

# TOWN OF WEST NEWBURY



# ZONING BY-LAW

Amendments are included  
with effective dates through  
April 29, 2019

## TABLE OF CONTENTS

SECTION 1.	PURPOSE AND AUTHORITY	4
SECTION 2.	DEFINITIONS	5
SECTION 3.	ESTABLISHMENT OF DISTRICTS	12
3.A.	Districts	12
3.B.	Location of Districts	12
3.C.	Boundaries of Districts	12
SECTION 4.	REGULATIONS PERTAINING TO ALL DISTRICTS	14
4.A.	Non-conforming Uses	14
4.B.	Exempt Uses	14
4.C.	Uses Permitted in all Districts	15
4.D.	Trailers	15
4.E.	Temporary Moratorium on Medical Marijuana Treatment Centers/Registered Marijuana Dispensaries. <b>DELETED</b>	
SECTION 5.	USE REGULATIONS	17
5.A.	Residence A, B, C Districts	17
	5.A.2. Permitted Uses in A,B,C, Districts	16
	5.A.3. Permitted Uses with a Special Permit in A,B,C, Districts	19
	5.A.4. Permitted Uses with a Special Permit in B,C, Districts	20
5.B.	Business District	22
	5.B.1. Permitted Uses with Site Plan Review	22
	5.B.2. Permitted Uses with a Special Permit	22
5.C.	Industrial District	23
	5.C.1. Permitted Uses with Site Plan Review	23
	5.C.2. Permitted Uses with a Special Permit	23
5.D.	Floodplain Overlay District	24
5.E.	Siren or Public Alert & Notification Systems	28
5.F.	Inclusionary Housing Requirements	30
5.G.	Large-Scale Ground-Mounted Solar Photovoltaic Overlay District	35
SECTION 6.	INTENSITY OF USE	39
6.A.	Area, Frontage, Yards, Coverage, Lot Width and Height Limitations	39
6.B.	Open Space Preservation Development	42
SECTION 7.	CONDITIONS FOR USE	51
7.A.	Performance Standards	54
7.B.	Off-Street Parking and Loading	54
7.C.	Signs	54
7.D.	Common Driveways	59
7.E.	Assisted Living Facilities	60
SECTION 8.	ADMINISTRATION	62
8.A.1.	Board of Appeals	62

	8.A.2.	Planning Board Acting as Special Permit Granting Authority	65
	8.B.	Site Plan Review	67
	8.C.	Enforcement	72
	8.D.	Penalty	72
	8.E.	Amendment	73
SECTION 9.		PERSONAL WIRELESS SERVICE FACILITIES	73
SECTION 10.		GROUNDWATER PROTECTION OVERLAY DISTRICT	88
SECTION 11.		WIND MONITORING AND METEOROLOGICAL TOWER	95
SECTION 12.		WIND FACILITIES	97
SECTIONS 13. through 19.		Reserved for Future Use 102	
SECTION 20.		VALIDITY	102
Appendix One		DIAGRAM FOR MEASURING LOT FRONTAGE	103

# **WEST NEWBURY, MASSACHUSETTS ZONING BY-LAW**

## **SECTION 1. PURPOSE AND AUTHORITY**

*[Section 1. amended by Amendment effective May 3, 2012 by vote of Annual Town Meeting, Article 21, and approved by the Attorney General on August 30, 2012 and posted according to law on September 7, 2012]*

- 1.A. The purpose of this by-law is to promote the health, safety, welfare and convenience of the inhabitants of West Newbury by dividing the Town into districts and regulating the uses therein, with a view to encouraging the most appropriate use of land in the Town, to protecting and improving property values and to furthering the objectives of Chapter 808 of the Acts of 1975.
- 1.B. This By Law is adopted under the authority provided by and in accordance with the provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, and Article 89 of the Massachusetts Constitution, the Home Rule Amendment.
- 1.C. All references to this Zoning Bylaw, state statutes, and other references shall be considered “as amended.”

## **SECTION 2. DEFINITIONS**

For the purposes of this by-law certain terms and words are herein defined as follows:

Words used in the present tense include the future; words in the singular number include the plural and words in the plural number include the singular; the word “shall” is mandatory and not directory; the word “lot” includes the word “plot”; the word “land” includes the words “marsh” and “water”.

Accessory Building or Use. A use, or detached building, which is located on the same lot with the main building or use and which is subordinate and customarily incidental to the use of the main building or the land.

Adult Use. Adult use shall mean any of the following adult uses as separate or combined entities or activities.

(1) Adult bookstore: an establishment having a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to “Sexual conduct” or “Sexual excitement” as defined by MGL Chapter 272, Section 31; (2) Adult video store: an establishment having a substantial or significant portion of its stock in trade videos, movies, CD-ROM, DVD or similar technologies that provide images to be viewed on or off premises which are distinguished or characterized by their emphasis depicting, describing or relating to “Sexual excitement” or “Sexual conduct” as defined in MGL Chapter 272, Section 31; (3) Adult paraphernalia store: an establishment having a substantial or significant portion of its stock, devices, objects, tools or toys which are distinguished or characterized by their association with sexual conduct or sexual excitement as defined by MGL Chapter 272, Section 31; (4) Adult motion picture theater: a building or structure used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined by MGL Chapter 272 Section 31; (5) Adult live entertainment establishment: any establishment which displays live entertainment which is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined by MGL Chapter 272 Section 31.

Animal Hospital or Veterinary. Facilities for keeping animals to be treated, in treatment or recovering from treatment in accord with normal veterinary practice as established by the Massachusetts Board of Registration of Veterinary Medicine.

Apartment. A dwelling unit which occupies a part of a building, other parts of which may or may not be used as dwellings.

Apartment House. A building arranged, intended or designed to be occupied by two or more families living independently of each other.

Assisted Living Facility. A managed residential community, operating under provisions of MGL Chapter 19D and contained in one or more primary buildings consisting of private residential units with or without kitchens. Further, said facilities may provide assistance with activities of daily living, together with meal service, housekeeping services, social and recreational activities and personal care services, transportation services, in a group setting primarily limited to individuals 62 years and older or couples, one of whom is at least 62 years of age, who require help or assistance with activities of daily living but do not require full time nursing care.

ATM/Automatic Teller Machine. A drive in or walk in banking facility which either stands as a single structure or is attached to another building.

Basement. The part of the building which is wholly or partly below ground level.

Basement, Finished. A basement used in whole or in part for continuous or permanent habitation for one (1) or more persons.

Bed and Breakfast. A house, or portion thereof, where up to four lodging rooms, with meals, are provided providing that the maximum duration of any tenant shall not exceed 15 days. The operator shall live on the premises, or in an adjacent premises immediately abutting the residence with the bed and breakfast facility.

Boarding House. A building or premises, other than a hotel, inn, motel, tourist house or lodging house, where rooms are let and where meals may be regularly served by prearrangement for compensation; not open to transient guests; in contrast to hotels, restaurants, and tourists homes, open to transients.

Building. A structure having a roof or cover for the shelter, housing, or permanent habitation for one (1) or more persons.

Building Inspector. See Inspector of Buildings.

Building Lot or Lot. A lot of land that meets the rules and regulations of all Town boards, such as Planning Board, Conservation Commission, Board of Health and Building Department as well as Chapter 40A, the West Newbury Zoning By-law and MGL 131 S40 and 310 CMR 10, the Wetlands Regulations.

Cemetery. An area of land for the interment of human remains.

Child Care Center. Any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name, which receives children not of common parentage under seven years of age, or under sixteen years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Child Care Centers shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; a Sunday School conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day car home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation therefore.

Cluster Zoning. A residential development in conformance with the Section 6.B, in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and from other groups in the same development by intervening open land, and in which the minimum dimensional requirements of lots are reduced and the land gained thereby is preserved as open space.

Condominium. A system of real estate ownership in which a person or persons, partnership or corporation own one or more units or parcels in a multi-unit structure or parcel of land plus an undivided interest in elements and/or components owned jointly by all of the unit or parcel owners, or as defined in Chapter 183A of the General Laws.

Congregate Housing. A nonprofit group living arrangement for elderly persons who cannot easily maintain their own housing, financially or otherwise, but who do not need nursing home care.

The persons living together may care for themselves or may have some support services.

Cooperative. A system of ownership in which shares in a corporation are owned, entitling an owner or owners to occupancy of a portion of real estate owned by the corporation.

Contiguous and Buildable Area. Consistent with the requirements of Section 6.A. Table of Dimensional Control, contiguous and buildable area shall mean that portion of any lot not defined as a resource, subject to MGL Chapter 131 S40 and 310 CMR 10, the Wetlands Regulations and/or having grades of 20% or less. Further, that the area not subject to the natural conditions and restraints noted above shall be a contiguous area of land.

Corner Lot. A corner lot shall be any lot abutting two or more public or private ways at their intersection. For the purpose of this bylaw, all yard setbacks from all ways shall be consistent with the required front yard setback of the district within which the lot is located.

Cul-de-sac. A dead end street with the closed end consisting of a turn around having an outside property line diameter of at least one hundred twenty feet (120'). In non-residential subdivisions, the minimum outside property line diameter will be of one hundred sixty feet (160'). The cul-de-sac may incorporate the placement of a landscaped circular island with a minimum radius of twenty feet (20') in the center of the turnaround. Refer to the West Newbury Rules and Regulations. *[Amended by vote of the Annual Town Meeting of April 30, 2007, approved by the Attorney General on June 11, 2007, and posted according to law on June 25, 2007.]*

Dwelling. Any building, or part thereof, used for habitation for one (1) or more persons, but not including commercial accommodations for transient occupancy or trailers or mobile homes, however mounted.

Dwelling Unit. One (1) or more rooms with cooking, living, sanitary and sleeping facilities arranged for the use of one (1) or more persons living together as a single housekeeping unit.

Family. One (1) or more persons living together in one dwelling unit, but not including sororities, fraternities and other communal arrangements.

Family Day Care. A day care facility for not more than six children located in a building in which the primary purpose is residential.

Farm. A parcel of land five (5) acres or more used for gain in the raising of agricultural products, live stock, poultry and dairy products, or a parcel with a gross annual value of farm products raised in excess of four hundred dollars (\$400.00), including necessary farm structures and the storage of equipment used.

Floor Area. 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 features. In the case of a multi-unit building, the center of the common wall shall be included.

Frontage. The linear extent of a lot measured along a constructed street right-of-way from the intersection of one side lot line to the intersection of the other side lot line of the same lot, which can be used for access to the lot but not including any portion thereof devoted to a right-of-way or a driveway serving more than one lot unless a special permit for a common driveway has been approved by the Planning Board.

Frontage at corner lot. At a corner, frontage shall be measured to the point of intersection of the extension of the sideline of the rights-of-way. (see diagram in Appendix One). *[Amended by vote of the Annual Town Meeting, second session, on May 6, 2009, approved by the Attorney General on August 11, 2009 and posted according to law on August 20 , 2009]*

Frontage on Curved Streets and in Cul-De-Sacs. For lots fronting on curved streets and cul-de-sacs, the frontage distance shall be determined by measuring the cumulative distances along the curves and any tangent sections there between. See diagram in Appendix One. *[Added by vote of the Annual Town Meeting of April 30, 2007, approved by the Attorney General on June 11, 2007 and posted according to law on June 25, 2007.]*

Garage, Private. Covered space for the housing of motor vehicles, but not for the rental of more than two (2) stalls or for commercial repair of vehicles or commercial storage of vehicles.

Garage, Public. Any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting or equipping of automobiles or other motor vehicles, or supplying of gasoline or oil to motor vehicles.

Gasoline Station. An establishment which provides for the servicing of motor vehicles and operations incidental thereto, and may include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including the painting thereof by any means.

Hazardous Materials. A substance or solid material in a quantity or form that significantly contributes to serious illness or death, or that poses a substantial threat to human health or poses an unreasonable risk to health, safety, property or the environment when improperly managed, including all materials listed as hazardous by the Environmental Protection agency, under the Toxic Substance Control Act, Federal Resource Conservation and Recovery Act or similar authority, the Department of Energy or the Commonwealth of Massachusetts pursuant to applicable General Laws.

Hotel, (Inn, Motel, Tourist Home or Lodging House). A building, or portion thereof, or a group of buildings on a single lot, intended to be used for the temporary occupancy of three (3) or more persons who are lodged, with or without meals, and in which major provision for cooking may be made in a central kitchen but may not be in the individual rooms or suites.

Inn. See Hotel

Inspector of Buildings. The administrative chief of the building department in a municipality who is charged with the enforcement of 780 CMR as well as the enforcement of the Zoning-By-Law.

Kennel. Facilities for keeping four (4) or more dogs three (3) months old or older on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any shop where dogs are customarily kept for sale.

Kindergarten. A school or class of young children, usually from four (4) to six (6) years of age.

Loading Space, Off-Street. An off-street space or berth, on the same lot with a building, for the temporary parking of vehicles while loading or unloading merchandise or material, and which has access to a street or other appropriate means of ingress or egress.

Lodging House. See Hotel

Lot. A single area of land in one ownership, with definite boundaries, uses, or available for use, as the site of one or more buildings. *[Amended by vote of the Annual town Meeting of April 30, 2007, approved by the Attorney General on June 11, 2007 and posted according to law on June 25, 2007.]*

Lot Area. The area of a lot exclusive of any area in a street or way, public or private. *[Added by vote of the Annual Town Meeting of April 30, 2007, approved by the Attorney General on June 11, 2007 and posted according to law on June 25, 2007.]*

Lot Width. The shortest distance between the side lot lines of the lot measured at the minimum set back line.

Maximum Building Coverage. The maximum permissible area that may be covered by the ground floor area of all buildings on a lot; to be measured as a percent of the required minimum lot area in the zoning district where the lot is located.

Maximum Lot Coverage. The maximum permissible area that may be covered by all impervious surfaces on a lot, such as but not limited to buildings, pools, paved tennis courts, paved driveways and walkways; to be measured as a percent of the required minimum lot area in the zoning district.

Membership Club. A private, non-profit organization, building or grounds, to include specifically country clubs and fraternities and other organizations to which membership is limited or controlled.

Mobile Home. Any vehicle or object, which is drawn by or used in connection with a motor vehicle and which is so designed and constructed or reconstructed or added to by means of such accessories as to permit the use and occupancy thereof for human habitation, whether resting on wheels, jacks, or other foundations. It shall include the type of vehicle or modular construction commonly known as a mobile home, containing complete electrical, plumbing, and sanitary facilities and designed to be installed on a temporary or permanent foundation for permanent living quarters.

Motel. See Hotel

Non-Conforming Lot. A non-conforming lot is an existing lawful lot, which does not conform to the regulations for the district in which it is located and which existed at the time of the publication of notice of the hearing before the Planning Board respecting the regulation to which it does not conform.

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

Nursery School. A place for group pre-school training of children.

Open Space Preservation Development “Reserved”

Principal Building. A building in which the primary use of the lot on which the building is located is conducted.

Principal Use. The main use of land or structures on a lot, as determined by the Inspector of Buildings.

Rooming House. See Boarding House

Screened Area. A section shielded from view from adjacent areas by fencing, hedges or trees.

Screening. The material used to shield an area from view.

Sign. Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trademarks, whether stationary or portable, by which anything is made known, such as are used to designate or locate an individual, a firm, an association, a corporation, a profession, a business, or a commodity or product, which are visible from a public or private street or right-of-way and used to attract attention.

Stream, Bank of. Rising ground bordering a flowing body of water as defined in 310 CMR 10 of Massachusetts Regulations.

Street. A public way or a private way either shown on a plan approved in accordance with the subdivision control law, or otherwise qualifying a lot for frontage under the subdivision control law.

Street Line. The dividing line between a street and a lot and, in the case of a public way, the street line established by the public authority laying out the way upon which the lot abuts.

Structure. Any construction, erection, assemblage or other combination of materials upon the land, necessitating pilings, footings or a foundation for attachment to the land including swimming pools two (2) feet or more deep or having a surface of seventy-five (75) or more square feet and including all swimming pools permanently equipped with a water circulating system.

Swimming Pool. An artificial pool of water or a natural pool altered to have a depth of two (2) feet or more at any point or seventy-five (75) or more square feet of surface and used for swimming or bathing, located indoors or outdoors, together with the equipment, and appurtenances used in connection with the pool.

Tourist Home. See Hotel

Town House. A single family dwelling attached to another single family dwelling, in such a manner that each dwelling has a floor at ground level and front and rear access to the outside.

Trailer. Any vehicle or object which is drawn by a motor vehicle.

Veterinary. See Animal Hospital

Wetlands. Swamps, bogs and freshwater wetlands as defined by Chapter 131 of the General Laws of the Commonwealth of Massachusetts.

Yard. An open space, other than an enclosed court, on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and a lot line, and is not occupied or obstructed from the ground upward by a building or a structure, except for fences.

Yard, Front. A yard extending across the full width of the lot and lying between the street line of the lot and the nearest line of the building. The depth of a front yard shall be the minimum distance between the building and the front lot line.

Yard, Rear. A yard extending across the full width of the lot and lying between the rear lot line of the lot and the nearest line of the building. The depth of a rear yard shall be the minimum distance between the building and the rear lot line.

Yard, Side. A yard between the side lot line of the lot and the nearest line of the building, and extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front or rear lot lines, as may be. The width of a side yard shall be the minimum distance between the building and the side lot line.

## **SECTION 3. ESTABLISHMENT OF DISTRICTS**

### **3.A. DISTRICTS**

*[Section 3.A.1. amended by Amendment effective May 3, 2012 by vote of Annual Town Meeting, Article 22, and approved by the Attorney General on August 30, 2012 and posted according to law on September 7, 2012]*

3.A.1. For the purpose of this Bylaw, the Town of West Newbury is divided into the following districts:

- Residence A
- Residence B
- Residence C
- Business
- Industrial

Overlay Districts:

- Floodplain Overlay District
- Groundwater Protection Overlay District
- Large-Scale Ground-Mounted Solar Photovoltaic Installations Overlay District

### **3.B. LOCATION OF DISTRICTS**

*[Revised by Amendments effective October 25, 2010 by vote of Special Town Meeting and approved by the Attorney General on February 22, 2011 and posted according to law on February 22, 2011]*

3.B.1. Said districts are hereby established as shown, located, defined and bounded on a map entitled "Town of West Newbury Zoning Map, based on Zoning Map dated September 1, 1967, adopted at Special Town Meeting of October 25, 2010" filed with the office of the Town Clerk, which map, together with all explanatory matter thereon, and amendments thereto, is hereby incorporated and made a part of this by-law.

### **3.C. BOUNDARIES OF DISTRICTS**

3.C.1. Where the boundary lines are shown upon said map within the street lines of public and private ways, or utility transmission lines, the center lines of such ways or lines shall be the boundary lines, unless otherwise indicated.

3.C.2. Boundary lines located outside of such street lines or transmission lines, and shown approximately parallel thereto, shall be regarded as parallel to such lines, and dimensions shown in figures placed upon said map between such boundary lines and transmission lines are the distances in feet of such boundary lines from such lines, such distances being measured at right angles to such lines unless otherwise indicated.

3.C.3. Where the boundary lines are shown approximately on the location of property or lot lines, and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the boundary lines.

3.C.4. In all cases which are not covered by other provisions of this Section, the location of boundary

lines shall be determined by the distance in feet, if given, from other lines upon said map, by the use of identifications as shown on the map, or by the scale of said map.

## **SECTION 4. REGULATIONS PERTAINING TO ALL DISTRICTS**

### **4.A. NON-CONFORMING USES**

- 4.A.1. Any lawful building or use of a premise existing at the time of the passage of this by-law, or any building or use commenced, within six months of the date of issuance of a building or special permit issued by the Planning Board or Board of Appeals in accordance with the provisions of this by-law before the first publication of notice of the public hearing on conformity with the provisions of this by-law or an amendment thereto, may be continued, rebuilt if damaged or destroyed, and, if authorized by the Board of Appeals, may be enlarged or changed to a specific use, provided, however, that the Board of Appeals shall not grant such approval unless it shall find that such expansion or change shall not be substantially more detrimental to the neighborhood than the existing non-conforming use or structures. Existing structures that do not meet the set backs may be expanded or extended along the existing non-conforming building set back line without Board of Appeals approval if said expansion or extension does not encroach upon another set back or create another dimensional non-conformity.
- 4.A.2. If a non-conforming use is discontinued or is abandoned for a period of more than two (2) years, it shall not be re-established, and any future use shall be in conformance with this by-law.
- 4.A.3. Increased requirements respecting lot area, frontage, width, yard depth and similar dimensions provided in this by-law or amendments thereto shall be subject to the exemptions provided in Section 6, Chapter 40A, G.L., and shall not apply to a lot for single or two-family use which, at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with adjoining land, conformed to the then existing requirements, and had less than the increased requirement but at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.
- 4.A.4. Any construction or use for which a building permit was lawfully issued prior to the first publication of notice of the public hearing respecting this by-law or any amendment thereto shall be permitted, notwithstanding non-compliance with the requirements of this by-law or amendments thereto provided such use or construction was commenced within six (6) months after the issuance of the permit and in cases involving construction completion as continuously and expeditiously as is reasonable.

### **4.B. EXEMPT USES**

*[Amended by vote of the Annual Town Meeting, second session, on May 6, 2009, approved by the Attorney General on August 11, 2009 and posted according to law on August 20, 2009]*

- 4.B.1. Nothing in this By-Law shall prohibit, or restrict the use of land or structures in any district for:
  - a. Religious purposes or for education purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic, or by a religious sect or denomination or by a non-profit education corporation, except as provided in Section 3 of Chapter 40A of the General Laws as amended.
  - b. Agriculture, horticulture, floriculture and viticulture, provided that such uses shall be limited to parcels of land containing at least five (5) acres.

#### **4.C. USES PERMITTED IN ALL DISTRICTS**

##### **4.C.1. Municipal Buildings and Use**

4.C.2. Conservation areas for water, plants and wildlife, and dams necessary for achieving this purpose; farming, including raising, harvesting and storing crops, truck gardening and grazing, orchards, nurseries, forests and tree farms, and areas for horticulture and floriculture, but not including fur farms or piggeries, provided that:

- a. Equipment necessary for these uses is normally stored in an enclosure.

#### **4.D. TRAILERS**

4.D.1. No person shall park, store, occupy or utilize a trailer for living or business purposes except that:

- a. A trailer may be parked or stored in a garage or accessory building, or in the rear half of a house lot owned or occupied by the owner of the trailer, provided however, that the trailer must be located at least twenty-five feet (25') from the rear and side lot lines and its use for living or business is prohibited.
- b. The owner of land may permit occupancy of land by a non-paying guest using a trailer for living purposes, for a period not exceeding four weeks (4) in any calendar year. A permit for this purpose must be obtained from the Board of Selectmen before the land may be occupied by the trailer.
- c. As a temporary office or dwelling incidental to construction or development of the premises on which the trailer is located. Such use, however, is conditioned upon the prior issuance of a permit from the Board of Health and the prior issuance of a permit from the Board of Appeals. Such permit shall run for a period of one year (1) and may be extended for a period of one year (1), but in no case may the trailer be so occupied for longer than a period of two years (2) during which time the construction of the structure is to be completed. A trailer or trailers may be placed on municipal property for a municipal use or uses conditioned upon issuance of permits from the Board of Appeals and the Board of Health which may be renewed annually. The approval of the Board of Health or the permit from the Board of Appeals may be revoked for cause at any time.

