

SECTION 9: SPECIAL PROVISIONS

- 9.1 The following special provisions govern land uses permitted in the TOWN OF LENOX. These provisions are in addition to the provisions of Section 6.6, TABLE OF USE REGULATIONS, Section 8, LAND SPACE REQUIREMENTS, and Section 10, OFF-STREET PARKING AND LOADING REQUIREMENTS.

The requirements of this section are the minimum requirements which must be met. These standards may be increased by the Zoning Board of Appeals where in the judgment of the Board the minimum standards are not sufficient. In addition, the Board of Appeals may impose additional safeguards where it deems appropriate as provided for by Section 11.

9.2 **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. Each unit shall contain not less than 700 square feet of habitable floor area.

9.3 **APARTMENT BUILDING**

- (a) No apartment project shall be constructed unless it has town water and town sewer and has the required frontage on an accepted public way.
- (b) All parking must be screened from abutters and from street line.
- (c) The Zoning Board of Appeals in reviewing an application for an apartment building (or buildings) shall consider the following factors: possible drainage problems, driveway entrances and exits, underground wiring, traffic provisions for storage of refuse, equipment, carriages, bicycles, retention of trees as buffer zones or for aesthetic purposes, usable open space or recreation area, location of buildings within area, and design of buildings in relation to neighborhood.
- (d) 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.
- (e) No apartment 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
 - more than) an additional 5' of frontage per unit and an additional 5' of width at
 - 6 units) building setback
 - 2. There shall be at least 10,000 square feet of land area for each apartment unit.
 - 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. (Added A.T.M. 2/23/73)
- (f) A buffer area of 200 feet be maintained between buildings, accessory uses, or activity areas and any abutting property used for a residence or a nursing home. (A.T.M. 5/6/83)

9.4 RESIDENTIAL CONVERSIONS

9.4.1 CONVERSION OF AN EXISTING DWELLING

- (a) Any building which is to be converted shall meet all of the requirements of 9.2 or 9.3 - Sections a, b, c, d, and e.
- (b) 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.

9.4.2 ACCESSORY DWELLING UNIT

9.4.2.1 The intent of permitting accessory apartments is to:

- A. 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;
- B. 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;
- C. Develop housing units in single-family neighborhoods that are appropriate for households at a variety of stages in their life cycle;

- D. 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;

9.4.2.2 One Accessory Dwelling Unit 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:

- A. 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.
- B. Occupation. Either the ADU or the principal unit shall be occupied by the owner of the property except for bona fide temporary absence.
 1. 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.
 2. When a structure, which has received a permit for 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 Inspector stating that they will occupy one of the dwelling units on the premises as their primary residence, except for bona fide temporary absences.
 3. 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 Inspector, prior to the occupancy of the accessory dwelling unit.
 4. 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.
- C. Density. Only one ADU may be created in conjunction with each single-family residence.
- D. Minimum lot size. An ADU shall not be established on any parcel smaller than 10,000 square feet.

- E. 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.
- F. 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 in (E) above, or as otherwise established by the requirements of the Town of Lenox.
- G. 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 accessory dwelling unit as part of a pre-existing non-conforming structure provided alterations or extensions do not exceed 50% of the existing floor area and do not increase the non-conforming nature of said structure as it relates to front, rear and side setbacks and lot coverage.
- H. 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.
- I. 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 accessory apartment 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.
- J. 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 10 shall be maintained for the principal residence.
- K. 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.

- L. 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.

9.4.3 CONVERSION OF AN ACCESSORY STRUCTURE

A. 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 standards of Section 9.4.2, unless allowed under Section 9.4.2.2.G. 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.

9.5 TOWNHOUSE

The special provisions which apply to apartment buildings constructed in a C-3A or R-15 district shall also apply to townhouse except that for each unit between sidewalls there shall be 15,000 square feet of land area.

9.6 RETIREMENT COMMUNITY

A building or group of buildings containing dwellings where occupancy is restricted to persons 55 years of age or older. In the case of double occupancy of the unit, only one of the residents is required to be at least 55 years of age. This does not include a development that contains convalescent or nursing facilities. Developments including a retirement communities shall meet the following conditions:

- (a) The project shall be served by town sewer.
- (b) There shall be a minimum of 8,000 square feet of lot area per dwelling unit except that in the case of housing projects for elderly persons as authorized under M.G.L. c. 121B, ss. 38-41, the minimum requirement shall be 4,000 square feet per dwelling unit.
- (c) In no case shall there be a total area of less than three (3) acres.
- (d) The lot shall have a frontage of not less than 100 feet on a public way.
- (e) No building shall be less than 75 feet from any public way or 30 feet from any property

line, the setbacks to be planted areas.

