shall be a minimum of 40 feet apart.
5. If a six-unit apartment building is to be constructed on one level, at least two of the units shall be offset from the others, said offset to be at least one-quarter of the width of the building.
6. Building setback from the street line shall be 60 feet; building setback from lot line shall be 40 feet.
7. All driveways in an apartment complex will be constructed to a standard at least equal to the contemporary requirements of a subdivision road.

## **7.2 ACCESSORY DWELLING UNIT**

### **7.2.1 Purpose**

The intent of permitting accessory apartments is to:

1. Provide older homeowners with a means of obtaining rental income, companionship, security and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
2. Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to moderate income households which might otherwise have difficulty finding housing;
3. Develop housing units in single-family neighborhoods that are appropriate for households at a variety of stages in their life cycle; and
4. Protect stability, property values, and the single-family residential character of a neighborhood by ensuring that accessory apartments are installed only in owner occupied houses.

### **7.2.2 Special Permit Required**

One Accessory Dwelling Unit (ADU) per lot may be allowed in the R-3A, R-1A, R-30, and R-15 by special permit from the Zoning Board of Appeals, notwithstanding any provision in the Zoning Bylaw that may restrict the total number of dwelling units , subject to the following standards.

### **7.2.3 Standards**

1. Configuration. An ADU may be located either within, attached to, or detached from the

- principal structure. Not more than one such unit shall exist on any lot.
2. Density. Only one ADU may be created in conjunction with each single-family residence.
  3. Minimum lot size. An ADU shall not be established on any parcel smaller than 10,000 square feet.
  4. Maximum unit size. The gross floor area, calculated from finished wall to finished wall, of an existing structure, an addition, or new detached structure, converted to, or constructed for the purpose of creating an ADU shall not exceed 40% of the gross floor area of the principal single family structure, not including garage and/or detached accessory buildings or 800 square feet, whichever is less.
  5. Minimum unit size. The gross floor area of an ADU shall not be less than 300 square feet even if this exceeds the maximum requirement above, or as otherwise established by the requirements of the Town of Lenox.
  6. Setbacks and lot coverage. Additions to existing structures or accessory structures, associated with the establishment of an ADU shall not exceed the allowable lot coverage or encroach into required setbacks as prescribed in the underlying zone. The applicable setbacks shall be the same as those prescribed for the principal structure, not those prescribed for detached accessory structures. An applicant may establish an ADU as part of a preexisting nonconforming structure provided alterations or extensions do not exceed 50% of the existing floor area and do not increase the nonconforming nature of said structure as it relates to front, rear and side setbacks and lot coverage.
  7. Scale and visual subordination. The ADU shall be visually subordinate to the principal unit. Specifically, new detached structures, or additions to existing structures, created for the purpose of establishing an ADU, shall be consistent in massing, scale and detail with the existing structure and to the greatest extent possible be indistinguishable from the single-family nature of the property.
  8. Design and Appearance. The external appearance of the existing structure shall not be significantly altered from the original and shall maintain the character of the neighborhood. Any stairways, access, or egress alterations serving the ADU shall be enclosed, screened, or located so that visibility from public ways is minimized. The roof pitch, siding materials, color and window treatment of the ADU shall be the same as the principal structure.
  9. Parking. Additional on-site parking of one space is required in conjunction with the establishment of an ADU. The off-street parking requirements set forth in Section 5.1 shall be maintained for the principal residence.
  10. Construction standards. The accessory apartment shall meet the standards of the State Building Code and State Environmental Code, 780CMR 6th edition MA Building Code, Chapter 3603.41, Title V. An applicant is encouraged to consult with local and state officials prior to making an applicant to the ZBA.

11. Accessibility. To encourage the development of housing units for people with disabilities, the ZBA may allow reasonable deviation from the stated requirements to install features that facilitate accessibility. Such facility shall be in conformance with state ADA and applicable building codes.

#### **7.2.4 Occupation**

Either the ADU or the principal unit shall be occupied by the owner of the property except for bona fide temporary absence. Prior to the issuance of a special permit, the owner of the premises must submit a notarized affidavit certifying under the pains and penalties of perjury that the premises will continue to be occupied by the owner as his or her principal domicile, except for bona fide temporary absences.

1. When a structure which has received a permit for an ADU is sold, the new owner(s), if they wish to continue to exercise the permit, must, within thirty (30) days of the sale, submit a notarized affidavit to the Building Commissioner stating that they will occupy one of the dwelling units on the premises as their primary residence, except for bona fide temporary absences.
2. The special permit and the notarized affidavit must be made part of the special permit and recorded in the Berkshire Middle District County Registry of Deeds, in the chain of the title to the property, with documentation of the recording provided to the Building Commissioner, prior to the occupancy of the accessory dwelling unit.
3. For the purposes of this by-law, the "owner" shall be defined as one or more individuals residing in a dwelling, who hold title and for whom the dwelling is the primary residence for voting and tax purposes. Said owner may designate a legal relative as a "life tenant" who may occupy the house in the owner's stead. Certification by affidavit shall be provided by the owner.

#### **7.2.5 Conversion of an Accessory Structure**

Conversion of an accessory structure. An accessory garage structure or other outbuilding may be converted to accommodate an accessory dwelling unit provided that the structure complies with the established setback standards for a principal structure, not accessory structure, as prescribed in the underlying zone, applicable building codes, and all other applicable standards, unless otherwise exempt. Conversion of such accessory structure shall not result in the elimination of the requirement of one legal on-site parking space to serve the single family residence.

### **7.3 Reserved (Retirement Community Removed - STM 4/15/08.)**

## **7.4 EXTENDED-CARE NURSING FACILITIES AND ASSISTED LIVING OR CONGREGATE CARE**

### **7.4.1 General Standards**

1. The minimum lot size for such facilities shall be three (3) acres.

2. For each 20 beds in the facility, one acre of land shall be required, except in Commercial C. districts. The minimum land acreage requirement may be included in calculating this land area.
3. Facilities must be served by town water and town sewer.
4. On each lot used for these purposes, except in Commercial C districts there shall be provided front, rear, and side yards each not less than seventy-five (75) feet in depth.
5. Except in Commercial C districts, a space not less than fifty (50) feet wide shall be maintained open with grass, bushes, flowers, or trees all along each side lot line, rear lot line and front lot line, except for entrance and exit driveways, and such open space shall not be built upon nor paved, nor used for parking.
6. Each facility shall be provided with not more than two driveways for motor vehicles for each abutting street which shall intersect the abutting street or streets at ninety (90) degrees.

## **7.5 MIXED USE DEVELOPMENT**

Dwelling units may be located on premises which also include nonresidential use, provided that all residential living areas are above the first story of a structure. If the gross floor area in residential exceeds that in nonresidential use, lot area shall equal not less than 3,500 square feet per dwelling unit (no additional area required for the nonresidential use). The minimum gross floor area for each dwelling unit shall be seven hundred (700) square feet.

## **7.6 RESIDENTIAL CONVERSIONS**

### **7.6.1 Conversion of an Existing Dwelling**

Any building which is to be converted shall meet all of the requirements of Section 7.1.3.1 and 4.1.1.

### **7.6.2 Floor Area**

Regardless of the minimum square feet of habitable floor area specified elsewhere in this Bylaw, each dwelling unit resulting from conversion shall have at least 600 square feet of habitable floor area.

## **7.7 OPEN SPACE FLEXIBLE DEVELOPMENT OVERLAY DISTRICT**

### **7.7.1 Purpose**

The purposes of this section, the Open Space Flexible Development Overlay District (OSFD), are to:

1. Encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use.
2. Preserve historical and archeological resources; to protect the natural environment, including the Town's varied landscapes and water resources.

3. Protect the value of real property.
4. Promote a more sensitive arrangement of buildings and better overall site planning.
5. Perpetuate the appearance of the Town's traditional New England landscape.
6. Facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner.
7. Offer an alternative to standard subdivision development.
8. Preserve, as applicable, the historic buildings and structures of the Town, as well as historic landscape features associated with such buildings and structures.

### **7.7.2 Definitions**

The following term shall have the following definition for the purposes of this section: "Contiguous open space" shall mean open space suitable, in the opinion of the Planning Board, for the purposes set forth herein. Such open space may be separated by the road(s) constructed within the OSFD. Contiguous open space shall not include any front, side or rear yards, if any, within the development, but may include the Buffer Areas as required in Section 7.7.14 around the project perimeter. Wetland areas may be included in the contiguous open space, but the area of such wetland shall be excluded from the calculations of percentage of contiguous open space required in Sections 7.7.8 and 7.7.12.

### **7.7.3 Applicability**

In accordance with the following provisions, an OSFD project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels held in common ownership and located entirely within the Town. Only parcels located in the R1-A District are eligible for consideration as an OSFD.

### **7.7.4 Procedures**

An OSFD may be authorized upon the issuance of a special permit by the Planning Board. Applicants for OSFD shall file with the Planning Board seven (7) copies of the following:

1. A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board.
2. Where wetland delineation is in doubt or dispute, the Planning Board may require appropriate documentation, including an Order of Resource Area Delineation.
3. Data on proposed wastewater disposal shall be submitted with the application and shall be referred to a consulting engineer for review and recommendation.
4. The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.

### **7.7.5 Design Process**

Each development plan shall follow the design process outlined below. When the development

plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, house lots, building location and contiguous open space. The Planning Board has developed design examples that are available for review at Town Hall.

1. **Understanding the Site.** The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.
2. **Evaluating Site Context.** The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.
3. **Designating the Contiguous Open Space.** The third step is to identify the contiguous open space to be preserved on the site. A minimum of 35% contiguous open space is required. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.
4. **Location of Development Areas.** The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns as well as any exiting historical architectural and landscape features.
5. **Lot Lines.** The final step is simply to draw in the lot lines (if applicable).