#### **4.E. TEMPORARY MORATORIUM ON MEDICAL MARIJUANA TREATMENT CENTERS/REGISTERED MARIJUANA DISPENSARIES.**

*[Section 4.E. added by Amendment effective November 4, 2013, Article 25. of the Special Town Meeting, approved by the Attorney General on February 27, 2014 and posted according to law on March 12, 2014.]*

*[Section 4.E. deleted by Amendment effective October 27, 2014, Article 14, of the Special Town Meeting, approved by the Attorney General on January 15, 2015, and posted according to law on January 21, 2015]*

## **SECTION 5. USE REGULATIONS**

#### **5.A. RESIDENCE A, B, AND C DISTRICTS**

##### **5.A.1. Purpose**

- a. The Residence A and B Districts are intended to provide low density residential, rural and agricultural areas.
  - b. The Residence C District is intended as a primarily residential area.
- 5.A.2. Permitted uses in the Residence A, B and C Districts in addition to uses permitted in all districts (Section 4.).
- a. One (1) or two (2) family dwelling.
  - b. Family Day Care in single family residential structure if a secure and fenced yard/outdoor play area of at least 3,000 square feet is provided.
  - c. Accessory Use, including the following:
    - i) Display and sale or offering for sale by the owner or resident of the land of farm produce, provided that the major portion of that produce is raised in the Town of West Newbury, and provided that no stand for such sale is located within twenty-five feet (25') of a street side line, and provision is made for off-street parking.
    - ii) Keeping of pets and animals for use of the resident of premises, provided that:
      - a) All animals permitted to graze within one hundred (100') feet of a district boundary line or street line shall be fenced.
      - b) There shall be a minimum of one acre of land for the keeping of a horse or a cow with one half (1/2) acre of land per each subsequent horse or cow kept
      - c) Animals shall be cared for in accord with all rules and regulations that the Board of Health may from time to time promulgate pertaining to the keeping of animals, following a posted public hearing.
    - iii) Boarding house or rooming house for not more than four (4) persons, provided that the house is also occupied as a private residence.
    - iv) Professional office or customary home occupation, provided that:
      - a) The profession or customary home occupation is conducted by a resident of the premises.
      - b) The use is clearly incidental to and secondary to the use as a residence.
      - c) No more than one (1) person, other than residents of the premises, is regularly employed in connection with such use.
      - d) No noise, vibration, smoke, dust, odors, heat, glare, unsightliness or other nuisance is produced which is discernible from other properties.
      - e) There is no public display of goods or wares, and no signs except as per Section 7.C.
      - f) There is no exterior storage of material or equipment and no exterior evidence of a non-residential use of the premises, and no hardtopping of areas normally landscaped in the front of a building in a residential area.
    - v) A private garage for not more than four (4) automobiles, storage sheds, swimming pools, summer houses and areas to park vehicles, provided that:

- a) No more than three (3) commercial vehicles registered by the Commonwealth of Massachusetts shall be parked, screened from view, or parked in an accessory building in a Residential District, except during the process of making deliveries.
- b) No more than two (2) commercial vehicles registered by the Commonwealth of Massachusetts in the Class 3 Category as defined by the Commonwealth of Massachusetts Registry of Motor Vehicles, "Drivers' License Manual", page 2, 1970 shall be parked in the front yard or side yard in front of the main building.
- c) Vehicles in the Class 1 or Class 2 Category as defined by the Commonwealth of Massachusetts, Registry of Motor Vehicles, "Drivers' License Manual", page 2, 1970, and commercial trailers other than two (2) wheel utility trailers or camping trailers shall not be parked except in an accessory building or when screened from view from the street and abutting property.
- d) School buses under contract to the School Committee of Pentucket Regional District shall be parked off the street. Approval to park any School Bus in a Residential District shall be sought from the Board of Appeals following a Public Hearing, see Section 8.A. The Board of Appeals may require restrictions in allowing the off-street parking of school buses.
- e) Commercial vehicles which are unregistered or abandoned shall not be parked on any land except in an accessory building or when screened from view from the street and abutting property.
- f) Notwithstanding, the provisions of paragraphs a)-e) above, a vehicle parked in connection with an existing non-conforming use can continue to be parked in the same place and manner as customarily parked prior to the adoption of the Zoning By-Law, and further the Board of Appeals may grant an exception with or without conditions to the provisions of paragraphs a)-e) as provided in Section 8.
- g) No more than two (2) unregistered vehicles of any class or type shall be parked or stored on any lot unless they are parked or stored within a structure.

d. Bed and Breakfast.

5.A.3. Uses Permitted in Residence A, B, and C Districts with a Special Permit

Uses permitted in the Residence A, B and C Districts on a special permit granted by the Planning Board, subject to appropriate conditions where such are deemed necessary to protect the neighborhood or the Town, in accord with the provisions of Section 8.

- a. Commercial greenhouse, cider mill or saw mill, provided that:

- i) All outdoor storage is screened from view from public right-of-ways.
- b. Riding stables, kennels, animals hospitals or veterinary, provided that:
  - i) Adjacent properties shall be adequately protected from noise, odors and unsightly appearance.
  - ii) Cadavers and contaminated animals are disposed of in accord with applicable Town and State Regulations.
  - iii) Animals are housed within a building and all facilities for breeding, boarding, treating and kenneling animals are within a building.
  - iv) Open air exercise yards and animals runs shall be enclosed by fencing located no less than fifty (50) feet from any property line.
- c. Non-profit day camps and camp sites where tents are used for structures, picnic areas, golf courses, boating, fishing and hunting where legally permitted, parks and any other non-commercial open-air recreation use, provided that:
  - i) No motorized vehicles except for golf carts are used in connection with the use, except for maintenance.
  - ii) There are no restaurants or bars in connection therewith.
  - iii) There is no outside electric amplification used or outside lighting for night sports.
- d. Restaurant or inn
- e. Telephone exchange buildings, radio stations, and other utility structures, provided that there are no service yards or outdoor storage.
- f. *[Deleted by Amendments effective April 27, 2006 by vote of Annual Town Meeting and approved by the Attorney General on July 24, 2006 and posted according to law on July 27, 2006]*
- g. Funeral homes and cemeteries, but not a mortuary or crematorium.
- h. Nursing homes, convalescent homes, old age homes, sanitariums, hospitals.
- i. Congregate housing for the elderly and shared elderly housing providing that:
  - i) In addition to the requirements of Section 6.A, the lot shall contain at least one-half (1/2) again the required lot area for the District in which it is located.
  - ii) There shall be no more than twelve (12) persons per unit and no more than two (2) persons per bedroom.
  - iii) All required licenses and permits from the Commonwealth and the Board of Health have been obtained.

- iv) The use is served by municipal water.
  - v) Off-street parking is provided in the side or rear yards.
  - vi) Off-street loading, if any, is in the rear of the structure.
  - j. Non-profit schools, kindergartens, nursery schools, children centers, arts, crafts and dramatic schools, dancing and music schools.
  - k. Non-profit membership clubs, providing that:
    - i) Facilities for serving food and beverages are not open to the public.
    - ii) All activities connected with the club, except as permitted in 5.A.3.c. and except for off-street parking are contained within the structure.
    - iii) Off-street parking and loading in accord with the provisions of Section 7.B.
  - l. Any use determined to be of similar character to the permitted uses of this district and to the intent of this district, (said determination to be made by the Board of Appeals following petition of the land owner or owner(s).
- 5.A.4. Uses permitted in the Residence B and C Districts on a Special Permit granted by the Planning Board subject to appropriate conditions where such are deemed necessary to protect the neighborhood or the Town in accord with the provisions of Section 8.A.
- a. Dwelling containing not to exceed four (4) units, provided that:
    - i) The lot shall have at least four (4) times the minimum lot area for the District in which it is located.
    - ii) The units are serviced with Town water.
    - iii) No such structure shall be constructed or placed on land shown as Medisaprists, Scarboro, Ipswich or Westbrook Soils, or on soils listed in Table 16 as having frequent flooding and/or depth to water table of less than six (6) feet, and shown on a map or maps contained in the "Soil Survey of Essex County, Northern Part", U.S. Department of Agriculture, Soil Conservation Service, February 1981, on file with the Planning Board and the Town Clerk.
    - iv) The structure shall be designed to conform to the natural terrain.
    - v) The structure shall be of an architectural style which is compatible with the prevailing style in the area in which it is located.
    - vi) All parking shall be located to the rear of the front setback line.

## **5.B. BUSINESS DISTRICT**

5.B.1. In a Business District the following uses are permitted subject to a site plan approved by the Planning Board in accord with Section 8.B.

- a. Retail store or service establishment, the principal activity of which shall be the offering of goods or services at retail within the building.
- b. Business or professional offices or banks.
- c. Restaurants or other places for serving food within a structure.
- d. Parking areas or garages for use of employees, customers, or visitors.
- e. Accessory buildings and uses provided that:
  - i) Outdoor storage and display is conducted in the rear and/or side yard, and such storage or display is screened from view of dwellings in abutting Residence A, B or C Districts with shrubs or a fence of at least four (4) feet in height.

5.B.2. In a Business District the following uses are permitted upon a special permit granted by the Planning Board.

- a. Theaters, museums, bowling alleys and other commercial amusement, provided that all business is conducted within the structure.
- b. Gasoline service stations, provided that:
  - i) Repairs shall be limited to minor repairs and adjustments such as changing and repairing of tires, but not including recapping changing and replacing batteries, but not major repair or rebuilding; installing minor accessories; radiator cleaning and flushing or steam cleaning.
  - ii) There shall be no storage of motor vehicles, appliances and equipment on the premises other than those in process of allowable repair or awaiting delivery or in an enclosed structure.
  - iii) Sales are limited to retail sale of gasoline, oil, tires, batteries and new accessories.
  - iv) The following operations are conducted wholly within an enclosed building:
    - a) Lubrication of motor vehicles
    - b) Brake adjustment, replacement of brake cylinders and brake fluid lines.
    - c) The testing, adjustment and replacement of carburetors, coils, condensers, distributor caps, fan belts, filters, generators, points, rotors, spark plugs, voltage regulators, fuel pumps, motor hoses, wheel balancing.
- c. Drive in or fast food restaurants, drive-in banks, stand alone ATM facilities or other drive in retail establishments provided that:

- i) No vehicles waiting service park or stand on a public way.
  - ii) The establishment shall be responsible for collecting litter within five hundred (500) feet of the premises resulting from its sales at least daily and more frequently if necessary to prevent unsightly conditions caused by litter.
- d. Motels and Hotels
- e. Child Care Center. A child care facility for more than six children may be permitted in the Business District by a special permit from the Planning Board, provided that the lot area used for facilities at least 60,000 square feet, that the facility provides service for no more than twenty (20) children, and that a safe and fenced yard/outdoor play area is provided having at least 10,000 square feet.
- f. Residential units located in the same buildings as commercial enterprises, provided that they be in compliance with other local regulations, including Board of Health. Visual elements, density, and parking shall be part of the special permit review. *[This subsection was added by amendment under Article 15 of the April 28, 2008 Special Town Meeting, effective April 28, 2008, approved by the Attorney General on May 29, 2008 and posted according to law on June 17, 2008]*

## **5.C. INDUSTRIAL DISTRICT**

5.C.1. In an Industrial District the following uses are permitted subject to a site plan approved by the Planning Board in accord with Section 8.

- a. Manufacturing enterprises
- b. Research laboratories
- c. Office Buildings
- d. Printing or publishing establishments, commercial photographic studios, medical or Dental Laboratories
- e. An apartment in a principal structure for occupancy by a watchman or caretaker.
- f. Accessory uses to the above, such as research laboratories offices, branch banks, cafeterias for employees and other normal accessory uses, when contained in the same structure as a permitted one.

*[Section 5.C.2. revised by Amendment effective October 27, 2014 by vote of Special Town Meeting, Article 13 to add Subsection c.. and approved by the Attorney General on January 15, 2015, and posted according to law on January 21, 2015]*

5.C.2. In an Industrial District the following uses are permitted subject to a special permit granted by the Planning Board in accord with Section 8.

- a. Building materials salesrooms, utility structures, including solid waste disposal plants, contractor's yards, storage warehouses and buildings and wholesale distribution plants, provided that:
  - i) All loading and unloading is done at the rear of the building in covered berths and provided all materials are stored in an enclosed area.
  - ii) All equipment stored outside is screened from view from public ways or abutting properties in a Residence A, B or C District, except that items on display for retail sales need be screened only from properties in a Residence A, B or C District.
- b. Adult Uses
- c. Medical Marijuana Facilities, in accordance with Chapter 369 of the Acts of 2012, and 105 CMR 725.00

## **SECTION 5.D. FLOODPLAIN OVERLAY DISTRICT**

*[Section 5.D. replaced by Amendment effective May 3, 2012 by vote of Annual Town Meeting, Article 17, and approved by the Attorney General on August 30, 2012 and posted according to law on September 7, 2012]*

### **5.D.1. Purpose and Intent**

The purposes of the Floodplain Overlay District are to:

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

### **5.D.2. Applicability**

Any Development (See Definitions) proposed in the Floodplain shall require a Special Permit from the Planning Board.

### **5.D.3. Application Procedure**

See Section 8.A.2. of the Zoning Bylaw and Planning Board Regulations for Special Permits for filing and other requirements. When feasible, the Planning Board and Conservation Commission may schedule a joint Public Hearing for Applications submitted. Applications are exempt from the requirement of Site Plan Review, Section 8.B.

### **5.D.4. Definitions**

**Area of Special Flood Hazard** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A or AE.

**Base Flood** means the flood having a one percent chance of being equaled or exceeded in any given year.

**Development** means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**District** means Floodplain Overlay District.

**Federal Emergency Management Agency (FEMA)** administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

**Flood Insurance Rate Map (FIRM)** means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood Insurance Study** means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

**Floodway** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

**Lowest Floor** means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

**New Construction** means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, NEW CONSTRUCTION means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

**One-Hundred-Year Flood** - see Base Flood.

**Regulatory Floodway** - see Floodway

**Special Flood Hazard Area** means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A and Zone AE.

**Structure** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. STRUCTURE, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

**Substantial Damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

**Zone A** means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

**Zone AE** (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

**Zone X** are areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

#### 5.D.5. Floodplain Overlay District Boundaries

The Floodplain Overlay District is herein established as an Overlay District. The District includes all special flood hazard areas within West Newbury designated as Zones A and AE, on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the Town of West Newbury are panel numbers 25009C0084F, 25009C0092F, 25009C0094F, 25009C0103F, 25009C0104F, 25009C0108F, 25009C0111F, 25009C0112F, 25009C0113F, 25009C0114F, 25009C0116F, and 25009C0118F dated July 3, 2012. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 3, 2012. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, and the Building Inspector.

#### 5.D.6. Base flood Elevation and Floodway Data

- a. Floodway Data. In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- b. Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or on 5 acres, whichever is the lesser, within unnumbered A zones.

#### 5.D.7. Notification of Watercourse Alteration

In a riverine situation, the Building Inspector/Zoning Enforcement Officer shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities
- NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, MA 02114-2104
- NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6th Floor  
Boston, MA 02110

#### 5.D.8. Use Regulations

##### a. Reference to Existing Regulations

All development in the Floodplain Overlay District, including structural and non-structural activities, whether permitted by right or by Special Permit must be in compliance with M.G.L. Chapter 131, § 40 and with the following:

- Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR)
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

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

##### b. Other Use Regulations

- 1) In Zone AE, along watercourses that have a regulatory floodway designated on the Essex County FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

- 2) Existing contour intervals of site and elevations of existing structures must be included on plan proposal.

#### 5.D.9 Permitted Uses

The following uses of low flood damage potential and which will not cause obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

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

#### 5.D.10. Planning Board Findings

The Planning Board shall make the following Findings relative to Special Permit approval in the Floodplain:

- a. Such proposals shall minimize flood damage;
- b. All public utilities and facilities shall be located and constructed to minimize or eliminate flood damage, and
- c. Adequate drainage shall be provided to reduce exposure to flood hazards.
- d. There is no volumetric loss of flood storage within the designated floodplain.

### 5.E. SIREN OR PUBLIC ALERT AND NOTIFICATION SYSTEMS

5.E.1. Notwithstanding any provision in the West Newbury Zoning By-laws to the contrary, the Planning Board, after consultation with the Board of Fire Engineers, the Chief of Police and the Director of Emergency Management for the Town of West Newbury may, by special permit, allow the construction or erection of structures to carry sirens and/or public alert and notification systems in any zoning district.

- a. Within 5 days after receipt of the application with a site plan, the Planning Board shall forward one (1) copy of each to the Board of Fire Engineers, the Police Chief, and the Director of Emergency Management WN. A written response with recommendations and opinions shall be returned to the Planning Board within 35 days of receipt. Failure to respond within 35 days shall constitute constructive approval.

5.E.2. Each application for a special permit hereunder shall include:

- a. an original and 8 copies of the application and the site plan(s)
- b. the name and address of each applicant
- c. the name and address of the owner of the property on which the structure is to be located
- d. written consent for the use of the property by the owner or agent thereof

- e. a description of the siren or notification system to be installed on each structure and the materials to be employed
  - f. a listing and assignment of tone control frequencies
- 5.E.3. Each proposed structure site shall be separately considered. A separate site plan shall be submitted for each proposed structure location. A separate special permit application fee for each proposed structure site shall be required.
- 5.E.4. The Planning Board, after consultation with the Board of Fire Engineers, the Chief of Police, and the Director of Emergency Management WN, shall impose such conditions or restrictions as are deemed reasonable appropriate to safeguard the public and the neighborhood where each structure is to be located, including, but not limited to, the following:
- a. limitations on the height of the structure, to include, at minimum,, a height no greater than that required by state and federal regulations for such warning and alert systems
  - b. the distance of each structure to nearby residences or inhabited buildings shall be at minimum, a distance greater than 50 feet.
  - c. limitations on the frequency, time or duration of audible non-emergency activation or testing of the warning or notification system
  - d. advance notice to area residents before any non-emergency audible activation or testing of the system
  - e. requirements concerning municipal access to and use of such system
  - f. provisions for a suitable area for parking maintenance vehicles which shall be off the traveled way
  - g. provisions for vegetative screening around the base of the structure.
- 5.E.5. Any special permit granted hereunder shall be for such duration as the Planning Board may allow. The Planning Board may require that the system be maintained for as long as the hazard for which the system was required exists.
- 5.E.6. The special permit requirements of sections 8.A.2.b. and 8.A.2c of the West Newbury Zoning By-laws shall apply to a special permit under this section.
- 5.E.7. The special permit procedures set forth in section 8.A.4. and 8.A.5. of the West Newbury Zoning By-law shall apply to a special permit under this section.

## **SECTION 5.F. INCLUSIONARY HOUSING REQUIREMENTS**

*[Added by Amendments effective April 27, 2006 by vote of Annual Town Meeting and approved by the Attorney General on July 24, 2006 and posted according to law on July 27, 2006]*

### **5.F.1. Purpose**

The Town of West Newbury sets forth the following requirements in an effort to provide multiple housing choices for people of all economic backgrounds and address the needs of current and future West Newbury residents by providing permanent affordable housing. The primary purpose of Section 5.F. is designed to increase the supply of rental and ownership housing for low and moderate income households in West Newbury, contribute affordable housing units to the town's Subsidized Housing Inventory, and sustain a viable community making multiple housing options available for future generations in West Newbury.

### **5.F.2. Definitions**

- a) Workforce Housing Trust Fund (the "Fund"): An account established and operated for the exclusive purpose of creating and preserving affordable housing in the Town of West Newbury.
- b) Affordable Housing Unit: A housing unit secured by a Deed Restriction that is, and will remain, 1) available for sale and sold at a selling price that will result in an Annual Shelter Cost of not more than thirty percent (30%) of the annual income of a Qualified Affordable Housing Unit Purchaser or 2) available for rental and rented at an annual rent, including mandatory or unavoidable fees, that will result in an Annual Shelter Cost of not more than thirty percent (30%) of the annual income of a Qualified Affordable Housing Unit Tenant, or rented to a tenant receiving rental assistance pursuant to a state or federal rental assistance program; and, in either case 3) affordable to and occupied by a low or moderate income household, meeting the definition of low or moderate income housing at 760 CMR 30.02, and eligible for inclusion in the Chapter 40B Subsidized Housing Inventory through the Local Initiative Program (LIP) under M.G.L. c.40B sec. 20-23.
- c) Annual Shelter Cost: The cost for owners shall be the aggregate of annual charges for debt service on a mortgage (assuming a 5% down payment), real estate taxes, homeowner's insurance, and condominium fees, if applicable. The cost for tenants shall be the aggregate of annual charges for rent, utilities (except telephone and other telecommunications), and renter's insurance.
- d) Deed Restriction: A provision, acceptable in form and substance to the Town Counsel of the Town of West Newbury, in a deed of real property that runs with the land in perpetuity or for the longest period of time allowed by law, so as to be binding on and enforceable against any person claiming an interest in the property. The Deed Restriction shall apply to both rental and owned units. The Deed Restriction shall limit the resale price of any ownership units, and shall bind all subsequent purchasers in perpetuity, consistent with Massachusetts Department of Housing and Community Development's (DHCD) regulations and guidelines under Chapter 40B of the Massachusetts General Laws. Subsequent resale prices shall be determined based on a percentage of the area median income at the time of resale as determined by DHCD. The resale price will be determined in accordance with the Deed Restriction and will be established based on the same percentage of the area median income that was used to set the price for which the unit was originally sold.

Notwithstanding the foregoing, the resale price of an Affordable Housing Unit shall not exceed that amount which will require a household earning 80% of the most recent area median income

number, as published by HUD and adjusted for the household size that corresponds with the number of bedrooms in the Affordable Housing Unit, to spend a maximum of 30% of the household's annual income on Annual Shelter Cost. The method of resale price calculation shall be included as part of the Deed Restriction. The Town of West Newbury shall not be held responsible for any future fluctuations in market price or median income that may affect the resale price of any unit subject to a Deed Restriction. Any restriction created under this By-law shall survive any bankruptcy or insolvency or other actions and shall not be subject to nullification for any reason.

- e) **Qualified Affordable Housing Unit Purchaser or Tenant:** An individual or family with household income that does not exceed 80% of the median income for the Lawrence metropolitan statistical area, with adjustments for household size, as reported by the most recent information from DHCD.
- f) **Resale of Affordable Housing Units**  
Subsequent resale prices shall be determined based on a percentage of the median income at the time of resale as determined by DHCD. The resale price will be established based on the income target percentage of the individual or family for which the unit was originally sold. The resale price calculation shall be included in the deed restriction.
- g) **Vacant Affordable Housing Units**  
In the event that a qualified affordable housing unit becomes vacant for a term beyond that designated in the Deed Restriction, the Town of West Newbury shall have the Right of First Refusal to purchase said unit and the West Newbury Housing Authority shall be notified of vacant affordable housing rental units.
- h) **Local Preference:** In accordance with DHCD regulations, local preference shall be granted to West Newbury residents as follows:
  - a. an individual or family or a parent or child of an individual maintaining a primary residence in the Town of West Newbury;
  - b. an individual who is employed at least 20 hours a week in the Town of West Newbury;
  - c. an individual who is employed at least 20 hours a week by the Town of West Newbury or by the Pentucket Regional School District; or
  - d. an individual who, for a continuous period of at least five years within the thirty years immediately preceding application for a West Newbury Affordable Housing Unit, maintained a primary residence within the Town of West Newbury

### **5.F.3. Applicability**

The requirements of this section apply to:

- a) Any proposed residential development that would create three or more attached or detached housing units on a single parcel of land;
- b) Any proposed subdivision of land for residential development that would permit construction of three or more attached or detached housing units, including land divisions under G.L. c. 40A, sec. 9 (Special Permits), as well as conventional subdivisions allowed by G.L. c. 41, sec. 8K-81GG (Subdivision Control Law).
- c) Any Open Space Preservation Development under Section 6B of this By-law that would permit construction of three or more attached or detached housing units; and
- d) Any application to the Zoning Board of Appeals for a variance or a finding that would permit construction of three or more attached or detached housing units.

*Willful evasion* of this section of the West Newbury Zoning Bylaw is prohibited. Willful evasion is defined as follows: segmenting land or properties with the intention of avoiding Inclusionary Housing requirements by either subdividing one parcel of land into two parcels of land in such a manner that each parcel will have less than three units of housing or purposefully dividing a large development into phases that would develop less than three units of housing during each phase.

Residential developments subject to this section shall include new housing units created by new construction or new housing units created by remodeling or conversion of an obsolete or unused building or other structure from its original use to an alternate use.

### **5.F.4. Requirements**

At least ten percent (10%) of the new housing units in any residential development shall be designated as and fulfill the requirements of Affordable Housing Units.