(f) There shall be a distance of at least 40 feet between buildings.

(S.T.M. 12/16/96)

9.7 MOTELS, INNS, HOTELS, OUTDOOR DINING

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) Each rental unit shall contain not less than two hundred (200) square feet of habitable floor area.

(f) 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.

9.7.1 BED AND BREAKFAST ESTABLISHMENTS

9.7.1.1 BED AND BREAKFAST IN-HOME STAY/ROOM RENTAL (Seasonal)

(a) Limited to one (1) to three (3) guests.

(b) Parking must be off street, on premises, with one (1) space per room rented and one (1) per owner.

(c) No other uses except for customary home occupation permitted on the property.

(d) No additions or external modifications may be made to the property for lodging use.

(e) Certificate of occupancy required subject to annual inspection. (A.T.M. 5/5/95)

9.7.1.2 BED AND BREAKFAST INN

(a) Lodging for four (4) to twenty (20) guests.

(b) Parking must be off street, on premises, with one space per room rented and one per

owner.

- (c) No other uses except for customary home occupation permitted on the property.
 - (d) 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.
 - (e) Requires a special permit, which is subject to review.
 - (f) Certificate of occupancy required. Subject to annual inspection.
 - (g) Property must be served by town water and sewer.
 - (h) 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.
- (A.T.M. 5/5/95)

9.7.2 OUTDOOR DINING

Seasonal outdoor dining, including sidewalk cafes, courtyard or terrace dining and similar uses may be permitted in the C, C1A, and C3A districts by special permit as an accessory use to a restaurant, cafeteria, or similar eating establishment or to a bakery, deli or other similar establishment for the production and sale of food or beverage on the premises. Where appropriate health, fire and building permits have been obtained, seasonal outdoor dining uses may also include the outdoor preparation and cooking of food or beverage (A.T.M. 5/5/05).

- (a) Number of seats indoors to be the number indicated Certificate of Occupancy
- (b) Number of seats allowed outdoors to be based on the following criteria:
 1. Outdoor dining to take place in a specified area.
 2. Total number of seats allowed to be based on square footage of above-mentioned specified area divided by 15 square feet per seat.
 3. Specified dining area shall not impede or infringe upon public spaces, especially concerning pedestrian and vehicular movement.
 4. Specified dining area shall have minimum setbacks of 10 feet from streets and 5 feet from sidewalks and, at the discretion of the Board of Appeals, be screened.
 5. All aspects of outdoor dining shall conform to any and all Board of Health regulations. (A.T.M. 5/5/95)

9.8 LABORATORY OR RESEARCH FACILITY WITH MANUFACTURING; PLACE FOR MANUFACTURING OR ASSEMBLY OF GOODS.

- (a) No fire and explosion hazards shall exist as to produce dangerous exposure to adjacent property.
- (b) No objectionable odors shall be detectable beyond the property line.

- (c) No noxious, toxic or corrosive fumes or gases shall be emitted.
- (d) No observable dust or smoke shall be exhausted into the air.
- (e) No heat and glare shall be evident beyond the property line.
- (f) No exterior lighting, other than properly shielded street lighting, shall shine directly on adjacent properties or toward any street.
- (g) No noise shall be detectable beyond the property line in excess of the average level of street and traffic noise generally heard at the point of observation, and no noise below such level shall be objectionable with respect to intermittence, beat frequency or shrillness. No external loud speakers shall be permitted.
- (h) No inherent and recurrently generated vibration shall be perceptible at the property line.
- (i) No dangerous radiation shall be detectable outside any structure.
- (j) Water service and waste and refuse disposal methods shall comply with pertinent health regulations and shall be in accordance with the approved site plan.
- (k) Fuel, raw, partially processed, finished or other material, machinery, supplies and equipment, including company owned or operated vehicles, shall not be stored between the street line and the front line of structures on the subject lot, or, if there be no structure, within forty (40) feet of the street line, and in no case shall be visible from the street.
- (l) Where an industrial district boundary and residence district boundary meet, the Board of Appeals shall give due consideration to provisions for screening.

9.9 MORTUARY OR FUNERAL ESTABLISHMENT

A minimum of twenty (20) off-street parking spaces shall be provided.

