

Town of Lenox
Massachusetts
Zoning Bylaw
2023

Adopted Special Town Meeting: April 15, 2008

This edition includes amendments through Special Town Meeting March 24, 2009, Annual Town Meeting May 6, 2010, Special Town Meeting April 14, 2011, Annual Town Meeting May 1, 2014, Annual Town Meeting May 7, 2015, Annual Town Meeting May 5, 2016, Annual Town Meeting May 4, 2017, Special Town Meeting November 1, 2018, Annual Town Meeting May 2, 2019, Special Town Meeting November 7, 2019, Annual Town Meeting June 29, 2021, and Annual Town Meeting May 4, 2023.

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



LENOX ZONING BYLAW

TABLE OF CONTENTS

SECTION 1. PURPOSE AND AUTHORITY	1
1.1. TITLE	1
1.2. PURPOSE.....	1
1.3. AUTHORITY	1
1.4. SCOPE	1
1.5. APPLICABILITY.....	1
1.6. ZONING AMENDMENTS.....	1
1.7. SEPARABILITY.....	2
SECTION 2. DISTRICTS.....	3
2.1. ESTABLISHMENT; PURPOSES	3
2.1.1. Residential Districts.....	3
2.1.2. Commercial Districts	3
2.1.3. Industrial Districts	3
2.1.4. Overlay Districts	3
2.2. ZONING MAP	3
2.2.1. Amendment.	3
2.2.2. Interpretation.....	3
2.2.3. Uncertainty.	4
2.2.4. Split Lots.....	4
SECTION 3. ADMINISTRATION AND ENFORCEMENT	5
3.1. BUILDING PERMIT; CERTIFICATE OF OCCUPANCY.....	5
3.1.1. Permit Required	5
3.1.2. Application	5
3.1.3. Construction to Conform to Plans.....	5
3.1.4. Certificate of Occupancy	5
3.2. ENFORCEMENT.....	6
3.2.1. Zoning Enforcement Officer.....	6
3.2.2. Action by Board of Selectmen.....	6
3.2.3. Penalty	6
3.2.4. Noncriminal Disposition	6
3.3. BOARD OF APPEALS	6
3.3.1. Establishment.....	6
3.3.2. Powers	6
3.3.3. Rules and Regulations	7
3.3.4. Fees	7
3.4. SPECIAL PERMITS	7
3.4.1. Special Permit Granting Authority	7
3.4.2. Criteria	7
3.4.3. Rules and Regulations	8
3.4.4. Conditions	8
3.4.5. Fees	8
3.4.6. Lapse	8
3.5. SITE PLAN APPROVAL IN THE C-1A AND C-3A ZONES	8
3.5.1. Purpose	8
3.5.2. Projects Requiring Site Plan Review.....	8
3.5.3. Waiver	9

3.5.4.	Action by the ZBA.....	9
3.5.5.	Contents of Site Plan.....	9
3.5.6.	Waiver of Submittal Requirements.....	11
3.5.7.	Procedure.....	11
3.5.8.	Rules and Regulations.....	12
3.5.9.	Standards for Review.....	12
3.5.10.	Sewer and Water Capacity.....	13
3.5.11.	Stormwater Management.....	13
3.5.12.	Erosion Control.....	13
3.5.13.	Design Standards.....	14
3.5.14.	Lapse.....	14
3.5.15.	Fee.....	15
3.5.16.	Appeal.....	15
SECTION 4.	DEFINITIONS	16
SECTION 5.	USE REGULATIONS	25
5.1.	GENERAL REQUIREMENTS	25
5.1.1.	Prohibited Uses.....	25
5.1.2.	Uses Permitted in All Districts.....	25
5.2.	SCHEDULE OF USES	25
5.3.	NONCONFORMING USES AND STRUCTURES	29
5.3.1.	Applicability.....	29
5.3.2.	Nonconforming Uses.....	29
5.3.3.	Nonconforming Structures.....	30
5.3.4.	Variance Required.....	30
5.3.5.	Nonconforming Single-Family and Two-Family Residential Structures.....	30
5.3.6.	Abandonment or Non-Use.....	30
5.3.7.	Reconstruction after Catastrophe or Demolition.....	31
5.3.8.	Reversion to Nonconformity.....	31
SECTION 6.	DIMENSIONAL REQUIREMENTS	32
6.1.	GENERAL REQUIREMENTS	32
6.1.1.	Table of Dimensional Requirements.....	32
6.1.2.	Computation.....	32
6.1.3.	Multiple Buildings.....	32
6.1.4.	Land Divided by Town Line.....	32
6.1.5.	Frontage Required.....	33
6.1.6.	Lots Abutting Multiple Streets.....	33
6.1.7.	District Boundary Lines.....	33
6.1.8.	Maximum Height/Number of Stories Restrictions.....	33
6.1.9.	Stairways.....	33
6.1.10.	Lot Sizes in the C District.....	33
6.1.11.	Lots in the C-3A District.....	33
6.1.12.	Fencing.....	33
6.1.13.	Screening.....	34
6.1.14.	Temporary Structures.....	34
6.2.	SPECIAL DIMENSIONAL REQUIREMENTS	34
6.2.1.	Two-Family House or Duplex.....	34
6.2.2.	Effect of Eminent Domain.....	34
6.2.3.	Commercial Stable, Golf Course, Country Club, Swimming Club.....	34
6.3.	REDUCTION OF STREET LINE SETBACK IN C-3A	35
6.3.1.	Special Permit Required.....	35
6.3.2.	Findings. The Board's findings shall take into account the following criteria:.....	35
SECTION 7.	GENERAL REGULATIONS.....	36

7.1.	OFF-STREET PARKING AND LOADING REQUIREMENTS	36
7.1.1.	General.....	36
7.1.2.	Location.....	36
7.1.3.	Parking Space Dimensions.	36
7.1.4.	Multiple Uses.	36
7.1.5.	Required Number of Spaces.	36
7.1.6.	Shared Parking.	37
7.1.7.	Reduction of Parking Requirements.	37
7.1.8.	Parking Design Standards.....	38
7.1.9.	Driveways.....	39
7.1.10.	Layout of Off-Street Parking Facilities.....	39
7.1.11.	Drainage, Surfacing and Maintenance.....	39
7.1.12.	Maintenance.	40
7.1.13.	Snow Storage.	40
7.1.14.	Lighting.....	40
7.1.15.	Screening.....	40
7.1.16.	Landscaping.....	41
7.1.17.	Bicycles.....	42
7.1.18.	Loading Space	42
7.1.19.	Loading Standards.....	42
7.1.20.	Commercial "C" Zoning District Exemptions.....	42
7.2.	SIGNS	43
7.2.1.	General.....	43
7.2.2.	Dimensions.....	43
7.2.3.	General Standards.....	43
7.2.4.	Signs in All Districts	43
7.2.5.	Signs in Residential Districts.....	44
7.2.6.	Signs in Commercial and Industrial Districts	44
7.2.7.	Entrance and Exit Signs in Commercial and Industrial Districts	45
7.2.8.	Other Signs Permitted in Commercial and Industrial Districts.....	45
7.2.9.	Free-standing Signs	45
7.2.10.	Signs in Historic District.....	45
7.3.	LIGHTING	45
7.3.1.	Sign Lighting	45
7.3.2.	Outdoor Lighting	46
7.4.	DRAINAGE AND EROSION CONTROL	46
7.4.1.	Applicability.....	46
7.4.2.	Submittals	46
7.4.3.	Standards	47
7.4.4.	Security.	47
SECTION 8.	SPECIAL REGULATIONS.....	48
8.1.	MOTELS, INNS, HOTELS.....	48
8.1.1.	General Requirements	48
8.1.2.	Special Requirements.....	48
8.2.	RESORTS	48
8.2.1.	General Requirements	48
8.3.	BED AND BREAKFAST ESTABLISHMENTS.....	49
8.3.1.	Bed & Breakfast Inn	49
8.4.	SHORT-TERM RENTAL OF RESIDENTIAL PROPERTIES	49
8.4.1.	Purpose	49
8.4.2.	General requirements for all Short-Term Rentals:	49
8.4.3.	Short-Term Rental of Rooms.....	50
8.4.4.	Short-Term Rental of Entire Dwelling Units	50
8.4.5.	Multiple dwelling units on a parcel.....	50

8.5.	SEASONAL OUTDOOR DISPLAYS	50
8.5.1.	General Requirements	50
8.5.2.	Additional Provisions in the Commercial C District	51
8.6.	PLANNED UNIT COMMERCIAL DEVELOPMENT	51
8.6.1.	General Requirements	51
8.6.2.	Special Requirements.....	51
8.7.	PLANNED UNIT OFFICE OR RESEARCH CENTER	51
8.7.1.	Planned Unit Office or Research Center; Residential Districts.....	51
8.7.2.	Planned Unit Office or Research Center; Commercial Districts	52
8.8.	EDUCATIONAL AND RELIGIOUS USES.....	52
8.8.1.	General Requirements	52
8.8.2.	Parking Requirements.....	53
8.8.3.	Special Requirements.....	53
8.9.	ADULT ENTERTAINMENT USES	53
8.9.1.	Purpose and Intent	53
8.9.2.	Special Permit	53
8.9.3.	Location.....	54
8.9.4.	Requirements.....	54
8.9.5.	Application	54
8.9.6.	Conditions	55
8.9.7.	Expiration	55
8.10.	ESTATE PRESERVATION AREA	55
8.10.1.	Purpose	55
8.10.2.	Special Permit	55
8.10.3.	Eligibility	55
8.10.4.	Designation	56
8.10.5.	Division.....	56
8.10.6.	Requirements.....	56
8.10.7.	Health Clinics.....	57
8.10.8.	Multifamily Uses	57
8.10.9.	Combined Uses	58
8.10.10.	Application Requirements.....	58
8.10.11.	Ownership and Development in Stages	58
8.10.12.	Release	58
8.10.13.	Great Estate Inn	59
8.11.	DRIVE-THROUGH FACILITIES	59
8.11.1.	Purpose	59
8.11.2.	Applicability.....	59
8.11.3.	Site Plan Review	60
8.11.4.	Traffic Impact Study	60
8.11.5.	Standards	60
8.11.6.	Compliance	62
8.12.	LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS.....	62
8.12.1.	Purpose	62
8.12.2.	Applicability.....	62
8.12.3.	Definitions	62
8.12.4.	General Requirements	63
8.12.5.	Site Plan Review	63
8.12.6.	Utility Notification.....	64
8.12.7.	Dimension and Density Requirements.....	64
8.12.8.	Design Standards.....	64
8.12.9.	Safety and Environmental Standards.....	65
8.12.10.	Monitoring and Maintenance; Solar Photovoltaic Installation Conditions	65
8.12.11.	Modifications	65
8.12.12.	Decommissioning or Abandonment	66

8.12.13.	Financial Surety	66
8.13.	REGISTERED MEDICAL MARIJUANA DISPENSARY	66
8.13.1.	Purposes.....	66
8.13.2.	Definitions	67
8.13.3.	Site Plan Approval	67
8.13.4.	Locational Requirements	67
8.13.5.	Physical Requirements	67
8.13.6.	Use Regulations.....	67
8.13.7.	Submittal Requirements	68
8.13.8.	Discontinuance of Use	68
8.14.	ADULT USE OF MARIJUANA (NON-MEDICAL)	68
8.14.1.	Purpose	68
8.14.2.	Number of Marijuana Retailers Allowed.....	68
8.14.3.	Special Permit Required	69
8.14.4.	On-site Consumption Prohibited	69
8.14.5.	General Requirements for Marijuana Establishments.....	69
8.15.	AGRICULTURAL USES	70
8.15.1.	Commercial Agriculture	70
8.15.2.	Small-Commercial Agriculture	70
8.15.3.	Non-Commercial Raising and Keeping of Animals	70
8.15.4.	Commercial and Small-Commercial Farm Stands	70
8.15.5.	Backyard Chickens.....	71
8.15.6.	Neighborhood Farm Stands	71
8.16.	MANUFACTURING OF CONSUMER GOODS	72
8.17.	LIMITING RETAILING AND/OR MAIL ORDER PROCESSING	72
8.18.	PERSONAL WIRELESS SERVICES FACILITIES	72
8.18.1.	Purpose	72
8.18.2.	Application Form and Permits Required	73
8.18.3.	Determination of Need	73
8.18.4.	Facility Impacts Criteria	73
8.18.5.	Collocations.....	75
8.18.6.	New Tower Mailed Notice	76
8.18.7.	New Tower Height and Setback Requirements	76
8.18.8.	Design Criteria for All Personal Wireless Services Facilities	77
8.18.9.	Eligible Facilities Requests	78
8.18.10.	Tower Replacement	79
8.18.11.	Application	79
8.18.12.	Employment of Outside Consultants	81
8.18.13.	Decision.....	81
8.18.14.	Post Construction RFR Study.....	82
8.18.15.	Abandonment (Discontinued Use).....	82
8.18.16.	Exempt Facilities	83
8.18.17.	Definitions	83
SECTION 9.	SPECIAL RESIDENTIAL REGULATIONS	85
9.1.	MULTIFAMILY AND TOWNHOUSE BUILDINGS	85
9.1.1.	General Requirements	85
9.1.2.	Decision.....	85
9.1.3.	R-15 or C-3A Districts	85
9.1.4.	Dwelling, Two Family (Duplex).....	86
9.1.5.	By-Right Provision	86
9.2.	ACCESSORY DWELLING UNIT	86
9.2.1.	Purpose	86
9.2.2.	Special Permit Required	86
9.2.3.	Standards	87