### **5.F.5. General Provisions**

- a) Consultation

Developers whose projects are subject to this By-law are encouraged to consult with the Lead Town Entity on Affordable Housing early in the development process concerning the Town's affordable housing needs and the optimum manner in which the Town's needs and the developer's affordable housing requirements can be met by the proposed development consistent with any affordable housing planned production plan then in effect in the Town. The Lead Town Entity on Affordable Housing may consult with and give advice to the Planning Board and the Zoning Board of Appeals during the development process and, as a part of the process, may submit written reports to the board reviewing any proposed development subject to the By-law.

b) Comparability

Unless otherwise approved by (a) the Planning Board or (b) the Zoning Board of Appeals in the case of residential developments requiring a finding or variance, all Affordable Housing Units shall be dispersed throughout the site and shall be indistinguishable from market-rate units except in interior finish, fixtures, and appliances. The number of bedrooms in Affordable Housing Units shall be comparable to the bedroom mix in market-rate units in the development.

c) Selection Process

The selection of Qualified Affordable Housing Unit Purchasers or Tenants shall be conducted as follows:

1) The selection process shall include an affirmative fair marketing plan prepared by the Developer for marketing the Affordable Housing Units created under this By-law which describes how the Affordable Housing Units will be marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers and/ or renters. The marketing plan must describe how the applicant will accommodate local preference requirements of this By-law in a manner that complies with the nondiscrimination in tenant or buyer selection guidelines of the Local Initiative Program. The duration and design of the plan shall reasonably inform all those seeking affordable housing, both within and outside the Town, of the availability of such units.

2) To the extent practicable, local preference shall be included in each development for the maximum number of the Affordable Housing Units created in any development subject to this By-law that is permitted subject to Massachusetts Department of Housing and Community Development guidelines.

d) Developers may sell affordable for-sale units to the Town, the West Newbury Housing Authority, or to a private nonprofit entity serving West Newbury for the purpose of providing affordable housing opportunities and to permit such entity to market the Affordable Housing Units and manage the choice of buyers.

**5.F.6. Fractional Affordable Housing Units and Housing Contribution Payments**

a) Requirements for Fractional Affordable Housing Units

When the calculation of Section 5.F.4. results in a Fractional Affordable Housing Unit (FAHU) of 0.8 or 0.9, the developer shall provide a whole On-Site Unit for that fractional unit. When the calculation of Section 5.F.4. results in a Fractional Affordable Housing Unit of 0.1 to 0.7, the developer shall provide a whole On-Site Unit or make a Housing Contribution Payment in lieu of the fractional unit.

b) Housing Contribution Payments in Lieu of Fractional Affordable Housing Units.

To make a Housing Contribution Payment in lieu of a qualifying Fractional Affordable Housing Unit the developer shall make a binding, written agreement with the Town of West Newbury (with appropriate payment security arrangements) to provide such payment to the fund established for this purpose. The contribution payment shall be paid in full prior to the issuance of a final occupancy permit for any portion of the project.

c) Amount of Housing Contribution Payments

*For ownership developments of three (3) to seven (7) units, the amount of the Housing Contribution Payment, HCP, shall be equal to:*

$$\text{HCP} = \text{AMSP} \times (\# \text{ of new units}) \times 4\%$$

*For ownership developments of eleven (11) units or more, the housing contribution shall be equal to:*

$$\text{HCP} = \text{AMSP} (\text{FAHU} \times 10) \times 4\%$$

where:

*AMSP* = the Average Market Sales Price for the market-rate units in the subject development,

*For rental units, the per-unit contribution payment shall be equal to the difference between the average market rental price for the market-rate units in the subject development and the rent affordable to a family of four at or below 80% of the median income, calculated for a term of 10 years without adjustments for interest or inflation.*

**5.F.7. Off-Site Affordable Housing Creation**

With the approval of the Planning Board, the inclusionary housing requirement may be met through the provision of all required Affordable Housing Units on an alternative site or multiple sites suitable for housing use. Affordable off-site housing units may be either new construction or located in a rehabilitated existing structure. In determining compliance with this By-law, affordable off-site units that are newly created and are not replacing existing, legal housing units shall be counted in the total number of housing units created by a proposed development. Unless otherwise approved, Affordable Housing Units provided under this subsection shall comply in all respects, other than on-site location, with the requirements of this By-law.

**5.F.8. Regulations**

Affordable housing production, Housing Contribution Payments and rental and resale restrictions required by this section shall be governed by regulations promulgated by the Planning Board and approved by the Board of Selectmen for purposes of carrying out this By-law and shall be consistent with the Massachusetts Department of Housing and Community Development's ("DHCD") regulations and guidelines under Chapter 40B of the Massachusetts General Laws.

**5.F.9. Compliance**

a) Building Permit Conditions

All contractual agreements with the Town of West Newbury and other documents necessary to ensure compliance with this Section 5F shall be executed and delivered to the Planning Board office and to the Town board reviewing any project or development prior to and as a condition of the issuance of a building permit. The Building Inspector shall not issue a building permit with respect to any project or development subject to this Section 5F unless and until the Planning Board has certified in writing to the Building Inspector that all conditions of this

Section 5F, including any conditions that may be established by the Planning Board or Zoning Board of Appeals in any decision or approval, have been met.

b) Occupancy Conditions

1). Compliance

No certificate of occupancy shall be issued for any market-rate units in a development subject to this Section 5F until all Deed Restrictions, agreements with the Town of West Newbury and/or other documents necessary to ensure compliance by the applicant (and any purchasers of the Affordable Housing Units) with the requirements of this By-law have been executed and recorded.

2) Housing Contribution Payments

Required Housing Contribution Payments shall be made with respect to each market-rate housing unit or rental unit prior to issuance of an occupancy permit for the unit; provided that such payments may be made at the time of conveyance of each unit to an end user or upon occupancy by any tenant if appropriate security arrangements to guarantee such payment have been made and are in effect under an agreement with the Town

3) Timing of Construction

As a condition of issuance of approval under this Section 5F Affordable Housing Units shall be provided concurrently with the development of market-rate units. The Planning Board may exercise authority in setting a time schedule for construction of both affordable and market rate housing units.

**5.F.10. Severability**

In the event that one or more of the provisions of this section 5.F.10 of the West Newbury zoning by-law are found or determined to be illegal or unenforceable, such finding shall not effect the validity of any other provisions of this by-law which provisions will remain in full force and effect.

**Section 5.G. LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS OVERLAY DISTRICT**

*[Section 5.G. adopted by Amendment effective May 3, 2012 by vote of Annual Town Meeting, Article 18, and approved by the Attorney General on August 30, 2012, and posted according to law on September 7, 2012]*

5.G.1. Purpose

The purpose of this Bylaw is to regulate Large-Scale Ground-Mounted Solar Photovoltaic Installations (LGSPI) in an established district(s) where they are allowed. The Bylaw provides standards for the placement, design, and construction of such installations. The standards aim to address public safety, and minimize impacts on scenic, natural, and historic resources.

5.G.2. Definitions

**Large-Scale Ground-Mounted Solar Photovoltaic Installation (LGSPI):** A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

**Large-Scale Ground-Mounted Solar Photovoltaic Installation (LGSPI) Overlay District:** The location[s] designated by a Town Meeting vote in accordance with Massachusetts General Laws Chapter 40A, §5., where LGSPI are a permitted use. Any designated location[s] [is/are] shown on the Town of West Newbury Zoning Map pursuant to Massachusetts General Laws Chapter 40A §4. A plan of an approved Overlay District delineated by metes and bounds shall be recorded at the Southern Essex Registry of Deeds. These plans shall also be filed in the Office of the Town Clerk.

**On-Site Solar Photovoltaic Installation:** A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

**Rated Nameplate Capacity:** The nominal rated output of electric power production of the Photovoltaic system in Direct Current (DC).

**Solar Photovoltaic Array:** an arrangement of solar photovoltaic panels.

### 5.G.3. Applicability

This Section applies to LGSPI proposed to be constructed after the effective date of this Section. This Section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment. The provisions set forth in this Section shall apply to the construction, operation, and/or repair LGSPI.

### 5.G.4. General Requirements for all Large Scale Ground-Mounted Solar Photovoltaic Installations

The following requirements are common to all LGSPI to be sited in designated locations:

- a. **Compliance with Laws, Ordinances and Regulations.** The construction and operation of all LGSPI shall be consistent with all applicable local, state and federal requirements, including 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.
- b. **Building Permit and Building Inspection.** A Building Permit is required for construction, installation, or modification of LGSPI as provided in this Section. An Application for a Building Permit for LGSPI must be submitted with all documents required by the Building Inspector's Office and the requirements of the Site Plan Review Decision.
- c. **Site Plan Review.** LGSPI are subject to Site Plan Review, Zoning Bylaw Section 8.B., by the Planning Board prior to construction, installation or modification as provided in this Section. In addition to the requirements of Section 8.B., Site Plan Review, and Planning Board Regulations, the Applicant shall submit the following:
  - i. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property Owners, if any
  - ii. The name, address, contact information and signature of any agents representing the project proponent, and
  - iii. Documentation of actual or prospective access and control of the project site. The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation

- iv. Zoning district designation for the parcel(s) of land comprising the project site, Street Address, Assessors' Map and Lot Number, North Arrow, and Locus Map
- v. An aerial photograph showing the existing property and structures, abutting properties, structures and streets. The proposed LGSPI, appurtenant structures, driveways and other proposed improvements shall be superimposed upon the aerial photograph.
- vi. Blueprints or drawings of the solar photovoltaic installation signed by a Registered Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures.
- vii. A description of the type of mounting system.

Waiver Authority. The Planning Board may waive documentary requirements of Site Plan Review as it deems appropriate.

#### 5.G.5. Dimensional Requirements.

- a. All LGSPI and Appurtenant Structures shall conform with the Table of Dimensional Control below.

**Table of Dimensional Control for Large- Scale Ground-Mounted Solar Photovoltaic Installations Overlay District**

<b>Structures</b>	<b>Minimum Lot Area In feet</b>	<b>Lot Frontage In feet</b>	<b>Percent of Required Lot area as Contiguous and Buildable (6.A.2)</b>	<b>Distance from Overlay District Boundary In feet</b>	<b>Maximum Lot Coverage %</b>	<b>Maximum Building Coverage %</b>	<b>Maximum Height in feet (6.A.3.)</b>
PV Array	n/a	n/a	n/a	50	n/a	n/a	15
Appurtenant Structures	n/a	n/a	n/a	40	n/a	n/a	35

- b. Appurtenant Structures. All appurtenant structures, including equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be screened from view by vegetation and/or fencing, and/or joined or clustered to avoid adverse visual impacts.

#### 5.G.6. Design Standards

- a. Lighting. Lighting of 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 solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

b. Signage. Signs on LGSPI shall comply with Section 7.C. of the Zoning Bylaw. A sign consistent with the Zoning Bylaw shall be required to identify the Owner and provide a 24-hour emergency contact phone number. Reasonable identification of the manufacturer or Operator of the solar photovoltaic installation may be provided.

Solar photovoltaic installations shall not be used for displaying any advertising.

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

d. Safety and Security. Appropriate measures shall be proposed to secure the facility from unauthorized entry.

#### 5.G.7. Environmental Standards

a. Wetlands. LSGPI shall comply with the requirements of M.G.L. Chapter 130, as amended.

b. Stormwater Management. Stormwater Management shall comply with Department of Environmental Protection Stormwater Management Policy, as amended.

c. Noise. LSGPI and equipment shall comply with Section 7.A.4. of the Zoning Bylaw, and the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations, (310 CMR 7.10., as amended).

d. Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the facility or otherwise prescribed by applicable laws, regulations, and bylaws.

#### 5.G.8. Monitoring and Maintenance.

The Large-Scale Ground-Mounted Solar Photovoltaic Installation Owner or Operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures.

#### 5.G.9. Modifications

The Building Inspector shall determine if a proposed Modification to an LGSPI made after issuance of the required Building Permit shall require the filing and approval of a new Site Plan and Application with the Planning Board .

## **SECTION 6. INTENSITY OF USE**

*[Amended by vote of the Annual Town Meeting, second session, on May 6, 2009, approved by the Attorney General on August 11, 2009 and posted according to law on August 20, 2009]*

### **SECTION 6.A. TABLE OF DIMENSIONAL CONTROL**

*[Section 6.A. revised by Amendment effective May 3, 2012 by vote of Annual Town Meeting, Article 23, and approved by the Attorney General on August 30, 2012, and posted according to law on September 7, 2012]*

*[Section 6.A. revised by Amendment effective October 27, 2014 by vote of Special Town Meeting, Article 10. and approved by the Attorney General on January 15, 2015, and posted according to law on January 21, 2015. Amendments were made to Bus. and Ind. Districts]*

District	Min. Lot Area In feet.	Lot Frontage In feet (6.A.1.) (6.A.9.)	Percent of Required Lot area as Contiguous and Buildable (6.A.2.)	Min. Front Yard In feet (6.A.4.)	Min. Side Yards In feet (6.A.4.)	Min. Rear Yard In feet (6.A.4.)	Max. Lot Cov. %	Max. Bldg. Cov. %	Max. Height in feet (6.A.3.)
Res.A	80,000	200	75	40	20	20	30	20	35
Res.B	40,000 (6.A.5)	200	75	40	20	20	30	25	35
Res.C	20,000 (6.A.5)	150	75	40	20	20	35	30	35
Bus.	N/A	100	50	15	15	15	80	30	35
Ind.	N/A	100	50	50	50	50	65	30	35

**6.A.1. REDUCED FRONTAGE LOT SPECIAL PERMIT.** The Planning Board may authorize a Reduced Frontage Lot in the Residential A, B, and C Districts pursuant to the grant of a Special Permit subject to the following criteria:

*[Section 6.A.1. amended by Amendment effective May 3, 2012 by vote of Annual Town Meeting, Article 20, and approved by the Attorney General on August 30, 2012 and posted according to law on September 7, 2012]*

#### **a. Table of Dimensional Control for Reduced Frontage Lots**

District	Min. Lot Area In feet	Lot Frontage In feet (6.A.9.)	Percent of Required Lot area as Contiguous and Buildable (6.A.2.)	Min. Front Yard In feet (6.A.4.)	Min. Side Yards In feet (6.A.4.)	Min. Rear Yard In feet (6.A.4.)	Max. Lot Cover- age %	Max. Bldg. Cover- age %	Max. Height in feet (6.A.3.)	Diameter of Circle In feet (6.A.1.c.)
Res. A	160,000	100	75	40	40	40	30	20	35	200
Res. B	80,000	100	75	40	40	40	30	25	35	200

Res. C	40,000	100	75	40	20	20	35	30	35	150

- b. Frontage must be continuous on a public or approved way.
  - c. The lot shall have at least one area that can accommodate a circle with a diameter as indicated in Table 6.A.1.a.
  - d. Not more than two Reduced Frontage Lots shall have abutting frontage.
  - e. Reduced Frontage Lots shall not block future extensions or connections of a dead-end street.
  - f. A Reduced Frontage Lot created by Special Permit shall not be further subdivided, reduced in area, and/or changed in size or shape. The Planning Board shall require a recorded Deed Restriction setting forth this restriction in perpetuity.
  - g. Applications for Reduced Frontage Lot Special Permit are exempt from the requirement of Section 8.B., Site Plan Review.
  - h. A Reduced Frontage Lot shall not interfere with the use and enjoyment of an abutting lot, and shall not adversely affect the neighborhood.
- 6.A.2. No lot shall have less than the required lot area as contiguous and buildable land as required by Section 6.A Table of Dimensional Controls. Wetlands as described by M.G.L. Chapter 131 and slopes in excess of 20% shall not be considered as buildable land for the purpose of calculating square footage.
- 6.A.3. No buildings, except accessory farm buildings, may have more than 2.5 stories within 35' as measured from the mid-point between the eaves and the ridge from the mean elevation or average grade where the foundation meets the soil.. However, chimneys, antennae with support structure for personal use, and flagpoles use may extend above the height limits proscribed in Section 6.A. Further, architectural elements not used for human occupancy and not exceeding ten feet in height and whose area is less than 10% of the principal building footprint, shall also be permitted to exceed the height limitations of Section 6.A.

*[Section 6.A.4.revised by Amendment effective October 27, 2014 by vote of Special Town Meeting, Article 11. and approved by the Attorney General on January 15, 2015, and posted according to law on January 21, 2015]*

#### 6.A.4.

The requirements for front yard, rear yard, side-yard, shall apply to the principal building and all accessory buildings and structures on a lot except for stairs, uncovered porches of less than thirty-two (32) square feet, windows or accessory buildings that are less than ten (10') in height and less than 120 square feet in total area.

*[Section 6.A.5.revised by Amendment effective October 27, 2014 by vote of Special Town Meeting, Article 12. and approved by the Attorney General on January 15, 2015, and posted according to law on January 21, 2015 ]*

#### 6.A.5.

For uses requiring a Special Permit in the Residence A, B, and C Districts, the minimum Lot Area shall be 60,000 square feet and the minimum Front, Side and Rear Yard Requirements shall be at least 50 feet.

- a. This requirement shall not apply to the following Special Permits, due to the nature of the Special Permit:

Flood Plain Special Permit (§5.D.)  
Siren or Public Alert & Notification Systems (§5.E.)  
Common Driveways (§7.D.)  
Groundwater Protection Overlay District (§10.)

- b. This requirement shall not apply to the following Special Permits, which have established minimum lot area and/or yard requirements:

Dwellings Containing Not to Exceed Four Units (5.A.4.a.)  
Reduced Frontage Lots (§6.A.1.)  
Assisted Living Facility (§7.E.)  
Personal Wireless Service Facilities (§9.)  
Wind Monitoring or Meteorological Tower (§11.)  
Wind Facilities (§12.)

- c. This requirement shall not apply to other Special Permit uses which are specifically exempted in the Zoning Bylaw.

6.A.6. Lot Shape and Width. The width of a lot shall be equal to at least ninety (90) percent of the required frontage at the front yard set back, and further at no point shall the distance between lot lines be less than forty (40) feet

6.A.7. Lots in Two Districts. Where a boundary line divides a lot in single ownership the regulations for the district in which the majority portion of the lot is situated shall apply, except that in no instance shall residentially zoned land be used for commercial parking purposes. Also, in no instance shall access to commercial uses be permitted over residentially zoned land.

6.A.8. *[Deleted by Amendments effective October 25, 2010 by vote of Special Town Meeting and approved by the Attorney General on February 22, 2011 and posted according to law on February 24, 2011]*

6.A.9. Frontage must provide access to the lot from the right of way counted for frontage unless otherwise approved by the Planning Board on a Definitive Plan submitted in accord with Chapter 41, General Laws or approved by the Planning Board in the same manner as a Definitive Plan. When a lot or lots has a minimum required frontage pursuant to the West Newbury Zoning Bylaw (or relief from such) on a street and there are no physical impediments for a vehicle to physically pass over the legal frontage onto the lot, the Planning Board may determine that there is adequate access. A valid Order of Conditions pursuant to MGL Ch. 131 from the Conservation Commission allowing the crossing of a wetland to access a lot is sufficient for the Board to make this finding.

## **SECTION 6.B. OPEN SPACE PRESERVATION DEVELOPMENT**

*[As amended under Article 16 of the April 28, 2008 Special Town Meeting, effective April 28, 2008, approved by the Attorney General on May 29, 2008 and posted according to law on June 17, 2008.]*

### **6.B.1 Purpose and Intent.**

The primary purposes for Open Space Preservation Development (OSPD) are the following:

- a. To allow for greater flexibility and creativity in the design of residential developments.
- b. To encourage the permanent preservation of open space agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies, wetlands, scenic vistas, slopes and hillsides, and historical and archeological resources in a manner that is consistent with the West Newbury Comprehensive and Open Space Plans.
- c. To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision.
- d. To provide density bonus incentives to encourage modestly sized housing units and affordable housing in order to further the goals and policies of the Town's Affordable Housing Plan.
- e. To minimize the total amount of disturbance on the site.
- f. To further the goals and policies of the West Newbury Comprehensive Plan and the West Newbury Open Space Plan.
- g. To facilitate the construction and maintenance of housing, streets, utilities and public service in a more economical and efficient manner.

### **6.B.2. The Secondary Purposes for the OSPD are the following:**

- a. To preserve and enhance the community character.
- b. To preserve and protect agriculturally significant land.
- c. To protect the value of real property,
- d. To protect community and regional water supplies.
- e. To provide for a diversified housing stock
- f. To provide affordable housing to persons of low and moderate income.

### **6.B.3. Applicability**

- a. There is no minimum tract size for an OSPD. The OSPD -Special Permit is an option for any proposed residential development.

*[Subsection Heading amended and Subsection b. deleted under Article 19. of the April 29, 2013 Annual Town Meeting, effective April 29, 2013, approved by the Attorney General on June 14, 2013 and posted according to law on June 26, 2013.]*

- b. Zoning Classification. Only those tracts located in Residential Districts A,B, or C shall be eligible for consideration as an OSPD.
- c. Contiguous Parcels. To be eligible for consideration as an OSPD, the tract shall consist of a parcel or set of contiguous parcels held under common ownership or site control.
- d. Land Division. To be eligible for consideration as an OSPD, the tract may be a subdivision or a division of land pursuant to G.L. c.41,s.81 P, provided, however, that OSPD may also be permitted where intended as a condominium on land not so divided or subdivided.

#### 6.B.4. Special Permit Required.

The Planning Board may authorize an OSPD pursuant to the grant of a Special Permit. No additional special permit approvals are required for all uses permitted under the OSPD special permit. Such special permits shall be acted upon in accordance with the requirements listed in Section 8.A. of the Zoning Bylaw and the following provisions.

#### 6.B.5. Pre-Application Conference.

- a. Conference. The applicant is very strongly encouraged to request a pre-application conference at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Open Space Committee, Inspector of Buildings and Water Department. The purpose of a pre-application conference is to minimize the applicant's cost of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage of development. At the pre-application conference, the applicant may outline the proposed conceptual Sketch Plan and Yield Plan (as outlined in subsection 6.B.7.a.i) and 6.B.8), seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. At the request of the applicant, and at the expense of the applicant, the Planning Board may engage technical experts to review the conceptual plans in order to facilitate submittal of a formal application for an OSPD Special Permit.
- b. The plan submitted shall be consistent with the rules and regulations listed in Section 6.B.7 relative to the size, form, number and contents of the plans to be submitted for a pre-application conference.

#### 6.B.6. Design Process.

In conformance with Section 6.B.7.a), applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a registered Landscape Architect and considered in determining the layout of proposed streets, house lots and open space. The Design Process shall be reflected on the Sketch Plan in accordance with Section 6.B.7 i).

- a. Step One: Identifying the Conservation Areas. The conservation areas shall be identified by two steps. First, “*Primary Conservation Areas*” (such as wetlands, riverfront areas, and

floodplains regulated by state or federal law) and “*Secondary Conservation Areas*” (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archeological sites as well as scenic views and stone walls) shall be identified and delineated on the Sketch Plan. Second, the “*Potentially Developable Area(s)*” will be identified and delineated on the Sketch Plan. To the maximum extent feasible, the Potentially Developable Area(s) shall consist of land outside identified Primary and Secondary Conservation Areas.

- b. Step Two: Locating the House Sites. Locate the approximate sites of individual residential structures within the Potentially Developable Area(s) and include the delineation of private yards and shared amenities, so as to reflect an integrated community with emphasis on consistency with West Newbury's historical character and development patterns. The number of residential structures enjoying the amenities of the development should be maximized.
- c. Step Three: Aligning the Streets and Trails. Align streets in order to access the residential structures. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks and trails.
- d. Step Four: Lot Lines. Draw in the lot lines.

6.B.7. Procedures.