9.10 SWIMMING POOLS

- (a) A fence of at least four feet in height shall be constructed surrounding swimming pools.
- (b) Such fence shall be constructed so as to prevent children from climbing over, under, or through it and shall be equipped with a gate which shall be kept closed when not in use.
- (c) Any permanent swimming pool constructed shall be equipped with poles and life preservers which shall be kept within immediate reach.
- (d) Any permanent swimming pool must meet the above requirements within six (6) months of the effective date of this Bylaw.

9.11 EXTENDED-CARE NURSING FACILITIES AND ASSISTED LIVING/CONGREGATE CARE

- (a) The minimum lot size for such facilities shall be three (3) acres. 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.
- (b) Facilities must be served by town water and town sewer.

- (c) 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.
- (d) 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.
- (e) 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.
(S.T.M. 12/16/96)

9.12 COMMERCIAL STABLE, GOLF COURSE, COUNTRY CLUB, SWIMMING CLUB, ETC.

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

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

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.

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 Zoning Board of Appeals shall consider landscaping. (A.T.M. 5/5/05)

9.14 PLANNED UNIT OFFICE OR RESEARCH CENTER

9.14.1 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. (S.T.M. 12/16/96)

9.14.2 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:

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%).

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.

(S.T.M. 12/16/96)

9.15 RESORTS

(a) A resort shall have a minimum of 15 acres of land area.

(b) 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.

- 9.16 **WHOLESALE BUSINESS OR STORAGE: TRUCKING OR FREIGHT TERMINAL**
The size of carriers and the volume of traffic shall be considered in relation to the adequacy of existing feeder streets.
- 9.17 **PROFESSIONAL OFFICES IN RESIDENCES**
(a) All parking areas shall be screened.
(b) Signs shall conform to residential sign provisions. (See Section 7.7)
(c) No more than one person shall practice and one be employed on the premises at any one time.
- 9.18 **EDUCATIONAL/RELIGIOUS USES (A.T.M. 5/7/76)**
(S.T.M. 6/8/84 deleted first two paragraphs of 5/7/76 amendment)

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

- (a) Maximum building height - 2 stories or 35 feet.
(b) Maximum building coverage - 4%.
(c) Setback - two hundred (200) feet buffer surrounding the property to be kept undeveloped except for entrance and exit roadways.
(d) 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.
(e) Parking areas shall be screened as provided in Section 2: DEFINITIONS - SCREENING - (a) and (c).
(f) Parking areas shall be within three hundred (300) feet of the building to be served.
(g) 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.

9.18.1 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 9.18. (A.T.M. 5/5/05)

9.19 ESTATE PRESERVATION AREA

Statement of Legislative Intent. 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.

9.19.1 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.

9.19.1.1 QUALIFICATION

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

LIST OF ESTATES

<u>PROPERTY NAME</u>	<u>CATEGORY #1 BUILDING NAME</u>	<u>ASSESSOR'S MAP-PARCEL NO.</u>	<u>STREET ADDRESS</u>
Bellefontaine	Mansion (Excluding Dorm and Gym Addition) Plus Gatehouse	22C-1	Kemble St.
Belvoir Terrace	Main Building (Excluding Kitchen Wing)	18A-1	Cliffwood St.
Blantyre	Main Building	26-3,4	East St.
Cranwell (Wyndburst) (Coldbrooke)	Cranwell Hall (Excluding West Wing) Wickham Hall, Berchman's Hall	25,27,28, 29, 28B-20	Lee Rd.
Ethelwynde	Main Building	17D-2,3	Yokun Ave.
Elms (Windsor Mtn.)	Main Building (Excluding Dining Hall Wing) (Groton Place)	21B-102	West St.
Lenox School (Stevens School of the Bible)	Clipston Grange Frelinghusen Cottage (Bassett Hall) Springlawn (Schermerhorn Hall)	22A-163	Kemble St.
Wayside (Lenox Club)	Main Building	17D-1	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.

9.19.1.2 The applicant shall designate in its application hereafter referred to in Section 9.19.3(a), 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 in 9.19.1.1 but shall contain at least 25 acres and 75% of the land, whichever is greater, listed in 9.19.1.1 and shall include the Designated Building.

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.