9.2.4.	Conversion of an Accessory Structure	88
9.3.	ACCESSORY BUILDINGS.....	88
9.3.1.	General Standards:.....	88
9.3.2.	Lots not Meeting Yard Area Requirement.	88
9.4.	EXTENDED-CARE NURSING, ASSISTED LIVING, CONGREGATE CARE	89
9.4.1.	General Standards.....	89
9.5.	MIXED USE DEVELOPMENT.....	89
9.6.	RESIDENTIAL CONVERSIONS	89
9.6.1.	Conversion of an Existing Dwelling	89
9.7.	OPEN SPACE FLEXIBLE DEVELOPMENT	89
9.7.1.	Purpose	89
9.7.2.	Definitions	90
9.7.3.	Applicability.....	90
9.7.4.	Procedures	90
9.7.5.	Design Process	90
9.7.6.	Modification of Lot Requirements	91
9.7.7.	Maximum Number of Dwelling Units.....	91
9.7.8.	Density Bonus	91
9.7.9.	Types of Buildings	91
9.7.10.	Roads.....	92
9.7.11.	Parking	92
9.7.12.	Contiguous Open Space	92
9.7.13.	Ownership of the Contiguous Open Space	92
9.7.14.	Buffer Areas	93
9.7.15.	Stormwater Management.....	93
9.7.16.	Planning Board Decision	93
9.7.17.	Relation to Other Requirements.....	93
9.7.18.	Parcels Under Ten Acres	93
9.8.	RESIDENTIAL INCLUSIONARY DEVELOPMENT.....	94
9.8.1.	Purpose.	94
9.8.2.	Definitions	94
9.8.3.	Applicability.....	94
9.8.4.	Special Permit Authority	95
9.8.5.	Minimum Requirements for Inclusionary Development	95
9.8.6.	Dimensional Requirements.....	96
9.8.7.	Types of Buildings	97
9.8.8.	Roads.....	97
9.8.9.	Parking	97
9.8.10.	Stormwater Management.....	97
9.8.11.	Decision.....	97
9.8.12.	Relation to Other Requirements.....	97
9.8.13.	Maximum Incomes and Selling Prices: Initial Sale:	97
9.8.14.	Reservation of Affordability; Restrictions on Resale:.....	98
9.8.15.	Conflict with Other Bylaws:.....	98
9.8.16.	Severability:.....	98
9.8.17.	Waivers	98
9.9.	HOME OCCUPATION	99
9.9.1.	Basic Requirements.....	99
9.9.2.	Special Permits.....	99
SECTION 10.	SPECIAL DISTRICT REGULATIONS.....	100
10.1.	FLOOD PLAIN OVERLAY DISTRICT.....	100
10.1.1.	The purposes of the Flood Plain Overlay District (FPOD) are:	100
10.1.2.	Location.....	100
10.1.3.	Overlay District.....	100

10.1.4.	Permitted Uses.....	100
10.1.5.	Special Permit	101
10.2.	GATEWAY MIXED USE DEVELOPMENT OVERLAY DISTRICT	101
10.2.1.	Purpose	101
10.2.2.	Location.....	102
10.2.3.	Overlay District.....	102
10.2.4.	Special Permit and Site Plan Approval Required.....	102
10.2.5.	Eligible Uses	102
10.2.6.	Prohibited Uses	102
10.2.7.	Combination of Uses	103
10.2.8.	Area Regulations	103
10.2.9.	Open Space	103
10.2.10.	General Design and Performance Standards	104
10.2.11.	Interior Roadways and Common Curb Cuts; Density Bonus	105
10.2.12.	Lighting.....	106
10.2.13.	Parking and Loading; Shared Parking Requirements	106
10.2.14.	Pre-Application	106
10.2.15.	Submission Requirements.....	107
10.2.16.	Decision	107
10.2.17.	Waivers	107

SECTION 1. PURPOSE AND AUTHORITY

1.1. TITLE

The full title of this Bylaw shall be the "Zoning Bylaw of the Town of Lenox, Massachusetts." This Bylaw shall be referred to herein as "this Zoning Bylaw" or "this Bylaw."

1.2. PURPOSE

This Bylaw is 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 but not limited by the provisions of the Zoning Act, G.L. c. 40A, as amended, and Section 2A of 1975 Mass. Acts 808.

1.3. AUTHORITY

This Zoning Bylaw is enacted in accordance with the provisions of G.L. c. 40A any and all amendments thereto, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

1.4. 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.

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

1.6. ZONING AMENDMENTS

This Bylaw may be amended or repealed at any Town Meeting of the Town of Lenox as provided by G.L. c. 40A, § 5.

1.7. SEPARABILITY

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision herein.

SECTION 2. DISTRICTS

2.1. ESTABLISHMENT; PURPOSES

The following types of districts, as shown on the Zoning Map referred to in Section 2.2, are hereby established for the purposes described generally below.

2.1.1. Residential Districts

1. R-3A
2. R-1A
3. R-30
4. R-15

2.1.2. Commercial Districts

1. C
2. C-1A
3. C-3A

2.1.3. Industrial Districts

1. I

2.1.4. Overlay Districts

In addition, the following overlay districts are hereby established:

- | | |
|-----------------------------------|------|
| 1. Gateway Mixed Use Development: | LMUD |
| 2. Flood Plain Overlay District: | FPOD |

2.2. 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 by Town Meeting, 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.

2.2.1. 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.

2.2.2. 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.

2.2.3. 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.

2.2.4. Split Lots.

Where a lot is transected by a district boundary, the regulations that apply to the larger part of the area of such lot may, at the option of the lot owner, apply in the smaller part beyond such district boundary for a distance not to exceed 30 linear feet, if the smaller part has frontage on an accepted way.

SECTION 3. ADMINISTRATION AND ENFORCEMENT

3.1. BUILDING PERMIT; CERTIFICATE OF OCCUPANCY

3.1.1. 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 this Zoning Bylaw, 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.

3.1.2. 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.

3.1.3. 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.

3.1.4. 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.

3.2. ENFORCEMENT

3.2.1. Zoning Enforcement Officer

The Zoning Bylaw 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.

3.2.2. 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.

3.2.3. Penalty

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

3.2.4. 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, § 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.

3.3. BOARD OF APPEALS

3.3.1. Establishment

There shall be a Zoning Board of Appeals (herein referred to as the “Board of Appeals” or “Board”) consisting of 5 members and 4 associate members appointed by the Board of Selectmen.

3.3.2. Powers

The Board of Appeals shall have the following powers:

1. To hear and decide appeals in accordance with G.L. c. 40A, § 8, as amended.

2. To hear and decide, in accordance with the provisions of G.L. c. 40A, § 9, applications for special permits when designated as the special permit granting authority herein.
3. To hear and decide, in accordance with the provisions of G.L. c. 40A, § 6, applications for special permits to change, alter, or extend lawfully pre-existing non-conforming uses and structures to the extent allowed by Section 5.3.2 of this Bylaw.
4. To hear and decide petitions for variances in accordance with G.L. c. 40A, § 10.
5. To hear and decide applications for comprehensive permits for construction of low or moderate income housing, as set forth in G.L. c. 40B, §§ 20-23.
6. The Board of Appeals shall be the Subdivision Board of Appeals.

3.3.3. Rules and Regulations

The Board of Appeals shall adopt rules and regulations not inconsistent with the provisions of this Bylaw 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.

3.3.4. 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.

3.4. SPECIAL PERMITS

3.4.1. Special Permit Granting Authority

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

3.4.2. Criteria

Unless otherwise specified herein, special permits shall be granted by the Special Permit Granting Authority 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 Bylaw, 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.

3.4.3. 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.

3.4.4. 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 Bylaw. 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.

3.4.5. Fees

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

3.4.6. 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.

3.5. SITE PLAN APPROVAL IN THE C-1A AND C-3A ZONES

3.5.1. 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.

3.5.2. 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.

3.5.3. 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.

3.5.4. 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 3.3.3 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.

3.5.5. 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 7.4, 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 7.1 of the Bylaw.

3.5.6. Waiver of Submittal Requirements

The ZBA shall have the right to waive any of the items set forth in Section 3.5.5 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.

3.5.7. 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 3.3.3 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.

3.5.8. 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.

3.5.9. 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.

3.5.10. 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.

3.5.11. 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.

3.5.12. 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.

3.5.13. 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 7.1.15 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.

3.5.14. 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.

3.5.15. Fee

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

3.5.16. 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 4. DEFINITIONS

In this Bylaw, 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 Bylaw. 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 Bylaw.

Accessory buildings: 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 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.

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.

Agriculture, Commercial: On parcels of five (5) acres or more as defined by G.L. c. 128, § 1A, and exempted by G.L. c. 40A, § 3.

Agriculture, Small-Commercial: On parcels of less than five (5) acres as defined by G.L. c. 128, § 1A, and referenced and not exempted by G.L. c. 40A, § 3.

Assisted living residence: A residential development subject to certification under G.L. c. 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.

“Backyard Chickens”: The raising and keeping of chickens for personal, non-commercial use on parcels of less than five (5) acres.

Bed and breakfast inn or lodging: Rental to 4 or more people and/or furnishing of room and breakfast to not more than 20 people in a dwelling that shall be the legal residence of the owner.

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.

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 buses (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, § 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.

Commercial Recreation, Indoor: Entertainment and recreational facilities operated as a business for gain, provided such use is housed indoors in a sound insulated structure protecting the neighborhood from noise.

Commercial Recreation, Outdoor: Sports facilities such as golf courses, country clubs, tennis clubs, riding stables, riding rings (indoor & outdoor), swimming clubs.

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

Custom Manufacturing of Goods Sold at Retail on the Premises: Production and retail of artifacts such as furniture, cabinets, clothing, crafts, pottery, and similar specialty items designed and manufactured in small quantities by an individual tradesperson on the premises of the tradesperson's shop.

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 or mechanical device through 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, Single Family: A free-standing detached building used exclusively for residential use by not more than by one family.

Dwelling, Two Family (Duplex): A free-standing building exclusively for residential use by two families

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.

Educational Use, Exempt: An educational use that is exempt under G.L. c. 40A, § 3. An exempt use is use of land or structures for educational purposes on land owned or leased by the commonwealth or a state agency, or a city, town, or other subdivision of the commonwealth, or by a religious sect or denomination, or by a nonprofit educational corporation.

Educational Use, Non-Exempt: Any educational use that is not exempt under G.L. c. 40A, § 3. Examples include a trade or business school, or for-profit college or university.

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.

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. For purposes of this Bylaw, “family” shall also include the residents of a group home for people with disabilities.

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

Farm Stand, Commercial: A place for the sale of produce, wine, and dairy products in association with a Commercial Agriculture use.

Farm Stand, Small-Commercial: A place for the sale of produce, wine, and dairy products in association with a Small-Commercial Agriculture Use.

Farm Stand, Neighborhood: A place for the sale of excess seasonal produce or other products as allowed from an on-site, non-commercial garden.

Fencing: Any opaque or semi-opaque fence, wall, sign, or any other fabricated visual barrier or enclosure.

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 Line: 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. (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: 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 more than one non-resident, utilizing no outside storage, and requiring no more than two off-street parking spaces for employees and customers. Home occupation does not include any retail establishment. See Section 9.9.

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 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: Includes furniture, antiques, clothing, collectible dolls and related products.

Loading Space, Off-Street: An area off the street for loading and unloading of trucks, located either within a building or in open space on the same lot.

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 following with the street line.

Manufacturing of Consumer Goods: A facility or structure for retail sales, manufacturing, assembly and/or packaging of consumer goods.

Marijuana Establishment: A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer, or any other type of marijuana-related business subject to regulation under G.L. 94G but not including a Registered Medical Marijuana Dispensary.

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.

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 laws governing municipal

powers and functions, including the Town's participation in regional or inter-local services.

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 current regulations of its district 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, Single 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.

Outpatient 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, psychologists, 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.

Reconstruct. The rebuilding of a structure in such a manner and to such an extent as to substantially replace the existing structure.

Research Center: A building or a group of interrelated buildings where the main functions are data analysis, scientific research or applied research in product development.

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: Plant material or structures located so that visibility from neighbors and public ways is minimized.

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.

Short-Term Rental: An accessory lodging use in owner-occupied, tenant-occupied or non-owner occupied dwelling unit including, but not limited to, an apartment, house, accessory dwelling unit, cottage, condominium, or furnished accommodation that is not a hotel, motel, inn, resort, lodging house, or bed and breakfast establishment, where at least 1 room or unit is rented to an occupant or sub-occupant for 1-31 consecutive calendar days; and all accommodations are reserved in advance; except for certain lodging types excluded from such regulation by Massachusetts General Law.

Sign: Any letter, word, symbol, drawing, picture, design, device, article or object that advertises, calls attention to or identifies 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.

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:

1. 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
2. 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.

Utility, Public: See Public Utility.

SECTION 5. USE REGULATIONS

5.1. GENERAL REQUIREMENTS

Except as provided by law or in this Bylaw 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 Table 5.2 Schedule of Uses.

5.1.1. Prohibited Uses

1. Any use not listed in Section 5.2, Schedule of Uses, or provided for elsewhere in this Zoning Bylaw shall be deemed prohibited.
2. All uses that pose a present or potential hazard to human health, safety, welfare, or the environment through emission of smoke, particulate matter, noise or vibration, or through fire or explosive hazard, or glare are expressly prohibited in all zoning districts.
3. Mobile homes are prohibited, except that pursuant to Massachusetts G.L. c. 40A, Section 3, a mobile home or temporary manufactured home may be placed on the site of a residence destroyed by fire or natural disaster, for a period not to exceed twelve months while the residence is being rebuilt.

5.1.2. Uses Permitted in All Districts

1. Federal government use.
2. State government uses to the extent that this Bylaw would prohibit the exercise of an essential government function.
3. Uses to the extent protected or exempt pursuant to G.L. c. 40A, § 3 or other state law.