#### **7.7.6 Modification of Lot Requirements**

The Planning Board encourages applicants for OSFD to modify lot size, shape, and other internal dimensional requirements. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSFD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood. An OSFD may have individual lots, or multiple units or buildings on a single lot without individual lot lines. Please see Section 7.7.14 Buffer Area for requirements for project setbacks to abutting properties.

#### **7.7.7 Maximum Number of Dwelling Units**

The Maximum Number of dwelling units allowed in a OSFD shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable federal, state and local requirements (hereinafter, the Yield Plan). The Yield Plan shall be prepared in conformance with the requirement for a preliminary plan as set forth in the Subdivision Rule and Regulations of the Planning Board. If the percent of the total results in a fraction, the Maximum Number shall be rounded up to the next whole number where the fractional portion is equal to 0.5 or greater, and shall be rounded down to the next whole number where the fractional portion is less than 0.5. The proponent shall have the burden of proof with regard to the design and engineering specifications for such Yield Plan.

### **7.7.8 Density Bonus**

The Planning Board may award a density bonus to increase the preservation of additional open space over and above the required thirty-five percent (35%). The density bonus shall be computed as the ratio of additional contiguous open space applied to increase Maximum Number of Units. For example, if an additional ten percent (10%) of the property is preserved as contiguous open space, a density bonus of ten percent (10%) of the Maximum Number of Units will be awarded. The maximum bonus is twenty percent (20%) of the basic yield. If the percent of the total results in a fraction, the number shall be rounded up to the next whole number where the fractional portion is equal to 0.5 or greater, and shall be rounded down to the next whole number where the fractional portion is less than 0.5. For the purpose of this section, the Contiguous Open Space shall not include any wetlands as defined in GL Chapter 131, Section 40.

### **7.7.9 Types of Buildings**

The OSFD may consist of any combination of single-family and two-family residential structures. The architecture of all buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding, an articulated footprint and varied facades. Residential structures shall be oriented toward the street serving the premises and not the required parking area.

### **7.7.10 Roads**

The principal roadway(s) serving the site shall be designed and constructed to conform to the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town. The Planning Board may allow proposed Private Ways to be designed and constructed to a standard less than the subdivision regulations. These Private Ways shall be adequate for the intended use, vehicular traffic and emergency vehicles, and shall be maintained by an association of unit owners or by the Applicant.

### **7.7.11 Parking**

Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation. The Planning Board may in appropriate cases allow some of the required parking to be located along the street, provided adequate width is provided for the on-street parking.

### **7.7.12 Contiguous Open Space**

A minimum of thirty-five percent (35%) of the parcel shown on the development plan shall be preserved as contiguous open space. Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded conservation restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational and/or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

1. For the purpose of this section, the calculation of required or additional “contiguous open space” shall exclude any wetland as defined in GL chapter 131, Section 40. Wetland may be included within the contiguous open space, but will not count toward the calculation.

2. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, active and/or passive recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.
3. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to ten (10%) percent of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bike paths.
4. Underground utilities to serve the OSFD site may be located within the contiguous open space.

### **7.7.13 Ownership of the Contiguous Open Space**

The contiguous open space shall, at the Planning Board's election, be conveyed to:

1. The Town or its Conservation Commission;
2. A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
3. A corporation or trust owned jointly or in common by the owners of lots within the Open Space Flexible Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

### **7.7.14 Buffer Areas**

There shall be a buffer area provided at the perimeter of the property. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance, except for roadways necessary for access and egress to and from the site or for utilities serving the development. The buffer area requirements are:

1. A buffer area of 100 feet shall be provided where it abuts residentially zoned or occupied properties.
2. Where the land abutting the site is the subject of a permanent restriction for conservation or recreation the Planning Board may reduce the buffer requirement to no less than 50 feet in depth, unless the Planning Board determines that a smaller buffer will suffice to

accomplish the objectives set forth herein.

### **7.7.15 Stormwater Management**

Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board.

### **7.7.16 Planning Board Decision**

The Planning Board may approve, approve with conditions, or deny an application for an OSFD after determining whether the OSFD better promotes the purposes of Section 7.7.1 of this Bylaw than would a conventional subdivision development of the same locus.

### **7.7.17 Relation to Other Requirements**

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw.

### **7.7.18 Parcels Under Ten Acres**

The Planning Board recognizes that parcels that are ten acres or less may not be feasible as OSFD projects unless waivers from the above requirements are available. For a project that is on a parcel that is ten acres or less the Planning Board may grant a waiver from one or more requirements of this bylaw if it finds that the waiver is in the public interest, that the specific information for which the waiver is sought is relevant to the project that is the subject of the application, and that the waiver is consistent with the intent of the Zoning Bylaws. A waiver shall be granted only by an affirmative vote of two-thirds (2/3) of the Planning Board.

## **7.8 RESIDENTIAL INCLUSIONARY DEVELOPMENT**

### **7.8.1 Purpose.**

The purpose of this bylaw is to promote the general public welfare, including but not limited to ensuring an economically integrated and diverse community by maintaining and increasing the supply of affordable and accessible housing in the Town of Lenox. This purpose includes:

1. Ensuring that new residential development generates affordable housing as defined in Section 7.8.2.
2. Ensuring that affordable housing created under this section remains affordable over the long term, with the majority of such housing remaining affordable in perpetuity, except as may be otherwise required under state or deferral programs.
3. Maintaining a full mix of housing types while providing affordable housing opportunities in Lenox.
4. To the extent allowed by law, ensuring that preference for new affordable housing is given to eligible persons who live or work in Lenox.

### **7.8.2 Definitions**

The following terms shall have the following definitions for the purposes of this section:

1. "Affordable to persons or families qualifying as low income" shall mean affordable to

households or persons earning less than 50% of the median income under the applicable guidelines of the Commonwealth's Department of Housing and Community Development.

2. "Affordable to persons or families qualifying as moderate income" shall mean affordable to households or persons earning more than 50% but less than 80% of the median income under the applicable guidelines of the Commonwealth's Department of Housing and Community Development.
3. "Affordable units" shall mean any combination of dwelling units restricted in perpetuity as affordable to persons or families qualifying as low or moderate income.

### **7.8.3 Applicability**

In all zoning districts, the following regulations shall apply to residential development in Lenox.

1. All residential development requiring a Special Permit and resulting in additional new dwelling units shall provide affordable housing units at the following minimum rates:

<b>Total Development Unit Count</b>	<b>Required Affordable Unit Provision</b>
1 - 15 units	None*
16 – 20 units	Minimum one (1) dwelling unit
21 – 30 units	Minimum two (2) dwelling units
31 units and up	Minimum 10% of total unit count**

\* While provision of affordable units is not required for developments containing 1 -15 units under this section, the Bylaw encourages affordability and provides for incentives. See Section 7.8.6.2.a.

\*\* For developments of 31 or more units, calculation of the number of affordable units shall, if the required percent of the total results in a fraction, be rounded up to the next whole number where the fractional portion is equal to 0.5 or greater, and shall be rounded down to the next whole number where the fractional portion is less than 0.5.

2. Applicants for residential development who are not subject to the requirements of Section 7.8.3.1 may voluntarily include affordable units and are eligible to apply for a special permit for the density bonus outlined in Section 7.8.6.2.

### **7.8.4 Special Permit Authority**

The development of any project set forth in Section 7.8.3 (above) shall require the grant of a Special Permit from the Zoning Board of Appeals (ZBA). The Special Permit shall conform to the requirements of this bylaw and to Massachusetts General Laws Chapter 40A, and to regulations which the ZBA may adopt for carrying out its requirements hereunder.

### **7.8.5 Minimum Requirements for Inclusionary Development**

An Inclusionary Development Special Permit shall be subject to the following conditions, and the ZBA shall make a determination that the proposed development meets the requirements for granting a Special Permit, as well as the following conditions:

1. Buffer Areas. A buffer area of 50 feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary

for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The ZBA may reduce the buffer requirement to no less than 25 feet (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation or (ii) where the land abutting the site is held by the Town for conservation or recreation purposes; unless the ZBA determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

2. Each inclusionary development shall provide, at the applicant's choice, one of the following:
  - a. Construct or rehabilitate affordable units comparable in appearance and setting to the rest of the development or neighborhood.
  - b. A cash payment equivalent to the value of structures, land and appropriate on-site and off-site improvements, be made to the Town of Lenox Housing Trust Fund. The cash payment shall be equal to the total cost of construction for each low or moderate income dwelling unit. The conditions of payment shall be determined through the Special Permit process.
  - c. As a condition for granting of a Special Permit, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in the form acceptable to the ZBA. The affordable restriction shall be approved as to form by legal counsel to the Zoning Board of Appeals and a right of first refusal upon the transfer of such restricted units shall be granted to the Town or its designee for a period of not less than 120 days after notice thereof. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development and shall ensure that affordable units can be counted toward the Lenox Subsidized Housing Inventory. The special permit shall not take effect until the restriction, the regulatory agreement and the special permit are recorded at the Registry of Deeds and a copy is provided to the ZBA and the Building Commissioner.

#### **7.8.6 Dimensional Requirements**

1. Design Process. Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Zoning Board of Appeals that this process was considered in determining the layout of the proposed inclusionary development.
  - a. *Understanding the Site.* The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.
  - b. *Evaluating Site Context.* The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.
  - c. *Location of Development Areas.* The third step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns as well as any existing historical

architectural and landscape features.

2. The applicant shall prepare a plan showing the Basic Maximum Number of dwelling units allowed in the residential zoning district. The Basic Maximum Number shall not exceed the number of units which could reasonably be expected to be developed upon the site under a conventional as of right residential plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable federal, state and local requirements (hereinafter, the Yield Plan). The proponent shall have the burden of proof with regard to the design and engineering specifications for such Yield Plan. The ZBA may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number as follows:
  - a. For projects with a Yield Plan of 15 or fewer units the ZBA has the discretion to award a density bonus of two market rate units for each affordable unit provided.
  - b. For projects with a Yield Plan of 16 or greater units the ZBA has the discretion to award the addition of two market rate units for each affordable unit provided as part of compliance with Section 7.8.3.
3. The street line and lot line setbacks, minimum lot size and minimum frontage of the proposed inclusionary development will be determined through the Special Permit process as outlined in Section 7.8.6.1. At least 50% of the lot line setback shall be maintained.