9.19.2 PROVISIONS

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

- (a) 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) for guidance.
- (b) acreage of not less than 25 acres.
- (c) town sewer will be used.
- (d) water for domestic purposes is available, and water mains shall satisfy equivalent subdivision standards.
- (e) town water when available will be connected for fire protection.
- (f) 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.
- (g) off-street parking is screened from abutters and adjoining streets.
- (h) 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 9.19. Development and rehabilitation may proceed in stages, and if so, the required bond or covenant shall be similarly staged.
- (i) unless required by the building code, no new buildings shall be erected within two hundred (200) feet of a Designated Building.
- (j) no new structure or building shall be permitted on the land lying between a Category 1 Building and its corresponding address street as listed in 9.19.1.1 unless located more than 1500 feet from any Category 1 Building.

9.19.2.1 HEALTH CLINICS

An Estate Preservation Area may include health clinics provided that:

- (a) 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

- (b) 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.)

9.19.2.2 MULTI-FAMILY USES

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

- (a) 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.
- (b) 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.
- (c) 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 in Sec. 9.19.1.1.

CATEGORY #2 buildings constructed prior to 1 July 1983, which are not listed in Sec. 9.19.1.1.

CATEGORY #3 buildings constructed or to be constructed after 1 July 1983.

THE REQUIRED LAND AREA PER DWELLING UNIT IS:

<u>CATEGORY #1</u>	<u>CATEGORY #2</u>	<u>CATEGORY #3</u>
1 Acre	2 Acres	3 Acres

- (d) Density for apartments, townhouses and single family dwelling units may be greater than the requirements of 9.19.2.2 (c) 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:
 1. conservation
 2. passive recreation
 3. golf course
 4. 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.

9.19.2.3 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.

9.19.3 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:

- (a) a written statement containing the following:
 1. how the development accomplishes the purposes set forth in Section 9.19.
 2. the applicant's designation of the building or buildings (Designated Building) and the land area (Designated Area), all as provided for in 9.19.1.2.
 3. the intended open space portions of land.
 4. the method of preservation and maintenance of the Designated Buildings.
- (b) 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.
- (c) 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.
- (d) the plans shall be prepared by a registered land surveyor and/or a registered civil engineer whose seal shall appear on the plans.
- (e) 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.
- (f) calculations showing compliance with 9.19.2.2.

(g) good quality recent photographs sufficient to document the existing conditions of the Designated Buildings. Photographs must:

1. show all exterior elevations and distinctive exterior architectural details;
2. show at least one (1) view of each Designated Building in its setting;
3. be labeled to include property name, what is shown, and date of photograph;
4. be large enough to show architectural details clearly.

9.19.4 OWNERSHIP, DEVELOPMENT IN STAGES

Provided that the Restriction described in Section 9.19.2.2 has been recorded, ownership of the land and/or buildings constructed and maintained may be in different ownership.

It is contemplated that the development of an Estate Preservation Area may proceed in stages, and application therefor 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.

9.19.5 INVOCATION OF SECTION 9.19

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. (Section 9.19 was originally added by amendment at S.T.M. 6/8/84. The entire section was deleted and replaced by the present Section 9.19 at S.T.M. 8/12/85)

9.20 PROFESSIONAL OFFICES IN EXISTING R-30 AND R-15 STRUCTURES

- (a) All parking areas shall be screened.
- (b) Signs shall conform to residential sign, provisions (see Section 7.7)
- (c) No more than 50 percent of the floor area of the structure shall be used for non-residential purposes.

9.21 GENERAL DESIGN REVIEW STANDARDS (*Removed TM 5/5/05*)

9.22 REDUCTION OF STREET LINE SETBACK IN C-3A

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.

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

- (a) Overall quality of the plan including design and materials;
- (b) Consistency of materials and design elements (stone walls, for instance) with the historic character of the Town of Lenox;
- (c) Landscape treatment of parking areas;
- (d) Location and landscaping of signs on the site;
- (e) Integration into the existing terrain and surrounding landscape;
- (f) Enhancement of scenic views or unique features from the roadway or other publicly accessible locations;
- (g) Preservation of unique or sensitive natural or historic features;
- (h) Minimizing of changes to existing trees, other vegetation or soils;
- (i) Maximizing retention of open space; and
- (j) Screening of objectionable features from neighboring properties and the roadway.