5.2. SCHEDULE OF USES

Table 5.2 - Schedule of Uses

		R3A	R1A	R30	R15	C3A	C1A	C	I	References
A.	Residential Uses									
1	Detached single-family dwelling	Y	Y	Y	Y	N	N	Y	N	
2	Two-family or duplex dwelling	N	N	BA	BA	N	N	BA	BA	
3	Townhouse	N	N	N	BA	BA	N	N	N	Section 9.1
4	Multifamily dwelling	N	N	BA	BA	BA	BA	Y	BA	Section 9.1
5	Bed & breakfast/inn	BA	BA	BA	BA	BA	BA	BA	BA	Section 8.3.1
6	Open Space Flexible Development (OSFD)	N	PB	N	N	N	N	N	N	Section 9.7
7	Upper-story units in a mixed use development	N	N	N	N	BA	BA	Y	BA	
8	Extended care nursing facility, assisted living or congregate care	N	BA	BA	BA	BA	BA	BA	N	Section 9.4
B.	Institutional, Recreational and Educational Uses									
1	Use of land for religious purposes	Y	Y	Y	Y	Y	Y	Y	Y	

Table 5.2 - Schedule of Uses

		R3A	R1A	R30	R15	C3A	C1A	C	I	References
2	Use of land or structures for educational purposes on land owned by 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	
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	Adult day care service (which may also be an accessory use to an assisted living residence, nursing home, or extended care facility)	BA	BA	BA	BA	BA	BA	BA	N	
10	Childcare facility	Y	Y	Y	Y	Y	Y	Y	Y	
C.	Places of Public Assembly									
1	Private membership club or lodge	N	N	N	N	BA	BA	BA	BA	
2	Commercial recreation: indoor	N	N	N	N	BA	BA	BA	BA	
3	Commercial recreation: outdoor.	BA	BA	BA	BA	N	N	BA	BA	
4	Bowling alley	N	N	N	N	BA	N	BA	N	
5	Live theater	N	N	N	N	BA	BA	BA	N	
6	Movie theater	N	N	N	N	N	BA	N	N	
7	Resorts	BA	BA	BA	BA	N	N	N	N	Section 8.2
D.	Agricultural Uses									
1	Agricultural, Commercial on parcels five acres or more	Y	Y	Y	Y	Y	Y	Y	Y	Section 8.15
2	Farm Stand, Commercial on parcels five acres or more	Y	Y	Y	Y	Y	Y	Y	Y	Section 8.15
3	Agricultural, Small-Commercial on parcels less than five acres	BA	BA	BA	N	BA	N	N	N	Section 8.15
4	Farm Stand, Small-Commercial on a parcel less than five acres	Y	Y	Y	N	Y	N	N	N	Section 8.15
5	Farm Stand, Neighborhood	Y	Y	Y	Y	BA	BA	Y	N	Section 8.15
6	“Backyard Chickens” on parcels less than five acres	Y	Y	Y	Y	BA	BA	Y	N	Section 8.15
7	The raising or keeping of animals, other than domestic pets and “Backyard Chickens” by residents of the premises, not as a commercial venture.	Y	Y	Y	Y	Y	Y	Y	Y	Section 8.15
E.	Office And Laboratory									
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	

Table 5.2 - Schedule of Uses

		R3A	R1A	R30	R15	C3A	C1A	C	I	References
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	Section 8.7
F.	Retail Business & Consumer Service Establishments									
1	Retail store	N	N	N	N	N	Y	Y	N	
2	Furniture Store	N	N	N	N	BA	N	N	N	
3	Eating place serving food and beverages to be consumed within the building or in a designated and permitted outdoor area of the dining establishment.	N	N	N	N	BA	Y	Y	BA	
4	Planned Unit Commercial Development	N	N	N	N	BA	BA	BA	N	Section 8.6
5	Establishment Manufacture, assembly or packaging of consumer goods (finished products)	N	N	N	N	N	Y	Y	Y	
6	Personal service establishment	N	N	N	N	N	Y	Y	N	
7	General service or trade establishment	N	N	N	N	BA	Y	Y	N	
8	Kennel, which may include animal day care service as an accessory use for domestic pets.	N	N	N	N	Y	Y	Y	Y	
9	Motels, Inns, Hotels	N	N	N	N	BA	BA	BA	N	Section 8.1
10	Conversion of existing structures to time sharing or time interval ownership	N	N	N	N	N	BA	BA	N	
11	Mixed use development	N	N	N	N	BA	BA	Y	N	Section 9.5
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	Gas station, which may include a convenience store	N	N	N	N	N	SB	N	N	
15	Motor vehicle light service	N	N	N	N	N	SB	N	N	
16	Motor vehicle and boat sales, rental and repair; indoors	N	N	N	N	N	Y	BA	N	
17	Motor vehicle and boat sales or rental; outdoors	N	N	N	N	N	BA	BA	N	
18	Car wash	N	N	N	N	N	BA	N	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	Y	

Table 5.2 - Schedule of Uses

		R3A	R1A	R30	R15	C3A	C1A	C	I	References
20	Adult use	N	N	N	N	N	BA	N	N	Section 8.9
21	Non-exempt educational use	N	BA	N	N	BA	BA	BA	Y	
22	Registered Medical Marijuana Dispensary	N	N	N	N	Y	Y	N	Y	
G.	Industrial Wholesale & Transportation Uses									
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	Manufacture, assembly or packaging of goods (subassemblies)	N	N	N	N	N	N	N	Y	
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	
8	Custom manufacturing of goods sold at retail on the premises	N	N	N	N	Y	Y	BA	Y	
H.	Accessory Uses and General Off-street Parking									
1	Short-Term Rental of Rooms	Y	Y	Y	Y	Y	Y	Y	Y	Section 8.4
2	Short-Term Rental of Entire Dwelling Units up to 75 days per calendar year	Y	Y	Y	Y	Y	Y	Y	Y	Section 8.4
3	Short-Term Rental of Entire Dwelling Units an additional 35 days (up to 110 days total)	BA	BA	BA	BA	BA	BA	BA	BA	Section 8.4
4	Accessory dwelling unit	BA	BA	BA	BA	N	N	N	N	Section 9.2
5	Home occupation	Y	Y	Y	Y	Y	Y	Y	Y	Section 9.9
6	Not more than one commercial vehicle per lot associated with a permitted home occupation	Y	Y	Y	Y	N	N	N	N	
7	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	Y	Y	Y	Y	Y	Y	Y	Y	
8	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	
9	Off-street parking for commercial vehicles registered at the premises or leased to occupant	N	N	N	N	Y	Y	Y	Y	

Table 5.2 - Schedule of Uses

		R3A	R1A	R30	R15	C3A	C1A	C	I	References
10	Privately owned garage for rental purposes	N	N	N	N	BA	BA	BA	Y	
11	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	
12	Seasonal outdoor display	N	N	N	N	N	Y	BA	N	Section 8.5
13	Drive through facilities fast food & drive through facilities other	N	N	N	N	N	BA	N	N	Section 8.11
I.	Estate Preservation Area									
1	Estate Preservation Area	N	BA	N	N	N	N	N	N	Section 8.10
2	Estate Preservation Area Great Estate Inn	N	Y	N	N	N	N	N	N	Section 8.10
3	Estate Preservation Area Health Clinic	N	BA	N	N	N	N	N	N	Section 8.10
4	Estate Preservation Multifamily Use	N	BA	N	N	N	N	N	N	Section 8.10
J.	Marijuana Businesses									
1	Marijuana Retailer	N	N	N	N	BA	BA	N	N	Section 8.14
2	Marijuana Cultivator	N	N	N	N	BA	BA	N	BA	Section 8.14
3	Marijuana Product Manufacturer	N	N	N	N	BA	BA	N	BA	Section 8.14
4	Craft Marijuana Cooperative	N	N	N	N	BA	BA	N	BA	Section 8.14
5	Microbusiness	N	N	N	N	BA	BA	N	BA	Section 8.14
6	Marijuana Research Facility	N	N	N	N	BA	BA	N	BA	Section 8.14
7	Marijuana Laboratory (Independent Testing, Standards Testing)	N	N	N	N	BA	BA	N	BA	Section 8.14
8	Marijuana Transporter	N	N	N	N	BA	BA	N	BA	Section 8.14
9	Registered Medical Marijuana Dispensary	N	N	N	N	Y	Y	N	Y	Section 8.13
K.	Personal Wireless Services Facilities									
1	Collocation (unless the Collocation qualifies as an Eligible Facility)	BA	BA	BA	BA	BA	BA	BA	BA	Section 8.18.5
2	New Tower Height and Setback	BA	BA	N	N	BA	BA	N	BA	Section 8.18.7
3	Substantial Change	BA	BA	BA	BA	BA	BA	BA	BA	Section 8.18.4.2
4	Eligible Facilities Request per 47 USC §1455	AA	AA	AA	AA	AA	AA	AA	AA	Section 8.18.9
Key	AA = Administrative Approval from the ZBA; BA = Special Permit; N = Not Permitted; Y = Permitted									

5.3. NONCONFORMING USES AND STRUCTURES

5.3.1. Applicability.

This Zoning Bylaw 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, § 5 at which this Zoning Bylaw, 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.

5.3.2. Nonconforming Uses.

The Board of Appeals may grant 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.

5.3.3. Nonconforming Structures.

The Board of Appeals may grant 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.

5.3.4. Variance Required.

Except as provided in subsection 5.3.5 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.

5.3.5. Nonconforming Single-Family 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 gross floor area of the original structure by more than 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.

If 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.

5.3.6. 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 Bylaw; provided, however, that such use or structure may be restored to its protected status by special permit from the Board of Appeals.

5.3.7. 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.
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.
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.

5.3.8. Reversion to Nonconformity.

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

SECTION 6. DIMENSIONAL REQUIREMENTS

6.1. GENERAL 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.

6.1.1. Table of Dimensional Requirements

Table 6.1.1– Table of Dimensional Requirements

Requirements	Districts	Residential				Commercial			Industrial
		R-3A	R-1A	R-30	R-15	C-3A	C-1A	C	I
1. Minimum lot area		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'	(6.1.10)	200'
4. Minimum setbacks:									
A. Building or structure (6.1.6)									
-Street Line		50'	35'	35'	35'	75'(6.1.11)	50'	(6.1.10)	50'
-Lot line		30'	25'	20'	20'	30'	30'	(6.1.10)	25'
-District Boundary Line (6.1.7)		30'	25'	20'	20'	50'	50'	(6.1.10)	50'
B. Sign Setback						35'	30'	(6.1.10)	30'
C. Parking Area Setback						30'	30'	(6.1.10)	30'
5. Maximum Building or structure height and stories (6.1.8)		In all districts except as allowed in Section 6.1.8, the maximum height shall be 35' and the maximum number of stories shall be two.							
6. Maximum building coverage		10%	20%	20%	20%	20%	30%	75%	35%

6.1.2. Computation

1. The land and yard areas 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.

6.1.3. 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 20 feet.

6.1.4. Land Divided by Town Line.

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

6.1.5. Frontage Required.

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

6.1.6. Lots Abutting Multiple Streets

On lots abutting streets on more than one side, the building 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.

6.1.7. District Boundary Lines

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.

6.1.8. Maximum Height/Number of Stories Restrictions

Maximum building or structure 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 and more stories 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 in Section 6.1.1, exceed 50 feet and the number of stories exceed four (4).

6.1.9. Stairways

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.

6.1.10. Lot Sizes in the C District

In view of small and irregular lot sizes in the C District, applications for a 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.

6.1.11. Lots in the C-3A District

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 Board of Appeals pursuant to Section 6.3 of this Bylaw if the Board determines that the proposed plan will significantly enhance the aesthetics of the property.

6.1.12. Fencing

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.)

6.1.13. Screening

1. Plant materials used for screening must be at least three feet in height at the time of planting, must be of a type that may be expected to form a year-round dense screen and must reach a height in maturity of at least five feet.
2. Any existing growth of trees and shrubs may be used for screening if in the judgment of the Board of Appeals, or if the use is by right, the Building Commissioner, such growth provides equivalent screening.
3. Masonry walls or wooden or fabricated fences used for screening must be from five to six feet in height, at least 50 percent solid, and designed in an attractive manner to obscure any view.

6.1.14. Temporary Structures

Temporary structures such as construction trailers 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.

6.2. SPECIAL DIMENSIONAL REQUIREMENTS

6.2.1. 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 except that in the R15 district, the Board of Appeals may grant a special permit to construct a two-family house on a lot meeting the minimum dimensional requirements of said district.

6.2.2. 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.

6.2.3. 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.

6.3. REDUCTION OF STREET LINE SETBACK IN C-3A

6.3.1. Special Permit Required.

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

6.3.2. 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 7. GENERAL REGULATIONS

7.1. OFF-STREET PARKING AND LOADING REQUIREMENTS

7.1.1. 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.

7.1.2. 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.

7.1.3. Parking Space Dimensions.

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

7.1.4. 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.

7.1.5. Required Number of 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 1.

Parking Space Quantity Requirements

Principal Use	Number of Spaces
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

Parking Space Quantity Requirements

Principal Use	Number of Spaces
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
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

7.1.6. 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 50 percent 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 600 feet of the building served for clients of the commercial use.
4. A written agreement acceptable to the Board of Appeals, defining the joint use of the common parking facility, shall be executed by all parties concerned and approved by the Board as part of the special permit process. Such agreement shall be recorded with 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.

7.1.7. Reduction of Parking Requirements.

Any minimum parking requirements may be modified by a Special Permit from the Board of Appeals upon determination that specific circumstances render a lesser provision adequate for all parking needs.

7.1.8. Parking Design Standards.

The following standards shall apply to all parking facilities.

1. A minimum of 80 percent 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:
3. Face 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.
4. Parking facilities for more than 35 cars which will be used only from June 1 to October 31 need not be paved if a grass cover satisfactory to the Superintendent of Public Works is used on top of the required gravel base.
5. Parking spaces accompanying uses by right in residential districts shall be exempt from the above surfacing requirements.
6. 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:

Parking Space Dimensional Requirements

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

7. 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.
8. 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 Board of Appeals 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 Board of Appeals 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.

7.1.9. Driveways.

Driveways shall meet 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.

7.1.10. 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 7.1.12 and 7.1.16.
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.

7.1.11. 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 Lenox Department 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.

7.1.12. 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.

7.1.13. 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 Lenox Department of Public Works may approve a procedure for trucking snow from the area.

7.1.14. 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.

7.1.15. 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 5 feet in width of densely planted shrubs or trees which are at least 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 50 percent of the face is open. The wall, barrier or fence shall be at least 4 feet and not more than 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 2 feet within 30 feet of an intersection or 10 feet of a driveway.
4. Every effort shall be made to retain existing trees. Removal of any tree exceeding 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.

7.1.16. 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 15 percent 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 25 square feet in area and have no dimensions less than 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 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:
 - a. 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).
 - b. 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.