#### **7.8.7 Types of Buildings**

The inclusionary development may consist of any combination of single-family, two-family and multifamily residential structures. A multifamily structure shall not contain more than four (4) dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding, an articulated footprint and varied facades.

#### **7.8.8 Roads**

The principal roadway(s) serving the site shall be designed to conform with the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

#### **7.8.9 Parking**

Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

#### **7.8.10 Stormwater Management**

Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board.

#### **7.8.11 Decision**

The ZBA may approve, approve with conditions, or deny an application for an Inclusionary Development after determining whether the Inclusionary Development promotes the purposes of Section 7.8.1.

### **7.8.12 Relation to Other Requirements**

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw.

### **7.8.13 Maximum Incomes and Selling Prices: Initial Sale:**

1. To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, housing authority or other agency as established by the town, that his/her or their family's annual income level does not exceed the maximum level as established by the Commonwealth's Department of Housing and Community Development, and as may be revised from time to time.
2. The maximum housing cost of affordable units created under this bylaw is established by the Commonwealth's Department Housing and Community Development, Local Initiative Program.

### **7.8.14 Reservation of Affordability; Restrictions on Resale:**

1. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section 7.8.5.2.c). The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property and shall be in force in perpetuity.
  - a. Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the sale price and the unit's appraised value at the time of resale. The percentage shall be recorded as part of the restriction on the property noted in Section 7.8.14.1, above.
  - b. Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the town, consistent with model riders prepared by Department of Housing and Community Development, granting, among other things, the municipality's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.
  - c. The ZBA shall require, as a condition for Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including execution of the deed rider noted in Section 7.8.14.1.b, above. The Building commissioner shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

### **7.8.15 Conflict with Other Bylaws:**

The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

### **7.8.16 Severability:**

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or section or parts of any section of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw.

**7.8.17 Waivers**

The Zoning Board of Appeals may grant a waiver or amendment from one or more requirements of this bylaw if it finds that the waiver is in the public interest, that the specific information for which the waiver is sought is relevant to the project that is the subject of the application, and that the waiver is consistent with the intent of the zoning Bylaws. A waiver shall be granted only by an affirmative vote of two-thirds (2/3) of the Zoning Board of Appeals.

## **SECTION 8 SPECIAL DISTRICT REGULATIONS**

### **8.1 FLOOD PLAIN OVERLAY DISTRICT**

#### **8.1.1 Purpose**

The purposes of the Flood Plain Overlay District (FPOD) are:

1. to protect the public health, safety, and general welfare;
2. to protect human life and property from the hazards of periodic flooding;
3. to preserve the natural flood control characteristics and the flood storage capacity of the flood plain; and to preserve and maintain the ground water table and water recharge areas within the flood plain.

#### **8.1.2 Location**

The general boundaries of the FPOD are shown on the Town of Lenox Flood Insurance Rate Map (FIRM), dated 5 July 1982 as Zones A.A 1-30 to indicate the 100 year water surface elevations shown on the FIRM and further defined by the Flood Profiles contained in the Flood Insurance Study, dated 5 July 1982. The floodway boundaries are delineated on the Town of Lenox Flood Boundary Floodway Map (FBFM), dated 5 July 1982, and further defined by the Floodway Data Tables contained in the Flood Insurance Study. These two maps as well as the accompanying Study are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner, and Board of Selectmen.

1. Within Zone A, where the 100 year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Building Commissioner. If the data is sufficiently detailed and accurate, it shall be relied upon to acquire compliance with this Bylaw. (Revised in accordance with the Attorney General Approval dated July 23, 2008.)

#### **8.1.3 Overlay District**

The FPOD is established as an overlay district to all other districts. All development, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws, and with the requirements of the Massachusetts State Building Code pertaining to construction in the flood plains.

#### **8.1.4 Permitted Uses**

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

1. Agricultural uses such as farming, grazing, truck farming, horticulture;
2. Forestry and nursery uses;

3. Outdoor recreational uses, including fishing, boating, play areas;
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.

### **8.1.5 Special Permit**

No structure or building shall be erected, constructed, substantially improved or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a special permit is granted by the Zoning Board of Appeals. Said Board may issue a special permit hereunder (subject to other applicable provisions of this bylaw) if the application is complaint with the following provisions:

1. The proposed use shall comply in all respects with the provisions of the underlying District, and
2. Within 10 days of receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Building Commissioner, and Board of Public Works. Final action shall not be taken until reports have been received from the above Boards or until 35 days have elapsed, and
3. All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless there is certification by a registered professional engineer provided by the applicant demonstrating the such encroachment shall not result in any increase in flood levels during the occurrence of the 100 year flood, and
4. The Board may specify such additional and conditions it finds necessary to protect the health, safety, and welfare of the public and the occupants of the proposed use.

## **8.2 GATEWAY MIXED USE DEVELOPMENT OVERLAY DISTRICT**

### **8.2.1 Purpose**

The purpose of this bylaw are to foster a greater opportunity for creative development by providing guidelines which encourage a mix of uses compatible with existing and neighboring properties. The intent, furthermore, is to ensure that the appearance and effects of buildings and uses are harmonious with the character of the area in which they are located by:

1. Allowing a diversity of uses in close proximity in the district within a limited area, including residential, retail, office, entertainment, and open space;
2. Preserving and restoring the overall character of the district;

3. Promoting a balance of land uses;
4. Promoting the opportunity for people to work, meet, shop and utilize services in the vicinity of their residences;
5. Providing opportunities for the development of housing;
6. Providing opportunities for a mixture of uses in the same building;
7. Promoting a positive pedestrian environment in the district;
8. Facilitating integrated physical design;
9. Promoting a high level of design quality;
10. Encouraging the development of flexible space for small and emerging businesses;
11. Facilitating development proposals responsive to current and future market conditions; and
12. Encouraging the development of open spaces and parks within the district to accommodate workers, residents, pedestrians and shoppers.

### **8.2.2 Location**

The area known as the Gateway Mixed Use Development Overlay District (LMUD) shall include such land shown on the official zoning map dated May 2005.

### **8.2.3 Overlay District**

The LMUD is an overlay mapped over the other districts. It modifies and, where there is inconsistency, it supercedes the regulations of the underlying district. Except as modified or superseded, the regulations of the underlying districts apply.

### **8.2.4 Special Permit and Site Plan Approval Required**

A Mixed Use Development requires a special permit from the Zoning Board of Appeals in compliance with this section and also requires site plan approval by the Planning Board as described in this Bylaw. The following uses are eligible for consideration in an application for such special permit in the LMUD. Where a proposed use in an application for a Mixed Use Development requires a special permit in the underlying district, the applicant shall only be required to submit a single application or a special permit and a single application for site plan approval for the purposes of gaining approval for all uses in such application for a Mixed Use Development.

### **8.2.5 Eligible Uses**

The following uses are eligible for consideration as part of a Mixed use Development:

1. All uses listed as permitted uses in the underlying zoning district;

2. A store serving retail business needs;
3. Restaurant;
4. Professional offices and governmental offices;
5. Offices of physicians, dentists, attorneys, architects, engineers or accountants;
6. Movie theater not to exceed 650 seats.

### **8.2.6 Prohibited Uses**

The following uses are prohibited in the LMUD:

1. Animal hospitals, animal sales;
2. Automobile or truck sales;
3. Drive-up services associated with any commercial use;
4. Junkyards;
5. Recycling collection facilities (not including typical recycling activities associated with the legal operation of a business or residence);
6. Motor Vehicle Light Service Stations;
7. Wholesale business, except if affiliated with and accessory to another use on the same lot; and
8. All other uses not specifically authorized herein.

### **8.2.7 Combination of Uses**

Within an approved Mixed Use Development, there shall be no restriction on combining different categories of use within the same building except those, if any, imposed by the State Building Code or other federal, state, or local regulations.

### **8.2.8 Area Regulations**

1. At least 10% of the entire development shall incorporate residential uses. Residential uses shall not be located on the first floor of a structure when developed in combination with commercial uses.
2. Uses must follow the performance standards in this section. A proposed Mixed Use Development shall demonstrate that the project shall be served by town water and sewer service upon completion of the proposed development.
3. Each building footprint for office, retail or restaurant use shall not exceed 20,000 square feet.

4. Setback between buildings shall be not less than twenty (20) feet unless otherwise specified in the Zoning Bylaw.

### **8.2.9 Open Space**

In a Mixed Use Development, at least 25% of the land shall be set aside as permanent usable open space, for the use of the Mixed Use Development residents, or for all users, or for the community. The required open space shall be conveyed to the Lenox Conservation Commission; a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; or, a corporation or trust owned jointly or in common by the owners of lots within the LMUD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Documents creating such trust corporation shall be submitted to the Board of Appeals for approval, and shall thereafter be recorded.

1. Open Space is defined as lands that are restricted from development and shall be naturally vegetated areas, open fields, parks or landscaped areas. Where possible, proposed open space shall be linked to existing open spaces from green corridors. Setback, disconnected parcels, and left over space including but not limited to areas between buildings shall not be considered as open space. The following may be considered open space:
2. No more than fifty (50%) percent of the dedicated open space shall constitute wetlands, and land subject to seasonal flooding. The term “wetland” shall be limited to the definition of wetlands as specified under G.L. c. 131, Section 40, the Wetlands Protection Act, as amended.
3. No more than fifty (50%) percent of the slope greater than twenty (20%) percent shall be dedicated as open space.
4. The open space shall be used for wildlife habitat, conservation, historic preservation, outdoor education, passive recreation, park purposes, or any combination of these uses. Additional uses may be permitted upon approval of the Planning Board, provided that such uses are in harmony with the promotion and retention of open space.