(S.T.M. 12/16/96)

9.23 NON-CONFORMING RESIDENCES IN THE C-3A AND C-1A DISTRICTS

- (a) No alteration of any structure shall be allowed which increases gross floor area or building coverage existing prior to March 30, 1996, except minimal changes deemed necessary by the Building Inspector or the ADA Coordinator to meet safety and access standards.
- (b) Permission to initiate or continue a use allowed by special permit shall be conditioned on the use of 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.
- (c) Each special permit must include findings or conditions enumerating limits on the scale or impact of the use. Such conditions might include a "not to exceed" number of vehicle trip ends to/from the property during a specified period or periods; a limit on the number of employees who may be present on the property at one time; a prohibition or limit on the number of special sales, demonstrations, or exhibitions designed to attract unusually large numbers of clients or customers to the site; and a limit on the floor area that may be devoted to retail use. For the

purposes of evaluating the traffic impact of a development proposal, an average may be projected using the latest edition of the Institute of Transportation Engineers "Trip Generation Manual", on file with the Town Clerk.

- (d) For the "NCR" uses identified as "Professional trades or crafts," no over-the-counter retail activity shall be permitted. An area for showing samples or for taking client orders shall be permitted.
- (e) For all uses, all display, sales and/or storage must take place within the building.
- (f) The area of any permitted retail floor area shall be conditioned on the provision of adequate on-site or shared parking for such use. All parking shall, at minimum, meet the standards of the applicable sections of Section 10 of this bylaw.
- (g) The number of employees who may be present on the site at any time shall not exceed the number of on-site parking spaces provided, after subtracting the number of parking spaces to be made available for use by clients or customers or deliveries. (S.T.M. 12/16/96)
- (h) No more than two signs are permitted for each lot. Only one of these signs may be freestanding. Neither sign shall exceed 14 (fourteen) square feet in surface area.

9.24 Mixed Use Development (ATM 5/6/04, ATM 5/5/05)

Dwelling units may be located on premises which also include non-residential 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 non-residential use, lot area shall equal not less than 3,500 square feet per dwelling unit (no additional area required for the non-residential use). The minimum gross floor area for each dwelling unit shall be seven hundred (700) square feet.

9.25 Seasonal Outdoor Displays (ATM. 5/5/05)

9.25.1 Outdoor Displays – C1A District

Outdoor displays may be allowed by right from May 15 to October 15, and shall be subject the following:

- (a) outdoor displays shall be established in a orderly manner with a high level of design quality so as to not adversely impact surrounding uses;
- (b) is displayed 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;

- (c) is not displayed on 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;
- (d) is a maximum of six (6) feet in height;
- (e) no additional signs are permitted except as otherwise provided herein; and,
- (f) display is located outdoors only during regular business hours; and
- (g) is the type that is displayed or sold in the ordinary and customary operations of the principal use.

9.25.2 Outdoor Displays – Commercial (C) District

Outdoor displays may be allowed by special permit from May 15 to October 15, and shall be subject the following:

- (a) outdoor displays shall be established in a orderly manner with a high level of design quality so as to not adversely impact surrounding uses;
- (b) is displayed 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
- (c) is not displayed on 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;
- (d) is a maximum of six (6) feet in height;
- (e) no additional signs are permitted except as otherwise provided herein;
- (f) display is located outdoors only during regular business hours; and,
- (g) is 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.

9.26 Adult Entertainment Uses (5/6/04)

9.26.1 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.

9.26.2 Special Permit

9.26.2.1 Authority

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.

9.26.2.2 Location

9.26.2.2.1 An adult use shall be prohibited in all zoning districts except in the C-1A Zone.

9.26.2.2.2 An adult use may not be located within four hundred (400) feet of (a) a boundary line of a residential zoning district, (b) any other adult bookstore or adult motion picture theater, or (c) 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.

9.26.3 Zoning Requirements

9.26.3.1 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.

9.26.3.2 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.

9.26.3.3 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.

9.26.3.4 No adult entertainment use shall be allowed within a building containing other retail, consumer or residential uses.

9.26.3.5 No adult entertainment use shall be allowed within a shopping center, shopping plaza or mall.

9.26.3.6 The proposed adult entertainment use shall comply with the off-street parking requirements set forth in Section 10.

9.26.3.7 No adult entertainment use shall have any flashing lights visible from outside the establishment.

9.26.3.8 No adult entertainment use shall have a freestanding accessory sign.

9.26.3.9 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 9.26.2.2.2.

9.26.4 Application

The application for a Special Permit for an Adult Use shall include the following information: name and address of the legal owner of the proposed establishment; name and address of all persons having a lawful ownership, equity or security interest in the proposed establishment; 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; name and address of the manager of the proposed establishment; proposed provisions for security; number of employees; and proposed physical layout of the interior of the proposed establishment.

9.26.5 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.

9.26.6 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 in paragraph 9.25.3.9 of this bylaw.

9.26.7 Severability

The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.