7.1.17. 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.

7.1.18. Loading Space

Each Loading Space 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 spaces, drives and maneuvering areas shall be located entirely on the lot with direct access to the building intended to be served.

Each space shall have a minimum clear height, including access to it from the street of fourteen (14) feet.

7.1.19. 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.

7.1.20. Commercial "C" Zoning District Exemptions.

1. The following exemptions promote adaptive re-use of existing Buildings and Structures and the replication of historic massing and density in the Commercial "C" zoning district:

Buildings and Structures in the Commercial "C" District are exempt from Sections: 7.1.5 (Parking Space Quantity Requirements) 7.1.7. (Parking Design Standards) 7.1.10.2 (Off-Street Parking Layout) 7.1.18 (Loading Bays) As follows:	
Change of Use	Exempt
Construction with no Substantial Building or Structure Change	Exempt
A "substantial Building or Structure Change" is any alteration that increases the Gross Floor Area by more than 25% or 1,000 square feet, whichever is smaller.	

2. Any Substantial Building or Structure Change, including new construction on a vacant Lot, is not exempt from any requirements of this section.

7.2. SIGNS

7.2.1. General

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

7.2.2. Dimensions

1. 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.
2. 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.

7.2.3. 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.

7.2.4. Signs in All Districts

The following signs are permitted in all districts.

1. One "For Sale" or "For Rent" sign, not more than 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 6 square

feet in signboard area.

3. The 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 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 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 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.
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.
7. All Historic Building Markers approved by the Historical Commission. Markers for public buildings must also be approved by the Board of Selectmen and Markers within the Historic District must also be approved by the Historic District Commission.

7.2.5. Signs in Residential Districts

The following signs are permitted in Residential Districts.

One non-illuminated sign which displays the street number, name of the occupant or the premises or both, not exceeding 3 square feet in area, or not more than two signs, not exceeding 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 4 feet high and not less than 3 feet from any lot line.

7.2.6. 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 7.2.6 - Commercial and Industrial District Sign Requirements

District	Number	Size	Location
C	See 7.2.8	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 7.2.8 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

Table 7.2.6 - Commercial and Industrial District Sign Requirements

District	Number	Size	Location
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
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

7.2.7. Entrance and Exit Signs in Commercial and Industrial Districts

The following sizes for signs designating entrance and exit are permitted:

C - 6" x 12"; C3A, C1A and I - 8" x 24".

7.2.8. 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.

7.2.9. 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 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 7.2.6. Maximum dimension for a free-standing sign in any direction is 16 feet.

7.2.10. Signs in Historic District

Signs must be submitted to the Historic District Commission for approval before a sign permit can be issued by the Building Commissioner.

7.3. LIGHTING

Lighting shall conform to the standards set forth below.

7.3.1. 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 Section 7.3.2, 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.

7.3.2. 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.

7.4. DRAINAGE AND EROSION CONTROL

7.4.1. Applicability.

This Section 7.4 shall apply to 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.

7.4.2. Submittals

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

1. 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. Plan for control of erosion and sedimentation both temporary and permanent measure prepared by a professional engineer, which shall include the following:
3. 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;
4. 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;
5. Seeding, sodding, or revegetation plans and specifications for all unprotected or unvegetated areas;
6. Map showing the location, design and timing of structural sediment-control measures, such as diversions, waterways, grade stabilization structures, debris basins, and the like;
7. The calculations used in designing erosion-control structures; and

8. 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.

7.4.3. 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 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.

7.4.4. Security.

A completion bond or covenant shall be required by the applicable approval authority for improvements in the proposed development. A bond shall be sufficient to cover the costs of accomplishing the erosion and sedimentation control measures.

SECTION 8. SPECIAL REGULATIONS

8.1. MOTELS, INNS, HOTELS

8.1.1. General Requirements

1. Each guest room shall contain not less than 200 square feet of habitable floor area.
2. Each motel site shall be provided with not more than 2 motor vehicle driveways for each abutting street. Such driveways shall intersect the abutting street or streets at 90 degrees.

8.1.2. Special Requirements.

The following requirements shall apply except in the Commercial C District:

1. No motel shall be constructed on a lot having less than 200 feet frontage and less than 90,000 square feet lot size. If a larger minimum lot area is specified for the district in which the motel is proposed, such larger lot size is required.
2. There shall be 3,000 square feet of land area for each motel unit. The minimum acreage requirement may be included in calculating the land area per unit.
3. On each lot used for motel purposes, the minimum front, rear, and side setbacks shall be at least 50 feet. If a larger setback is specified for the district for which the use is proposed, the larger setback is required.
4. An area not less than 20 feet wide shall be maintained as an open space buffer 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. Such open space shall not be built upon nor paved, nor used for parking.

8.2. RESORTS

8.2.1. 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.

8.3. BED AND BREAKFAST ESTABLISHMENTS

8.3.1. Bed & Breakfast Inn

1. The establishment may provide lodging for 4 to 20 guests.
2. Parking shall be off street, on premises, with one space per room rented and one per owner.
3. Except for a home occupation that complies with this Bylaw, no other uses shall be permitted on the property;
4. There shall be no external additions to the property for lodging use;
5. External modifications for access and safety are permitted, but such modification shall be designed for minimum impact on abutters;
6. A certificate of occupancy is required and is subject to annual inspection;
7. The property must be served by town water and sewer; and
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.

8.4. SHORT-TERM RENTAL OF RESIDENTIAL PROPERTIES

8.4.1. Purpose

Short-Term Rentals (STRs) as defined in this section are allowed for residential properties in conformance with the following regulations: These regulations aim to balance private, neighborhood, and public interests by establishing middle-ground intensity limits that will:

1. Protect and maintain the residential character of existing neighborhoods.
2. Preserve housing options for new residents by deterring commercial interests from buying housing to use primarily as short-term rental businesses.
3. Enable residents to earn extra money from their properties to better afford to live here, maintain their properties, and contribute to the community.

8.4.2. General requirements for all Short-Term Rentals:

1. During the Short-Term Rental use:
 - a. All overnight parking must be within the property's driveway or garage.
 - b. Events that include tents or amplified music or which would customarily require a license or permit are not allowed.
2. Signs advertising the Short-Term Rental are not allowed.
3. A Short-Term Rental is not allowed on any property with outstanding violations of the Building Code, Fire Code, Board of Health, or Town General Bylaws.
4. Except as allowed in 8.4, the regulations of the underlying districts apply.

8.4.3. Short-Term Rental of Rooms

1. Up to two bedrooms in a dwelling unit may be rented year-round by right provided that the owner or tenant is occupying the dwelling unit at the time of the rental.

8.4.4. Short-Term Rental of Entire Dwelling Units

1. An entire dwelling unit may be rented up to 75 days per calendar year by right.
2. An entire dwelling unit may be rented for an additional 35 days (up to 110 days) per calendar year by Special Permit.

8.4.5. Multiple dwelling units on a parcel

1. If more than one dwelling unit exists on a single parcel:
 - a. The above totals apply to the parcel. The day limits defined above shall be apportioned among those dwelling units.
 - b. Only one dwelling may be used for either Short-Term Rental of Rooms or Short-Term Rental of Entire Dwelling Unit on the parcel at a time.

8.5. SEASONAL OUTDOOR DISPLAYS

8.5.1. General Requirements.

The provisions of this Section 8.2 shall apply in any district where outdoor displays of retail merchandise are allowed as an accessory retail use in Table 5.2 Schedule of Uses, subject to the following requirements.

1. Outdoor displays shall be permitted only between May 15 and October 15.
2. The outdoor display is clearly related to the retail use conducted inside the principal building.
3. No display shall be located in designated or required landscaped areas, parking lots, or drive aisles.
4. No display shall obstruct or otherwise interfere with visibility at intersections.
5. An outdoor display shall be only during the retail establishment's ordinary business hours, except that an evening display shall be allowed when properly lighted for safety and visibility.
6. Outdoor display is not intended to be, and shall not be interpreted to include, outdoor parking or outdoor storage or display of motor vehicles. No merchandise shall remain outdoors when the business is closed.
7. Outdoor displays shall be in an area parallel to the front of the building in which the principal use is located and shall extend no more than 50 percent of the front facade of such building.
8. No outdoor display shall exceed 6 feet in height.
9. No outdoor display shall be located within the front, side, or rear setbacks required in Table 6.1.1, or on public or private streets or ways, on public sidewalks. For an outdoor

display located in whole or in part on a private sidewalk, 4 feet of the sidewalk width shall remain unencumbered.

8.5.2. Additional Provisions in the Commercial C District.

1. Outdoor displays may include the assembly or packaging of consumer goods, including food and beverage products, provided that not more than 10 percent of the outdoor display area is devoted to such purposes.
2. An outdoor display may be located on a public sidewalk in front of a retail establishment, provided that all of the following requirements have been met:
 - a. The use complies with Section 8.5.1 (1) through (8) above; and
 - b. The owner of the display has obtained all other approvals, licenses or permits required under state or local law.

8.6. PLANNED UNIT COMMERCIAL DEVELOPMENT

8.6.1. 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 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 landscaping and on-site traffic mitigation measures such as shared highway access, joint driveways, good internal traffic access to adjacent parcels, and shared parking.

8.6.2. Special Requirements

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.

8.7. PLANNED UNIT OFFICE OR RESEARCH CENTER

8.7.1. Planned Unit Office or Research Center; Residential Districts

1. 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.
2. No manufacturing shall be permitted.
3. Minimum lot size for a planned unit office or research center in a residential district

shall be 15 acres.

4. Maximum percentage of building coverage to lot size shall be 5 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.

8.7.2. Planned Unit Office or Research Center; Commercial Districts

1. 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.
2. Accessory manufacturing and processing shall be permitted.
3. Minimum lot size for a planned unit office or research center in a commercial district shall be 3 acres.
4. Maximum percentage of building coverage to lot size shall be 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.
5. 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: 5 percent.
6. Bonus for parcels of over 15 acres which are submitted under a single special permit application and which incorporate traffic mitigation measures: 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.

8.8. EDUCATIONAL AND RELIGIOUS USES

8.8.1. 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 percent.
3. Setback: 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 18 feet wide and shall not exceed a 7 1/2 percent grade.
5. Parking areas shall be screened as provided in Section 7.1.15.

6. Parking areas shall be within three hundred (300) feet of the building to be served.

8.8.2. 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. |
| 3. College:----- | 1 space for each staff member plus two (2) spaces for every three (3) students. |

8.8.3. Special Requirements

Any property located in the C district or R-15 district used primarily for religious purposes shall be exempt from the provisions of this Section 8.8.

8.9. ADULT ENTERTAINMENT USES

8.9.1. 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.

8.9.2. Special Permit

No adult use shall be allowed except by a Special Permit granted by the Board of Appeals. The Board may impose such conditions as it deems appropriate for the protection of public health, safety, and welfare in any district permitting such use. A Special Permit shall only be issued following a public hearing held within 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.

8.9.3. 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.

8.9.4. 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 7.1.
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 8.9.3.

8.9.5. Application

Submission requirements shall be as set forth in the rules and regulations of the Board of Appeals.

8.9.6. Conditions

The Board of Appeals may impose reasonable conditions, safeguards and limitations on time or use. 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.

8.9.7. 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.

8.10. ESTATE PRESERVATION AREA

8.10.1. 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.

8.10.2. Special Permit

The 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 Board of Appeals in accordance with this bylaw.

8.10.3. Eligibility

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

Table 8.10.3 – 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.

Table 8.10.3 – List of Estates

Property Name	Building Name	Map/Parcel No.	Street Address
Ethelwynde	Main Building	12-2	Yokun Ave.
Elms (Windsor Mtn.)	Main Building (Excluding Dining Hall Wing) (Groton Place)	11-1	West St.
Shakespeare & Co. Springlawn	Clipston Grange Frelinghuysen Cottage (Bassett Hall) Springlawn (Schermerhorn 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.

8.10.4. 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 percent of the land, whichever is greater, listed above and shall include the Designated Building.

8.10.5. 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.

8.10.6. 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 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. Site with not less than 25 acres;
3. Connected 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 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 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.

8.10.7. Health Clinics

An Estate Preservation Area may include health clinics provided that:

1. A buffer area up to 200 feet wide, as determined by the Board of Appeals, is maintained between activity areas and off premises neighbors; and
2. At least 150 feet of frontage and 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.)

8.10.8. Multifamily Uses

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

1. Frontage of 150 feet plus an additional 5 feet of frontage for each multifamily dwelling, single family dwelling unit or townhouse unit;
2. A buffer area up to 200 feet wide as determined by the 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 multifamily units, 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 8.9.3)

4. The required land area per dwelling unit is:

CATEGORY #1: 1 acre

CATEGORY #2: 2 acres

CATEGORY #3: 3 acres

5. Density for multifamily units, 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 G.L. c. 184, § 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 Board of Appeals to be similar in character and protection to the above.
6. 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.
7. 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.

8.10.9. 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.

8.10.10. Application Requirements

Submission requirements shall be in accordance with the rules and regulations of the Board of Appeals.

8.10.11. Ownership and Development in Stages

1. Provided that the Restriction described herein has been recorded, ownership of the land and/or buildings constructed and maintained may be in different ownership.
2. 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.

8.10.12. Release

The election permitted by this Section 8.10 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 Board of Appeals, which shall release the Restriction on behalf of the Town.

8.10.13. 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 8.10.1 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 8.10.3 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 this Section 8.10, 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 Board of Appeals, based on the criteria in Section 3.4.2 of this Bylaw:

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

8.11. DRIVE-THROUGH FACILITIES

8.11.1. 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.

8.11.2. Applicability

This section applies to all uses identified as requiring a special permit for drive-through facilities in Table 5.2 Schedule of Uses.

8.11.3. Site Plan Review

Any proposed drive-through facility shall be subject to site plan review in accordance with Section 3.5.

8.11.4. 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 Board of Appeals 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 Board of Appeals must determine that the mitigation is satisfactory.