*[Amended by vote of the Annual Town Meeting, second session, on May 6, 2009, approved by the Attorney General on August 11, 2009 and posted according to law on August 20, 2009]*

- a. Application. An application for an OSPD - Special Permit (OSPD-SP) shall include a “*Sketch Plan*” and a “*Yield Plan*” (see the Yield Plan requirements listed in Section 6.B.8). The Planning Board shall adopt rules and regulations relative to the size, form, number and contents of the sketch plan and yield plan.
  - i) Sketch Plan. The Sketch Plan shall be prepared by a registered Landscape Architect, or by a multi-disciplinary team of which one member must be a registered Landscape Architect, and shall address the general features of the land, give approximate configurations of the lots, open space and roadways, and include the information listed in Planning Board Rules and Regulations. When determining a proposed design for the development, the Sketch Plan shall incorporate and show the Four-Step Design Process listed in Section 6.B.6. and the Design Standards according to Section 6.B.11.
- b) Relationship to a Definitive Subdivision Plan. The issuance of an OSPD–SP allows the applicant to also submit an OSPD–SP /Definitive Subdivision Plan, where required, to the Planning Board. Any OSPD–SP issued by the Planning Board shall specifically state the OSPD–SP/Definitive Subdivision Plan shall substantially comply with the OSPD–SP.
  - i) An OSPD–SP/Definitive Subdivision Plan will be considered not to substantially comply with the OSPD–SP if the Planning Board determines that any of the following conditions exist:
    - a) an increase in the number of building lots;
    - b) a significant decrease in open space acreage;
    - c) a significant change in the lot layout;
    - d) a significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
    - e) significant changes to the stormwater management facilities; and/or

- f) significant changes in the wastewater management systems.
  - ii) If the Planning Board determines that the OSPD–SP/Definitive Subdivision Plan does not substantially comply with the OSPD–SP, the Board may disapprove the definitive subdivision plan for failure to comply with the condition of the Special Permit requiring that the OSPD–SP/Definitive Plan substantially comply with the OSPD–SP.
  - iii) The Planning Board may conditionally approve an OSPD–SP/Definitive Subdivision Plan that does not substantially comply with the OSPD–SP. However, such conditional approval must identify where the plan does not substantially comply with the OSPD–SP and shall require that the OSPD–SP be amended to be in compliance with the significant changes identified by the Planning Board. The Planning Board shall also require that the applicant file an application to amend the OSPD–SP within a specified time period.
  - iv) The public hearing on the application to amend the OSPD–SP shall be limited to the significant changes identified by the Planning Board in their conditional approval of the OSPD–SP/Definitive Subdivision Plan. These are the only considerations that the Planning Board may take into account in deciding whether to amend the OSPD–SP.
- c. General Procedures. Whenever an application for a OSPD–SP is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plan, and other documentation to the Board of Health, Conservation Commission, Inspector of Buildings, Water Department, Police Chief, Fire Chief and Superintendent of Roads for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board within thirty (30) days of receipt of the reviewing parties of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty (30) day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty (30) day period. The Decision of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.
- d. Site Visit. Whether or not conducted during the pre-application stage, the Planning Board may conduct a site visit during the public hearing. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or its agents.
- e. Design and Construction Standards. In addition to the development and performance standards listed under Section 8.B. Site Plan Review, the design and construction standards listed in Sections 4-6 of the *Rules and Regulations Governing the Subdivision of Land, West Newbury, MA* shall be applied in the review and approval of an OSPD–SP.
- f. Other Information. 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. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for any application for a special permit for an OSPD with the public hearing required for approval of a Definitive Subdivision Plan or Site Plan Review.

6.B.8. Basic Maximum Number and Yield Plan

*[Subsection 6.B.8. amended October 26, 2015 by vote of Annual Town Meeting, Article 9, approved by the Attorney General on February 8, 2016 and posted according to law on March 21, 2016]*

- i) The Yield Plan shall show the maximum number of single family dwelling units that would be deemed buildable upon the site under a conventional development plan process according to a reasonable application of the Rules and Regulations Governing the Subdivision of Land in the Town of West Newbury and all other applicable state and local land use regulations. At a minimum, the Yield Plan shall show the proposed land use, lot configuration, street layout, building envelopes, setbacks, conceptual grading, wetland resource areas and the general location of all drainage and utility systems.
- ii) The applicant shall provide information related to the proposed yield, including but not limited to, an approved wetland resource area delineation or soil testing reports and one (1) deep observation hole or one (1) percolation test report per single family dwelling unit in accordance with Title 5 requirements. The Board may also request review of the Yield Plan from the Board of Health and/or Conservation Commission prior to determining the maximum number of lots or dwelling units that could be placed upon the site.
- iii) The Planning Board will determine the Basic Maximum Number based upon information provided under Sections 6.B.8.i. & 6.B.8.ii. above. *[Subsection 6.B.8.iii. amended April 29, 2019 by vote of Annual Town Meeting, Article 27, approved by the Attorney General on July 18, 2019 and posted according to law on July 18, 2019]*

6.B.9. Dimensional Requirements. Lot size, shape and other dimensional requirements for lots within an OSPD may be modified from the requirements of Section 6.A, subject to the following limitations:

- a. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSPD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this Bylaw.
- b. At least fifty percent (50%) of the required setbacks for the district shall be maintained on lots within the OSPD unless a reduction is otherwise authorized by the Planning Board, except that no building may be built within ten (10) feet of the front lot line.

*[Subsection 6.B.9. amended April 29, 2019 by vote of Annual Town Meeting, Article 27, approved by the Attorney General on July 18, 2019 and posted according to law on July 18, 2019]*

6.B. 10. Open Space Requirements.

- a. Protected Open Space. A minimum of sixty percent (60%) of the tract shown on the development plan shall be designated protected open space. Any proposed protected open space, unless conveyed to the Town or its Conservation Commission for conservation purposes, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

- i) The percentage of the protected open space that is wetlands shall not exceed the percentage of the tract which is wetlands at the time of application; provided, however, that the Board may allow a greater percentage of wetlands in the protected open space upon a demonstration that such inclusion promotes the purposes of this Bylaw.
  - ii) The protected open space shall be contiguous and may be considered contiguous if it is separated by a roadway or an accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing non-contiguous open space will promote the goals of this Bylaw and/or protect identified primary and secondary conservation areas. *[Subsection 6.B.10.a.ii. amended April 29, 2019 by vote of Annual Town Meeting, Article 27, approved by the Attorney General on July 18, 2019 and posted according to law on July 18, 2019]*
  - iii) The protected open space may only be used for one or more of the following uses: wildlife habitat and conservation; historic preservation; education; outdoor education; recreation; park purposes; agriculture' horticulture' forestry' or a combination of these uses and shall be served by suitable access for such purposes. The Planning Board may permit a small portion of the protected open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths).
  - iv) Except for agricultural or recreational uses, all protected open space areas that restrict use or access from all members of the homeowners association or the general public shall not be included in the calculation of protected open space under this Section. All outdoor restricted use areas for individual dwelling units shall be shown on the OSPD-SP Plan.
  - v) Wastewater and stormwater management systems serving the OSPD may be located within the protected open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required. Wastewater and stormwater management systems serving the OSPD that offer a natural and aesthetic appearance and are constructed to be a natural feature such as a wetland or pond with ecological qualities and/or assets may qualify towards the minimum protected open space area.
- b. Ownership of the Protected Open Space. The protected open space shall, at the Planning Board's election, be conveyed in fee or easement to the following:
- i) the Town or its Conservation Commission;
  - ii) 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;
  - iii) a corporation or trust owned jointly or in common by the owners of lots within the OSPD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and,

if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

6.B.11. Design Standards. The following Generic and Site Specific Design Standards shall apply to all OSPDs and shall govern the development and design process.

a. Generic Design Standards.

- i) The landscape shall be preserved in its natural state, insofar as practicable, by minimizing the removal of healthy tree, shrub and other natural vegetation. Removal of soils should also be minimized. The grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, healthy tree cover, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.
- ii) Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks and trees in order to minimize cuts and fills and to preserve and enhance views and vistas on or off the subject property.
- iii) The density and design of the development shall be related harmoniously to the terrain on the property as well as the, use(s), scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings.
- iv) All open space (landscape and useable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.
- v) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or any adjacent properties.

b. Site Specific Design Standards.

- i) Mix of Housing Types. The OSPD may consist of any combination of single family, two-family, or multi-family residential structures. Except for congregate care or age-restricted developments (restricted to occupants over the age of fifty-five (55) years), a multifamily structure shall contain not more than four dwelling units. In congregate care or age-restricted buildings, the Planning Board may permit more units per structure where it is determined that allowing a larger structure will promote the goals of this Bylaw and/or protect the identified primary and secondary conservation areas. To the maximum extent feasible, all residential structures shall be oriented toward the street serving the premises and not the required parking area.
- ii) Parking. Unless waived by the Planning Board due to a reduced parking demand as demonstrated through a detailed traffic impact study, each dwelling unit shall be served by

two (2) off-street parking spaces. Parking spaces in front of garages may count in the computation. All parking areas with greater than four (4) spaces shall be screened from view.

- iii) Buffer Areas. Vegetation in the buffer areas described below shall not be disturbed, destroyed or removed, except for normal maintenance of structures and landscapes approved as part of the project. The buffer area may be included in the calculation of protected open space. All driveways necessary for access and egress to and from the tract may cross such buffer areas but shall not be included in the calculation of protected open space. The Planning Board may waive the buffer requirement in these locations when it determines that a smaller buffer (or no buffer) will suffice to accomplish the objective set forth herein.

Except for access, utilities and drainage systems, buffer areas shall be provided as follows:

- a) At the perimeter of the property:

<u>Zoning District</u>	<u>Minimum Buffer</u>
Residence A	100 feet
Residence B	75 feet
Residence C	50 feet

- b) Certain resource areas on the tract like ponds, wetlands, streams and riverfront areas, rock outcrops, ledge, agricultural or recreational fields, and land held for conservation purposes shall have a minimum buffer area of twenty-five (25) feet. Buffer areas as described in this section shall be used for Planning Board determinations only and shall not affect determinations or requirements of other authorities.

*[Subsection 6.B.11.b.iii. amended April 29, 2019 by vote of Annual Town Meeting, Article 27, approved by the Attorney General on July 18, 2019 and posted according to law on July 18, 2019]*

- iv) Distance between residential buildings shall be no less than 20 feet. *[New subsection 6.B.11.b.iv. added and subsequent sections renumbered April 29, 2019 by vote of Annual Town Meeting, Article 27, approved by the Attorney General on July 18, 2019 and posted according to law on July 18, 2019]*

- v) Drainage. The Planning Board shall encourage the use of "soft" (non structural) stormwater management techniques (such as swales) and other drainage techniques that reduce impervious surface and enable infiltration where appropriate.

- vi) Common/Shared Driveway. A common or shared driveway may serve a maximum of three dwelling units.

- vii) Screening and Landscaping. All areas within the site that are designated on the plan for screening or landscaping shall be accompanied by a stamped landscape plan prepared by a Registered Landscape Architect.

- viii) On-site Pedestrian and Bicycle Circulation. Walkways and bicycle paths shall be provided to link residences with parking areas, recreation facilities (including parkland and open space) and adjacent land uses where appropriate.

6.B.12. Decision of the Planning Board. The Planning Board may grant a special permit for an OSPD if it determines that the proposed OSPD has less detrimental impact on the tract than a conventional development proposed for the tract, after considering the following factors:

- a. Whether the OSPD achieves greater flexibility and creativity in the design of residential developments than a conventional development plan;
- b. Whether the OSPD promotes permanent preservation of open space, agricultural land forestry land, other natural resources including waterbodies and wetlands, and historical and archeological resources;
- c. Whether the OSPD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional development plan;
- d. Whether the OSPD reduces the total amount of disturbance on the site compared to a conventional development plan;
- e. Whether the OSPD furthers the goals and policies of the Open Space Plan and/or the Comprehensive Plan;
- f. Whether the OSPD facilitates the construction and maintenance of streets, utilities and public service in a more economical and efficient manner;
- g. Whether the OSPD Plan and its supporting narrative documentation complies with all sections of this Zoning Bylaw.

6.B. 13. Increases in Permissible Density. After reviewing the design standards listed in subsection 6.B.11 and the factors listed in subsection 6.B.12, the Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. Any density bonus units approved under this section shall also comply with the Town's Inclusionary Zoning Bylaw.

The density bonus for the OSPD shall not, in the aggregate, exceed fifty percent (50%) of the Basic Maximum Number. Computations shall be rounded to the lowest number. A density bonus may be awarded by the Planning Board in each of the following circumstances:

- a. Protected Open Space: For each additional five percent (5%) of the site (over and above the required sixty percent (60%) set aside as open space, a bonus of one (1) lot or unit may be awarded; provided, however, that this density bonus shall not exceed twenty percent (20%) of the Basic Maximum Number.
- b. Detached Single Family Cottage Units: For every detached single family dwelling unit that has less than 1,500 SF in finished gross floor area with up to three-bedrooms, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed twenty percent (20%) of the Basic Maximum Number.
- c. Accessory Dwelling Units: For every one (1) accessory dwelling units that has no more than 1,000 SF in finished gross floor area with up to two bedrooms, two (2) dwelling units may be added as a density bonus; provided, however, that this density bonus shall not exceed twenty percent (20%) of the Basic Maximum Number. Accessory dwelling units may be permitted within accessory structures such as upper floors of garages, carriage houses or barns as well as within a two-family or multi-family structures.

- d. Affordable Housing Units:
- i. The number of Affordable Housing Units required under Section 5.F.4. shall be derived by taking the number of new housing units of Section 5.F.4. as equal to the Basic Maximum Number determined by the Planning Board under Section 6.B.8.
  - ii. For each Affordable Housing Unit in excess of those required by Section 5.F.4 and meeting the definition of an Affordable Housing Unit per Section 5.F.2.b), the Planning Board may award a density bonus of three (3) similarly designed dwelling units; provided, however, that this density bonus shall not exceed fifty percent (50%) of the Basic Maximum Number.

*[Subsection 6.B.13.d. amended April 29, 2019 by vote of Annual Town Meeting, Article 27, approved by the Attorney General on July 18, 2019 and posted according to law on July 18, 2019]*

- e. Historic Preservation: For any historically significant building or structure that records a permanent preservation restriction under GL 184, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed ten percent (10%) of the Basic Maximum Number. The Planning Board shall determine whether such building or structure is historically significant. To be deemed historically significant such building or structure shall meet at least one of the following:
- (a) any principle building or structure within the Town which is in whole or in part seventy-five (75) or more years old;
  - (b) any accessory structure one-hundred (100) or more years old; or
  - (c) any building or structure which is listed on the National Register of Historic Places.

See Appendix 2. for summary table showing examples of bonus unit calculations. *[Appendix 2 added on April 29, 2019 by vote of Annual Town Meeting, Article 27, approved by the Attorney General on July 18, 2019 and posted according to law on July 18, 2019]*

## **SECTION 7. CONDITIONS FOR USE**

### **7.A. PERFORMANCE STANDARDS**

#### **7.A.1. Administration and Interpretation**

All proposed uses of buildings, lots or premises within any District after the passage of this ordinance shall conform to the following:

- a. The applicant, at his own expense, shall furnish evidence sufficient to satisfy the Inspector of Buildings that the proposed use of the building or premises will not produce any nuisances beyond the lot lines as measured by the performance standards listed below or as existing in comparable operations allowed in the District.
- b. Any nuisance produced in excess of the standards permitted below or any other nuisance found after public hearing to be excessive shall be reduced to acceptable standards or discontinued.

#### **7.A.2. Building Construction**

- a. All buildings shall be of construction prescribed in the State Building Code. No building permit shall be granted unless the application for such permit is filed in accord with the Building Code.

#### **7.A.3. Air Pollutants**

- a. Except as is herein provided, all use and conditions of land, buildings and structures shall be in conformance with the Regulations 310 CMR 6.00-8.00 of the Environmental Department Quality Engineering, Commonwealth of Massachusetts, December 31, 1981 and amendments thereto.

#### **7.A.4. Noise**

- a. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness, and as measured at any property line of the lot shall not exceed the following intensity in relation to sound frequency during the hours between eight (8) P.M. and seven (7) A.M.:

<u>Frequency. Cycles Per Second</u>	<u>Maximum Sound Level. Above Zero Decibels Permitted*</u>
0 to 74	74
75 to 149	59
150 to 299	52
300 to 599	46
600to 1199	42
1200 to 2399	39
2400 to 4799	36
4800 to —	33

\*According to the following formula: Sound Pressure Level in Decibels equals  $10 \log P_1/P_2$  where  $P_2$  equals 0.0002 dynes/cm<sup>2</sup>.

- b. Such sound levels shall be measured with a sound level meter and octave band analyzer approved by the United States of America Standards Institute.
- c. Noise making devices which are maintained and are utilized strictly to serve as warning devices are excluded from these regulations.

#### 7.A.5. Heat, glare, vibration and radiation

- a. No heat, glare or vibration shall be discernible without instruments from the outside of any structure, and no nuclear radiation shall be discernible from the outside of the structure with or without instruments.
- b. *[Deleted by Amendments effective October 25, 2010 by vote of Special Town Meeting and approved by the Attorney General on February 22 , 2011 and posted according to law on February 24 , 2011]*

#### 7.A.6. Odor. Emissions from plant sites or other sources as measured at the user's property line shall not exceed the established threshold limit values for odors as outlined in T.M.Hellman and F.H. Small, Journal Air Pollution Control Association, 24(10), 979-982, (1974); and amendments thereto added by the Manufacturing Chemists Association, Inc., Washington, D.C.

#### 7.A.7. Exterior Lighting

- a. No exterior lighting, other than street lighting approved by the Selectmen, shall shine on adjacent properties or towards any street.
- b. Exterior illumination of buildings or grounds in Residential Districts, except as may be permitted for required parking areas, shall:
  - i) Be permitted only for non-commercial uses open to the public, such as a church or playground; and
  - ii) Shall be shown on a site plan approved by the Inspector of Buildings.
- c. Any lighting shall be continuous and non-flashing.

#### 7.A.8. Storage. All materials, supplies and equipment shall be stored in accord with the Fire Prevention Standards of the National Fire Protection Association and shall be screened from view from public ways or abutting properties.

7.A.9. Waste disposal, water supply and water quality. Regulations of the State Department of Public Health shall be met and when required, approval shall be indicated on the approved site plan. In no case shall discharge, whether effluent or other pollutant, cause the waters of the receiving body, consisting of either surface or ground water, to exceed the limits of pollution assigned by the Commonwealth of Massachusetts Water Resources Commission, Division of Water Pollution Control as published and entitled "Water Quality Standards", filed with the Secretary of State on September 21, 1987.

7.A.10. Hazardous materials

- a. All hazardous materials used, created, stored, processed disposed of by processing, diluting, burying or containment, leaching or any other manner, or transported including piping in the Town of West Newbury shall be used, created, stored, processed, disposed of or transported in accord with all applicable federal, state and local regulations.
- b. A notice for use, creation, storage, processing, disposal or transport shall be filed with the Board of Selectmen, the Police Chief and the Inspector of Buildings on such form as they shall require. Notification shall include, as a minimum, identification of material, the amount involved, the process, if any, the place of storage, the routes of transport, carrier and conveyance, if any. The Board may require a bond to be posted to cover any and all possible damage to persons, property and environment.
- c. All radioactive materials, including but not limited to low level radioactive materials, used or transported in the Town of West Newbury shall in addition to the requirements in Sections 7.A.10.a. and 7.A.10.b. require a special permit to be granted by the Board of Selectmen after a public hearing subject to such conditions and limitations as it shall establish, which shall relate to but not be limited to an emergency plan, approved by the Board of Selectmen and the Police Chief.

7.A.11. Erosion control and stormwater management. Whenever the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of water to or from abutting properties, and shall be suitably landscaped. No building permit may be issued for any development that would cause disturbance of more than 1 acre, as determined by the Inspector of Buildings, without a Construction Phase Erosion and Sediment Control Plan and a Stormwater Management Plan that demonstrate compliance with the Massachusetts Stormwater Standards (2008 or as further updated) and the Massachusetts Stormwater Handbook (2008 or as further updated).

*[Section 7.A.11. amended April 29, 2019 by vote of Annual Town Meeting, Article 29, and approved by the Attorney General on July 18, 2019 and posted according to law on July 18, 2019]*

7.A.12. Dish antennae. Accessory dish antennae shall be located in the rear yard of all structures, shall be set back at least the minimum setback distance listed in the table in Section 6.A. from all property lines, principal buildings and accessory buildings, and shall not have a diameter greater than one-third (1/3) of the required rear yard.

7.A.13. Electrical interference. No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

7.A.14. Access. All driveways cuts shall be approved by the Board of Selectmen, and all driveways, except for those one (1) family dwellings, shall be constructed to the specifications for road surface and drainage required for minor streets by the subdivision regulations of the Town of West Newbury.

7.A.15. Landscaping

- a. All land not covered by buildings, roads, drives, walkways or recreation facilities shall be left in a natural state, cultivated, or landscaped with indigenous plantings or grass.
- b. Where a non-residential use abuts a Residence A, B or C District, there shall be a buffer strip of at least ten (10) feet planted with a tree or shrub screen shown on and approved with the site plan in accord with Section 8.B.

**7.B. OFF-STREET PARKING AND LOADING**

7.B.1. Parking and loading spaces

- a. For uses permitted by this by-law adequate off street parking and loading spaces shall be provided for daily and/or customary uses in connection with the use.
- b. When a site plan is required, spaces shall be shown on the plan and approved with the plan as to number and location.

7.B.2. Design, construction and maintenance of off-street parking and loading spaces. All spaces, except those for one family dwellings, shall be designed, constructed and maintained in accord with the Regulations of the Planning Board of the Town of West Newbury Governing the Design, Construction and Maintenance of Off-Street Parking and Loading Areas, March 22, 1982.

**7.C. SIGNS**

*[Amended by vote of the Annual Town Meeting on April 24, 2017, approved by the Attorney General on August 7, 2017 and posted according to law on August 23, 2017]*

7.C.1. Purpose - The purpose of this Bylaw Section is as follows:

- A. To preserve and enhance the natural, scenic, historical, cultural, and aesthetic qualities of the Town of West Newbury.
- B. To ensure the safety and general welfare of motorists and pedestrians.

7.C.2. Definitions

- A. Legally Existing Prior Nonconforming Signs - A non-abandoned sign, existent when these bylaws became effective that does not meet the requirements of this bylaw, but that complied with the existing bylaws and regulations at the time the sign was erected.
- B. Nonconforming Sign - A sign that does not comply with this bylaw and which is also not a legally existing, nonconforming sign.
- C. Off-Premises Sign - A sign related to any type of event, product, business, service, etc. which

is not held on, conducted on, or sold on the premises where the sign is located.

D. Permanent Signs

1. Freestanding Sign - A sign affixed to a structure whose sole purpose is to support the sign.
2. Attached Sign - Any sign that is attached to, erected on or supported by a building.

E. Portable A Frame Sign - An "A-frame" shaped sign that identifies or advertises a place of business and that consists of two sign boards that are hinged together at the top.

F. Private Sign - A sign that is not a public sign.

G. Public Sign - A sign authorized, erected, and maintained by the Town or the Commonwealth or other public agencies.

H. Roofline - A horizontal line located at the highest point of a roof exclusive of antennas, cupolas, or other appendages that may protrude from the roof structure.

I. Sign

1. Refer to Section 2. of the Zoning Bylaw for the definition of a sign.
2. Exceptions - The following devices shall not be considered signs within the context of this bylaw:
  - a) Non-commercial historical markers, memorial plaques, and building names.
  - b) Flags and insignia of governmental jurisdictions when displayed for non-commercial purposes
  - c) Seasonal, non-commercial banners
  - d) On premise devices guiding and directing traffic and parking which bear no advertising.
  - e) Legal notices such as "No Trespass", "No Soliciting" and "Private Way" signs and building numbers.
  - f) Informational devices required by public agencies.
  - g) Standard gasoline pumps bearing thereon in usual size and form, the name, type and price of gasoline.

J. Sign Area - The area of the smallest horizontally or vertically oriented rectangle which could enclose the display area of the sign, exclusive of structural members not bearing advertising matter.

K. Temporary Sign

1. A commercial or non-commercial sign relating to any event, activity or business operation which is not of a continuing or regularly recurring nature.
2. Portable A frame and similar signs shall be considered temporary signs. Examples include, but are not limited to, sales, special events, seasonal businesses or changes in the nature of an operation.
3. Window Sign—A sign located in the interior of a building, usually at a window or door, intended to convey information to the public outside the building.

L. Uses

1. Commercial - A use intended to promote any for-profit event, activity, or business operation.
2. Non-commercial - A use not intended to promote any for-profit event, activity, or business operation.

7.C.3. Authorities

A. Inspector of Buildings—Sign permits are issued by the Inspector of Buildings.

B. Special Permit Granting Authority

1. For purposes of this Article, the Zoning Board of Appeals shall be the Special Permit Granting Authority.
2. The Special Permit Granting Authority shall adopt rules and regulations including, but not limited to, fees, procedures, methods, and removal of noncomplying signs and shall make them available at the Town Clerk's Office.

7.C.4. General Regulations

The following regulations apply to all districts unless a district is specifically mentioned.