### **8.2.10 General Design and Performance Standards**

1. No use shall be permitted that causes or results in dissemination of dust, smoke, gas or fumes odor, noise, vibration or excessive light under standards set forth in the performance criteria in this chapter.
2. Any other performance standards of the town shall also apply to uses conducted under this Section.
3. Architecture should demonstrate the cohesive planning of the development and present a clearly identifiable design feature throughout. Applicants are encouraged to use traditional New England architectural elements in the design. It is not intended that buildings be totally uniform in appearance or that designers and developers be restricted in their creativity. Rather, cohesion and identity can be demonstrated in similar building scale or mass; consistent use of facade materials; similar ground level detailing, color or signage; consistency in functional systems such as roadway or pedestrian way surfaces, signage, or

landscaping; the framing of outdoor open space and linkages, or a clear conveyance in the importance of various buildings and features on the site.

4. Buildings adjacent to usable open space should generally be oriented to that space, with access to the building opening onto the open space.
5. It is strongly encouraged that landscaped space, and particularly usable open space, be designed and located to connect as a network throughout the Mixed Use Development. It is also generally intended that said space be designed and located to connect with existing off-site usable open space, and provide potential for connection with future open space by extending to the perimeter of the Mixed Use Development, particularly when a plan exists for the location and networking of such future open space.
6. Commercial uses shall be designed and operated, and hours of operation limited where appropriate, so that neighboring residents are not exposed to offensive noise, especially from traffic or late-night activity. No amplified music shall be audible to neighboring residents.
7. Signs shall conform to the existing bylaws of the Town of Lenox.
8. Vehicular access to and from public roads is intended to be consolidated. Vehicular access to Mixed Use Development lands from a public roadway shall generally be limited to one (1) access point, particularly when Mixed Use Development frontage along said roadway is three hundred (300) feet or less.
9. The design should preserve and enhance natural features such as topography, waterways, vegetation, and drainage ways.
10. The design should minimize impervious surfaces and incorporate other design features to minimize storm water runoff.
11. Storage of waste and waste facilities shall be screened from view from public ways and neighboring properties and shall follow State and Town Board of Health regulations.
12. The design should maximize pedestrian transit-oriented development. Specifically they should use "traffic-calming" techniques liberally; provide networks for pedestrians as good as the networks for motorists; provide pedestrians and bicycles with shortcuts and alternatives to travel along high-volume streets, and emphasize safe and direct pedestrian connections to transit stops and other commercial and/or employment nodes; provide long-term, covered, bicycle parking areas; provide well-lit, transit shelters; incorporate transit-oriented design features; and establish Travel Demand Management programs at employment centers.
13. All materials, supplies and equipment shall be stored in accordance with Fire Prevention Standards of the National Board of Fire underwriters and shall be screened from view from public ways and abutting properties.

14. Internal streets shall consist of local and collector roadways, designed in accordance with standard traffic engineering practice. Any street proposed for public dedication shall meet the town standards. Driveway consolidation should be undertaken so as to reduce traffic conflicts on Routes 7 and 20.

### **8.2.11 Interior Roadways and Common Curb Cuts; Density Bonus**

To allow for the least disruption in flow of north/south traffic on Routes 7 and 20, and the opportunity for orderly growth within the zoning districts bordering this state roadway, the town considers the reduction of entrances and exits on the highway of major concern. All site plans shall show reasonable plans for interior roadways linking neighboring parcels presently developed or which could be developed or which could be developed as future site development activity occurs to a common access point.

The Zoning Board of Appeals may approve provisions for interior roadways utilizing joint access and/or egress, recognizing that the final design and permitting of access to Routes 7 and 20 is to be accomplished only through the access permit process of the Massachusetts Highway Department. The ZBA shall have the authority to authorize the density bonuses for abutting owners who develop interior roadways or feeder streets utilizing a common drive and curb cuts thereby eliminating per parcel access/egress point on the highway based on the following:

1. the number of square feet occupied by the interior roadway on the owner's land; and,
2. an additional five (5%) percent in the amount of lot coverage allowed by the requirements of the bylaw for an existing or proposed use; and,
3. an increase of one dwelling unit per acre for an existing or proposed residential use.

Applicants should notify the Massachusetts Highway Department as soon as possible of their intent to utilize the provisions of this bylaw in order to facilitate an orderly and cooperative permitting process between the ZBA and said Department.

### **8.2.12 Lighting**

1. All outdoor lighting shall be designed so as not to adversely impact surrounding uses, while also providing a sufficient level of illumination for access and security purposes. Such lighting shall not blink, flash, oscillate or be of unusually high intensity of brightness.
2. Parking areas shall be illuminated to provide appropriate visibility and security during hours of darkness.
3. Any outdoor lighting fixture newly installed or replaced shall be shielded so that it does not produce a strong, direct light beyond the property boundaries, and shall be directed toward the object or area to be illuminated. Light shall be directed away from residences.
4. Lighting of the site shall be adequate at ground level for the protection and safety of the public in regard to pedestrian and vehicular circulation. The glare from the installation of outdoor lights and illuminated signs shall be contained on the property and shall be

shielded from abutting properties. Lighting structures shall be integrated with the site and surrounding uses.

### **8.2.13 Parking and Loading; Shared Parking Requirements**

Parking shall conform to the existing bylaws of the Town of Lenox and the following requirements.

1. Parking shall be located to the side or rear of buildings. In no case shall parking be allowed in the planting strip adjacent to the sidewalk or within the front setback of any lot.
2. Buildings that do not have frontage on a street must provide access for emergency and service vehicles through the layout and design of driveways, interior service roads, or pedestrian and bicycle circulation corridors.
3. Where there is more than one category of use, then the number of spaces required shall be 70% of the sum of required spaces for each category of use.
4. Parking areas shall be screened from adjacent residential uses, streets, and walkways using trees and shrubs adapted to the region, of specimen quality conforming to the American Standard for Nursery Stock, (American Standards Institute, Inc.), and shall be planted according to accepted horticultural standards. Berms may be used for screening along the street in conjunction with plant materials.

### **8.2.14 Pre-Application**

Prior to an application for Mixed Use Development, the owner/applicant may, and is encouraged to, arrange for an informal review of the Mixed Use Development plan by the Planning Board.

### **8.2.15 Submission Requirements**

An application to the SPGA shall be in accordance with Section 9.4. In addition, any application for a Mixed Use Development shall submit a master plan for tract in accordance with the Lenox Gateway Redevelopment Plan and including the following supportive information:

1. A neighborhood context map, at a scale not less than one inch (1") equals one hundred feet (100'), providing a graphic description of the neighborhood in which the tract lies, including roads, utilities and other public facilities, major existing buildings and structures. There shall also be a statement and/or plan as to the general impact of the proposed Mixed Use Development upon the area, indicating how the Mixed Use Development relates to surrounding properties and what measures will be taken to create appropriate transitions and access from the subject property to abutting public properties (i.e. parks and other recreational lands) or other neighboring tracts (if applicable);
2. A conceptual site plan drawn to a scale of not less than one inch (1") equaling fifty feet (50'), or series of drawings at the same scale, and any necessary supporting information;
3. Analysis of compliance with regulations as to dwelling units per square feet of lot area, height, building coverage, floor area ratio (FAR) and parking requirements;

4. Names of all property owners within three hundred (300) feet of the Mixed Use Development boundary;
5. Explanation of provisions for the landscaping and maintenance of all open space and drainage areas;
6. A traffic analysis and recommendations prepared by a registered professional engineer qualified to conduct such studies, including current traffic counts for streets surrounding the project, analysis of the existing capacity of those streets, projections of the amount of traffic that will be generated by the proposed development, and the ability of the thoroughfare system to absorb the increased traffic without decreasing the level of service below an acceptable level - said level to be determined by the SPGA in consultation with the Chief of Police and Superintendent of Public Works;
7. A utilities analysis and recommendations prepared by a registered professional engineer qualified to conduct such studies. Said analysis shall contain an inventory of existing utilities including, but not limited to, storm sewers and drains, sanitary sewers, electrical lines, Fire alarm boxes and lines, gas lines/mains, water mains, lighting, curb and gutter, etc. Said inventory shall illustrate utility locations, sizes, diameters, carrying capacity and present load on the system. The engineer's report shall state if the current system is capable of adequately serving the proposed development. If the current utility system is found to be inadequate for the proposed development, the report shall confirm the deficiencies and make recommendation(s) as to the infrastructure improvements necessary to properly service the proposed development and maintain the existing service. The report shall also present a formal plan for infrastructure improvements, documenting timing, funding mechanisms and coordination with the Town;
8. In addition, in making an application for final approval of the Mixed Use Development (or phase thereof), an applicant shall supply full documentation as to how the final level plan complies with the approved Lenox Gateway Redevelopment Study. When final Mixed Use Development approval is applied for in phases or stages of development, the applicant shall keep and submit with each final application a running total or status report of Mixed Use development compliance with the approved preliminary master plan, including, but not limited to, floor area ratio, residential density and number of units, Mixed Use Development ground coverage, required landscaped area and usable open space and the like. The applicant shall provide full documentation and a comparison of approved master plan development data, existing Mixed Use Development site data to date, final approved development data to date, and the currently proposed development data.
9. Any other supportive information the applicant feels may be beneficial to the Town of Lenox in the evaluation of the request.

#### **8.2.16 Decision**

The SPGA shall review and determine whether an application is complete and place special emphasis in its review as to compliance with provisions of this Section, including compliance with the purpose and general requirements/features of a Mixed Use Development. The SPGA shall also determine whether the proposal is consistent with the most suitable development of the

Town, and conduct a review in accordance with the requirements for special permit with site plan review as set forth in Section 9.5 of this Bylaw.