8.11.5. Standards

1. There must be a minimum of 200 feet between curb cuts unless reduced by the Board of Appeals 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 25 feet, unless the traffic impact study identifies the need for a larger curb cut and the requirement is increased by the Board of Appeals.
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 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 20 percent.
6. Drive-through facilities-fast food, shall provide a minimum of 8 stacking spaces (within the site) before the order board. The facility shall provide another 4 stacking

- spaces between the order board and the transaction window. If the facility has 2 transaction windows the 4 stacking spaces may be split 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 shall be at the discretion of the Board.
 8. Each stacking space shall be a minimum of 20 feet in length and 10 feet in width along straight portions. Stacking spaces and stacking lane shall be a minimum of 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 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 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 shall be a minimum of 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 the side and rear yards directly adjacent to residential uses to screen the abutting residential use. The landscaped buffer must be a minimum of 20 feet.
 13. Menu boards shall be a maximum of 30 square feet, with a maximum height of 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 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 10 dB(A) above the ambient levels measured at the property line by the Board of Health or its designee.

8.11.6. 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 Board of Appeals for review and approval pursuant to all requirements of this section.
5. The Board of Appeals may, in appropriate cases as it determines, impose further restrictions upon the development or parts thereof as a condition to granting the approval.

8.12. LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS

8.12.1. Purpose

The purpose of this bylaw is to allow the creation of new Large-Scale Ground-Mounted (LSGM) solar photovoltaic installations by regulating the placement, design, construction, operation, monitoring, modification and removal of such installations through providing reasonable standards that address public safety, minimize impacts on scenic, natural and historic resources and require adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, repair, and/or dismantling or removal of Large-Scale Ground-Mounted solar photovoltaic installations.

8.12.2. Applicability

This section applies to Large-Scale Ground-Mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or accessory structures, or related equipment at the site.

8.12.3. Definitions

As used in this Section 8.12, the following terms shall have the following meanings

BY RIGHT: By-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. By-right solar development will be subject to Site Plan Review to determine conformance with the Town's bylaws. Projects cannot be prohibited, but can be reasonably regulated by the Building

Commissioner and the Zoning Board of Appeals.

BUILDING PERMIT: A construction permit issued by the Town's Building Commissioner; the building permit evidences that the project is consistent with the state and federal building codes as well as the Town's Zoning Bylaw.

LARGE-SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION: A solar photovoltaic system that is structurally mounted on the ground, is not roof-mounted, and has a minimum rated nameplate capacity of 250 kW DC.

RATED NAMEPLATE CAPACITY: The maximum rated output of electric power production of the Photovoltaic system in kilowatts (kW) of Direct Current (DC).

SITE PLAN REVIEW AUTHORITY: For purposes of Large-Scale Ground-Mounted Solar Photovoltaic installations, the Site Plan Review Authority is the Zoning Board of Appeals ("Board").

SOLAR PHOTOVOLTAIC ARRAY: An arrangement of solar photovoltaic panels.

8.12.4. General Requirements

1. Designated Locations. The locations designated by the Town, in accordance with G.L. c. 40A, § 5, where Large-Scale Ground-Mounted solar photovoltaic installations may be sited by right or by Special Permit in accordance with Section 3.4 of the Zoning Bylaw:

DESIGNATED LOCATIONS FOR LSGM INSTALLATIONS							
Residential				Commercial			Industrial
R3A	R1A	R30	R15	C3A	C1A	C	I
N	N	N	N	BA	BA	N	Y

Y =By Right; BA=Board of Appeals Special Permit; N=Prohibited

Locations are shown on the Zoning Map pursuant to G.L. c. 40A, § 4

2. Compliance with Laws and Regulations. The construction and operation of all LSGM solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.
3. Building Permit and Building Inspection. No LSGM solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit. The application for a building permit for a LSGM solar photovoltaic installation must be accompanied by the required building permit application fee.

8.12.5. Site Plan Review

LSGM solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo administrative site plan review by the Board of Appeals prior to construction, installation,

or modification as provided in this Section 8.12.

1. Application for site plan review shall be in accordance with the Board's rules and regulations.
2. General. All plans and maps shall be prepared, stamped and signed by a Professional Engineer and/or a Professional Land Surveyor licensed to practice in the Commonwealth of Massachusetts.
3. Waiver of Submittal Requirements. The Board of Appeals may, by majority vote, waive any of its submission requirements under unique site conditions or request any additional data needed to render its decision.
4. Site Control. The applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction, operation and maintenance of the proposed solar photovoltaic installation.
5. Operation & Maintenance Plan. The applicant shall submit a plan for the operation and maintenance of the LSGM solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

8.12.6. Utility Notification

No LSGM solar photovoltaic installation shall be constructed until evidence has been given to the Board of Appeals that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

8.12.7. Dimension and Density Requirements

1. Setbacks. LSGM solar photovoltaic installations shall be constructed and maintained in conformance with the dimensional and setback requirements for Street, Lot, and District Boundary lines in the applicable Designated Location Districts, as outlined in Table 6.1.1 Table of Dimensional Requirements.
2. Appurtenant Structures and Buildings. All structures appurtenant to LSGM solar photovoltaic installations shall be subject to the regulations of the underlying zoning district concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements (see Table 6.1.1). All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shielded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

8.12.8. Design Standards

1. Lighting. Lighting of LSGM solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the installation shall be directed downward and shall incorporate full cut-off

fixtures to reduce light pollution.

2. Signage. Signs on LSGM solar photovoltaic installations shall comply with Section 7.2 of the Zoning Bylaw regulating signs. A sign consistent with the sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number. The emergency contact sign shall be:
 - a. Maximum size of 11" X 17";
 - b. Overlaid with or of a reflective material or reflective text; and
 - c. Prominently displayed at the main access point or gate.
 - d. Solar photovoltaic installations shall not be used for displaying any advertising, but identification of the manufacturer or operator of the solar photovoltaic installation will be allowed.
3. Utility Connections. Reasonable efforts, as determined by the Board of Appeals, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

8.12.9. Safety and Environmental Standards

1. Emergency Services. The LSGM solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. As a condition of Site Plan approval, owner or operator shall, in consultation with local emergency services, develop an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
2. Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the LSGM solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws. Herbicides may not be used to control vegetation at the solar electric installation. Mowing or the use of pervious pavers or geotextile materials underneath the solar array are possible alternatives.

8.12.10. Monitoring and Maintenance; Solar Photovoltaic Installation Conditions

The LSGM solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the installation and any access road(s), unless accepted as a public way.

8.12.11. Modifications

All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Board of Appeals. Material modifications shall include changes to the type, configuration or size of the installation or accessory structures, and changes to site topography, landscaping or site access.

8.12.12. Decommissioning or Abandonment

1. Removal Requirements. Any LSGM solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with this Section 8.12 shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Board of Appeals by certified mail of the proposed date of discontinued operations and plans for removal.
2. Decommissioning shall consist of:
 - a. Physical removal of all LSGM solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
 - b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - c. Stabilization or re-vegetation of the site as necessary to minimize erosion. The BOARD may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
3. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the BOARD. If the owner or operator of the LSGM solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town, to the extent it is duly authorized by law, may enter the property and physically remove the installation. As a condition of Site Plan Approval, the applicant and landowner shall agree to allow entry to remove an abandoned installation. The Town's cost for the removal will be charged to the property owner in accordance with the provisions of G.L. 139, § 3A as a tax lien on the property.

8.12.13. Financial Surety

Applicants for LSGM solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the BOARD, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

8.13. REGISTERED MEDICAL MARIJUANA DISPENSARY

8.13.1. Purposes

To provide for the placement of Registered Marijuana Dispensaries (RMDs) in recognition of and accordance with the Humanitarian Medical Use of Marijuana Act, G.L. c.94C, and the

implementing regulations, 105 CMR 725, in suitable locations in Lenox, in order to minimize potential adverse impacts of RMDs.

8.13.2. Definitions

Registered Marijuana Dispensary (RMD): A use operated by a not-for-profit entity registered, approved, and regulated by the Massachusetts Department of public Health in accordance with 105 CMR 725.000, and pursuant to all other applicable state laws and regulations, to be known as a registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. A Registered Marijuana Dispensary (RMD) shall include a Medical Marijuana Treatment Center (MMTC).

8.13.3. Site Plan Approval

All proposed uses under this Section, , shall be subject to a Site Plan Approval from the Zoning Board of Appeals pursuant to Section 3.5 of the Lenox Zoning Bylaw. Proposed RMDs in the Commercial “C” district shall require a Special Permit pursuant to Section 3.3 of the Zoning Bylaw.

8.13.4. Locational Requirements

RMDs may be located in accordance with Section 5.2, Schedule of Uses, except as follows:

1. No RMD may be located closer than 200 feet from any school, daycare center, public park or playground where minors may commonly congregate.
2. The distance is to be measured in a straight line from the nearest point of the property line of the proposed RMD and the nearest point of the property line of the protected uses stated above.
3. The Zoning Board of Appeals may authorize a waiver from this distance requirement if it finds specific circumstances or barriers adequately separate the RMD and a protected use. The burden shall be on the applicant to satisfy the Zoning Board of Appeals that these barriers are adequate to serve the purpose of this Section 8.13.4

8.13.5. Physical Requirements

In addition to pertinent requirements of 105 CMR 725, RMDs shall comply with the following:

1. All aspects of a RMD relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials shall take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the business.
2. No outside storage of marijuana, related supplies, or educational materials is permitted.

8.13.6. Use Regulations

In addition to pertinent requirements of 105 CMR 725, RMDs shall comply with the following:

1. Uses under this Section may only consist of the uses and activities permitted by its definition as limited by state law, and may not include other businesses or services in the same building.
2. No marijuana shall be smoked, eaten or otherwise consumed or ingested on the premises, except as permitted by 105 CMR 725.000.
3. The hours of operations for sales, delivery and dispensing purposes, and that the facility is open to qualifying patients, shall be limited to between the hours of 8:00 AM and 8:00 PM, seven days a week.
4. Additional regulations may be imposed as Site Plan Approval or Special Permit conditions.

8.13.7. Submittal Requirements

Above and beyond the standard application for Site Plan Review, an application under this section shall include the following:

1. Copies of all required RMD registrations issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the facility;
2. Evidence that the applicant has site control and the right to use the site for a facility in the form of a deed, valid lease, or purchase and sale agreement, and a signed statement from the property owner;
3. In addition to what is normally required in a site plan pursuant to Section 3.5, details showing all exterior proposed security measures for the premises, including lighting, fencing, gates and alarms, etc. ensuring the safety of employees and patrons and to protect the premises from theft or other criminal activity.

8.13.8. Discontinuance of Use

1. Any RMD permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia in compliance with 105 CMR 725 prior to expiration of its DPH Registration or immediately following revocation or voiding of its DPH Registration.

8.14. ADULT USE OF MARIJUANA (NON-MEDICAL)

8.14.1. Purpose

The purpose of this section is to provide requirements for siting marijuana establishments in suitable locations in the Town of Lenox in accordance with An Act To Ensure Safe Access to Marijuana, Chapter 55 of the Acts of 2017, and all applicable regulations, including 935 CMR 500.00.

8.14.2. Number of Marijuana Retailers Allowed

The total number of marijuana retailers allowed shall not exceed twenty percent (20%) of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be consumed on the premises. Fractions of retail licenses shall be rounded up to the nearest whole number. A decrease in the number of those licenses issued shall not affect an existing marijuana

retailer from continuing to operate.

8.14.3. Special Permit Required

All marijuana establishments in Lenox shall be subject to a Special Permit by the Lenox Zoning Board of Appeals per the procedures of Section 3.4 of the Lenox Zoning Bylaw.

8.14.4. On-site Consumption Prohibited

Any consumption of marijuana and marijuana products shall be prohibited at all marijuana establishments. No establishments, including private social clubs, shall allow consumption of marijuana or marijuana products on the premises, whether the product is sold to consumers on-site or not.

8.14.5. General Requirements for Marijuana Establishments

1. There shall be no publicly visible indication of marijuana cultivation, production, processing, testing, transportation or retail at any marijuana establishment in Lenox. This includes outside storage and activities necessary for business operation. All phases of the cultivation, processing and packaging of marijuana by a marijuana establishment shall take place in an enclosed building.
2. Marijuana establishments with grow operations in a translucent building shall not illuminate grow operations between dusk and dawn.
3. There shall be no noxious odors emitted from the cultivation or processing of marijuana and marijuana products.
4. No use shall be allowed by a marijuana establishment which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive sound or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.
5. Marijuana establishments shall conform to the following sections of the Lenox Zoning Bylaw:
 - a. Section 7.1, "Off Street Parking and Loading Requirements"
 - b. Section 7.2, "Signs"
 - c. Section 7.3, "Lighting"

8.15. AGRICULTURAL USES

Please note: Commercial marijuana cultivation is not part of this bylaw. It is subject to different regulations.

8.15.1. Commercial Agriculture

1. Commercial farming activities are allowed by right in any zoning district on parcels of five (5) acres or more, as defined by G.L. c. 128, § 1A, and exempted by G.L. c. 40A, §3.

8.15.2. Small-Commercial Agriculture

Special requirements.

1. The raising of livestock or poultry is allowed if the following conditions are met:
 - a. Swing, mink, chinchilla or other animals raised for their pelts are not allowed.
 - b. Any building housing livestock or poultry may not be less than 150 feet from any lot line. In considering the Special Permit, the Zoning Board may reduce the required setback to no less than 100 feet, if it deems that a smaller buffer will suffice to protect impacts on the natural environment, community, and neighborhood interests.

8.15.3. Non-Commercial Raising and Keeping of Animals

1. Any building or structure housing animals other than domestic pets and “Backyard Chickens” kept by residents on their premises may not be less than 100 feet from any lot line.

8.15.4. Commercial and Small-Commercial Farm Stands

Special requirements.