A. Permits

1. No sign shall be erected, enlarged, or structurally altered without a sign permit issued by the Inspector of Buildings, except as provided for in this bylaw. See Sections 7.C.4.E, 7.C.4.I, 7.C.4.J, and 7.C.4.K of this bylaw.
2. Sign permits shall be issued only for signs conforming to this Article.
3. Sign permit applications shall be accompanied by two prints of scale drawings of the sign, supporting structure, source of illumination, and location.
4. Each application with respect to a sign to be located within an Historic District must be accompanied by a Certificate of Appropriateness from the Historic Districts Commission. A copy of any relevant Special Permit shall also accompany this type of application.
5. The Inspector of Buildings shall issue a sign permit for the erection and maintenance of a sign or signs or deny the issuance thereof within thirty (30) days of the date on which the application for a permit was received.
6. In the event that a sign permit has been denied, the Inspector of Buildings shall state the reason for said denial.
7. If the Inspector of Buildings fails to take the appropriate action within the above stated period, the sign permit shall be deemed to have been issued, and the Town Clerk shall issue a certificate of constructive approval of the application.

B. Materials and Maintenance - Permanent signs shall be constructed of durable materials and shall, together with their structural elements, be maintained in a safe and neat condition to the satisfaction of the Inspector of Buildings.

C. Illumination

1. Temporary signs shall not be illuminated in any way.
2. No signs shall be internally lit and no sign shall use luminous letters or symbols.
3. No sign shall be lit externally, except by white, continuous, stationary lights, shielded and directed solely at the sign.
4. Lights used to illuminate signs must be of sufficiently low intensity and brightness so as not to affect the safe vision of operators of vehicles moving within the premises or on adjacent public or private ways and so as not to negatively impact abutting residential uses.
5. No sign shall be illuminated between the hours of 11:00 p.m. and 6:00 a.m. unless an establishment is open to the public during these hours.

D. Legally Existing Prior Nonconforming Signs

1. Such signs may continue to be used, maintained, and repaired hereafter unless abandoned.
2. Such signs may not be replaced by a new nonconforming sign without a Special Permit

- from the Special Permit Granting Authority.
  - 3. Such signs shall not be altered in shape or dimension unless brought into conformity.
  - 4. A change of use requires that such signs be brought back into conformity.
- E. Exempt Uses
- Signage for Exempt Uses pursuant to Section 4.B of this Bylaw and Section 3 of Chapter 40A of the General Laws as amended may be subject to reasonable regulations such as bulk and height. Examples of exempt uses include certain religious, educational and agricultural uses.
- F. Abandonment
- 1. Signs not repaired within ninety (90) days after notice given by the Inspector of Buildings shall be considered abandoned.
  - 2. Signs that advertise for or call attention to an abandoned establishment or any products, businesses or activities which are no longer carried on or sold on the premises shall be considered abandoned.
  - 3. Abandoned signs shall be removed by the owner within sixty (60) days after notice given by the Inspector of Buildings.
- G. Location
- 1. Private signs shall not be affixed to public property including but not limited to utility poles, fences, trees, traffic signs, light posts, flag poles, or columns except with the approval of the Board of Selectmen or other entity having jurisdiction over such public property.
  - 2. Private signs shall not be located within or project into or over a public right of way except with Board of Selectmen approval.
  - 3. Signs shall not project above the roofline of the building to which it is attached.
  - 4. Motor vehicles or trailers whose primary purpose is to act as a sign may not be parked along streets or the highway and may not be stationed on property in a location readily visible to the public.
  - 5. Signs shall not be erected in a manner that impairs visibility of the road or of traffic control signs.
  - 6. Off-Premises Signs for a business, service, product, or event which is located within West Newbury shall not be erected except upon the issuance of a Special Permit by the Special Permit Granting Authority in accordance with these General Regulations and except for temporary signs as discussed below. Said signs must serve a reasonable public purpose and be consistent with the purpose of this bylaw.
  - 7. Off-Premises Signs for a business, service, product, or event which is located outside of West Newbury are prohibited except for temporary signs as discussed below.
- H. Animation
- 1. Signs shall not wave, oscillate, revolve, flash, or operate with movable parts except for:
    - i. such portion of a sign which indicates time, temperature, or both;
    - ii. a flag with the word "Open" used to indicate that a business is open.
- I. Temporary Signs Not Requiring a Sign Permit
- 1. Unless otherwise specified in this section, temporary signs shall comply with all applicable requirements for permanent signs.
  - 2. Real estate and contractor's signs not exceeding six (6) square feet.
  - 3. Portable A frame signs associated with a commercial event such as grand openings, sales, or closings may be displayed without a permit for no more than fourteen (14) days at a time and no more than thirty (30) days in the aggregate in any twelve (12) month period.

Such signs shall not exceed six (6) square feet.

4. Non-commercial signs for the purpose of sales, promotions, drives, campaigns, or other events of a civic, philanthropic, or educational nature. Such signs shall not exceed thirty two (32) square feet and shall not be posted for more than sixty (60) days prior to the date of the relevant event. Such signs shall be removed fourteen (14) days after the conclusion of said event.

J. Signs Not Requiring a Sign Permit in a Residential District

1. One permanent sign per dwelling unit, either attached or freestanding, indicating the name of the owner or occupant. This sign may have the street name and number upon it. Such sign shall not exceed two (2) square feet in area.
2. One permanent sign per allowed home occupation indicating such use. Such sign shall not exceed four (4) square feet in area.
3. One temporary sign per dwelling unit advertising the sale, rental, or lease of the premises on which the sign is located. Such sign shall not exceed six (6) square feet in area and shall be displayed for no more than fourteen (14) consecutive days after the date of the completion of the sale or signing of the rental or lease agreement.
4. No more than four (4) temporary signs limited to one per contractor associated with construction on the premises. Each such sign shall not exceed six (6) square feet in area and shall be displayed for no more than fourteen (14) days after completion of related work.
5. Two temporary signs total, regardless of the number of items being sold, advertising the private sale of automobiles or other personal items on the premises. Such signs shall not exceed two (2) square feet each in area and shall be displayed for no more than thirty (30) consecutive days at a time and no more than sixty (60) days in the aggregate in any twelve (12) month period.
6. Any freestanding sign, including its structure, which does not require a Sign Permit in a Residential District pursuant to this Section, shall be no more than eight (8) feet from the top of the sign to the ground.

K. Signs Not Requiring a Sign Permit in the Business District

1. Signs allowed in Residential Districts are also allowed in the Business District.
2. Temporary window signs that cover no more than 20% of the area of each window provided that such signs shall only be placed on windows that face parking lots and/or streets.
3. Buildings having one (1) to three (3) businesses may have one (1) freestanding sign per building and two (2) attached signs per business.
4. Portable A frame signs providing that they are no more than six (6) square feet and are displayed only during business hours.
5. A flag with the word "Open" used to indicate that a business is open. Such flag shall be no more than 15 square feet and shall be taken down at the close of business each day.
6. All permanent signs, including the structure, which do not require a Sign Permit in a Business District pursuant to this Section, shall be no more than twelve (12) feet from the top of the sign to the ground and sixteen (16) square feet in area.

L. Signs Requiring a Sign Permit in the Business District

1. Buildings having four (4) or more occupants may erect a single sign, either attached or freestanding, identifying either the premises, the occupants, or both. Additionally, each occupant may erect one attached sign.
2. Any business complex comprising three or more buildings on a single lot may erect one freestanding sign for each street on which the development fronts containing the name or

other identification of the complex.

**M. Industrial District**

Any sign proposed in the Industrial District requires a Special Permit from the Special Permit Granting Authority.

**N. Non Conforming Signs**

1. The Special Permit Granting Authority may grant a Special Permit for a sign not in compliance with the provisions of this Article providing that the Special Permit Granting Authority finds the following:
  - a) that the sign will be in harmony with the interests cited in section I.
  - b) that a reasonable public benefit is derived from the erection, replacement, or maintenance of the sign
  - c) that the general purposes of this Article are not defeated.
2. The following criteria shall apply:
  - a) The Special Permit shall be granted to a user, owner, or both.
  - b) The Special Permit shall not run with the land.
  - c) The Special Permit shall terminate (become void) when or if the user or owner moves or goes out of business.
  - d) The Special Permit shall not be transferrable to another property.
  - e) The Special Permit Granting Authority shall specify the location of the sign.
  - f) The Special Permit Granting Authority shall approve the size of the sign subject to the following:
    - 1) The sign area shall not be more than 100% greater than signs not requiring a special permit in the district.
    - 2) The sign height shall not be greater than 25% greater than signs not requiring a special permit in the district.
  - g) The Special Permit Granting Authority may impose other terms, restriction, and conditions as it may deem to be in the public interest.

**7.C.5 Severability**

If any section of this Article is found to be in conflict with any statutes of the Commonwealth, such finding shall not affect the validity of the remainder of the Article nor the lawful administration thereof.”

**7.D. COMMON DRIVEWAYS**

Common Driveways shall require a special permit from the Planning Board consistent with the following:

- 7.D.1. Purpose and Approval. A common driveway shall not be permitted unless said driveway is determined by the Planning Board to provide a reasonable public benefit, which would not otherwise be obtained without use of a common driveway. Said benefit or purpose may include reduction in the number of curb openings or driveways onto major streets or at unsafe or unsuitable locations, protection of stone walls, protection of significant natural features, preservation of historic landscapes or views, and/or other safety and environmental concerns which can be avoided by provision of common or shared driveways.
- 7.D.2. Number of Single-family Lots. No more than three residential lots shall be served by a common or shared driveway.
- 7.D.3. Number of Lots Other Than Single-family Lots. The number of lots, other than single-

family lots, shall be determined on a case-by-case basis, based upon determination that safety will be adequately protected and that commonly employed engineering and planning standards have been met in full.

- 7.D.4. Frontage. The length of a common driveway shall never be used to satisfy zoning frontage requirements. All the proposed building lots sharing a common driveway must have frontage on an acceptable way as defined in MGL C.40 §81-L, and each lot frontage must also provide the possibility of reasonable practical access from the proposed structure or use to the way without using a common driveway.
- 7.D.5. Point of Access. The location of the common driveway and any easement or easement conditions obtained by the property owners over an abutting lot shall be subject to the approval of the Planning Board.
- 7.D.6. Covenants. The Planning Board shall require covenant restrictions for the proper maintenance of common driveways by all affected property owners. All covenants and deed restrictions shall be recorded at the Registry of Deeds, Essex County South and referenced on the plan, prior to construction of the common driveway.
- 7.D.7. Construction. Common driveways shall meet the dimensional and construction standards of the Town of West Newbury minor roadway standards as are outlined in the West Newbury Subdivision Regulations.

#### **7.E. ASSISTED LIVING FACILITY**

Assisted Living Facility, shall be subject to a special permit from the Planning Board and the following special permit conditions:

- 7.E.1. Dimensional criteria:
  - a. Minimum Area. The minimum lot area shall be 15 acres.
  - b. Height. The maximum height shall be two and one half (2.5) stories but not more than 35 feet see Section 6.A.3.
  - c. Building Coverage. The maximum building coverage shall be 10%.
  - d. Lot Coverage. The maximum lot coverage shall be 20%.
  - e. Minimum Open Space. The minimum open space requirement shall be 80% of the total parcel size, and no more than 20% of the open space may be wetlands as defined by Chapter 131 of the MGL.
  - f. Setbacks. No setbacks between buildings within the Assisted Living Facility are required. However, no portion of any structure may be within 50 feet of any portion of the parcel boundary
  - g. Parking. The minimum parking requirement shall be 0.5 spaces per unit.
  - h. Number of Units. The maximum number of units per project shall be 150.

- i. Design Considerations. At intervals of no less than 75 feet, any continuous building façade shall be interrupted by architectural elements running the full height of the building that create a clear and obvious three dimensional change in the façade design.
- j. Walking Trails. If publicly accessible walking trails abut the proposed site, and would benefit by a connection across the proposed assisted living site, the planning board shall require that the proposed site plan provide for a publicly accessible walking trail across the proposed site, if said trail can be accommodated without being located within 200 feet of any assisted living dwelling unit. If a publicly accessible walking trail can be accommodated, the planning board shall require that the developer provide a permanent conservation easement to the Town for said walking trail.

7.E.2 Site Plan Review. All assisted living projects shall be subject to site plan review , section 8.B.

## **Section 8. ADMINISTRATION**

*[Revised by Amendments effective October 25, 2010 by vote of Special Town Meeting and approved by the Attorney General on February 22, 2011 and posted according to law on February 22, 2011]*

### **8.A.1. BOARD OF APPEALS**

#### **8.A.1.a. Establishment**

- 1) There is hereby established a Board of Appeals, which shall be appointed by the Board of Selectmen in accordance with the provisions of M.G.L. Chapter 40A, §12, as amended.
- 2) The Board of Appeals established hereunder shall consist of five (5) members, residents of West Newbury, each member to serve a five year term, with the term of one member to expire each year.
- 3) Associate Members: There are also established two Associate Members to the Board of Appeals.
  - i. The Chairman of the Board of Appeals may designate any such Associate Member to sit as a member of the board in case of absence, inability to act or conflict of interest on the part of any member thereof; or in the event of a vacancy on the board until said vacancy is filled in the manner provided in this section.
  - ii. Vacancies shall be filled for the unexpired terms in the same manner as in the case of the original appointment.
  - iii. Said Associate Members shall be appointed by the Board of Selectmen to serve a one year term.

#### **8.A.1.b. Powers**

- 1) The Board of Appeals shall have the following powers:
  - i. to hear and decide Appeals in accordance with M.G.L. Chapter 40A, §8 and §15, as amended.
  - ii. to hear and decide petitions for Variances in accordance with M.G.L. Chapter 40A, §10, 11, 15, 16, as amended.
  - iii. to grant permits to change, alter and/or extend a pre-existing, non-conforming use or structure following determination of a Finding in accordance with M.G.L. Chapter 40A, §6, as amended, and as provided in Section 4.0.
  - iv. to hear and decide Special Permits in accordance with M.G.L. Chapter 40A, §1A and §9, as amended.
- 2) In exercising the powers granted by Section 8.A.1.b.1), the Board of Appeals:
  - i. shall act in accordance with the provisions of M.G.L. Chapter 40A, §11, 14, 15 and 16.
  - ii. shall give due consideration to promoting the public health, safety, convenience and welfare, shall encourage the most appropriate use of land, and shall not permit structures or uses which may be injurious, noxious, offensive, or detrimental to the neighborhood.

iii. may impose or prescribe appropriate conditions, safeguards and limitations, as it may deem reasonably appropriate to protect the neighborhood or otherwise serve the purpose of this Bylaw.

#### 8.A.1.c. Board of Appeals Rules and Regulations and Fees

1) The Board of Appeals shall adopt, and from time to time amend, Rules and Regulations to effectuate the purposes and intent of the provisions of this Bylaw section, as authorized in M.G.L. Chapter 40A, §12.

2) Such Rules and Regulations shall prescribe at a minimum the size, form, contents, style, number of copies of plans and specifications, and procedure for submittal and materials required, Public Hearing requirements, Fee Schedule, and the town boards or agencies from which the Board of Appeals shall request written reports.

#### 8.A.1.d. Procedure for Filing Applications for Appeal, Variance, and Extension or Alteration of Pre-Existing Non-Conforming Uses or Structures

1) A written Application, prepared in compliance with the Rules and Regulations of the Board, shall be submitted by delivery or by Certified Mail, with return receipt requested, to the Town Clerk, who shall transmit it to the Board of Appeals.

2) The Town Clerk shall time and date stamp copies of the submittal, and shall retain a copy of the submittal for office files.

3) The submittal shall include a Certified List of Abutters from Assessor's Office which lists all abutters within three hundred feet (300') of the locus.

4) Notice of the Public Hearing shall be made in compliance with the requirements of M.G.L. Chapter 40A, §11, as amended.

5) The Board shall hold a Public Hearing with regard to any such Application within sixty-five (65) days of the filing thereof.

6) The Board of Appeals shall supply a copy of a Legal Notice to the Applicant. In accordance M.G.L. c. 40 §11, the Applicant shall send a copy of the Legal Notice to all parties in interest by Certified Mail, Return Receipt Requested.

7) Return Receipt Requested (USPS) cards for each abutter listed on the Certified List of Abutters and all parties in interest shall be submitted to Board of Appeals at the commencement of the hearing.

#### 8.A.1.e. Procedure for Filing Applications for Special Permit

See Sections 8.A.1.d.1) through 7) for filing requirements.

#### 8.A.1.f. Filing and Plan Requirements

An application for a Variance, Extension or Alteration of Pre-Existing Non-Conforming Uses or Structures, Special Permit, or an Appeal shall be submitted in accordance with the Rules and Regulations of the Board of Appeals.

#### 8.A.1.g. Findings of the Board of Appeals

1) In Granting a Variance (M.G.L. Chapter 40A, §10)

i. The Board of Appeals must find that due to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a

literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and

ii. that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw.

2) In Granting Approval of Extension or Alteration of Pre-Existing Non-Conforming Uses or Structures (M.G.L. Chapter 40A, §6).

3) The Board of Appeals must find that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

4) In granting a Special Permit

5) The Board of Appeals must make Findings as listed in Section 8.A.2.f. below.

#### 8.A.1.h. Decisions

1) Decisions on an Appeal, a Variance, or Pre-Existing Non-Conforming Use or Structure made pursuant to Section 8.A.1.b.1) i., ii., and iii of this Bylaw Section.

i. The Board of Appeals shall make its decision within one hundred (100) days from the date of the filing of the appeal, application or petition with the Town Clerk.

ii. The Board of Appeals shall file its decision with the Town Clerk in accordance with the provisions of M.G.L. c. 40A §15.

2) Decisions on a Special Permit pursuant to Section 8.A.1.b.1) iv. of this Bylaw section.

The Board of Appeals shall file its decision with the Town Clerk within ninety (90) days from the close of the Public Hearing on such application.

3) The Applicant may request, and the Board of Appeals may grant by majority vote, an extension of the time limits set forth herein. Notice of an Extension must be filed forthwith with the Town Clerk.

#### 8.A.1.i. Other Provisions

The provisions and requirements outlined in Section 8.A.2.g., i., and j. below shall apply to Decisions under this Bylaw section.

#### 8.A.1.j. Lapse of Approval

1) For a Variance (M.G.L. Chapter 40A, §10)

i. If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the Board of Appeals in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with the Board of Appeals prior to the expiration of such one year period.

ii. If the Board of Appeals does not grant such extension within thirty days of the date of application therefore, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of M.G.L. Chapter 40A, §11.

2) For an Extension or Alteration of Pre-Existing Non-Conforming Uses or Structures (M.G.L. Chapter 40A, §6)

i. Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is

commenced within a period of not more than six months after the issuance of the permit and,

ii. In cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

3) For a Special Permit (M.G.L. Chapter 40A, §9). See Section 8.A.2.h. below.

## **8.A.2. PLANNING BOARD ACTING AS SPECIAL PERMIT GRANTING AUTHORITY**

### **8.A.2.a. Authority**

The Planning Board shall hear and decide Applications for Special Permits in accordance with the provisions of M.G.L. Chapter 40A, §9, as amended, and the Zoning Bylaw.

### **8.A.2.b. Associate Member**

There is hereby established a position of Associate Member to the Planning Board when acting as a Special Permit Granting Authority, in accordance with the provisions of M.G.L. Chapter 40A, §9, as amended.

- 1) The Associate Member so established, a resident of West Newbury, shall be appointed by the Board of Selectmen for a term not to exceed one year or upon a vacancy.
- 2) An Associate Member may be appointed for consecutive terms.
- 3) The Planning Board shall provide the Board of Selectmen with a nomination list of no less than two names at least thirty days prior to an appointment.

### **8.A.2.c. Planning Board Regulations**

- 1) The Planning Board shall adopt, and from time to time amend, Regulations to effectuate the purposes and intent of the provisions of this Bylaw section, as authorized in M.G.L. Chapter 40A, §12.
- 2) Such Regulations shall prescribe at a minimum the size, form, contents, style, number of copies of plans and specifications, and procedure for submittal and materials required, Public Hearing requirements, Fee Schedule, and the town boards or agencies from which the Board of Appeals shall request written reports.

### **8.A.2.d. Application**

An Application shall be filed in accordance with the Planning Board Regulations Governing Special Permits.

### **8.A.2.e. Timelines and Requests for Extension**

- 1) The timelines for hearing and decision requirements shall comply with the requirements of M.G.L. Chapter 40A, §9 and 11.
- 2) The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein. Notice of an Extension shall be filed forthwith with the Town Clerk.

#### 8.A.2.f. Findings of the Planning Board

In granting any Special Permit the Planning Board shall find that:

- 1) The specific site is an appropriate location for the use or structure.
- 2) The use developed will not adversely affect the neighborhood.
- 3) There will not be an undue nuisance or serious hazard to vehicles or pedestrians, and adequate and appropriate facilities will be provided to ensure the proper operation of the proposed use, structure or condition.
- 4) The proposed use or structure will be in harmony with the general purpose of this Bylaw.
- 5) The requested use will not overload any public water, drainage, or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the town will be unduly subjected to hazards affecting health, safety or the general welfare.

#### 8.A.2.g. Decision of the Special Permit Granting Authority (SPGA), Planning Board or Board of Appeals

- 1) The SPGA may make a Decision as follows:
  - i. Approval as Submitted - Approval based on a determination that the Application complies with the criteria and Findings set forth in this Bylaw.
  - ii. Approval with Conditions - Approval of the Application subject to any conditions, modifications, and restrictions the SPGA may deem necessary to ensure the health, safety, and general welfare of the community. The Planning Board may impose such conditions, safeguards and limitations, both of time and use, as it may deem reasonably appropriate to protect the neighborhood or otherwise serve the purpose of this Bylaw.
  - iii. Disapproval - A disapproval of the Application for the reasons of an incomplete Application, non-compliance with the Zoning Bylaw, or a negative Finding of the criteria.
- 2) Distribution of Decisions
  - i. The SPGA shall file its Decisions with the Town Clerk in accordance with M.G.L. Chapter 40A, §9.
  - ii. A notice of the Decision shall be mailed to the petitioner; to all parties to whom notice of the hearings was mailed; to every person present at the hearing who requested that notice be sent to him and who stated the address to which such notice was to be sent; to the Inspector of Buildings; and where applicable, to the Board of Health, the Conservation Commission, and other Town boards or departments.
- 3) Decision Date
  - i. The Board's decision becomes final when the Decision is filed with the Town Clerk and duly recorded with accompanying documents at the Registry of Deeds.
  - ii. It is the responsibility of the Applicant to record all documents, and to provide the SPGA with a recorded copy.
- 4) Modifications

All modifications to an approved Special Permit made after issuance of the Special Permit require review by the SPGA or its Agent as follows:

  - i. Minor Modifications – The SPGA or its Agent may allow minor modifications of construction or Site Plan details, provided that they do not alter the intent or the Conditions of the Approval.

ii. Major Modifications – The Applicant will be required to file an amended Special Permit application.

5) Withdrawal of Application

Any application or petition may be withdrawn without prejudice by notice in writing to the SPGA prior to the publication of the notice of hearing, but thereafter, may be withdrawn without prejudice only with the approval of the SPGA.

8.A.2.h. Lapse of Approval

Any approval which has been granted by the SPGA shall lapse within two (2) years from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.

8.A.2.i. Compliance with other Requirements

- 1) A Building Permit, where applicable, is required for all uses approved by a Special Permit.
- 2) A proposal must comply with all other applicable Town Bylaws, and the applicable rules, regulations, and requirements of all departments, boards, and commissions.

8.A.2.j. Performance Guarantee

- 1) The SPGA may require that the Applicant file with the Board, as a condition of approval, a bond or other such surety acceptable in form and amount. This surety is to cover costs of non-building construction, including, but not limited to: streets, utilities, drainage, erosion control measures, and off-site environmental impacts.
- 2) A Performance Guarantee between the Applicant and the Board will specify the manner in which the on or off-site improvements will be completed and the specific manner and time frame in which the surety will be released.

**8.B. SITE PLAN REVIEW**

*[Former Site Plan Review Bylaw replaced with a new Site Plan Review Bylaw, amended by Article 24. Of the Special Town Meeting of November 4, 2013, effective November 4, 2013, approved by the Attorney General on February 27, 2014 and posted according to law on March 12, 2014.]*

8.B.1. Purposes

The purposes of Site Plan Review are to promote logic, imagination, and innovation in the design process; to provide adequate review of development plans that may have significant impacts on traffic, stormwater, community services, environmental quality, and the character of the Town; and to protect public health and safety.