**8.2.17 Deviation**

The Mixed Use Development shall comply with all requirements of this Bylaw unless a deviation from these strict requirements is authorized herein. The SPGA may modify or waive any requirement of the overlay district upon finding that due to topography, location or other unusual conditions affecting the property, the requirements of this section would unreasonably restrict the use of the property or would be detrimental to the orderly development the area. In granting such modifications or waiver, the Board may impose conditions it deems necessary to protect the public interest and to insure that the development will be consistent with the purpose of this section.

**8.3 WIRELESS TELECOMMUNICATIONS OVERLAY DISTRICT (WTOD)**

**8.3.1 Purpose**

The Wireless Telecommunications Overlay District (WTOD) is intended to protect the scenic, historic, natural and other resources of the Town of Lenox, while allowing adequate Wireless Telecommunications to be developed

**8.3.2 Location**

This District includes the properties listed below. These properties are included by reason of their potential to provide technically feasible and accessible locations for the siting of facilities which can provide adequate wireless telecommunications services to the Town of Lenox. The Overlay District is defined, delineated and mapped on the Map entitled “Wireless Telecommunications Overlay District Map, Town of Lenox, MA”, and incorporated by this reference herein.

Address	Assessors’ Map & Parcel #
Junction Rtes 7 & 20	Map 17, Lot 57
Route 7	Map 17, Lots 54, 55 & 56
Route 7	Map 12, Lot 9

**8.3.3 Overlay District**

The WTOD is an overlay district mapped over other districts. It modifies and where there is inconsistency, supersedes the regulations of such other districts. Except as so modified or superseded, the regulations of the underlying districts remain in effect.

**8.3.4 Applicability**

Any use of lands within the WTOD for purposes of placement, construction, modification or removal of Personal Wireless Service Facilities and/or Towers shall be subject to the requirements of Section 6.11 of this Bylaw

## **SECTION 9 ADMINISTRATION AND PROCEDURES**

### **9.1 BUILDING PERMIT; CERTIFICATE OF OCCUPANCY**

#### **9.1.1 Permit Required**

No building or structure shall be erected, altered or moved in Lenox without a written permit issued by the Building Commissioner. Such permits shall be applied for in writing to the Building Commissioner. The Building Commissioner shall not issue any such permit unless the plans for the building and the intended use thereof in all respects fulfill the provisions of the Zoning By-law, except as may have been specifically permitted otherwise by action of the Board of Appeals or the Board of Selectmen, provided a written copy of the decision governing any such permission be attached to the application and to the resulting building permit issued. One copy of each such permit as issued, including any conditions or restrictions attached thereto, shall be kept on file in the office of the Building Commissioner.

#### **9.1.2 Application**

Each application for a permit to build, alter, or move a building or structure shall be accompanied by a plot plan in such number of copies and drawn to such scale as is required in the State Building Code. Each such plot plan shall show dimensions in feet and areas of lots and structures to be erected altered or moved, and adjacent streets or ways. Such plot plans shall accurately indicate dimensions and angles of all lot lines shown thereon, also of any streets or ways. Such plot plans shall indicate approved street grades and proposed elevations of the tops of foundations. Also such plot plans shall show the locations of existing sanitary sewers, storm drains, and water pipes in any street shown and the locations of all existing buildings and structures within the application area, as well as the location of any proposed buildings or structures.

#### **9.1.3 Construction to Conform to Plans**

Special permits or building permits issued on the basis of plans and applications approved by the Board of Selectmen, Board of Health, Planning Board or the Board of Appeals authorize only the use, arrangement and construction as set forth in such approved plans and applications. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this Bylaw and punishable as provided herein.

#### **9.1.4 Certificate of Occupancy**

No building or structure hereafter erected or altered so as to require a building permit shall be occupied or used, in whole or in part, until a certificate of occupancy shall have been issued by the Building Commissioner certifying that such building conforms to the conditions of the building permit and the provisions of the building code. Upon the request of the holder of a permit, the Building Commissioner may issue a temporary certificate of occupancy for part of a building, provided that such temporary occupancy or use would not jeopardize life or property. No change of occupancy or use shall be made in a building hereafter erected or altered that is not consistent with the last certificate issued for such building unless a permit is secured. A certificate of occupancy shall be issued within seven days after receipt of written application therefore, if the building at the time of such application shall be entitled thereto.

## **9.2 ENFORCEMENT**

### **9.2.1 Zoning Enforcement Officer**

The Zoning By-law shall be enforced by the Building Commissioner. The Building Commissioner, upon being informed in writing of a possible violation of the Bylaw or on his own initiative shall make or cause to be made an investigation of facts and an inspection of the premises where such violation may exist. The Building Commissioner, on evidence of any violation, after investigation and inspection, shall give written notice of such violation to the owner and to the occupant of such premises. The Building Commissioner shall demand in such notice that such violation be abated within a reasonable time, designated therein by the Building Commissioner. Such notice and demand may be given by mail addressed to the owner at the address appearing for him on the most recent real estate tax records of the Town and to the occupant at the address of the premises of such seeming violation.

### **9.2.2 Action by Board of Selectmen**

If, after such notice and demand, such violation has not been abated within the time specified, the Building Commissioner shall notify the Board of Selectmen of the Town who shall take such action or initiate such proceedings in the name of the Town as it shall deem appropriate and necessary to prevent, correct, restrain, or abate any violation of this Bylaw.

### **9.2.3 Penalty**

Any violation of any provision of this Bylaw pursuant to this bylaw shall be punishable by a fine of not more than Three Hundred Dollars (\$300.00). Each violation and each day of violation shall constitute a separate offense, punishable by fine as aforesaid.

### **9.2.4 Noncriminal Disposition**

In addition to the procedures for enforcement as described above, the provisions of this zoning bylaw may also be enforced, by the Building Commissioner, by non-criminal complaint pursuant to the provisions of G.L. c. 40, section 21D. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for violation of any provision of this bylaw shall be \$25.00 for the first offense; \$50.00 for the second offense; \$100.00 for the third offense and \$300.00 for the fourth and each subsequent offense.

## **9.3 BOARD OF APPEALS**

### **9.3.1 Establishment**

As provided by statute, there shall be in Lenox a Board of Appeals for zoning matters, which shall also be the Subdivision Board of Appeals. Such Board of Appeals shall consist of five (5) members and four (4) associate members, all of whom shall be appointed by the Selectmen in the manner specified by statute. Such Board members shall have and exercise the powers available under said statute.

### **9.3.2 Powers**

The Board of Appeals shall have the following powers:

1. 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 said G.L. Chapter

40A, or by any officer or board of the Town or by any person aggrieved by any order or decision of the Building Commissioner or any other administrative official in violation of any provision of said Chapter 40A or any bylaw adopted thereunder.

2. To hear and decide applications for special permits for exceptions as provided in this By-law, subject to any general or specific rules therein contained and subject to any appropriate conditions and safeguards imposed by the Board.
3. To authorize upon appeal, or upon petition in cases where a particular use is sought, 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, 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 petitioner or appellant, and that desirable relief may be granted without substantial hardship, financial or otherwise, to the petitioner or appellant, and that 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. The Board may authorize a use or activity variance. In exercising the powers of this paragraph, the Board may impose limitations both of time and of use and a continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time to time thereafter.
4. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

### **9.3.3 Rules and Regulations**

The Board of Appeals shall adopt rules and regulations not inconsistent with the provisions of the Zoning By-law for conduct of its business and otherwise carrying out the purposes of said Chapter 40A, and shall file a copy of such rules in the office of the Town Clerk.

### **9.3.4 Fees**

The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

## **9.4 SPECIAL PERMITS**

### **9.4.1 Special Permit Granting Authority**

Unless specifically designated otherwise, the Board of Appeals shall act as the Special Permit Granting Authority.

### **9.4.2 Criteria**

Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific

factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:

1. Community needs served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential economic and fiscal impact to the Town, including impact on town services, tax base, and employment.

#### **9.4.3 Rules and Regulations**

The Special Permit Granting Authority may adopt rules and regulations for the administration of this section. An application for a special permit shall be filed in accordance with such Rules and Regulations.

#### **9.4.4 Conditions**

Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-Law. Any conditions, safeguards or limitations shall be imposed in writing and shall be made a part of the special permit and building permit. Such conditions, safeguards or limitations may include, but are not limited to, the following:

1. Limitations upon the size, number of occupants, method and time of operation, time duration of the permit, or extent of facilities;
2. Regulation of number and location of driveways, or other traffic features; and off-street parking or loading, or other special features beyond the minimum required by this Bylaw.

#### **9.4.5 Fees**

The Special Permit Granting Authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

#### **9.4.6 Lapse**

A special permit shall lapse in two (2) years if a substantial use or construction has not begun under the permit within said two years, except for good cause. The Special Permit Granting Authority may establish a shorter period if it so votes, on a specific application.

### **9.5 SITE PLAN APPROVAL FOR DEVELOPMENTS IN THE C-1A AND C-3A ZONES**

#### **9.5.1 Purpose**

It is the intent of this section that no individual, corporation or any business entity, regardless of

the form chosen, shall occupy any building structure or premises or change the use thereof or the construction or alteration to the exterior of any structure in the C-1A or C-3A zones without first complying with the provisions of site plan review. In considering a site plan, the Zoning Board of Appeals (ZBA) shall assure that all structures and uses are developed in a manner which considers community needs, including protection of abutting properties and visual amenities, convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas, adequacy of methods of disposal for wastes and surface water drainage and protection of environmental features on the site and in adjacent area.

### **9.5.2 Projects Requiring Site Plan Review**

Notwithstanding anything contained in the Bylaw to the contrary, no building permit for the construction, exterior alteration, or relocation, occupancy or change in use of any building, structure or premises in the C-1A or C-3A zones shall be issued, nor shall an occupancy certificate for any change of use of a building, structure, or premise be issued, without site plan review and approval by the ZBA.