1. Location and associated activity:
 - a. Parking areas, garbage collection areas, and any other associated activity areas shall be set back at least 50 feet from the side and rear lot lines and 20 feet from the street line. Any structures shall be set back at least 50 feet from the side and rear lot lines. The Zoning Board, by Special Permit, may reduce the required side and rear lot line setbacks to no less than the district.
 - b. Outdoor displays, including goods for sale, are allowed.
2. Hours of Operation:
 - a. The Farm Stand may be open to the public between the hours of 8 a.m. and 8 p.m.
 - b. Garbage pickup and loading activities shall take place only between the hours of 8 a.m. and 7 p.m.
 - c. Exterior and interior lighting shall be extinguished no later than 9 p.m., unless required for public safety purposes.

3. Signs

- a. In addition to the requirements in 7.2, the following signs are permitted:
 - i. Commercial and Small-Commercial Farm Stands may have two three (3)-feet square in area signs, one on the building and one free-standing.
 - ii. A free-standing sign shall have a maximum assembly height not more than four (4) feet above the lowest underlying grade and shall be set back at least 15 feet from the street line.

8.15.5. Backyard Chickens

Special requirements.

1. Number of chickens allowed:
 - a. On parcels less than two (2) acres, up to 18 chickens may be kept.
 - b. On parcels more than two (2) acres, up to 24 chickens may be kept.
 - c. Roosters are allowed only on parcels of one (1) acre or more.
2. Enclosing the chickens:
 - a. Chickens must be contained on the owner's property.
 - b. A dedicated structure, such as a henhouse, to enclose chickens must be provided with a minimum rate of four (4) square feet per chicken.
 - c. Chicken enclosures (barn, coop, fenced-in area) must comply with zoning district distances and setbacks.

8.15.6. Neighborhood Farm Stands

A Neighborhood Farm Stand:

1. May be comprised of a table, tent, canopy, wagon, or small moveable temporary structure.
2. Shall not exceed 120 square feet in size.
3. May be located at the lot line but no within the Town way.
4. May only operate March-November and shall be removed when not in use.
5. May sell only flowers and only whole uncut fresh fruits and vegetables, unprocessed honey, pure maple products, or farm fresh eggs as regulated by Massachusetts Department of Public Health 105 CMR 590 State Sanitary Code Chapter X - Minimum Sanitation Standards For Food Establishments, and all produced on site.
6. Shall securely store or cover products overnight.
7. Must provide one on-site, off-street parking spot.
8. Is allowed one three (3) square feet single- or double-sided advertising sign either affixed to the Farm Stand or on adjacent ground.

9. Shall have no lighting of Farm Stand or sign.

8.16. MANUFACTURING OF CONSUMER GOODS

A facility or structure for retail sales, manufacturing, assembly and/or packaging of consumer goods is allowed if the following conditions are met:

1. Goods must be finished products and not subassemblies.
2. Some of the merchandise must be sold at retail on the premises.
3. All display, sales and storage of merchandise must be conducted within a building.
4. Not more than 25 percent of floor area can be devoted to manufacturing, assembly, or packaging.
5. Not more than five persons are employed at any one time.

8.17. LIMITING RETAILING AND/OR MAIL ORDER PROCESSING

Limiting Retailing and/or Mail Order Processing, including furniture, antiques, clothing, collectible dolls and related products is allowed if the following conditions are met.

1. All items must be manufactured on site.
2. All display, sales and storage must be conducted within the building.
3. No more than two persons, including the proprietor, shall be employed at any time.
4. Permissible retail floor area shall be tied to provision of on-site parking spaces in full compliance with the requirements of this bylaw.

8.18. PERSONAL WIRELESS SERVICES FACILITIES

8.18.1. Purpose

The purpose of this bylaw is to establish requirements for the locating of Personal Wireless Services Facilities including without limitation, towers, antennas, ground equipment, and related accessory structures. This Bylaw does not regulate the permitting and siting of Small Wireless Facilities in the public Right of Way. The intent of this bylaw is to:

1. Accommodate the growing need and demand for Personal Wireless Services.
2. Establish review procedures to ensure that applications for Personal Wireless Services Facilities are compliant with federal, state, and local regulations and acted upon within a reasonable period of time as required by applicable state and federal regulations.
3. Minimize the impacts of Personal Wireless Services Facilities on surrounding land uses by establishing standards for location and compatibility.
4. Encourage the placement of Personal Wireless Services Facilities on existing non-residential structures thereby minimizing new visual, aesthetic, and public safety impacts, or effects upon the natural environment and wildlife.

5. Respond to the policies embodied in the Telecommunications Act of 1996 and subsequent FCC regulation of Personal Wireless Facility placement in such a manner as not to unreasonably discriminate between providers of functionally equivalent Personal Wireless Services Facilities or to prohibit or have the effect of prohibiting Personal Wireless Services Facilities.
6. Protect the character of the Town while meeting the needs of its citizens to access Personal Wireless Services.

8.18.2. Application Form and Permits Required

Installation, modification or operation of a Personal Wireless Services Facility on property other than a public way shall require a Special Permit from the ZBA (See Section 3.4) or Administrative Approval (AA). Completion of a Lenox Personal Wireless Service Facility Application form available from the Land Use department is required for each Personal Wireless Services Facility being requested. Application processing fees for Personal Wireless Services Facilities shall be paid at the time of application in accordance with the Town of Lenox Fee Schedule.

8.18.3. Determination of Need

1. **Demonstration of Need:** All applications for Special Permits for Personal Wireless Services Facilities (except Eligible Facilities Requests) shall be accompanied by a Demonstration of Need for the proposed Facility. Demonstrations of Need shall include at a minimum an evaluation of existing coverage and the combined effect of existing and proposed coverage, including coverage maps and an accompanying narrative explaining the maps and the need. When the stated Need for the proposed Facility includes claims regarding network capacity, applicants shall include information (such as network statistics) demonstrating the capacity need quantitatively.
2. **Determination of Alternatives:** All applications for Special Permits for Personal Wireless Services Facilities (except Eligible Facilities Requests) shall be accompanied by a demonstration of a lack of less impactful solutions composed of one or more alternative Facilities.
3. **Findings:** To approve such applications, among other findings, the Zoning Board shall find that there is a Demonstrated Need for the proposed Facility that cannot be addressed with a solution composed of one or more alternative Facilities that have a lesser impact on the community.
4. **Applicant Assertion of Federal Rights:** If the application involves a project over which the applicant asserts federal rights, the applicant shall provide a brief outline of the relevant law and the applicant's standing, and include such substantial evidence as is necessary to demonstrate applicant's claim. Examples of such rights are: claims of effective prohibition or discrimination if denied, or assertions that a design qualifies as a Small Wireless Facility or an Eligible Facilities Request.

8.18.4. Facility Impacts Criteria

1. Qualitative Criteria

The selection of location and design of Personal Wireless Services Facilities shall conform to the following Qualitative Criteria:

- a. Review Criteria: The Zoning Board, in its review, shall engage with the applicant to assess the following preferred Qualitative factors, each of which shall be given substantial consideration in deliberations to approve the proposal, or to examine alternative sites.
- b. Application Submission Criteria: The applicant shall provide substantial evidence why and how they meet or cannot meet each of these objectives and define why and how their proposal is demonstrably better:
 - i. New Personal Wireless Services Facilities shall not have an undue adverse impact on historic resources, scenic views, residential property values, or natural or man-made resources.
 - ii. Ideally, new Personal Wireless Services Facilities shall be located on an existing non-residential structure (including an existing Tower) in a manner that does not materially increase its impact on the community.
 - iii. The preferred locations for a New Tower are along commercial and industrial corridors or in suitable municipal locations or other quasi-public sites where the settings, other structures, and intensity of uses already in place are more compatible with the industrial nature of Personal Wireless Services Facilities. Remote locations on largely undeveloped areas may be acceptable if the result is a New Tower that is generally not visible to the public.
 - iv. While setback requirements are included in this bylaw, it is preferred that a New Tower be located as far from residential lot lines as possible to avoid detrimental visual impacts and adversely effects on property values, and to preserve the privacy of adjoining properties.
 - v. A New Tower may be acceptable when it does not diminish the quality of experience of Lenox such as by piercing valuable scenic and historic skylines, or unduly compromising the look of traditional land development and use.

2. Quantitative Criteria

As a complement to the Qualitative factors and at the discretion of the Zoning Board, new Personal Wireless Services Facility types shall be considered in accordance with the below preferences.

Where a lower ranked alternative is proposed, the applicant must provide in its application relevant information demonstrating:

- a. that diligent efforts were made to adhere to the established hierarchy within the search area, and that higher ranked options are not technically feasible, practical, or justified given the location of the proposed Personal Wireless Services Facility, and/or...
- b. that the impact of the proposed Facility is demonstrably better than any available higher priority solutions.

Location preferences are as follows:

First preference	Concealed Collocation on a non-residential structure, or Attachment to existing Tower (not a Substantial Change*)
Second preference	Camouflaged Collocation on a non-residential structure
Third preference	Collocation (not Concealed or Camouflaged) on a non-residential structure except Substantial Change* to existing base station or Tower
Fourth preference	Substantial Change* to existing base station or Tower (i.e., not an Eligible Facilities Request) New Camouflaged or Concealed Tower
Fifth preference	New Tower**
Sixth preference	Collocation on a residential structure***

* A type of modification to an existing approved Personal Wireless Services Facility as defined in in 47 CFR 1.6100.

** Before a New Tower is proposed in a residential district, the applicant must also demonstrate that it is not feasible or effective to locate the Facility in other districts or on a municipal location.

*** Before any New Tower or any Collocation on a residential structure is approved, the applicant must demonstrate that it is not feasible or effective to locate their Facility on an existing Tower or non-residential structure.

8.18.5. Collocations

Personal Wireless Services Facilities may be mounted onto a building or support structure that is not primarily constructed for the purpose of holding Personal Wireless Services Facilities or as an attachment to an existing Tower, subject to the following standards:

1. **Antenna Setbacks:** An Antenna attached to any structure that is not a Tower shall be setback at least 100 feet from the property line of an abutting residential property. An Antenna attached to the side of such a structure may extend up to five feet horizontally from the side of the structure, provided that the Antenna does not encroach upon an adjoining parcel.
2. **Height Extensions:** The top of an attached Antenna shall not extend more than fifteen (15) feet above the structure other than a Tower to which it is attached. Notwithstanding this provision, the height of the Antenna shall not extend more than eight (8) feet above the maximum allowed height for such a structure in the zone in which it is located. These height limitations may be waived to accommodate the height of an architecturally appropriate Concealment structure.
3. **Stanchion and Pole Extensions:** Additional height may be allowed on power transmission stanchions and utility poles to accommodate the minimum safety separation necessary from electrical lines, as required by the National Electrical Safety Code and the utility provider. For the purposes of classifying an application for the replacement of an existing utility pole, a replacement pole with up to five (5) feet greater height above ground (including attachments) is considered a replacement pole and is subject to Collocation requirements of this Zoning Bylaw. Replacement utility poles that will be more than five (5) feet above ground (including attachments) taller than the pole being replaced will be considered new poles.

4. Collocations on subsidized multi-family structures of twenty units or more, including but not limited to the buildings at 6 Main St., are prohibited.

8.18.6. New Tower Mailed Notice

Mailed Notice to Neighbors. All New Towers shall require that mailed notice, in addition to meeting the standards of M.G.L. C. 40A, Section 11, be sent to all property owners within 600 feet of the property subject to the application.

8.18.7. New Tower Height and Setback Requirements

1. Height Limitation

- a. New Towers shall not exceed the minimum height necessary to provide adequate coverage for the Personal Wireless Services Facilities proposed for use on the Tower.
- b. In working with the applicant to determine approved height, the Zoning Board will consider the following Balancing test as part of the Special Permit process:
 - i. The Personal Wireless Services Facilities shall be designed to accommodate multiple users to the maximum extent technologically practicable in order to reduce the number of Personal Wireless Services Facilities that will be required to be located in the Town.
 - ii. However, at its discretion, the Zoning Board may reduce the capacity for multiple Facilities (typically by a decrease in height or width) if the Board finds that it is preferable to consider the need for a second Tower rather than approve one taller Facility.
- c. The Zoning Board may allow height greater than the allowable height (See Section 8.18.7.1.a) if such height does not materially increase the impacts of the proposed Facility.
- d. Any Special Permit granted for a new Facility may be conditioned to allow the collocation of other Personal Wireless Services providers on commercially reasonable terms.

2. Setbacks

New Towers shall be subject to the setbacks described below:

- a. The minimum setback distance to the nearest residential property line or school building property line shall be 250 feet. As part of the Special Permit process, the Zoning Board by supermajority vote may reduce this setback to no less than 1.5 times the Tower height based on the following findings:
 - i. This does not materially increase the impact of the proposed Tower on its surroundings in comparison to satisfying the full setback, or
 - ii. There is no viable location on any parcel in the subject area from which to provide the necessary service that would comply with the full setback, or
 - iii. This results in a design that is fully compatible with the purpose and intent of

the Zoning Bylaws.

- b. In the C-1A, C-3A, and Industrial Zones the minimum setback from parcels in commercial and industrial zones shall equal the height of the New Tower. As part of the Special Permit process, the Zoning Board by supermajority vote, may allow a shorter setback if the shorter setback provides adequate safety and aesthetics.

8.18.8. Design Criteria for All Personal Wireless Services Facilities

1. Personal Wireless Services Facilities shall be constructed and maintained in compliance with all applicable federal, state and local laws, regulations, ordinances, and safety, and environmental codes and regulations, including but not limited to Public Safety Grade Site Hardening Requirements (APCO ANSI 2.106.1-2019), to radio frequency energy safety, hazardous materials, noise, building, electrical, and Americans with Disabilities Act.
2. Personal Wireless Services Facilities located within an Historic District or on or associated with an historic structure eligible to be listed on the state or federal register shall be concealed or camouflaged in a manner that preserves the character and appearance of the structure and/or Historic District and does not alter or obscure character defining features or distinctive characteristics. A Certificate from the Historic District Commission shall be required for all Personal Wireless Services Facilities in the Historic District.
3. Personal Wireless Services Facility shall not significantly impact viewsheds and views from nearby locations and shall be architecturally compatible with respect to such views.
4. Monopole Tower designs are preferred over lattice and guyed Towers.
5. Concealment or Camouflage shall be used when appropriate for mitigating visual impacts. The following are examples or options, not to be viewed as recommendations per se:
 - a. A faux carillon tower artfully placed on an institutional parcel.
 - b. A unipole inconspicuously placed near the rear of a lot.
 - c. A mimicked manmade or natural object consistent with a feature of the surrounding landscape.
 - d. Field light stanchions for athletic or recreational facilities or developed park areas.
 - e. Clock tower for commercially developed area.
 - f. Fire watch tower or monopine "tree" (native evergreen) compatible with rural or undeveloped area dominant points of view.
6. Landscaping, and existing vegetation shall be employed to minimize visual impacts.
7. Means of access shall be designed to minimize impacts on the existing landscape and land use.
8. Antennas, cables, associated equipment, and mounting apparatus should be enclosed, Concealed, screened, or obscured so that they are not readily apparent to a casual off-site observer, except that a Facility may be approved with exposed Antennas and associated equipment if Concealment or Camouflage would not mitigate any visual

impacts and no less visually impactful alternative locations or designs are available.