8.B.2. Administration and Regulations

- a. Site Plan Review shall be administered by the Planning Board.
- b. The Planning Board shall adopt, and from time to time amend, Regulations to effectuate the

purposes and intent of the provisions of this Bylaw section. Such Regulations shall prescribe at a minimum the size, form, contents, number of plans, filing, materials and submittal requirements, Public Hearing requirements, and the Town boards or agencies from which the Planning Board shall request written reports.

- c. The Planning Board may adopt, and from time to time amend, Fees sufficient to cover reasonable costs incurred by the Town in review and administration of Site Plan Review Applications.
- d. The Planning Board may require a Technical Review Fee in appropriate circumstances subject to M.G.L. Chapter 44, §53G.
- e. Any work done in deviation from an approved Site Plan shall be a violation of this Bylaw unless such deviation is approved in writing by the Planning Board or its designated Agent, or determined by the Building Inspector to be an insubstantial change.

#### 8.B.3. Applicability

Site Plan Review is required for all non-residential structures and uses, which include new construction, additions, reconstruction, new use or change of use, whether or not a Building Permit is required, for the following buildings, facilities, and/or uses:

- a. Commercial, industrial, and mixed-use
- b. Public, municipal, and municipal recreational
- c. Institutional
- d. Agricultural, which includes:
  - 1. the commercial breeding and/or keeping of livestock;
  - 2. permanent farm stands and greenhouses for commercial production of plants or produce;
  - 3. stables providing boarding and/or services for more than six (6) horses in addition to those owned by the residents of the lot on which the stable is located.
- e. Uses which require a Special Permit, with the following exceptions:
  - 1. Common Driveways (Section 7.D.)
  - 2. Reduced Frontage Lots (Section 6.A.1.)
  - 3. Floodplain Overlay District (Section 5.D.)
  - 4. Other Special Permits which are specifically exempt in the Zoning Bylaw.
  - 5. Signs (Section 7.C) [*Section 8.B.3.e.5. added by vote of the Annual Town Meeting on April 24, 2017, approved by the Attorney General on August 7, 2017 and posted according to law on August 23, 2017*]
- f. Creation of six (6) or more new parking spaces.
- g. Any alteration of traffic or pedestrian flow for access to or egress from the site along any lot line bordering a right-of-way.

#### 8.B.4. Review Procedure

The following steps shall be followed for review of a project:

- a. **Building Inspector Review.** The Building Inspector will determine if Site Plan Review is required. If the Inspector determines that a Site Plan Review or Special Permit with Site Plan Review is required, following receipt of a written denial from the Building Inspector, the Applicant shall submit the appropriate Application(s) to the Planning Board.
- b. **Pre-Application Conference.** Prior to submission of a formal Application, it is required that the Applicant file a request with the Planning Board for a Pre-Application Conference. Said conference will be placed on the Agenda for a regularly scheduled Planning Board Meeting. The purpose of this conference is to determine the applicability of the informational requirements of this subsection and to obtain other information and guidance before the Applicant enters into binding commitments or incurs substantial expense in the preparation of plans, surveys, and other data. It is recommended that the Applicant provide information to the Planning Board to assist the Planning Board in understanding the scope and impact of the project. Said information may include conceptual drawings of the proposed project indicating a preliminary site layout, general building design, potential locations of curb cuts, parking areas, signs, and wetland resource areas, habitat areas, the location and type of surrounding uses, information regarding environmental impact or infrastructure capacity related to the project, and a list of potential Waivers to submittal requirements. The number of copies and size of plan submittal shall be determined.
- c. **Public Hearing.** The Planning Board shall hold a Public Hearing to act on a Site Plan Review Application filed. The following criteria shall apply:
  1. The current owner of record or an authorized representative shall submit an Application for Site Plan Review to the Planning Board that has been time-stamped at the Town Clerk's Office. The Application shall include an administrative Filing Fee in accordance with the schedule established by the Planning Board. See Planning Board Regulations for submittal requirements.
  2. The Planning Board shall schedule a Public Hearing within sixty-five (65) days of receipt of the Application. The notification requirements for the Public Hearing shall conform to the requirements of §IV. of Planning Board Regulations.
- d. **Planning Board Decision.** The Planning Board shall render and file a written Decision, agreed to by a majority vote of the Planning Board, with the Town Clerk within ninety (90) days of closing the Public Hearing, except where an Applicant has formally requested an extension of time which is mutually agreed to by a majority vote of the Planning Board. If the Planning Board fails to file a written Decision with the Town Clerk within the required time limit, or such further time as is mutually agreed upon by the Applicant and the Planning Board, the plan shall be deemed approved.

#### 8.B.5. Waivers

When reviewing an Application, the Planning Board, at the formal written request of the Applicant, may waive any submittal requirements listed in this Bylaw section. Said waiver requests shall be made in writing by the Applicant with stated reasons for requesting the waiver(s). The Planning Board shall review such requests and may vote to grant such waivers during the review process and in writing within the final Decision under Site Plan Review.

#### 8.B.6. Site Plan Review Guidelines

In reviewing the Site Plan, the Planning Board shall promote the purposes set forth in §8.B.1. The Applicant is requested to comply with the Development and Performance Guidelines contained in Planning Board Regulations however, these are Guidelines and are not mandatory. These Guidelines may encompass the following criteria for the proposed development:

- a. Traffic, Parking, and Public Access:
  - 1. Minimizes vehicular traffic and safety impacts of the proposed development on adjacent highways or roads.
  - 2. Maximizes the convenience and safety of vehicular, bicycle, and pedestrian movement within the neighborhood and site.
- b. Health:
  - 1. Minimizes adverse air quality impacts, noise, glare, and odors.
  - 2. Provides for appropriate handling and disposal of waste and hazardous materials.
- c. Public Services and Utilities:
  - 1. Is designed with suitable water supply, wastewater systems, solid waste disposal systems, and stormwater management practices.
  - 2. Is within the capacity of the Town's infrastructure as determined by the Department of Public Works.
  - 3. Includes measures to prevent pollution of surface or groundwater, minimize erosion and sedimentation, prevent changes in groundwater levels, and prevent increased run-off, flow and flow rates, and limits the potential for flooding.
  - 4. Demonstrates an effort to conserve energy and water.
- d. Land Use Planning: Is consistent with the land-use goals of the Town's Master plan and other relevant documents.
- e. Open Space and Environmental Protection:
  - 1. Minimizes adverse impacts to open space and views, and adverse environmental impacts to such features as wetlands, floodplains, surface water and groundwater.
  - 2. Proposes a landscape design that favors native and drought-tolerant species and avoids invasive plants.
- f. Community Character:
  - 1. Minimizes obstruction of scenic views from publicly accessible locations.
  - 2. Minimizes impacts to important natural or historical features.
  - 3. Screens objectionable features, such as large blank walls, open dumpsters, loading or storage areas, from neighboring properties and roadways.
  - 4. Is appropriate with regard to the size, shape, and architectural design of the buildings or structures both in relation to the land area upon which the building or structure is situated and to the adjacent buildings and structures within the neighborhood.

#### 8.B.7. Final Action for Site Plan Review

- a. The Planning Board may make a Decision as follows:
  - 1. Approval as Submitted: Approval based on a determination that the Application complies with the criteria and design performance standards set forth in this Bylaw.
  - 2. Approval with Conditions: Approval of the Application subject to any conditions, modifications, and restrictions the Planning Board may deem necessary to ensure the health, safety, and general welfare of the community.
  - 3. Disapproval: A disapproval of the Application for the reasons of an incomplete Application, or non-compliance with the Zoning Bylaw.

b. Distribution of Decisions

- 1. The Planning Board shall file its Decision with the Town Clerk within 21 days of a vote taken.
- 2. A notice of the Decision shall be mailed to the Applicant; to all parties to whom notice of the Public Hearing was mailed; to every person present at the Hearing who requested that notice be sent and who stated the address to which such notice was to be sent; to the Inspector of Buildings; and where applicable, to the Board of Health, the Conservation Commission, and other Town boards or departments.

c. Decision Date

The Board's decision becomes final when the Decision is filed with the Town Clerk and duly recorded with accompanying documents at the Registry of Deeds. It is the responsibility of the Applicant to record all documents, and to provide the Planning Board with a recorded copy, prior to commencement of any work authorized under this Bylaw section.

d. Modifications

The Planning Board has the sole discretion to determine whether a modification is Major or Minor. All modifications to an approved Site Plan made after issuance of the Decision require review by the Planning Board or its Agent as follows:

- 1. Minor Modifications: The Planning Board or its Agent may allow minor modifications of construction or Site Plan details, provided that they do not alter the intent or the Conditions of the Approval.
- 2. Major Modifications: The Applicant will be required to file an amended Site Plan Review Application.

e. Withdrawal of Application

Any Application may be withdrawn without prejudice by notice in writing to the Planning Board prior to the publication of the notice of Hearing, but thereafter, may be withdrawn without prejudice only with the approval of the Board.

8.B.8. Lapse of Approval

Any approval which has been granted by the Planning Board shall lapse within two (2) years from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon written request of the Applicant.

8.B.9. Appeals

Appeal of the Planning Board's final action on a Site Plan Review Application shall be made to the Zoning Board of Appeals in accordance with §8A of this Bylaw, and within 30 (thirty) days of filing the Decision with the Town Clerk. In the case where applications for Special Permit and Site Plan

Review have been decided jointly, Appeals shall be made in accordance with M.G.L. Chapter 40A, §17.

#### 8.B.10. Performance Guarantee

- a. Performance Guarantee: The Planning Board may require that the Applicant file with the Planning Board, as a Condition of Approval, a bond or other such surety acceptable in form and amount. This surety is to cover costs of non-building construction, including, but not limited to: streets, utilities, erosion control measures, and off-site environmental impacts, which present a public health and safety hazard or nuisance if left incomplete or improperly constructed. Further, a Performance Agreement between the Applicant and the Board will specify the manner in which the on or off-site improvements will be completed and the specific manner and time frame in which the surety will be released.
- b. Plan Certification: Prior to the final release of a Performance Guarantee, a copy of the final Site Plan(s), stamped by a professional Civil Engineer, Land Surveyor and/or Registered Architect, shall be submitted to the Building Inspector and the Planning Board. Said plans shall contain a certification that construction is consistent with the approved plans and conditions set forth by the Planning Board in the Site Plan Review approval. Any modifications shall be consistent with the requirements listed under Section 8.B.10. The Applicant shall also submit to the Planning Board all drawings and Site Plan(s) in an electronic Computer Aided Drafting (CAD) format.
- c. Release of Performance Guarantee: Upon completion of all or a portion of the improvements required by a Performance Agreement entered under this Bylaw, the Applicant may request either partial or full release of the bond, or other such surety as has been posted by the Applicant pursuant to this Bylaw, by sending a statement of completion and request for release to the Planning Board and to the Town Clerk. If the Planning Board, or its consulting engineer or designated representative, determines that said construction has been completed, it shall release the interest of the Town in such bond or other security and return it to the person(s) or entity who furnished it.
- d. Refusal of Release: If the Planning Board determines that said site improvements have not been either fully or adequately completed, it shall specify in a notice sent by Certified Mail to the Applicant and filed with the Town Clerk, how the site improvements fail to comply with the requirements of this Bylaw.

### 8.C. ENFORCEMENT

8.C.1. This By-Law shall be enforced by the Inspector of Buildings.

### 8.D. PENALTY

8.D.1. Any person violating any provisions of this By-Law, any of the conditions under which a permit is issued, or any decision rendered by the Board of Appeals, may be fined not more than one hundred (\$100.00) dollars for each offense. Each day that each violation continues shall

constitute a separate offense.

## **8.E. AMENDMENT**

- 8.E.1. This By-Law may from time to time be changed by amendment, addition or repeal in the manner provided in Section 5, Chapter 40A, General Laws.

## **SECTION 9. Personal Wireless Service Facilities**

*[Section 9 changed by Amendment effective April 25, 2011 by vote of Annual Town Meeting and approved by the Attorney General on August 17, 2011 and posted according to law on August 17, 2011]*

### **9.A. PURPOSE AND INTENT**

### **9.B. DEFINITIONS**

### **9.C. GENERAL REGULATIONS**

- 9.C.1. Use Regulations
- 9.C.2. Location
- 9.C.3. Dimensional Requirements
  - a. Height, General
  - b. Height, Ground-Mounted Facilities
  - c. Height, Side- and Roof-Mounted Facilities
  - d. Height, Facilities Mounted on Other Existing Structures
  - e. Exceptions to Height Requirements
  - f. Setbacks

### **9.D. PERFORMANCE STANDARDS**

- 9.D.1. Design Standards
  - a. Visual Impacts
  - b. Other Structures
  - c. Equipment Shelters & other Equipment not on the Antenna Mount
  - d. Lighting
  - e. Signage
  - f. Scenic Landscapes and Vistas
- 9.D.2. Environmental Standards
  - a. Wetlands
  - b. Stormwater Management
  - c. Noise
  - d. Land Clearing, Soil Erosion and Habitat Impacts
- 9.D.3. Safety Standards
- 9.D.4. Site-sharing

### **9.E. APPLICATION PROCEDURES**

- 9.E.1. Pre-Application Conference
- 9.E.2. General Application Filing Requirements
  - a. General Filing Requirements
  - b. Need for Service
  - c. Need for Location and Design

- d. Availability of Alternatives
- e. Written Report
- f. Additional Information Required Visual Impacts
- g. Visual Impacts
- h. Radio Frequency Emissions
- i. Compliance with State and Local Noise Regulations
- j. Hazard to Air Navigation
- 9.E.3. Post-Approval Documents Required
- 9.E.4. Waiver

**9.F. ADDITIONAL FINDINGS**

**9.G. MODIFICATIONS**

**9.H. MONITORING AND MAINTENANCE**

**9.I. ABANDONMENT AND DISCONTINUATION OF USE**

**9.J. RECONSTRUCTION/REPLACEMENT OF EXISTING TOWERS AND MONOPOLES**

**9.K. TERM OF SPECIAL PERMIT**

**9.L. LAPSE OF APPROVAL**

**9.M. APPEALS**

**SECTION 9. PERSONAL WIRELESS SERVICE FACILITIES (PWSF)**

The placement, design, construction, operation, monitoring, modification, and removal of Personal Wireless Service Facilities (PWSF) shall be allowed in any zoning district subject to a Special Permit from the Planning Board, in accordance with the provisions of M.G.L. Chapter 40A, §9, the Zoning Bylaw, and consistent with the following:

**9.A. PURPOSE AND INTENT-** The purpose of this subsection is to:

- a. minimize the impacts of PWSF on adjacent properties and residential neighborhoods;
- b. control the adverse impacts of PWSF, individually and collectively, on the Town by employing sound planning and zoning principles;
- c. promote shared use of existing facilities to reduce the need for new ones;
- d. encourage the most appropriate use of the land and to guide sound development while promoting the health, safety and general welfare of the Town.

**9.B. DEFINITIONS**

Above Ground Level (AGL) - A measurement of height from the natural grade of a site to the highest point of a structure.

Antenna - The surface from which wireless radio signals are sent and received by a personal wireless service facility.

Camouflaged - A PWSF that is disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure is considered “camouflaged.”

Carrier - A company that provides Personal Wireless Services.

Collocation - The term employed by the FCC describing the use of any existing structure to mount a wireless facility, whether or not there exist any other wireless facilities on the structure. The Planning Board may assume that when the terms Site-sharing or collocation are spoken or written in evidence in an application proceeding, the Bylaw definition of Site-sharing prevails, unless context indicates otherwise, or there is specific reference to the FCC's meaning (as defined by "collocation" above).

Elevation - The measurement of altitude above sea level.

Environmental Assessment (EA) - An EA is a document that reports on the environmental impact of a development proposed by an entity that is subject the National Environmental Policy Act ("NEPA"). Federal Communications Commission ("FCC") licensees are subject to NEPA. (47 CFR §1.1307) An EA is not required unless the proposed development will not be in compliance with environmental regulations. FCC Regulations establish the responsibilities of FCC licensees to comply with NEPA.

Equipment Shelter - An enclosed structure, cabinet, shed or box at the base of the mount within which are housed batteries and electrical equipment.

Flush Mount - The industry term for the attachment of Antennas to the surface of a Monopole, typically extending less than 1½ feet from the surface of the Monopole.

Guyed Tower - A monopole or lattice tower that is anchored to the ground or other surface by diagonal cables.

Lattice Tower - A type of mount that is self-supporting with multiple legs and cross-bracing typically constructed with structural steel.

Licensed Carrier - A company authorized by the FCC to construct and operate a commercial mobile radio services system.

Monopole - The type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel Antennas arrayed at the top.

Mount - The structure or surface upon which Antennas are mounted, including the following four types of mounts:

1. Roof-mounted- Mounted on the roof of a building.
2. Side-mounted- Mounted on the side of a building.
3. Ground-mounted- Mounted on the ground.
4. Structure-mounted-Mounted on a structure other than a building.

NEPA Checklist - A Document prepared by a qualified independent entity, such as an environmental engineering firm, that shows the results of the entity's due-diligence effort to determine whether a proposed development complies with NEPA criteria.

Omnidirectional Antenna - A vertical rod that transmits and/or receives a signal in all directions (for example "whip" or "collinear" Antennas).

Panel Antenna - A shallow, flat Antenna enclosure, usually tall and rectangular. Panel Antennas are often mounted in groups (arrays).

Personal Wireless Service Facility - Facility for the provision of personal wireless services, including but not limited to towers or other Antenna support structures, Antennas and related equipment for the transmission and reception of personal wireless services, electronic, power, control, and communications equipment the is connected directly or indirectly to Antennas for the purpose of providing personal wireless services.

Personal Wireless Services - Personal Wireless Services as defined by the Telecommunications Act of 1996, and subsequent law and regulation.

Radiofrequency (RF) Engineer - An engineer specializing in radio communications systems, and in the context of this Bylaw section, having particular experience and credentials relating to the placement, construction and modification of PWSF.

Radiofrequency Energy (RFE) - The electromagnetic energy emitted and received by radio communications systems, including those of PWSF.

Security Barrier - A locked, secure wall, fence or berm that completely seals an area from unauthorized entry or trespass.

Site-sharing - The use of a single mount on the ground by more than one carrier (vertical site-sharing) and/or several mounts on an existing building or structure by more than one carrier.

## **9.C. GENERAL REGULATIONS**

### **9.C.1. Use Regulations**

- a. Subject to a Special Permit issued by the Planning Board, a PWSF provider may locate Antennas and related equipment on any existing guyed tower, lattice tower, monopole, electric utility transmission or distribution tower or pole, fire tower or water tower; or may construct one or more ground or building (roof or side) mount facilities; and associated structures.
- b. A PWSF which has been approved by a Special Permit must comply with the requirements of the Massachusetts Building Code, and with all applicable Town

Bylaws, and the rules, regulations, and requirements of all departments, boards, and commissions, as applicable.

9.C.2. Location. Applicants seeking approval for PWSF shall comply with the following:

- a. Unless wholly within an existing structure or architecturally suitable attachment to an existing structure, PWSF shall NOT be located or collocated in the Historic District.
- b. Whenever feasible, new PWSF shall be collocated on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures and their surroundings. In particular, Applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more PWSF. The Applicant shall have the burden of proving that there are no feasible existing structures upon which to collocate that would provide substantial service to the area in West Newbury that the Applicant has targeted for improved service.
- c. If the Applicant demonstrates that it is not feasible to collocate on an existing structure, PWSF shall be designed so as to be camouflaged and integrated into the visual environment to the greatest extent possible, including but not limited to: use of creative structure and facility design, compatible building materials and colors, screening, landscaping and placement within trees.
- d. The Applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of application for a Building Permit and/or Special Permit, including but not limited to access/ownership of the affected parcel or way, and an FCC license to provide personal wireless services in West Newbury or an agreement with one or more such licensees to provide facilities that the licensees will use to provide such services.

9.C.3. Dimensional Requirements. PWSF shall comply with the following requirements:

- a. Height, General. The height of a PWSF shall not exceed by more than ten feet the height limits of the zoning district in which the facility is proposed to be located, unless the Planning Board finds the facility will not be detrimental to the character of the area surrounding the facility based on the Design Standards and the facility conforms to the other height criteria in this section.
- b. Height, Ground-Mounted Facilities. A ground-mounted PWSF shall not project higher than ten feet above the height permitted in the zoning district, provided that the Planning Board may relax this height restriction if the Planning Board finds that the facility may be granted an exception under 9.C.3.e. Under such an exception, the Ground-Mounted Facility may extend no more than 120 feet above ground.

- c. Height, Side- and Roof-Mounted Facilities on Existing Buildings. Side and roof-mounted PWSF shall not project more than ten feet above the height of an existing building that conforms or is legally non-conforming with respect to height. This projection of up to ten feet above such buildings is not subject to the height limit of the underlying district. The Planning Board may relax this height limit to as high as thirty feet above the height of the building, provided it makes the required finding under Section 9.C.3.e.
- d. Height, Facilities Mounted on Other Existing Structures. PWSF located on any legally existing structures to which the Paragraph 9.C.3.c. does not apply, such as water towers, communications towers, fire towers, industrial and agricultural structures and monopoles, shall not result in more than a thirty foot (30') increase in the height of the structure.
- e. Exceptions to height requirements:
  - i) Ground-Mounted Facilities. Ground-mounted Facilities may be granted an exception to the height limit as permitted in Section 9.C.3.b. provided that the Planning Board finds that:
    - 1. The Ground-Mounted Facility has an acceptable visual impact that is not detrimental to the objectives of the purpose and intent of the Zoning Bylaw, based on evidence such as that it will be well screened from public and neighbor view by dense tree growth or other obstacles, or
    - 2. Is designed to be architecturally consistent with its surroundings, such as, in context, a flagpole, carillon tower, or monument, or is sufficiently remote so that the visual impact, if any, is minimal, and
    - 3. The approved height is necessary to achieve sufficient coverage for the Applicant and/or will provide Site-sharing space, the use of which will be more beneficial and less detrimental to the Town than the alternatives.
  - ii) Side- and Roof-Mounted Facilities. Side- and roof-mounted facilities may be granted an exception to the height limit, as permitted in Section 9.C.3.c., provided that the Planning Board finds the additional height is necessary and the negative impacts of permitting the increased height are inconsequential.
- f. Setbacks. All PWSF and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, the following setbacks shall be observed:
  - i) A proposed new ground-mounted PWSF shall have, at the time of construction, a minimum distance that equals the height of the facility/mount, including any Antennas or other appurtenances, from the base of the ground-mounted facility to any property line, road, habitable dwelling, business or institutional building or use. The purpose of this setback is to ensure public safety and minimize visual impact to neighbors.
  - ii) In the event that an existing structure is proposed as a mount for a PWSF, the setback provisions of the zoning district shall apply. In the case of pre-existing

non-conforming structures, PWSF and their equipment shelters shall not increase any non-conformity.

- iii) In reviewing a Special Permit Application for a PWSF, the Planning Board may reduce the required setback by as much as 50%, if it finds that a substantially better design will result from such reduction. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

**9.D. PERFORMANCE STANDARDS.** All PWSF shall comply with the Performance Standards set forth in this section.

**9.D.1. Design Standards**

**a. Visual Impact**

- i) General. Completely camouflaged or concealed Antenna installations, such as within a flagpole, steeple, chimney, or similar structure that are appropriate to the proposed location, are encouraged unless a proposed Antenna installation is sufficiently remote and/or limited in visibility to the surrounding area to permit less camouflage or concealment without detriment to its surroundings.
- ii) When PWSF Antennas and related equipment extend above the roof height of a building on which they are mounted, every effort shall be made to conceal the installation within or behind existing or new architectural features to limit their visibility from public ways. New architectural features and color shall be consistent with the structure and the surrounding area. Facilities mounted on a non-peaked roof shall be stepped back from the edge as reasonably practicable in order to limit their impact on the building's silhouette.
- iii) PWSF Antennas and related equipment which are side mounted shall blend with the existing building's architecture and shall be painted, concealed or shielded with material which is consistent with the design features and materials of the building.

**b. Other Structures**

- i) If PWSF are not camouflaged from public viewing areas by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and understory vegetation of sufficient height and depth in all directions to create an effective year-round visual buffer.
- ii) To the extent that any PWSF extends above the height of the vegetation immediately surrounding it, the color of the facility shall be chosen to minimize adverse visual impact.