### **9.5.3 Waiver**

If the ZBA determines upon review at a regularly posted meeting that there is no substantive change in use and the proposed use is not more detrimental than its present or immediate prior use and that the external enlargement, if applicable, is less than 2,000 square feet, the Board may waive any or all of the requirements of site plan review.

### **9.5.4 Action by the ZBA**

The Board of Appeals may approve a site plan subject to conditions, modifications and restrictions as the Board may deem necessary; and any construction, reconstruction, alteration or addition shall be carried out only in conformity with such conditions, modifications or restrictions and in conformity with the application and site plan. The Board of Appeals may condition its approval under Section 9.4.4 as follows:

1. in the case of multi-family dwellings, by requiring the provision of up to 25 percent (25%) of the total housing units for persons of low or moderate income pursuant to G.L. Ch. 40B and regulations promulgated thereunder;
2. for any development requiring a special permit under these provisions, provision of certain vegetated open space, protection for solar access, natural contours and existing vegetation, or limitations on use or hours of operation of such developments; and
3. the improvement of road or utility facilities and on off-site to accommodate increased demand likely to be generated by the proposal.

### **9.5.5 Contents of Site Plan**

A site plan shall be prepared by a Registered Professional Engineer and/or a Registered Land Surveyor and/or a Registered Landscape Architect at a scale of 1" = 20' or such scale as may be approved by the ZBA on standard 24" x 36" sheets and continuation on 8 1/2" x 11" sheets as necessary for narrative. The site plan shall include:

1. Name of the project, locus, boundaries, date and scale of the plan.

2. Name and address of the record owner, developer, and seal of the engineer or surveyor.
3. Name and addresses of all record owners within three hundred (300) feet of the property lines.
4. All existing lot lines, easements, rights-of-way, size in acres or square feet, abutting land uses and location and use of structures within three hundred (300) feet of the site.
5. The location and use of all existing and proposed buildings and structures within the site plan, including dimensions and height, and showing exterior entrances, exits and all anticipated future additions or alterations, and a rendering of buildings to be constructed. The requirements of this Section do not apply to residential developments.
6. Location of all present and proposed public and private ways, parking areas, driveways, sidewalks, ramps, curbs, fences, buffers for screening purposes, paths, landscaping, lighting fixtures, planting areas, walls, signs, service areas, refuse and other waste disposal containers.
7. Location of all present and proposed utility systems including sewage or septic systems, water supply system, existing and proposed surface and subsurface drainage systems, telephone, cable and electric lines. Storm drainage system will include existing and proposed drainlines, culverts, drainage swells, catch basins, headwalls, endwalls, hydrants, manholes, channels, and subdrainage along with soil logs, percolation tests when necessary, and drainage calculations.
8. Plans to prevent the pollution of surface or groundwater, erosion of soil, excessive run-off of precipitation, excessive raising or lowering of the water table and flooding of other properties.
9. Existing and proposed topography at a two (2) foot contour level.
10. Sufficient information to indicate areas in the site and within 50 feet of the site where gravel removal or filling is proposed and the approximate volume in cubic yards. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark.
11. A landscape plan showing all existing natural land features, forest coverage and water sources, and all proposed changes to these features. Water sources will include ponds, lakes, brooks, streams, wetlands, floodplains and drainage retention areas.
12. Zoning District boundaries within five hundred (500) feet of the site's perimeter shall be drawn and identified on the plan. Floodplain boundaries and the square feet within this district shall be shown.
13. Existing and proposed business signs and traffic signs located on the site and within one hundred feet of the site, and the size, dimension, height, color and illumination of all signs.

14. A traffic study to include:
- a. Traffic flow patterns within the site, egresses and entrances, loading and unloading areas, and curb cuts on site and within one hundred feet of the site.
  - b. Traffic impact - the projected number of motor vehicle trips to enter or depart from the site shall be estimated for daily hour and peak hour traffic levels.
  - c. A projected traffic flow pattern for both vehicular and pedestrian access shall be described and related to the site plan, including vehicular movements at all major intersections likely to be affected by the proposed use of the site.
  - d. The impact of this traffic upon existing abutting public and private ways in relation to road capacities. Existing and proposed daily hour and peak hour traffic levels will be given and road capacity levels.

As a result of subparagraph items a-d, above, the ZBA may request a plan to implement the improvements needed to provide for the free flow of traffic in areas surrounding the site and identified by the ZBA as impacted by the proposed uses.

15. With respect to vehicular and pedestrian circulation, including entrances, ramps, walkways, drives, and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls and public transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.
16. A plan for the control of erosion, dust and silt, both during and after construction. Such plan shall include all existing and proposed slopes, construction sequencing, temporary and permanent erosion control, and protection of water bodies. In addition, applicant must comply with Section 5.4, Drainage and Erosion Control, if applicable.
17. For alterations to any existing or new business/commercial/industrial uses a table containing the following information:
- a. Maximum area of building to be used for selling, offices, business, industrial or other uses.
  - b. Maximum number of employees where applicable.
  - c. Maximum seating capacity where applicable.
  - d. Number of parking spaces existing or required for the intended use, based on Section 5.1 of the Bylaw.

### **9.5.6 Waiver of Submittal Requirements**

The ZBA shall have the right to waive any of the items set forth in Section 9.5.5 under unique site conditions or request any additional data it should need to render its decision. A majority vote of the ZBA would be required to waive any of the site plan items.

### **9.5.7 Procedure**

An applicant for Site Plan Review under this section shall file (4) copies each of the application and Site Plan with the Land Use Clerk on the forms provided by the ZBA. A copy of the application shall be given to the Town Clerk by the applicant. An applicant may seek to waive the requirements of this section by making a written request to the ZBA at least fourteen (14) days prior to the next regularly scheduled ZBA meeting. The ZBA shall consider the request at the next regularly scheduled posted meeting and notify the applicant within seven (7) days of its decision.

1. The Board shall transmit to the Planning Board, Conservation Commission, Board of Health and Building Commissioner or other boards as deemed necessary copies of the application and site plan. The boards shall have up to thirty-five (35) days to make recommendations to the ZBA.
2. The applicant shall submit a filing fee to cover any expenses connected with the public hearing and review of the plan.
3. The ZBA shall hold a public hearing within sixty-five (65) days of receipt of an application and shall take final action within ninety (90) days from the time of hearing, as provided in G.L., Chapter 40A, Sections 9 and 11, and in Section 9.3.3 of this Bylaw relating to special permit procedures. Such final action shall consist of either (1) a finding that the proposed project will constitute a suitable development and will not result in detriment to the neighborhood or the environment; or (2) a written denial of the application stating the reasons for such denial. Approval may be made subject to conditions, modifications and restrictions as the Board may deem necessary; and any construction, reconstruction, alteration or addition shall be carried out only in conformity with such conditions, modifications or restrictions and in conformity with the application and site plan. A denied applicant may resubmit his application to comply with the requirements of this Site Plan Review Bylaw and resubmit the plan for review. In no event may the Board deny an application that meets all the standards set forth in this Section of the Bylaw.
4. The Board may require the posting of a security to assure compliance with the plan and conditions and may suspend any permit or license when work is not performed as required.

### **9.5.8 Rules and Regulations**

The Board may after a public hearing adopt and periodically amend or add rules and regulations relating to the procedures and administration of this section and shall file a copy of said rules with the Town Clerk.

### **9.5.9 Standards for Review**

In reviewing site plans, the Board shall consider the following:

1. Protection of the abutting properties and community to minimize any detrimental use of the site.
2. Convenience and safety of vehicular and pedestrian movement within the site and the relationship to adjoining ways and properties.
3. Adequacy of the methods of disposal of sewage and refuse and the drainage of surface and subsurface water.
4. Adequate means of protecting wetlands, watersheds, aquifers, and well areas.
5. Provisions for off-street loading and unloading of vehicles incidental to the normal operation of the establishment, parking, lighting and internal traffic control.
6. Provision of open space consistent with Town Open Space Plan Concepts.
7. The natural landscape shall be preserved in its existing state insofar as practicable, by minimizing tree cutting, and soil removal or filling of the site. Any grade changes shall be in keeping with the general appearance of neighboring developed areas.
8. Location and design shall not cause avoidable damage to wildlife habitats or corridors, or to any plant species listed as endangered, threatened or of special concern by the Massachusetts Natural Heritage Program, or to any tree exceeding 24 inches trunk diameter four and a half (4 ½) feet above grade. Applicants must submit documentation to the SPGA of having consulted with the Conservation Commission and the MA NHP regarding these considerations, and that the proposed site either contains no such habitats or materials or that all feasible efforts to avoid, minimize or compensate for damage have been reflected in the proposal.
9. The layout of design features, such as vegetative buffers, within developments which will integrate into the existing landscape.
10. Consistency of the proposed development with the Town Master Plan Concepts.
11. Compliance with the provision of Massachusetts General Laws, Chapter 40A and 41A, the rules and regulations of state and federal agencies and the Bylaw of the Town of Lenox.

#### **9.5.10 Sewer and Water Capacity**

Each development proposal shall demonstrate that it will not adversely affect the existing loads on the public water and public sewer systems of the Town. The Department of Public Works or its agent shall serve to determine the existing load on the public water and public sewer systems of the Town. In the event that the Applicant is unable to demonstrate that there will be no adverse effect or if the Board should find there will be an adverse impact, the Board may require the Applicant to redesign the development proposal to minimize such impact and may require the Applicant to proceed with development in phases as specified by the Board.

The Board may specifically require a development density less than that otherwise permitted under this Bylaw. In the alternative, the Applicant may offer to fund any required capital improvements deemed necessary by the Board to handle the increased water and sewer demands of the proposed development and the Board may require bonding in an amount sufficient to provide adequate security to the Town for the completion of said capital improvements. Any such capital improvements will be subject to the approval and continuing review of the Board of Public Works.