9. Signage: Commercial messages shall not be displayed on any Personal Wireless Services Facilities. Required noncommercial signage shall be restricted to FCC Antenna Structure Registration Number (when required), information about the Facility owner/operator, and any additional security and/or safety signs as applicable.
10. Lighting: Lighting shall be prohibited on all Personal Wireless Services Facilities unless required by the Federal Aviation Administration (FAA). Applicants shall demonstrate efforts to avoid FAA lighting requirements, such as reduced Tower height or alternative locations. If lighting is required, night lighting shall be red and employ luminaires with the lowest practicable beam spread toward the earth.
11. Noise: Sound levels contributed by Facility operations including generators shall not exceed 40 dBA at the property lines of the parcel containing the Personal Wireless Services Facility, and operations when no generator is running shall not exceed 30 dBA at said property lines. Emergency generators are permitted and are exempt from noise requirements during emergencies. Routine generator tests shall be conducted between 8 AM and 5 PM on business days except holidays.
12. Equipment Compound and Cabinets: When practicable, equipment cabinets should be installed inside existing structures. If installed outdoors, equipment should not be visible to the public and neighbors or be screened behind an architecturally appropriate enclosure, behind a screen on a rooftop, or on the ground with landscape screening as required. Equipment compounds shall not be used for storage. Equipment compounds shall be subject to the setback requirements of their underlying zone.
13. Parking: Personal Wireless Services Facilities shall include at least one parking space for personnel accessing the Facilities in addition to any parking minimums for other uses on the parcel.

8.18.9. Eligible Facilities Requests

1. The Zoning Board of Appeals is the Administrative Approval Granting Authority and shall grant Administrative Approval of an Eligible Facilities Request. Applicants with Eligible Facilities Requests shall submit application materials and undergo a review process that shall be conducted in a manner consistent with federal limitations. The Zoning Board shall verify that the application for an Eligible Facilities Request is bona fide and may apply conditions that are not otherwise preempted by the FCC.
2. The design of an Eligible Facilities Request shall maintain the appearance intended by the original Facility and shall comply with any conditions of prior approvals for Personal Wireless Services Facilities on the site, including but not limited to, color, screening, landscaping, Camouflage, Concealment techniques, mounting configuration, or architectural treatment.
3. Administrative Approval: Applicants shall submit application materials to the Lenox Town Clerk. Detailed instructions and application content requirements are available from the Lenox Land Use Department.
4. Eligible Facilities Requests shall be accompanied by evidence demonstrating eligibility under federal law, addressing all points in the federal definition including such information, exhibits and calculations necessary to support the claim and demonstrating compliance with applicable state and local safety codes. Applications

for Eligible Facilities Requests are not required to provide documentation intended to illustrate the need for such Personal Wireless Services Facilities or to justify the business decision to modify such Facilities. Eligible Facilities Requests shall not be required to meet the application requirements of Sections 8.18.11.1, 8.18.11.6, 8.18.11.7, and 8.18.11.8.

8.18.10. Tower Replacement

1. Existing Towers may be replaced pursuant to this Section 8.18, provided that the replacement accomplishes a minimum of one of the following:
 - a. Increases the number of Personal Wireless Services providers the Tower can support or otherwise materially improves the provision of Personal Wireless Services in Lenox;
 - b. Contributes to the reduction of the proliferation of New Towers in Lenox;
 - c. Replaces an existing Tower with a Tower with less impact on the town, such as reduced height or improved appearance (by Camouflage or Concealment).
2. Landscaping: At the time of replacement or upgrade, the Tower equipment compound shall be brought into compliance with any applicable landscaping requirements.
3. Setbacks: A replacement of an existing Tower shall not be required to meet new setback standards so long as the New Tower and its equipment compound do not increase the existing nonconformity.

8.18.11. Application

All Applications shall include:

1. Plans: One (1) set of plans at 24" x 36" and five (5) sets of plans at 11" x 17" and an electronic original (not scanned) of plans that constitute a customary package of "Zoning Drawings," including, without limitation, locus information, area parcel plans showing abutting lots and a 300 and 600 foot radius, details including property line and other relevant setbacks, proposed easements, utilities, driveways, site improvements, etc.; and detailed site plans to illustrate site development, wetland/river buffers, landscaping, tree cover, etc.; elevation drawings and details about the ground equipment and the Tower-mounted equipment; any other information the applicant or the Town determines is appropriate for showing the proposed development.
2. Photo simulations: Applicants shall provide photo simulations with their application to demonstrate visual impacts. Photos should have the field of view of a 50-55 mm focal length lens with respect to a standard full-frame 35 mm camera. Photo simulations should be provided showing (a) the impact on viewsheds and neighboring uses as described above and (b) how the design, including Concealment, landscaping, topography, existing cover, etc. contribute to minimizing visual impacts. Photos shall be taken from representative locations where the Tower is or is expected to be visible or partially visible in any season. Before the photos are taken, applicants shall consult with the Land Use Department to identify sensitive locations that should be added to the photographer's list of locations to photograph. To produce photo simulations for New Towers, applicants shall conduct such field testing (such as a balloon/crane test) at their convenience prior to filing the application and notify the Town of the scheduled date and time of such testing.

3. Design: Applicant's zoning drawings shall include details of the Concealment or Camouflage design.
4. Radio Frequency Emissions Analysis: Applicant shall provide an analysis of radio frequency energy emissions for the proposed and potentially collocating Personal Wireless Services Facilities based on the methods outlined in FCC Office of Engineering and Technology Bulletin 65, demonstrating compliance with applicable safety standards.
5. Noise Analysis: Applicant shall provide a noise analysis of the proposed Facility prepared by a qualified professional, demonstrating compliance with the Commonwealth's Department of Environmental Protection regulation of noise and with any noise restrictions of the Town of Lenox.
6. Applicant shall provide a narrative and additional exhibits as necessary to demonstrate fulfillment of and compliance with the criteria outlined in all sections of this bylaw Section 8.18 including, as per the type of application, Sections 8.18.1 through 8.18.10.
7. A report and supporting technical data shall be submitted, demonstrating the following:
 - a. All potential Antenna attachments, Collocations, and alternative Antenna configurations on existing elevated structures, including all usable utility distribution towers within the proposed service area have been examined, and found unacceptable.
 - b. A technical report by a qualified professional, which qualifications shall be included, regarding service gaps, service expansions, and/or system capacity or other evidence of need for the Personal Wireless Services Facility (Section 8.18.3 Determination of Need) and accompanying exhibits including coverage and other maps, graphics, charts and calculations to support the claims in the report.
 - c. The application shall include a written narrative and exhibits describing how the proposed Facility's coverage or capacity benefits cannot be substantially achieved by the use of one or more of any higher ranked alternatives (Section 8.18.3 Determination of Need) and alternatives ranking (Sections 8.18.4.1 Facility Impacts Qualitative Criteria and 8.18.4.2 Facility Impacts Quantitative Criteria).
 - d. No existing Towers or Personal Wireless Services Facilities located within the geographic area meet the applicant's engineering requirements without increasing the height of the existing Tower or structure or otherwise creating a greater visual impact, and why.
 - e. Existing Towers cannot physically accommodate the applicant's proposed Personal Wireless Services Facilities and related equipment, and the existing Facility cannot be sufficiently improved.
 - f. Other limiting factors that render existing Personal Wireless Services Facilities unsuitable.
 - g. Demonstration of satisfaction of FAA hazard to air navigation requirements, including as applicable, a professional technical evaluation indicating FAA requires no notification and no lighting will be required, or an FAA Determination of No Hazard.
 - h. Balloon/Crane Test for New Towers.

- i. During the hearing and to be considered part of the application, the Zoning Board shall require the applicant to conduct a publicly noticed balloon/crane test. If the proposed site is accessible by crane, a crane test is preferred. The applicant shall arrange to raise a red or orange colored balloon no less than three (3) feet in diameter at the maximum height of the proposed Tower, and within twenty-five (25) horizontal feet of the center of the proposed Tower. A second balloon twenty (20 feet) below the first (or at some other height requested by the Town) shall also be raised.
 - ii. A three-foot by five-foot (3' by 5') sign or signs with lettering no less than three (3) inches high stating the date, time, and location, including alternative date, time and location, of the balloon test shall be posted at a site or sites determined in consultation with the Zoning Board of Appeals.
 - iii. The balloon shall be flown the day prior, the day of, and the day after a site visit to be scheduled by the Zoning Board of Appeals. The applicant shall record the weather, including wind speed and direction during the balloon test. Photographs taken of the balloon test shall be timed to capture the balloon at its apex during wind-induced motion. The height of the balloon shall be measured, and tether length shall not be relied upon to determine height.
8. HACE Documentation: Documentation of all historical, archaeological, cultural and environmental (HACE) reviews related to the project and conducted pursuant to 47 CFR Part 1, Subpart I, Procedures Implementing the National Environmental Policy Act of 1969, as well as information on the status of any pending matter subject to such reviews.

8.18.12. Employment of Outside Consultants

Pursuant to MGL Ch 44 Sec 53G, the Zoning Board shall engage outside consultants at the expense of the applicant to assist the Zoning Board's review of an application under this Personal Wireless Services Facilities Bylaw.

8.18.13. Decision

Special Permits: In addition to the findings required by the Bylaw in Section 3.4, the Board of Appeals shall, in consultation with the Independent Consultant(s), make all of the applicable findings before granting the Special Permit as follows:

- 1. Special Permit Findings
 - a. The Zoning Board of Appeals shall evaluate the application in light of Section 3.4 of the Zoning Bylaw and make findings and apply conditions as appropriate.
 - b. The Board also shall make findings that:
 - i. The application meets all the Application Criteria (Section 8.18.11) or is granted waivers to specific application requirements, as authorized in this bylaw section.
 - ii. The applicant has/has not met the burden of Demonstrating the Need for the proposed Personal Wireless Services Facility Section 8.18.3.

- iii. The application satisfies the Qualitative and Quantitative Criteria for Facility Impacts Sections 8.18.4.1 and 8.18.4.2.
- iv. The application meets the performance criteria for Collocation (Section 8.18.5), New Tower Height (Section 8.18.7.1) and New Tower Setbacks (Section 8.18.7.2), or Tower Replacement (Section 8.18.10) as applicable.
- v. The application is an acceptable Design and meets Design Criteria (Section 8.18.8).
- vi. The application and any waivers granted are consistent with the Purpose (Section 8.18.1) of this Bylaw.

2. Administrative Approval / Eligible Facilities Requests Finding

Eligible Facilities Requests (Section 8.18.9) shall be granted Administrative Approval consistent with findings based on requirements and application in this bylaw (Section 8.18).

8.18.14. Post Construction RFR Study

After the installation of an approved Personal Wireless Services Facility, the Town shall require, or at any time may require, operators of such Facilities to demonstrate compliance with FCC regulations regarding the safety of all relevant radio frequency emissions from the site (47 CFR 1.1310). As appropriate to the situation, such demonstrations of compliance may require either the conduct of a field survey of emissions and/or by production of calculations consistent with FCC OET Bulletin 65, as directed by the Town. The Town may require the operator(s) to reimburse the Town for such analysis independently commissioned by the Town. In the event the results demonstrate that the Personal Wireless Services Facility is not in compliance with the applicable rules, the applicant shall immediately bring the Facility into compliance, including by cessation of operations if necessary prior to implementing changes.

8.18.15. Abandonment (Discontinued Use)

- 1. Towers, Personal Wireless Services Facilities, Antennas, and the equipment compound shall be removed, at the owner's expense, within 180 days of cessation of use.
- 2. An owner wishing to extend the time for removal or reactivation shall submit an application stating the reason for such extension. The Town may extend the time for removal or reactivation up to 60 additional days upon a showing of good cause. If the Tower or Antenna is not removed within this time, the Town may give notice that it will contract for removal within 30 days following written notice to the owner either with the owner's permission or pursuant to a court order. Thereafter, the Town may cause removal of the Tower with costs being borne by the owner.
- 3. Upon removal of the Tower, Personal Wireless Services Facility, Antenna, and equipment compound, the development area shall be returned to its natural state and topography and vegetation consistent with the natural surroundings or consistent with the current uses of the surrounding or adjacent land at the time of removal. At the Town's discretion, the foundation may be abandoned in place if reduced to below finished grade.
- 4. All applicants shall, upon grant of Administrative Approval or a Special Permit, furnish

a performance bond or irrevocable letter of credit naming Town of Lenox as beneficiary in an amount to be determined by the Zoning Board of Appeals (“Performance Bond”) which shall state, inter alia, that it is for the purpose of assuring the removal of the permitted Personal Wireless Services Facility in the case of abandonment as contemplated herein.

8.18.16. Exempt Facilities

The following are exempt from the standards for Personal Wireless Services Facilities notwithstanding any other provisions.

1. Satellite earth stations used for the transmission or reception of Wireless Communications signals with satellites that are one (1) meter (39.37 inches) or less in diameter in all residential zones and two (2) meters or less in all other zones.
2. A government-owned Wireless Communication Facility erected for the purposes of providing communications for public health and safety.
3. Amateur radio towers solely used for licensed amateur services up to 70 feet in height, or at such additional height as approved by informal application to the Zoning Board of Appeals.
4. A temporary Wireless Communication Facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town designee; except that such Facility must comply with all federal and state requirements. No Communications Facility shall be exempt from the provisions of this Section beyond the duration of the state of emergency.
5. A temporary Wireless Communication Facility for the purposes of providing coverage of a special event, and subject to federal and state requirements. Said Communications Facility may be exempt from the provisions of this Section up to one week before and after the duration of the special event.