- c. Equipment Shelters and other Equipment not on the Antenna Mount. The placement of the PWSF's equipment, other than the Antennas and related equipment on/in the mount, shall be as unobtrusive as is appropriate to the site and its surroundings. Equipment should be installed in an existing building or

outdoors in a manner that minimizes negative impacts on the facility's surroundings caused by its appearance, noise, access, and other aspects that the Planning Board may reasonably identify during the application process.

Equipment outdoors shall be secured from unauthorized access and the means of securing the equipment (such as a fence or new building) shall be designed to be harmonious with the facility's surroundings. Equipment shelters for PWSF shall be designed consistent with one of the following design standards:

- i) Equipment shelters shall be located in underground vaults; or
- ii) Equipment shelters shall be designed consistent with local architectural styles and materials; or
- iii) Equipment shelters shall be screened behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or fence constructed of materials appropriate to the site, or by other means of limiting adverse visual impacts of ground facilities.

d. Lighting

PWSF shall be lighted only if required by the Federal Aviation Administration (FAA). Whenever practicable, new PWSF shall be designed to employ heights that do not require FAA lighting. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. There shall be total cutoff of all light at the property lines of the parcel to be developed, and footcandle measurements at the property line shall be 0.0 initial footcandles when measured at grade.

e. Signage

Signs shall be limited to those needed to provide necessary information about the facility, the owners/operators, safety, and regulations. All signs shall comply with the requirements of the Town's Sign Bylaw, Section 7.C.

f. Scenic Landscapes and Vistas

Any detrimental effect of a PWSF on the view as seen from regular vantage points, such as public ways and places, or residential structures and land uses, shall be minimized. The Planning Board may consider visual characteristics such as a looming effect or a stark or otherwise unreasonably distracting contrast with the experience of the view. The Planning Board may consider whether mitigation of the proposed facility would resolve the detriment, such as with the facility design, height, or position on the site.

9.D.2. Environmental Standards

- a. Wetlands. PWSF shall comply with the requirements of M.G.L. Chapter 130, as amended.
- b. Stormwater Management. Stormwater Management shall comply with Department of Environmental Protection Stormwater Management Policy, as amended.

- c. Noise. Equipment for PWSF shall comply with Section 7.A.4. of the Zoning Bylaw, and the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations, (310 CMR 7.10., as amended).
- d. Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the facility or otherwise prescribed by applicable laws, regulations, and bylaws.

#### 9.D.3. Safety Standards

Radiofrequency Energy (RFE) Standards. All PWSF shall be compliant with the FCC requirements for control of human exposure to the facility's radio frequency energy. (47 CFR §1.1307 *et seq*)

#### 9.D.4. Site-Sharing

- a. Licensed carriers shall share PWSF and sites where feasible and appropriate, thereby reducing the number of PWSF that are stand-alone facilities. Nevertheless, the visual and other impacts of the facility shall be considered in determining how many co-locators the facility should support. All Applicants for a Special Permit for a PWSF shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes:
  - i) A survey of all existing structures that may be feasible sites for Site-sharing PWSF.
  - ii) Contact with all the other licensed carriers for commercial mobile radio services operation in the County; and
  - iii) Sharing information necessary to determine if Site-sharing is feasible under the design configuration most accommodating to Site-sharing.
- b. In the event that Site-sharing is found to be not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Planning Board. The Planning Board may deny a Special Permit to an Applicant that has not demonstrated a good faith effort to provide for Site-sharing.
- c. If the Applicant does intend to co-locate or to permit Site-sharing, the Planning Board shall request drawings and studies which show the ultimate appearance and operation of the PWSF at full build-out.
- d. If the Planning Board approves Site-sharing for a PWSF site, the Special Permit shall indicate how many facilities of what type shall be permitted on that site. Facilities specified in the Special Permit approval shall require no further zoning approval. However, the addition of any facilities not specified in the approved Special Permit shall require a new Special Permit.

### 9.E. APPLICATIONS AND PROCEDURES

#### 9.E.1. Pre-Application Conference

- a. Prior to the submission of an application for a Special Permit and Site Plan Review under this Bylaw section, the Applicant is strongly encouraged to meet with the Planning Board at a regularly scheduled public meeting to discuss the proposed PWSF in general terms and to clarify the filing requirements.
- b. Pre-Application Filing Requirements. The purpose of the Pre-Application conference is to inform the Planning Board as to the preliminary nature of the proposed PWSF. As such, no formal filings are required for the pre-application conference. However, the Applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the Planning Board of the location of the proposed facility, as well as its scale and overall design.

#### 9.E.2. General Application Filing Requirement

- a. General Filing Requirements. See Section 8.A.2. of the Zoning Bylaw and Planning Board Regulations Governing Special Permits for Filing Requirements.
- b. Need for Service. The Applicant must demonstrate the service objectives in West Newbury that the proposed PWSF will address in whole or in part. Such demonstration shall include technical documentation demonstrating that there is a substantial deficiency in the Applicant's provision of service to West Newbury which fails to satisfy the service objectives. Such information shall include, when relevant, coverage maps; information about terrain, vegetation and land use; mobile subscribers affected; stationary subscribers affected; network performance factors; and other information relevant to the Applicant's objectives.
- c. Need for Location and Design. The Applicant must show with clear documentation how the improved service to West Newbury that the Applicant seeks could not be substantially provided by utilizing one or more locations or designs of higher preference as expressed in Sections 9.C. & 9.D; and/or how the proposed PWSF achieves a better result than preferences expressed in Sections 9.C. and 9.D.
- d. Availability of Alternatives. The Planning Board, at its discretion, may require the Applicant to consider specific potential alternatives at any level of preference (lesser to, equivalent to, or greater than the proposed) as expressed in Sections 9.C. & 9.D., if the Planning Board determines that any such alternatives may provide a better overall result for West Newbury.
- e. A written report that shall:
  - i) Describe the projected current and future needs of the Applicant and how the proposed PWSF is consistent with the Applicant's present and future expectations to serve the Town and adjacent Towns.

- ii) Describe the manner in which the Applicant has placed and designed the proposed PWSF to minimize any adverse visual impact in West Newbury.
    - iii) Demonstrate need for the proposed PWSF at the proposed location by describing:
      - 1. The service objectives in West Newbury that the proposed PWSF will address in whole or in part.
      - 2. How and where there is a substantial deficiency in the Applicant's provision of service to West Newbury which fails to satisfy the service objectives,
      - 3. How the improved service to West Newbury that the Applicant seeks could not be substantially provided by utilizing one or more locations of higher preference as expressed in Sections 9.C. and 9.D, and/or how the proposed PWSF achieves a better result than such preferences expressed in Sections 9.C. and 9.D.
  - f. Include, when applicable, coverage maps; information about terrain, vegetation and land use; how mobile subscribers are affected by the proposal; how stationary subscribers are affected by the proposal; network performance factors; and other information relevant to the Applicant's objectives.
  - g. Visual Impacts. The Applicant shall demonstrate how the proposed PWSF creates the least adverse visual impact that is practicable, in consideration of the many ways adverse visual impacts are controlled, including, without limitation, alternative locations on the proposed site, alternative heights, alternative designs and one or more alternative sites that collectively may have a substantially lesser adverse visual impact than the proposed.
  - h. Radio Frequency Emissions. The Applicant shall provide evidence prepared by a qualified engineer demonstrating that the radio frequency emissions of the proposed PWSF will be compliant with the FCC environmental regulations (47 C.F.R. §1.1307 et seq) upon construction and during operation.
  - i. Compliance with state and local Noise Regulations. The Applicant shall provide evidence that the proposed PWSF will be, on its own and in the aggregate with other uses on the proposed site, compliant with applicable state and local noise regulations.
  - j. Hazard to Air Navigation. The Applicant shall demonstrate that the proposed PWSF is not a Hazard to Air Navigation, pursuant to state and federal regulations.
- 9.E.3. Post-Approval Documents Required. Prior to issuance of a Building Permit, the Applicant must supply the following items to the Planning Board for review, and the Planning Board must verify to the Building Inspector that the documentation is in order:
- a. A copy of the recorded Special Permit Decision and all related documents and plans at the Registry of Deeds.
  - b. Evidence that the proposed height meets FAA requirements

- c. An electronic copy of the final approved submittal
  - d. Evidence that the facility is properly grounded for a lightning strike event
  - e. An Operation and Maintenance Plan
  - f. If requested by the Planning Board, an Emergency Response Plan developed in cooperation with public safety officials
  - g. Evidence that the Applicant is carrying comprehensive general liability insurance with a company registered to do business in Massachusetts in amounts specified by the Planning Board, and for a duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.
  - h. Unless the facility will be municipally or state owned, 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 facility and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board. The Applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include an adjustment for inflation for the expected life of the facility.
  - i. A recordable covenant authorizing the Town of West Newbury and/or its designees to enter the property for the purposes of maintenance or removal of the facility, if the terms of the Special Permit are not complied with. The covenant shall be signed by the record Owner of the property and shall run with the land, and shall be binding upon heirs/successors and assigns. The Planning Board shall establish the recording requirement in the conditions of the Special Permit. This covenant shall be referenced by Book and Page/document number in each deed executed by the Grantor for the conveyance or other instrument of transfer the property.
- 9.E.4. Waiver. The Planning Board may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of a proposed PWSF.
- 9.F. ADDITIONAL FINDINGS.** In addition to the Findings required in Section 8.A.2.f. of the Zoning Bylaw, the Planning Board must make the following Findings:
- 9.F.1. That the Applicant or co-Applicant:
- a. Has demonstrated that it is a Personal Wireless Service provider in the West Newbury area.
  - b. Has sufficient leasehold or ownership interest in the proposed site to construct the PWSF.

- c. Has demonstrated a reasonable need for one or more new PWSF to satisfy its coverage objectives in the area served by the proposed PWSF.
- d. Has provided written assent to the Town that the Applicant will allow Site-Sharing, to the extent reasonably practicable, in a reasonable and nondiscriminatory manner.
- e. Has demonstrated that the construction, operation and maintenance of the proposed PWSF is consistent with applicable environmental regulations including, but not limited to, NEPA criteria.

9.F.2. That the proposed PWSF (with conditions, if applicable):

- a. Is part of the orderly development of PWSF in West Newbury.
- b. Is compatible with West Newbury's character and is designed and screened in a manner that is sensitive to the surrounding neighborhood as well as the community at large.
- c. Protects adjacent properties from unreasonable risks of PWSF, to the extent permitted by law.
- d. Has utilized Collocation and Site-Sharing to the extent practicable.
- e. Has been located and designed to avoid:
  - i) A dominant silhouette from sensitive viewpoints,
  - ii) a discontinuity of scale on the site and in the neighborhood, and
  - iii) an effect of looming over nearby land uses.
- f. If the proposed PWSF will Site-Share with an existing PWSF, the benefits of such site-sharing outweigh the detriments.
- g. If the proposed PWSF includes a new Tower, no combination of one or more alternative Collocations and/or Site Sharing can:
  - i) substantially satisfy the Applicant's coverage objectives and
  - ii) present a substantially less detrimental impact on West Newbury
- h. Utilizes a design that is appropriate to the context of its location and the character of its surroundings.
- i. Satisfies the intent of the Zoning Bylaw and the specific requirements of this Section.
- j. If applicable:
  - i) existing vegetation will be preserved or improved, and disturbance of the existing topography has been minimized, or

- ii) proposed manipulation of vegetation and disturbance of topography results in a lesser visual impact.
  - k. Facilities future Site-Sharing to the extent that is appropriate for the site and surroundings.
- 9.F.3. If the Planning Board fails to find in favor of all elements of 9.F.1. and 9.F.2., the Board shall reconsider the proposed PWSF in the context of the Telecommunications Act of 1996. To approve the Special Permit under this subsection 9.F.3., the Planning Board must make the following findings:
- a. That a significant gap exists in the coverage area of the proposed PWSF, which significant gap is not necessarily equivalent to the lack of the Applicant's stated coverage objectives considered in 2.i. above.
  - b. That there are no viable alternatives involving one or more PWSF to serve the significant gap. That, either
    - i) based on positive findings in a. and b., not granting a Special Permit for the proposed PWSF (including conditions, if any) effectively prohibits the provision of personal wire service, or
    - ii) not granting a Special Permit for the proposed PWSF (including conditions, if any) unreasonably discriminates among providers of functionally equivalent services.
  - c. That, in addition to any findings in this subsection 9.F.3., the Planning Board has made any other findings that are necessary to grant approval under federal law.
- 9.G. MODIFICATIONS.** Filing an Application for a modification to the Special Permit will be required when the Applicant and/or Co-Applicant wishes to alter the terms of the Special Permit by amending the existing Personal Wireless Service Facility Special Permit in one or more of the following ways:
- 1. Amendment to revise the number of facilities permitted on the site.
  - 2. Amendment to revise the technology used for the PWSF.
  - 3. Amendment to add any equipment or additional height not specified in the original design filing.
- 9.H. MONITORING AND MAINTENANCE.** The Planning Board may condition the grant of a Special Permit to require the following after the PWSF is operational:
- 9.H.1. The owner of the PWSF shall maintain the facility in good condition and provide acceptable evidence to the Planning Board annually upon request that the insurance coverage required by Section 9.E.3.g. is in effect. Maintenance shall include, but not be limited, to painting, structural repairs, structural integrity of the mount and security measures, and maintenance of the buffer areas and landscaping. Site access shall be maintained to a level acceptable to the local Fire Chief. The owner of the PWSF shall

be responsible for the cost of maintaining the PWSF and any access road(s). The owner of the facility shall provide access to the facility for inspection upon request from the Planning Board or its designee. The Planning Board may require annual inspection and reports by a qualified professional.

9.H.2. The Planning Board may condition the grant of a Special Permit to require the following after the PWSF is operational:

- a. Post-construction RFE compliance measurements. The Applicant may be required to submit, within 90 days of beginning operations, measurements of RFE from the PWSF at general population/uncontrolled areas as defined by the FCC. In addition, at any time in the future, if the Planning Board or the Building Inspector has reasonable cause for concern that the facility is not RFE compliant, it may require the Applicant to demonstrate compliance using methods that are appropriate to the situation, including calculations and/or measurements. Such measurements shall be signed and certified by a RF engineer, stating that RFE measurements are accurate and meet FCC Guidelines as specified in the Radiofrequency Standards section of this Bylaw.
- b. Post-construction noise compliance measurements. The Applicant may be required to submit, within 90 days of the beginning of operations, measurements of noise from the personal wireless service facility. In addition, at any time in the future, if the Planning Board or the Building Inspector has reasonable cause for concern that the facility is not noise compliant, the Planning Board may require the Applicant to demonstrate compliance using methods that are appropriate to the situation, including calculations and/or measurements. Such measurements shall be signed by an acoustical engineer, stating that noise measurements are accurate and meet the Noise standards sub-section of this Bylaw or such conditions as may be imposed in the Special Permit.

## **9.I. ABANDONMENT OR DISCONTINUATION OF USE**

9.I.1. At such time that a licensed carrier plans to abandon or discontinue operation of a PWSF, such carrier will notify the Planning Board by certified U.S.Mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that a licensed carrier fails to give such notice, the PWSF shall be considered abandoned upon such discontinuation of operations.

9.I.2. Upon abandonment or discontinuation of use, the carrier shall physically remove the PWSF within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

- a. Removal of Antennas, mount, equipment shelters and security barriers from the subject property.

- b. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
  - c. Restoring the location of the PWSF to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- 9.I.3. If a carrier fails to remove a PWSF in accordance with this section of this Bylaw, the Town or its designee shall have the authority to enter the subject property and physically remove the facility. The Planning Board may require the Applicant to post a bond at the time of construction to cover costs for the removal of the PWSF in the event the Town must remove the facility.
- 9.J. RECONSTRUCTION OR REPLACEMENT OF EXISTING TOWERS AND MONOPOLES.** Guyed towers, lattice towers, utility towers and monopoles in existence at the time of adoption of this Bylaw may be reconstructed, altered, extended or replaced on the same site by Special Permit, provided that the Planning Board finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the Town than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension or replacement will create public benefits such as opportunities for Site-sharing, improvements in public safety, and/or reduction in visual and environmental impacts. No reconstruction, alteration, extension or replacement shall exceed the height of the existing facility by more than twenty (20) feet.
- 9.K. TERM OF SPECIAL PERMIT** A Special Permit issued for any PWSF over fifty (50) feet in height shall be valid for fifteen (15) years. At the end of that time period, the PWSF shall be removed by the carrier or a new Special Permit shall be required. Excepted from this requirement is any PWSF wholly concealed within an existing structure.
- 9.L. LAPSE OF APPROVAL.** Any approval which has been granted by the SPGA shall lapse within two (2) years from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.
- 9.M. APPEALS.** Appeal of the Planning Board's final action on a Special Permit shall be made to a court of competent jurisdiction in accordance with the provisions of M.G.L. Chapter 40A, §17.

## **SECTION 10.0 GROUNDWATER PROTECTION OVERLAY DISTRICT BYLAW**

*[Section 10.D. and GPOD Map amended by Article 17. Of the Annual Town Meeting of April 29, 2013, effective April 29, 2013, approved by the Attorney General on June 14, 2013 and posted according to law on June 26, 2013.]*

*[Section 10.D. and GPOD Map amended by Article 23. Of the Special Town Meeting of November 4, 2013, effective November 4, 2013, approved by the Attorney General on February 27, 2014 and posted according to law on March 12, 2014.]*

#### **10.A PURPOSE OF DISTRICT**

The purpose of this Groundwater Protection Overlay District is to:

- 10.A.1. Promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of West Newbury;
- 10.A.2. Preserve and protect existing and potential sources of drinking water supplies;
- 10.A.3. Conserve the natural resources of the town; and
- 10.A.4. Prevent temporary and permanent contamination of the environment.

#### **10.B. THE GROUNDWATER PROTECTION DISTRICT IS AN OVERLAY DISTRICT SUPERIMPOSED ON THE ZONING DISTRICTS.**

This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities and uses in a portion of one of the underlying zoning districts which fall within the Groundwater Protection District must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Groundwater Protection District.

#### **10.C. DEFINITIONS:**

For the purposes of this section, the following terms are defined below:

Aquifer: Geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

Groundwater Protection District: The zoning district defined to overlay other zoning districts in the Town of West Newbury. The groundwater protection district may include specifically designated recharge areas.

Impervious Surface: Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

Mining: The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

Potential Drinking Water Sources : Areas which could provide significant potable water in the future.

Recharge Areas: Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas may include areas designated as Zone I, Zone II, or Zone III.

Toxic or Hazardous Material: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water in the Town of West Newbury. Toxic or hazardous materials include, without limitation; synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (M.G.L.) Chapter(c.) 21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.

Zone I: The 100 to 400 foot protective radius around a public water system well or wellfield which must be owned by the water supplier or controlled through a conservation restriction.

Zone II: The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield with no recharge from precipitation), as defined in 310 CMR 22.00. The determination of the location and extent of Zone II shall be in conformance with the criteria set forth in 310 CMR 22.00 and in the DEP's Guidelines and Policies for Public Water Systems.

Zone III: The land area beyond the area of Zone II from which surface water and groundwater drain into Zone II, as defined in 310 CMR 22.00. Activities in Zone III are not regulated in this bylaw.

#### **10.D. ESTABLISHMENT AND DELINEATION OF GROUNDWATER PROTECTION DISTRICT**

For the purposes of this district, there are hereby established within the town certain groundwater protection areas, consisting of aquifers or recharge areas which are delineated on a map. This map is entitled "Groundwater Protection Overlay District, Town of West Newbury," produced by Merrimack Valley Planning Commission, and dated September 20, 2004, amended April 29, 2013, amended November 4, 2013. This map is hereby made a part of the town zoning bylaw and is on file in the Office of the Town Clerk and the Office of the Planning Board.

#### **10.E. DISTRICT BOUNDARY DISPUTES**

If the location of the District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a Special Permit application to the Special Permit Granting Authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.

The burden of proof shall be upon the owner(s) of the land to show where the bounds should be located. At the request of the owner(s), the town may engage a professional civil or sanitary engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and may charge the owner(s) for the cost of the investigation. The Zone II district boundary and methodology must be approved by the Massachusetts Department of Environmental Protection (DEP).

#### **10.F. USE REGULATIONS**

In the Groundwater Protection District the following regulations shall apply:

##### **10.F.1. Uses Allowed in Zone I**

Only uses related to the operation and maintenance of the public water supply are permitted in the Zone I defined in 310 Code of Massachusetts Regulations 22.00.

##### **10.F.2. Uses Allowed in Zone II**

- a. The following uses are allowed within the Groundwater Protection District, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:
- b. conservation of soil, water, plants, and wildlife;
- c. outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;
- d. foot, bicycle and/or horse paths, and bridges;
- e. normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
- f. maintenance, repair, and enlargement of any existing structure, subject to Section

- g. (prohibited uses) and Section 10.G (special permitted uses);
- h. residential development, subject to Section 10.F.3. (prohibited uses) and Section 10.G (special permitted uses);
- i. farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Section 10.F.3 (prohibited uses) and Section 10.G (special permitted uses);
- h. construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels.
- j. Underground storage tanks related to these activities are categorically not permitted.

#### 10.F.3. Uses Prohibited in Zone I and II

The following uses are prohibited:

Statutes and regulations cited are as in effect on March 1, 1999, and as subsequently amended.

- a. landfills and open dumps as defined in 310 CMR 19.006;
- b. automobile graveyards and junkyards, as defined in M.G.L. c. 140B, §1;
- c. landfills receiving only wastewater and/or septage residuals including those approved by the Department pursuant to M.G.L. c. 21, §26 through 53; M.G.L.c.111, §17; M.G.L c. 83, §6 and 7, and regulations promulgated thereunder;
- d. facilities that generate, treat, store, or dispose of hazardous waste that are subject to M.G.L. c. 21C and 310 CMR 30.00, except for the following:
  - i) very small quantity generators as defined under 310 CMR 30.000;
  - ii) household hazardous waste centers and events under 310 CMR 30.390;
  - iii) waste oil retention facilities required by M.G.L. c. 21, § 52A;
  - iv) water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters;
- e. petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5171 and 5983. SIC Codes are established by the US Office of Management and Budget and may be determined by referring to the publication, Standard Industrial Classification Manual, and any other subsequent amendments;
- 3.f. storage of liquid hazardous materials, as defined in MGL.c.21E, and/or liquid petroleum products unless such storage is:
  - i) above ground level, and;
  - ii) on an impervious surface, and
  - iii) either
    - a) in container(s) or above ground tank(s) within a building, or;
    - b) outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater;
- g. storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
- h. storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
- i. Contamination of groundwater by improper storage of animal manure:
- j. Manure generated by residential and recreational uses, not for resale and not incidental to commercial landscaping;

Storage of animal manure must be contained or otherwise controlled from excessive leaching, in accordance with best management practices such as described in the West Newbury Livestock Guidelines; and as determined by the Planning Board. Any accumulation shall be removed at least every 2 years.

- k. Manure for commercial use, such as for landscaping or for resale: Storage of animal manure must be covered or contained in accordance with guidelines from the Natural Resource Conservation Service. Storage time shall be limited to 1 year.
- l. Mining and removal of earth material to within 4 feet of historical high groundwater as determined through soil analysis by a Certified Soil Evaluator using a method approved by the Department of Environmental Protection. Sand and gravel operations must determine the historical high groundwater table from monitoring wells and historical water table fluctuation data as compiled by the United States Geological Survey. Excavation and grading for residential development, including building foundations, roads, swimming pools, landscaping, gardening, and utility works are exempt. Sanitary disposal waste systems are exempt if constructed in accordance with State (Title 5) and local Board of Health.
- m. discharge to the ground of non-sanitary wastewater including industrial and commercial process waste water, except:
  - i) the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
  - ii) treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13);
  - iii) publicly owned treatment works;
- n. stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the district;
- o. storage of commercial fertilizers, as defined in MGL Chapter 128, §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

#### 10.F.4. Uses and Activities Requiring a Special Permit

The following uses and activities are permitted only upon the issuance of a Special Permit by the Special Permit Granting Authority (SPGA) under such conditions as they may require:

- a. enlargement or alteration of existing uses that do not conform to the Groundwater Protection District;
- b. those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning (except as prohibited under Section C). Such activities shall require a special permit to prevent contamination of groundwater;
- c. any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

## **10.G. PROCEDURES FOR ISSUANCE OF SPECIAL PERMIT**

10.G.1. The Special Permit Granting Authority (SPGA) under this bylaw shall be the West Newbury Planning Board. Such special permit shall be granted if the SPGA determines, with advice from the Board of Health, the Conservation Commission, and the Water Department that the intent of this bylaw, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The SPGA shall document the basis for any departures from the recommendations of the other town boards or agencies in its decision.