#### **9.5.11 Stormwater Management**

All development shall be designed so that resulting stormwater conditions resemble, as nearly as possible, preexisting conditions of volume, velocity, quality and location of runoff.

#### **9.5.12 Erosion Control**

Any area of bare earth exposed through nonagricultural building development must be permanently stabilized through replanting, paving, or other means of eliminating wind or water erosion. Such stabilization must be completed prior to building occupancy, or a performance bond must be posted in an amount sufficient to assure completion of such work. All construction must comply with the following:

1. Stripping of vegetation, regarding or other development shall be done in a way which will minimize soil erosion.
2. Whenever practical, natural vegetation shall be retained, protected and supplemented.
3. The disturbed area shall be kept to a minimum.
4. Where necessary, temporary vegetation and/or mulching shall be used to protect areas exposed during development.
5. Sediment basins (debris basins, desilting basins or silt traps) shall be installed and maintained where necessary to remove from runoff water any sediment from land undergoing development.
6. The angle of graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or alternative proposed erosion control devices or structures. In any event, slopes left exposed must immediately be planted or otherwise provided with permanent ground cover or other means sufficient to retain erosion.
7. The development plan or land-disturbing activity shall be fitted to the topography and soils so as to create the least erosion potential.

#### **9.5.13 Design Standards**

1. Any proposed landscape development or alteration should be compatible with the character and appearance of the surrounding area and the proposed project. Landscape and

streetscape elements should provide continuity and definition to the street, pedestrian areas and surrounding landscape.

2. The design should give attention to the placement of storage, waste or mechanical equipment so as to screen it from view. Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be subject to setbacks, screen plantings or other screening methods described in this section and in Section 5.1.15 to hide their existence and cause them to blend in with the existing or contemplated environment and the surrounding properties.
3. The proposed materials and colors must be compatible with the character of the Town and the intent of the design standards. With respect to Lenox's unique architectural heritage, removal or alteration of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.
4. Where feasible, fire escapes, window mounted air conditioners or other mechanical features should not be located on facades which front major streets, or face residential districts.
5. Architectural details including but not limited to additions, signage, awnings, lighting, pedestrian furniture, planting and paving, shall be compatible with the architecture of the principal building and site landscaping with regards to scale, materials, color, and texture.
6. Buildings and structures shall be designed and arranged so as to relate to open space in a manner compatible with adjacent lots.
7. New development shall be compatible with existing natural and developed environment within the surrounding visual area. New buildings, additions or alterations shall be related to their surroundings with respect to:
  - a. Street façade. All buildings should present high quality and architecturally related front facades to streets.
  - b. Buildings on corner lots. If one street is more heavily used, then the facade of a new or renovated building facing that street may be more highly articulated and/or detailed than the facade which faces the side street.
  - c. Renovations to historic buildings. Historic buildings should be renovated so as to retain historic features with original storefront elements and facade detailing.
  - d. Roof Slopes. Heights of new buildings erected on sites without an existing building shall approximate those of adjacent buildings where feasible. Diverse roof heights are encouraged, however, should be complementary to the surrounding developed environment.

**9.5.14 Lapse**

Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

**9.5.15 Fee**

The Board may adopt reasonable administrative fees and technical review fees for site plan review.

**9.5.16 Appeal.**

Any decision of the Board pursuant to this Section shall be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

## SECTION 10 DEFINITIONS

In this by-law, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the by-law. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this by-law.

***Accessory buildings:*** Accessory buildings, not including a private garage, - a building or structure subordinate and incidental to the principal use of the primary building on a property lot or on an adjoining lot under the same ownership. Accessory buildings in a residential zone shall not exceed twenty (20) feet to the ridge (height) above mean grade at the foundation and shall not be located nearer than twenty (20) feet to the principal building or occupy more than ten (10) percent of the lot area and shall not be located any nearer to any street than the required minimum street line set back of the zoning district. Allowed by right.

***Accessory dwelling unit:*** An accessory dwelling unit (ADU) is a self-contained dwelling unit in an owner occupied single-family home that is either enclosed within the principal dwelling unit or made part of an accessory structure on the same property.

***Apartment unit:*** Any number of rooms comprising one complete housekeeping unit of not less than 700 square feet with its own cooking and food storage equipment and facilities and its own bathing and toilet facilities wholly within such suite of rooms. Apartment shall include condominium or cooperative ownership.

***Accessory use:*** A use customarily incidental to that of the main or principal building or use of the land.

***Adult day care facility:*** A social day care or adult day health facility as those terms are defined by the Commonwealth's Department of Elder Affairs.

***Agricultural use, exempt:*** Agricultural use of property exempted by G.L. c. 40A, s. 3 on a parcel larger than five acres.

***Agricultural use, nonexempt:*** Farms, livestock or poultry, but not swine, mink, chinchilla or other animals raised for their pelts on a parcel with less than five acres, provided that any that any building housing livestock or poultry may not be less than 300 feet from the property boundary.

**Apartment building:** A free-standing building used exclusively for residential use in three (3) or more apartment units.

**Assisted living/congregate care:** A residential development subject to certification under G.L. Chapter 19D, which provides room and board; provides assistance with activities of daily living for three or more adult residents who are not related by consanguinity or affinity to their care provider; and collects payments or third party reimbursement from or on behalf of residents to pay for the provision of assistance.

**Bed and breakfast in-home stay/room rental:** Seasonal rental of rooms to not more than three (3) persons in a dwelling whose principal use is a private home for its owner with lodging as an accessory use . The home shall be the legal residence of the owner. Only continental breakfast from the common family kitchen is permitted.

**Bed and breakfast inn or lodging:** Rental to four (4) or more people and/or furnishing of room and breakfast to not more than twenty (20) people in a dwelling that shall be the legal residence of the owner. Only breakfast from the family kitchen is permitted. A food establishment permit is required for continental or full breakfast.

**Building:** A combination of materials to form a construction that is safe and stable, built according to any applicable building codes, and adapted to permanent or continuous occupancy for assembly, business, education, industrial, institutional, residential or storage purposes; and the term "building" shall be construed as if followed by the words "or portion thereof".

**Building height:** The vertical distance as measured from the mean grade at the foundation to the building's ridge line. Thirty-five (35) feet is the maximum height.

**Building setback** - see setback, building.

**Business office:** A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage, or processing of merchandise; no medical or dental offices directly serving patients, no retail business, no manufacturing and no processing.

**Bus storage** – Any area used or intended for use for the parking of busses (not to exceed 19 Ton GVW per bus) related to educational and religious purposes (A.T.M. 5/6/02).

**Child Care Facility:** A day care center or school age child care program, as those terms are defined in G.L. c. 28A, s. 9.

**Clinic:** An establishment where patients are admitted for examination and treatment on an outpatient basis by one or more physicians, dentists, other medical personnel, psychologists, or social workers and where patients are not lodged overnight.

**Club, Private** - See PRIVATE CLUB.

**Constructed:** The word "constructed" shall include the words "built", "erected", "reconstructed", "altered", "enlarged", "moved", and any others of like significance.

**Customary Home Occupation:** Self-employed resident occupants in their private homes working at an occupation which is limited to the home, carried forth at the home, employing no persons outside of the household, utilizing no outside structure or equipment, and requiring no more off-street parking facilities than would ordinarily be used by the household. Customary home occupation does not include gift shop, antique shop, or any similar retail establishment. See Section 3.1.H.9 for those uses requiring a special permit. (STM 4/14/2011)

**Domestic Pets:** See PETS, DOMESTIC.

**Drive-Through Facility:** A commercial facility which provides a service directly to a motor vehicle or where the customer drives a motor vehicle onto the premise and to a window for mechanical device through or by which the customer is serviced without exiting the vehicle. This shall not include for example, the selling of fuel at a motor fuel facility or the accessory function of a carwash facility such as a vacuum cleaning station.

**Drive-Through Facility – Fast Food:** A drive-through facility that serves food or drink.

**Drive-Through Facility – Other:** A drive-through facility that does not include food or drink; includes banks, pharmacies, and similar uses.

**Dwelling:** A building occupied or suitable for occupancy as a residence but not including trailers or mobile homes however mounted or commercial accommodations offered for periodic occupancy, e.g. motel, hotel.

**Dwelling, One Family:** A free-standing building used exclusively for residential use by not more than by one family.

**Dwelling, Two Family:** A free-standing building exclusively for residential use by two families but not more than two families. Each unit shall contain not less than 700 square feet of habitable floor area. This definition shall also include the term "duplex".

**Dwelling, Multifamily:** A free-standing building used exclusively for residential use by three or more families.

**Eating Establishment:** An establishment with kitchen facilities where food is prepared for consumption, including the serving of alcoholic beverages.

**Eating establishment, fast-food:** An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready to consume state for consumption either within the restaurant building or off premises and usually requires ordering food at a counter.

**Essential services:** Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhead, but not including wireless communications facilities.

Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

***Establishment for manufacture, assembly or packaging of consumer goods:*** provided that some of the merchandise is sold at retail on the premises and that all display, sales & storage is conducted within a building; and further provided that not more than 25% of floor area is devoted to manufacturing, assembly, or packaging of consumer goods and that not more than 5 persons are employed at any one time for the manufacturing, assembly, or packaging of such goods.

***Extended-Care Nursing Facility:*** Extended care nursing facility, rehabilitation facility, convalescent facility, or any such institution, however named, whether conducted for charity or for profit, which is maintained for the purpose of caring for up to one-hundred forty (140) persons, requiring medium to intensive medical, rehabilitative, or convalescent therapy and who need assistance or monitoring on a regular basis.

***Family:*** An individual residing in one dwelling unit, or any number of related individuals or up to four unrelated individuals living as one housekeeping unit and using in common among them one set of cooking and food storage equipment and facilities.