8.18.17. Definitions

The following definitions are used exclusively in the Personal Wireless Services Facilities Bylaw.

Antenna: a device consisting of exposed elements or of an enclosure containing one or more elements that transmits and/or receives electromagnetic radio frequency signals. Two or more Antennas operated by one carrier/owner at one site constitute an Antenna Array. In context, a single enclosure that contains multiple Antenna elements connected to multiple electrical ports that provide for any of the following is considered an Antenna herein: multiple frequency bands, multiple input/multiple output Arrays, transmit/receive isolation, polarization and space diversity.

Camouflaged (Facility/Antennas): the use of materials added to an installation, including when applicable added to existing architecture, to render a Facility or Antennas less noticeable.

Collocation: to install a Personal Wireless Services Facility on an existing structure, including but not limited to an existing Tower, building, or other structure (such as water or fire tower, pole, etc.).

Concealed (Facility, Antennas): a Personal Wireless Services Facility or portion thereof that is designed in a manner that it is not visible to the public, typically through the use of radio frequency

transparent materials integrated with existing architecture; any Tower that is designed to conceal the Antennas is considered a Concealment.

Eligible Facilities Request: an application for a type of modification to an existing approved Personal Wireless Services Facility as defined in 47 CFR 1.6100.

FCC: the Federal Communications Commission of the United States.

Person: an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

Personal Wireless Services: Personal Wireless Services as defined in the National Wireless Telecommunications Policy, 47 U.S.C. 332(7)(c) Definitions: “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.” Note: This covers telecommunications services offered to the public or a subset thereof using a network of base stations to link remote subscribers to the telecommunications network.

Personal Wireless Services Facility (Facility): an installation of equipment and utilities for the provision of Personal Wireless Services to link remote user equipment to a communications network.

Substantial Change: a type of modification to an existing approved Personal Wireless Services Facility as defined in 47 CFR 1.6100.

Tower: A structure constructed on the ground for the sole or primary purpose of supporting Antennas and their associated equipment.

SECTION 9. SPECIAL RESIDENTIAL REGULATIONS

9.1. MULTIFAMILY AND TOWNHOUSE BUILDINGS

9.1.1. General Requirements

1. No multifamily dwelling 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.

9.1.2. Decision

The Board of Appeals in reviewing an application for a multifamily development shall consider the following factors:

1. Drainage design and provisions for stormwater management;
2. Driveway entrances and exits;
3. Underground utilities;
4. Provisions for disposal of refuse and storage of equipment, carriages, and 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 the neighborhood and site context.

9.1.3. R-15 or C-3A Districts

1. No multifamily or townhouse building shall be constructed in an R-15 or C-3A district unless it meets the following minimum requirements:
 - a. 3 units: 120' frontage, 120' width at building setback
 - b. 4 units: 125' frontage, 125' width at building setback
 - c. 5 units: 130' frontage, 130' width at building setback
 - d. 6 units: 135' frontage, 135' width at building setback

Where more than 6 units are proposed, an additional 5 feet of frontage per unit and an additional 5 feet of width at building setback shall be required.

2. There shall be at least 10,000 square feet of land area for each multifamily unit and 15,000 square feet of land area for each townhouse.

3. No multifamily 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 multifamily 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 a multifamily development will be constructed to a standard at least equal to the contemporary requirements of a subdivision road.

9.1.4. Dwelling, Two Family (Duplex)

Two family dwellings are allowed if the following conditions are met.

1. Only one family shall reside in each unit.

9.1.5. By-Right Provision

In the Commercial “C” zoning district, multifamily dwellings are permitted by-right subject to the standards of Section 9.1

Multifamily dwellings proposed within the “C” district unable to comply with the provisions of Section 9.1 may seek relief from these requirements via a Special Permit from the Zoning Board of Appeals.

9.2. ACCESSORY DWELLING UNIT

9.2.1. Purpose

The intent of permitting Accessory Dwelling Units (ADU) 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 ADUs are installed only in owner occupied houses.

9.2.2. Special Permit Required

The Board of Appeals may grant a special permit for one ADU per lot in the R-3A, R-1A, R-30, and R-15, subject to the following standards.

9.2.3. 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 percent 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 comply with the maximum lot coverage and minimum setbacks of the district in which the property is located. 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 percent 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 7.1 shall be maintained for the principal residence.
10. Accessibility. To encourage the development of housing units for people with disabilities, the Board of Appeals 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.
11. Owner Occupancy Requirement. 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 shall submit a notarized affidavit

certifying that the premises will continue to be occupied by the owner as his or her principal domicile, except for bona fide temporary absences. The special permit and the notarized affidavit shall be recorded with 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 ADU.

12. 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 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.
13. For the purposes of this Bylaw, 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.

9.2.4. 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.

9.3. ACCESSORY BUILDINGS

The limitations of this Section (9.3) shall not apply to structures used for agricultural purposes.

9.3.1. General Standards:

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. Accessory buildings shall not be located forward of the principle building on the property.

In the event that the Building Commissioner determines there is not compliance with Section 9.3.2, the Board of Appeals may grant a special permit for the reduction of these requirements.

9.3.2. Lots not Meeting Yard Area Requirement.

In the residential zoning districts, one accessory building or one garage (attached or detached) is allowed, as long as it complies with all current street and lot line setbacks, frontage and setback between building requirements.

9.4. EXTENDED-CARE NURSING, ASSISTED LIVING, CONGREGATE CARE

9.4.1. General Standards

1. The minimum lot size for such facilities shall be 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 75 feet in depth.
5. Except in Commercial C districts, a space not less than 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 90 degrees.

9.5. 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.

9.6. RESIDENTIAL CONVERSIONS

9.6.1. Conversion of an Existing Dwelling

1. Any building which is to be converted shall meet all of the requirements of Section 9.1.3 and 6.1.1.

9.7. OPEN SPACE FLEXIBLE DEVELOPMENT

9.7.1. Purpose

The purposes of this Section 9.7 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.

9.7.2. Definitions

The following term shall have the following definition for the purposes of this Section 9.7:

"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 9.7.14 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 9.7.8 and 9.7.12.

9.7.3. Applicability

In accordance with this Section 9.7, the Planning Board may grant a Special Permit in the R1-A District for an Open Space Flexible Development (OSFD) on any parcel or set of contiguous parcels held in common ownership and located entirely within the Town. An OSFD need not be a subdivision, but where a subdivision is proposed, the applicant shall comply with the Planning Board's OSFD rules and regulations and the Lenox Subdivision Regulations.

9.7.4. Procedures

Application for an OSFD Special Permit shall be in accordance with the rules and regulations of the Planning Board and Section 3.4 of this Bylaw.

9.7.5. 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.

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 percent 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).

9.7.6. 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. (See Section 9.7.14 Buffer Area for requirements for project setbacks to abutting properties.)

9.7.7. 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 applicant shall have the burden of proof with regard to the design and engineering specifications for such Yield Plan.

9.7.8. Density Bonus

The Planning Board may award a density bonus to increase the preservation of additional open space over and above the required 35 percent. 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 10 percent of the property is preserved as contiguous open space, a density bonus of 10 percent of the Maximum Number of Units will be awarded. The maximum bonus is 20 percent 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 G.L. c. 131, § 40.

9.7.9. 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.

9.7.10. 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.

9.7.11. Parking

Each dwelling unit shall be served by 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.

9.7.12. Contiguous Open Space

1. A minimum of 35 percent 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.
2. For the purpose of this section, the calculation of required or additional "contiguous open space" shall exclude any wetland as defined in G.L. c. 131, § 40. Wetland may be included within the contiguous open space, but will not count toward the calculation.
3. 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.
4. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to 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.
5. Underground utilities to serve the OSFD site may be located within the contiguous open space.

9.7.13. 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 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.

9.7.14. Buffer Areas

1. 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:
2. A buffer area of 100 feet shall be provided where it abuts residentially zoned or occupied properties.
3. 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.

9.7.15. Stormwater Management

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

9.7.16. 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 9.7.1 than would a conventional subdivision development of the same locus.

9.7.17. 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.

9.7.18. 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 of the Planning Board.

9.8. RESIDENTIAL INCLUSIONARY DEVELOPMENT

9.8.1. 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 9.8.2.
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.

9.8.2. 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.

9.8.3. 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:

Total Development Unit Count	Required Affordable Unit Provision
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 9.8.6.2.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 9.8.3.1 may voluntarily include affordable units and are eligible to apply for a special permit for the density bonus outlined in Section 9.8.6.2.

9.8.4. Special Permit Authority

The development of any project set forth in Section 9.8.3 (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.

9.8.5. 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.

9.8.6. 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 exiting 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 9.8.3.
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 9.8.6.1. At least 50% of the lot line setback shall be maintained.

9.8.7. 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.

9.8.8. 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.

9.8.9. 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.

9.8.10. Stormwater Management

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

9.8.11. 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 9.8.1.

9.8.12. 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.

9.8.13. 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.

9.8.14. 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 9.8.5.2.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 9.8.14.1, 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 9.8.14.1.b, above. The Building commissioner shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

9.8.15. 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.

9.8.16. 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.

9.8.17. 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.

9.9. HOME OCCUPATION

A Home Occupation shall be allowed by right as shown in Section 5.2 if it meets the requirements of this Section 9.9.

9.9.1. Basic Requirements.

1. The business use is subordinate to the residential use of the premises. No more than 20 percent of the gross floor area of the dwelling and any accessory structures, up to a maximum of 1,000 square feet of gross floor area, shall be used for the home occupation.
2. There shall be no visible evidence of the home occupation from the street or an adjacent lot. A home occupation shall be conducted entirely indoors within the principal dwelling on the lot or a building accessory thereto.
3. There shall be no outside storage associated with the home occupation. Accessory structures such as sheds, detached garages, and barns may be used for unheated storage of the home occupation's stock in trade, commodities, tools, equipment, or products.
4. Not more than one non-resident shall be employed on the premises at any time, and the maximum number of customers on the premises at any given time shall not exceed the number that can be accommodated in one passenger vehicle.
5. The maximum number of off-street parking spaces for employee and customer parking shall be two. There shall be no outside parking of more than one commercial vehicle as defined by the Registry of Motor Vehicles in 540 CMR 4.02.
6. There shall be no change in the exterior appearance of the dwelling or accessory building used for the home occupation. Any new building constructed for the business shall not deviate from the residential character of the area. No signs shall be permitted for a home occupation except as provided in Section 7.2 of this Bylaw.
7. No equipment or process shall be used in the home occupation which creates noise, vibration, odor, fumes, gas, smoke, dust, or electrical disturbance detectable to the normal senses off the lot.
8. A home occupation shall not generate any solid waste or sewage discharge in volume or type greater than that associated with a typical residential use.
9. Deliveries or pick-ups of supplies or products for the home occupation are allowed between 8 am and 8 pm. Vehicles used for such delivery and pick-ups shall be limited to those that customarily serve residential neighborhoods.
10. Not more than one home occupation may be conducted in a single dwelling unit except by Special Permit from the Board of Appeals.

9.9.2. Special Permits.

A home occupation that does not comply with all of the above standards shall only be allowed by special permit from the Zoning Board of Appeals. Special permits granted hereunder shall be based upon the criteria in Section 3.4.

SECTION 10. SPECIAL DISTRICT REGULATIONS

10.1. FLOOD PLAIN OVERLAY DISTRICT

10.1.1. 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.

10.1.2. 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.

Within Zone A, where the 100 year flood elevation is not provided on the FIRM, the 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.)

10.1.3. 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 G.L. c. 131, § 40 and the requirements of the Massachusetts State Building Code pertaining to construction in the flood plains.

10.1.4. 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.

10.1.5. 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 Board of Appeals. Said Board may issue a special permit hereunder (subject to other applicable provisions of this bylaw) if the application is compliant 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.

10.2. GATEWAY MIXED USE DEVELOPMENT OVERLAY DISTRICT

10.2.1. Purpose

The purpose of this bylaw is 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.

10.2.2. 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.

10.2.3. Overlay District

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

10.2.4. Special Permit and Site Plan Approval Required

A Mixed Use Development requires a special permit from the 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.

10.2.5. 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.

10.2.6. 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.

10.2.7. 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.

10.2.8. Area Regulations

1. At least 10 percent 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.

10.2.9. Open Space

1. In a Mixed Use Development, at least 25 percent 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.
2. 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:

- a. No more than 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 under G.L. c. 131, § 40, the Wetlands Protection Act, as amended.
- b. No more than 50 percent of the slope greater than 20 percent shall be dedicated as open space.
3. 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.

10.2.10. 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 1 access point, particularly when Mixed Use Development frontage along said roadway is 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 as 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.

10.2.11. 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 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 Board of Appeals 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 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 Board of Appeals and said Department.

10.2.12. 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.

10.2.13. 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 percent 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.

10.2.14. Pre-Application

Prior to an application for Mixed Use Development, the applicant may, and is encouraged to, arrange for an informal review of the Mixed Use Development plan by the Planning Board. The purposes of pre-application review are to minimize the applicant's costs of engineering and other technical experts and to commence discussions with the Planning Board at the earliest possible stage in the development. The pre-application review will focus primarily on the proposed project's consistency with the purposes of this Section 10.2.

10.2.15. Submission Requirements

Special permit submission requirements and procedures shall be in accordance with Section 3.4 of this Bylaw and the rules and regulations of the Board of Appeals.

10.2.16. Decision

The Board of Appeals shall review and determine whether an application is complete and conforms to the provisions of this Section, including compliance with the purposes and general requirements and features of a Mixed Use Development. The Board 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 3.4 of this Bylaw.

10.2.17. Waivers

The Mixed Use Development shall comply with all requirements of this Bylaw unless a deviation from these strict requirements is authorized herein. The Board of Appeals 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.