***Family day care home, large or small:*** Any private residence operating a facility as defined in G.L. c. 28A, s. 9.

***Farm stand, exempt:*** Facility for the sale of produce, wine and dairy products on a parcel of five acres exempted by G.L. c. 40A, s. 3.

***Farm stand, nonexempt:*** Facility for the sale of produce, wine and dairy products on a parcel of less than five acres not exempted by G.L. c. 40A, s. 3.

***Fencing:*** Any opaque or semi-opaque fence, wall, sign, or any other fabricated visual barrier or enclosure. Fences in side and rear yards are not to exceed six (6) feet in height. Fences in the street line setback are not to exceed four (4) feet in height and be not more than fifty (50) percent solid, and be finished on the good side which is to face the abutting property. (Revised in accordance with the Attorney General Approval dated July 23, 2008.)

***Floor Area, Gross:*** Gross floor area shall be the floor area within the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

***Frontage Lot:*** A lot line coinciding with the sideline of a street which provides both legal rights of vehicular access and physical vehicular access to the lot, said line to be measured continuously along a single street or along two (2) intersecting streets if their angle of intersection is greater than one hundred and twenty (120) degrees. Vehicular access to a building site on the lot shall be exclusively through the frontage of the lot.

***Funeral home:*** Facility for the conducting of funerals and related activities such as embalming.

**Garage, private:** An attached or detached structure used exclusively for parking and storage of motor vehicles, not operated for commercial purposes and not available to the general public. (STM 4/14/2011)

**General Laws (G.L.):** The General Laws of the Commonwealth of Massachusetts.

**General service establishment:** Professional trades and crafts serving local needs such as job printing, electrical, plumbing, interior design or carpentry shop- in every case all indoor operations

**Home Occupation, Customary:** See CUSTOMARY HOME OCCUPATION.

**Hospital:** An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, and other physical or mental conditions and including, as an integral part of the institution, related facilities, including laboratories, outpatient facilities, training facilities, medical offices, and staff residences.

**Kennel, commercial:** A commercial establishment in which more than three (3) dogs or domesticated animals are housed, groomed, bred, boarded, trained or sold.

**Laboratory or research facility:** including but not limited to computer-related and media businesses, printing, binding, and publishing, with accessory manufacturing or processing, provided such use and its storage materials are total enclosed in a building. No use will be allowed which is determined to be noxious, detrimental or dangerous to the surrounding area.

Limited retailing and/or mail order processing of furniture, antique, clothing collectible dolls and related products: Manufactured on site. All display, sales and storage must be conducted within the building. No more than 2 persons including the proprietor shall be employed at any time for the manufacturing, assembly, packaging or processing of such goods. Permissible retail floor area shall be tied to provision of on-site parking spaces in full compliance with the requirements of this bylaw.

**Loading Space, Off-Street:** See OFF-STREET LOADING SPACE.

**Lot:** An area of land in one ownership or one leasehold with ascertainable boundaries established by deed or deeds of record, or a segment of land ownership defined by lot boundary lines on a land division plan duly recorded, said plan having been either approved by the Planning Board under the Subdivision Control Law, or endorsed by the Planning Board "approval under the Subdivision Control Law not required".

**Lot Line:** The boundary between lots.

**Lot Line Setback:** See SETBACK, LOT LINE

**Lot Width:** The width of a lot, measured at the street building setback line, measured parallel to or concentric with the street line.

**Mixed Use Development:** The development of a tract of land, building, or structure with multiple uses such as, but not limited to, residential, office, retail, institutional, entertainment, or light industrial, in a compact village form, with vehicular access to an accepted public way (ATM 5/5/05).

**Motel:** The word "motel" shall include "hotel", "inn", "tourist home", "guest house", and any others of like significance.

**Motel Unit:** Any room or suite of rooms with its own bathing facilities and toilet facilities wholly within such room or suite of rooms but without its own cooking and food storage equipment and facilities.

**Motor vehicle body repair:** An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage vehicles for the cannibalization of parts.

**Motor vehicle general repairs:** Premises for the servicing and repair of autos, but not to include fuel sales.

**Motor vehicle light service:** Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

**Municipal Use:** Any TOWN OF LENOX use of land in accordance with statutory laws governing municipal powers and functions including participation in regional uses.

**Non-Conforming Use:**

A non-conforming use of land or buildings is an existing use of land or buildings which does not conform to the regulations for the district in which such use of land or building exists but which legally existed at the time of publication of notice of the hearing before the Planning Board respecting the regulation to which it does not conform.

**Nursing or convalescent home:** Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

**One Family Dwelling:** See DWELLING, ONE FAMILY

**Off-Street Loading Space:** For the purposes of this Bylaw an off-street loading space is defined as accommodations off the street for loading and unloading of trucks, in the form of one or more truck berths located either within a building or in open space on the same lot. The area of each berth shall not be less than 350 square feet and it shall have a minimum clear height, including access to it from the street of fourteen (14) feet.

**Out Patient Facility:** An ambulatory health care facility is where patients are seen for examination and treatment on an outpatient basis by one or more physicians, dentists or other medical personnel, psychologist, or social workers.

**Parking Area:** Any area used or intended for use for vehicular parking including loading and unloading areas but not including driveways except for one and two family dwellings.

**Parking Area Setback:** See SETBACK, PARKING AREA.

**Personal service establishment:** A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, tailor shop, shoe repair, laundry, self-service dry cleaning or pick-up agency, in every case an all indoor operation.

**Pets, Domestic:** Those animals which may be and commonly are kept in the home, e.g., dogs, cats, fish, birds.

**Planned Unit Commercial Development:** A planned unit commercial development shall consist of retail business and consumer service establishments conceived as an integrated unit characterized by common party walls between most of the individual retail and consumer service establishments.

**Private Club:** Land and/or buildings used exclusively by members of an organized group, whose members are either elected by a committee of the group or by the membership, and not open to public use.

**Research Center:** See Section 6.5.

**Resident:** A person living in the particular building in question.

**Resort:** Building or group of buildings, a portion thereof designed for serving food in a public dining room and containing 15 or more sleeping rooms for transient guests together with both indoor and outdoor recreational facilities with a variety of activities provided which could be judged self-sufficient for the entertainment of the guests therein.

**Retail establishment:** A store serving retail business needs including but not limited to bakery, grocery, meat market, fruit store, hardware or paint store florist, news & tobacco store, drug store, provided display, storage and sales of material are conducted within a building and provided there be not manufacturing or assembly on the premises.

**Retirement Community:** Removed at STM 4/15/08.

**Screening:** A screen shall consist of one of the following:

- (a) Plant materials, at least three feet in height at the time of planting, which are of a type that may be expected to form a year-round dense screen and will reach a height in maturity of at least five feet.
- (b) A masonry wall or a wooden or fabricated fence from five to six feet in height at least 50% solid designed in an attractive manner to obscure any view.

- (c) Any existing growth of trees and shrubs if in the judgment of the Zoning Board of Appeals, or if the use is by right, the Building Commissioner, such growth provides equivalent screening.

**Setback:** The required minimum horizontal distance between the front, side, or rear property line and the related line(s) beyond which building or other improvements are permitted. (See definitions of Building Setback, Parking Area Setback, Street Setback and Lot Line Setback in this section.)

**Setback, building:** A setback in which there shall be no building or high fences.

**Setback, Parking Area:** A setback in which there shall be no parking area or intermediate height fencing.

**Setback, Street:** A setback along a street line.

**Setback, Lot Line:** A setback along a lot line other than a street line.

**Sign:** Any letter, word, symbol, drawing, picture, design, device, article or object that advertises, calls attention to or indicates any premises, person or activity, whatever the nature of the material and manner of composition or construction.

**Statute:** Statute shall mean, unless otherwise defined, MASSACHUSETTS GENERAL LAWS, as most recently amended.

**Story:** That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one-half of such portion vertically is below the average mean finished grade of the ground adjoining such building.

**Street:** A public way, or a private way open to travel by the general public, or a way shown on a plan of a subdivision duly approved by the Planning Board.

**Street Setback:** See SETBACK, STREET

**Street Line:** The boundary between a street and a lot.

**Structure:** Any construction or any production or piece of work artificially built up or composed of parts joined together in some definite manner including but not limited to tents, reviewing stands, platforms, stagings, towers, display signs, fences, and swimming pools, but not including those fences which delineate property lines.

**Temporary Structures:** Trailers (such as construction), and tents that are for commercial use and are at least one-hundred twenty (120) square feet in size and will be occupied by more than ten (10) people may be issued a temporary permit by the Building Commissioner if the Building Commissioner determines that such uses shall be reasonably required or customary. Such permit shall be for a period of not more than a year with renewal for successive period of not more than one additional year with permission of the Building Commissioner.

***Time-Sharing or Time Interval Ownership:*** An ownership in which the exclusive right of use, possession or occupancy circulates among various owners or lessees thereof in accordance with a fixed or floating time schedule on a periodically recurring basis, whether such use, possession or occupancy is subject to either:

- (a) Time-Share Estate, in which the ownership or leasehold estate in property is devoted to time-share fee (tenants in common, time span ownership, interval ownership) and a time-share lease; or
- (b) Time-Share Use, including any contractual right of exclusive occupancy which does not fall within the definition of Time-Share Estate, including, but not limited to a vacation license, prepaid hotel reservation, club membership, limited partnership or vacation bond.

***Townhouse:*** A group of attached dwelling units occupied by not more than one family in each unit between side walls, each unit having a separate entrance from the street and sharing a common open space. Townhouse shall include condominiums or cooperative ownership.

***Two Family Dwelling:*** See DWELLING, TWO FAMILY.

***Use, Accessory:*** See ACCESSORY USE.

***Use Municipal:*** See MUNICIPAL USE.

***Use Non-conforming:*** See NON-CONFORMING USE.

***Utility, Public:*** See PUBLIC UTILITY.