The SPGA is authorized to adopt regulations to administer this bylaw, and to set performance and/or design standards.

10.G.2. Upon receipt of the special permit application, the SPGA shall transmit one copy to the Water Department, Board of Health, and the Conservation Commission for their written recommendations. Failure to respond in writing within 35 days of receipt by the Board shall indicate approval or no desire to comment by said agency. The necessary number of copies of the application shall be furnished by the applicant.

10.G.3. The SPGA may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 6 of this bylaw, and any regulations or guidelines adopted by the SPGA. The proposed use must:

- a. in no way, during construction or thereafter, adversely affect the existing or potential quality of quantity of water that is available in the Groundwater Protection District; and
- b. be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.

10.G.4. The SPGA may adopt regulations to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the municipality.

10.G.5. The applicant shall file 10 copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:

- a. a complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
- b. for those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and Board of Health. The plan shall include:
  - i) provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
  - ii) provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
  - iii) evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA

identification number from the Massachusetts Department of Environmental Protection.

- c. proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.

- 10.G.6. The SPGA shall hold a hearing, in conformity with the provision of MGL Chapter 40A, Section 9, within 65 days after the filing of the application and after the review by the Town Boards, Departments, and Commissions.

Notice of the public hearing shall be given by publication and posting and by first-class mailings to "parties of interest" as defined in MGL Chapter 40A, §11. The decision of the SPGA and any extension, modification, or renewal thereof shall be filed with the SPGA and Town Clerk within 90 days following the date of the public hearing, as provided in MGL Ch.40A, §9. Failure of the SPGA to act within 90 days shall be deemed as a granting of the permit. However, no work shall commence until a certification is recorded as required by MGL Chapter 40A, §11.

- 10.G.7. Written notice of any violations of this Bylaw shall be given by the Zoning Enforcement Authority to the responsible person within a week after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Planning Board, Building Inspector, Board of Health, Conservation Commission, and Water Department. The cost of containment, clean-up, or other action of compliance shall be borne by the owner and operator of the premises.
- 10.G.8. A determination that any portion or provision of this Groundwater Protection Overlay District Bylaw is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.

## **SECTION 11. WIND MONITORING OR METEOROLOGICAL TOWER**

*[Added by Amendments effective October 25, 2010 by vote of Special Town Meeting and approved by the Attorney General on February 22, 2011 and posted according to law on February 24, 2011]*

A Wind Monitoring or Meteorological Tower (WMMT) is defined as a temporary tower equipped with devices to measure wind speeds and direction and used to determine how much wind power a site can be expected to generate. The placement, design, construction, operation, monitoring, modification, and removal of the WMMT in any zoning district shall be subject to a Special Permit from the Planning Board in accordance with the provisions of M.G.L. Chapter 40A, §9 and the Zoning Bylaw, and consistent with the following:

### **11.1. Purpose**

The purpose of this bylaw is to allow the installation, modification, and removal of a WMMT, and to address public safety requirements; preserve the rural character of West Newbury; minimize impacts on scenic, natural, and historic resources; and provide adequate financial assurance for the eventual removal. The provisions set forth in this bylaw shall take precedence over all other bylaws when considering applications related to the construction, operation, and repair of wind facilities.

### **11.2. General Requirements**

The construction and operation of a WMMT shall comply with all applicable local, state and federal requirements, including but not limited to safety, construction, environmental, electrical, communications, and aviation requirements. Additionally, applicable requirements of Section 7 of this Bylaw shall be met. Site Plan Review, Section 8.B., shall not be required for a WMMT Special Permit.

### **11.3 Application Procedure**

See Planning Board Regulations Governing Special Permits for filing and other requirements.

### **11.4. Required Documents**

- a. In addition to the Site Plan requirements of Section 8.A. and Planning Board Regulations, the Site Plan shall show the following:
  - i) location of proposed WMMT, foundations, guy anchors, access roads, and associated equipment, with dimensional offsets measured from the center of the proposed monopole to two of the boundary lines
  - ii) distances from each building on the lot to the nearest WMMT and from each lot line to the nearest WMMT.
  - iii) any existing overhead utility lines.
- b. Prior to issuance of a Building Permit, the applicant will supply the following items to the Planning Board for review, and the Planning Board must verify to the Building Inspector that the documentation is in order:
  - i) a plan and schedule for the removal of the WMMT
  - ii) evidence that the proposed height meets FAA requirements.
  - iii) contact information for a person responsible for receiving public inquiries or complaints while the WMMT is in place.

- iv) unless the facility will be municipally or state owned, 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 WMMT and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer.
- v) evidence that the applicant is carrying comprehensive general liability insurance with a company registered to do business in Massachusetts in amounts specified by the Planning Board.

#### 11.5. Design Standards

- a. **Lighting.** The WMMT shall be lighted only if required by the FAA. Lighting of other parts of the WMMT, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Except as required by the FAA, lighting of the WMMT shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.
- b. **Signage.** Signs shall comply with Section 7.C.
- c. **Unauthorized Access.** The WMMT shall be designed to prevent unauthorized access.
- d. **Setbacks.** The WMMT and any related supporting structure including guy lines must meet the following setback requirements:
  - i) from the nearest residential structure on abutting or nearby parcels existing at the time of the submittal of the application for the Special Permit, one point five (1.5x) the height of the WMMT;
  - ii) the height of the WMMT from the nearest property line.
- e. **Land Clearing, Soil Erosion and Habitat Impacts.** Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the WMMT or otherwise prescribed by applicable laws, regulations, and bylaws

#### 11.6. Modifications

All modifications to the WMMT made after issuance of the Special Permit require review by the Planning Board or its Technical Review agent as follows:

- a. Minor Modifications – The Planning Board or its Agent may allow minor modifications of construction or Site Plan details, provided that they do not alter the intent or conditions of the approval.
- b. Major Modifications – The Applicant will be required to file an amended Special Permit application.

#### 11.7 Special Permit Duration and Removal Requirements

- a. A WMMT shall be permitted for a period of time not to exceed 30 (thirty) months. The WMMT must be removed no later than 30 months from the issuance of the Special Permit.
- b. Removal shall consist of physical removal of the WMMT, disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations,

and stabilization or re-vegetation of the site as necessary to minimize erosion.

#### 11.8. Appeals

Appeal of the Planning Board's final action on a Special Permit shall be made to a court of competent jurisdiction in accordance with the provisions of M.G.L. Chapter 40A, §17.

### **Section 12. WIND FACILITIES**

*[Added by Amendments effective October 25, 2010 by vote of Special Town Meeting and approved by the Attorney General on February 22, 2011 and posted according to law on February 24, 2011]*

The placement, design, construction, operation, monitoring, modification, and removal of Wind Facilities shall be allowed in any zoning district subject to a Special Permit from the Planning Board, in accordance with the provisions of M.G.L. Chapter 40A, §9 and the Zoning Bylaw, and consistent with the following:

#### 12.1. Purpose

The purpose of this bylaw is to allow the installation, modification, and removal of Wind Facilities, and to address public safety requirements; preserve the rural character of West Newbury; minimize impacts on scenic, natural, and historic resources, and provide adequate financial assurance for the eventual decommissioning and removal of such facilities. The provisions set forth in this bylaw shall take precedence over all other bylaws when considering applications related to the construction, operation, and repair of Wind Facilities.

#### 12.2. Definitions

Nacelle: The frame and housing at the top of the Wind Energy Conversion Facility tower that encloses the gearbox and generator and protects them from the weather.

##### **WIND FACILITY:**

Wind Facility: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity, where the primary use of the facility is electrical generation which in part or in whole may be sold to the electricity markets. This includes, but is not limited to transmission, storage, collection and supply, substations, transformers, service and access roads, and one or more Wind Turbines.

Small Wind Facility: A Wind Facility consisting of no more than one small Wind Turbine per lot.

Large Wind Facility: A Wind Facility consisting of more than one small Wind Turbine per lot or any Wind Facility using one or more large Wind Turbines.

##### **WIND TURBINE:**

Wind Turbine: A device that uses wind energy to drive an electrical generator. A Wind Turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

Small Wind Turbine: A Wind Turbine with a height of 100 feet or less.

Large Wind Turbine: A Wind Turbine with a height which exceeds 100 feet.

Wind Turbine Height: The height of a Wind Turbine measured from the elevation of the

natural grade at the center of the tower location to the elevation of the tip of the rotor blade at its highest point, or to the otherwise highest point of the structure.

Windmill: A device, usually associated with agriculture, that converts kinetic energy of the wind into mechanical power, not electrical power. A Windmill is not subject to the Wind Facilities provisions of Section 12 of the Zoning Bylaw.

#### 12.3. Applicability

This section applies to all Wind Facilities proposed to be constructed and to existing Wind Facilities proposed to be altered in type, configuration, size, or a combination thereof.

#### 12.4. General Requirements

The construction and operation of Wind Facilities shall comply with all applicable local, state and federal requirements, including but not limited to safety, construction, environmental, electrical, communications, and aviation requirements. Additionally, applicable requirements of Section 7. and Section 8. of this Bylaw shall be met. Large Wind Facilities are subject to Section 8B, Site Plan Review. Small Wind Facilities are not.

#### 12.5. Application Procedure

See Planning Board Regulations for Special Permits for filing and other requirements.

#### 12.6. Required Documents

- a. During a pre-application conference with the Planning Board, the Planning Board shall select up to six sight lines for pre- and post- construction view representations for a Large Wind Facility, and up to three for a Small Wind Facility. Sight line points of view will be selected from nearby buildings, public ways, town-owned areas open to the public, or any combination thereof. The applicant will then supply with the Special Permit application full color, ground-level, photographic-style, view representations showing existing and post-construction conditions, for the purpose of illustrating the proposed facility to the public.
- b. In addition to the Site Plan requirements of Section 8.A. and, for Large Wind Facilities, those of 8.B. of the Zoning Bylaw, and Planning Board Regulations, the Site Plan shall show the following:
  - i) location of proposed Wind Turbines, foundations, guy anchors, access roads, and associated equipment, with dimensional offsets measured from the center of the proposed monopole to two of the boundary lines
  - ii) all required setbacks
  - iii) any existing overhead utility lines
  - iv) tower foundation blueprints or drawings
  - v) documentation of the Wind Turbine's manufacturer and model, rotor diameter, tower height, and tower type (freestanding or guyed)
  - vi) a statement that evidences ambient sound levels at the site and maximum projected sound levels from the Wind Facility at the property lines.

- c. Prior to issuance of a Building Permit, the applicant will supply the following items to the Planning Board for review, and the Planning Board must verify to the Building Inspector that the documentation is in order:
  - i) one or three line electrical diagram detailing Wind Turbine, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices
  - ii) evidence that the proposed height meets FAA requirements
  - iii) if connection to the grid is anticipated, evidence that the utility company that operates the electrical grid where the facility is to be located has been informed of the customer's intent to install an interconnected customer-owned generator
  - iv) An electronic copy of the final approved submittal
  - v) evidence that the facility is properly grounded for a lightning strike event
  - vi) evidence that the applicant is carrying comprehensive general liability insurance with a company registered to do business in Massachusetts in amounts specified by the Planning Board
  - vii) the recording of a copy of the Special Permit at the Registry of Deeds.
  
- d. In addition to the above requirements in Section 12.6.c, the following are required for a Large Wind Facility:
  - i) an Operation and Maintenance Plan
  - ii) documentation regarding systems to be provided that will prevent a situation whereby high winds cause the Wind Turbine to spin at speeds greater than the maximum design speed.
  - iii) evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.
  - iv) if requested by the Planning Board, an Emergency Response Plan developed in cooperation with public safety officials.
  - v) unless the facility will be municipally or state owned, 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 facility and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include an adjustment for inflation for the expected life of the facility.
  
- e. The Planning Board may waive or modify the submission requirements contained herein where it finds such waiver or modification shall not adversely affect the public health, safety, or welfare, and will not derogate from the intent of this bylaw.

#### 12.7. Design Standards for Wind Facilities

- a. Color and appearance. The Planning Board shall have discretion over the turbine color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged. Appearance shall comply with Federal Aviation Administration (FAA) safety requirements.
- b. Type of Structure. A monopole type of structure may be permitted. Lattice-type structures are not allowed.
- c. Lighting. Wind Turbines shall be lighted only if required by the FAA. Lighting of other parts of the Wind Facility, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting

properties. Except as required by the FAA, lighting of the Wind Facility shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

d. Signage. Signs on Wind Facilities shall comply with Section 7.C. of the Zoning Bylaw. Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Wind Facility.

e. Location of Utilities. Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the Wind Facility 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.

f. Appurtenant Structures. All appurtenant structures to Large Wind Facilities, including but not limited to equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and contained within the turbine tower whenever technically and economically feasible. Whenever reasonable, structures should be shielded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

g. Unauthorized Access. Wind Facilities shall be designed to prevent unauthorized access. For instance, the towers of Wind Turbines shall be designed and installed so that step bolts or other climbing features are not readily accessible to the public and so that step bolts or other climbing features are not installed below the level of 8 feet above the ground. Electrical equipment shall be locked. A fence, placed a minimum of half the rotor diameter from the tower centerline, shall be provided to restrict unauthorized access.

h. Setbacks. Each Wind Turbine must meet the following setback requirements:

- i) A distance three times (3x) the height of the Wind Turbine from any Contiguous and Buildable Area on any off-site parcel suitable for the construction of a residential structure. If the project satisfies all other criteria for the granting of a Special Permit and based on site-specific consideration and written consent of the affected abutters, the Planning Board may reduce this minimum setback distance to no less than two times (2x) the height of the Wind Turbine.
- ii) A distance two times (2x) the height of the Wind Turbine from the nearest property line, road, legally established trail, and areas set aside for public use. If the project satisfies all other criteria for the granting of a Special Permit and based on site-specific considerations, the Planning Board may reduce this minimum setback distance to no less than one point three times (1.3x) the height of the Wind Turbine.
- iii) A distance equal to the height of the Turbine from the nearest on-site residential or business structure. This setback distance shall not be reduced.

i. Shadow Flicker. Wind facilities shall be sited in a manner that minimizes shadow flicker impacts. The applicant has the burden of proving to the Planning Board that this effect does not have significant adverse impact on neighboring or adjacent uses and that no nearby residence will experience more than 30 hours per year of shadow flicker.

j. Noise. The operation of the Wind facility shall conform with Section 7.A.4. of the Zoning Bylaw and the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10.)

k. Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the Wind Facility or otherwise prescribed by applicable laws, regulations, and bylaws.

#### 12.8. Maintenance

The owner of the Wind Facility shall maintain the Wind Facility in good condition and provide acceptable evidence to the Planning Board annually upon request that the insurance coverage required by Section 12.6.c.vi. is in effect. 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. The owner of the Wind Facility shall be responsible for the cost of maintaining the Wind Facility and any access road(s). The owner of the Wind Facility shall provide access to the facility for inspection upon request from the Planning Board or its designee. The Planning Board may require annual inspection and reports by a qualified professional.

#### 12.9. Modifications

All modifications to a Wind facility made after issuance of the Special Permit require review by the Planning Board or its Technical Review agent as follows:

- a. Minor Modifications – The Planning Board or its Technical Review Agent may allow minor modifications of construction or Site Plan details, provided that they do not alter the intent or conditions of the approval.
- b. Major Modifications – The Applicant will be required to file an amended Special Permit application.

#### 12.10. Abandonment or Decommissioning

- a) **Removal Requirements.** Any Wind Facility which ceases to be used for its originally intended purpose, is used differently than specified by the special permit, has been abandoned, or has not been properly maintained, as required in Section 12.8. above, shall be removed. The owner/operator shall physically remove the facility no more than 150 days after the date of discontinued operations. The applicant shall notify the Planning Board by Certified Mail or hand delivery of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of physical removal of all Wind Turbines, structures, equipment, security barriers and transmission lines from the site, disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations, and stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- b) If the facility has not operated for more than one year, the Wind Facility shall be considered abandoned unless a written extension of time has been granted by the Planning Board, subject to a written notice from the owner of a proposed date of decommissioning, or of extenuating circumstances. If the applicant fails to remove the facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property

and physically remove the facility, utilizing the surety required in Section 12.6. In the event that the Town incurs expenses beyond the amounts reserved, the owner of the Wind Facility shall be liable for the additional expenses including reasonable attorney's fees.

12.11. Appeals

Appeal of the Planning Board's final action on a Special Permit shall be made to a court of competent jurisdiction in accordance with the provisions of M.G.L. Chapter 40A, §17.

**Sections 13.0. to 19.0: Reserved for future use.**

**20.0. VALIDITY**

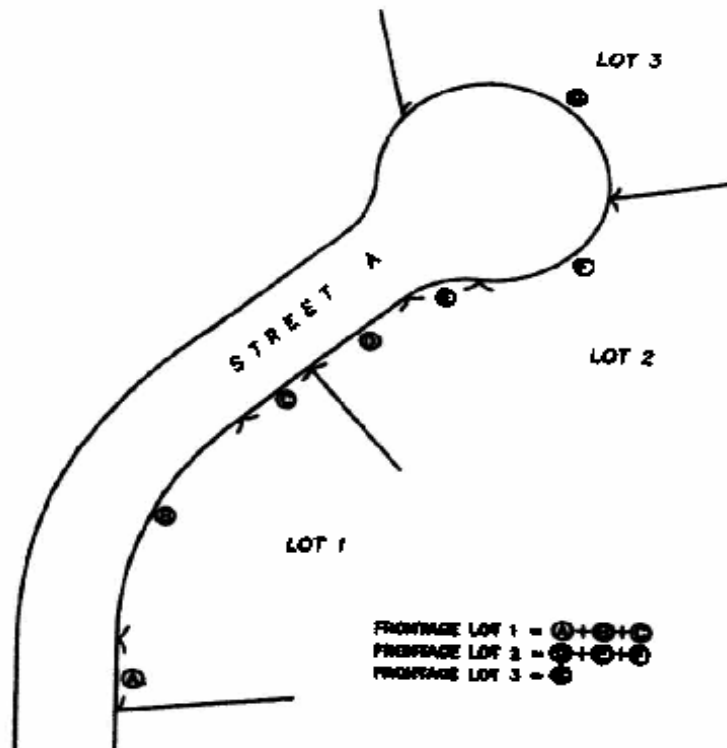
*[Number of Section changed by Amendment effective October 25, 2010 by vote of Special Town Meeting and approved by the Attorney General on February 22, 2011 and posted according to law on February 24, 2011]*

20.A. The invalidity of any other section or provision of this By-Law shall not invalidate any other section or Provision thereof.

**APPENDIX ONE (1<sup>ST</sup> PAGE)**

*(Amended by vote of the Annual Town Meeting of April 30, 2007, approved by the Attorney General on June 11, 2007 and posted according to law on June 25, 2007)*

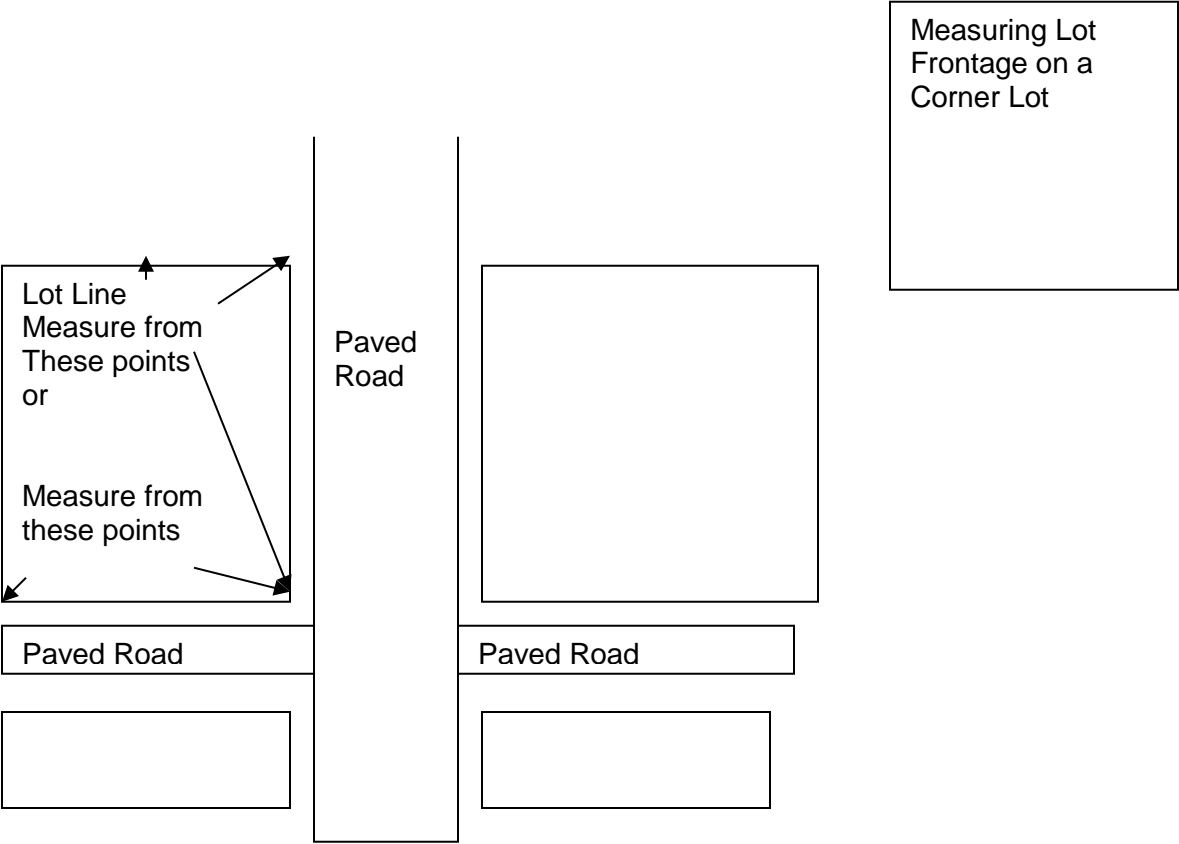
(FRONTAGE ON CURVED STREETS AND IN CUL-DE-SACS)



**APPENDIX ONE**  
**(FRONTAGE ON CURVED STREETS AND IN CUL-DE-SACS)**

APPENDIX ONE (2<sup>ND</sup> PAGE)

Measuring Lot Frontage at Corner Lot



## APPENDIX TWO

Examples of Bonus Unit Calculations (Section 6.B.13)											
	Division of the Basic Maximum Number (Each line in this section always adds up to the BMN.)						Market Rate Bonus Units (from 6.B.13) (The total in this section is limited to 50% of the BMN.)				Total for Development
	Market Rate Units	Affordable Units Required by 5.F.4*	Detached Single Family Cottage Units	Accessory Dwelling Units	Affordable Units in Excess of Those Required	Historic Preservation	From Detached Single Family Cottage Units	From Accessory Dwelling Units	From Affordable Units in Excess of Those Required	From Historic Preservation	(The maximum total number of units is limited to 150% of the BMN.)
Limits (% of BMN) →			20%	20%	50%	10%	20%	20%	50%	10%	150%
Density Bonus per Provided Unit →			1	2	3	1	1:1	2:1	3:1	1:1	
Example: BMN = 22	No Bonus Units	20    2	0	0	0	0	0	0	0	0	22
	Three Additional Affordable	17    2	0	0	3	0	0	0	9	0	31
	Three Accessory Units	17    2	0	3	0	0	0	6	0	0	28
	Two Add'l Affordable + Two Accessory	16    2	0	2	2	0	0	4	6	0	32
	Various Bonus Units to Maximum 1.50(22) = 33	14    2	2	1	2	1	2	2	6	1	33
Example: BMN = 30	No Bonus Units	27    3	0	0	0	0	0	0	0	0	30
	Two Additional Affordable	25    3	0	0	2	0	0	0	6	0	36
	Two Cottage Units	25    3	2	0	0	0	2	0	0	0	32
	Two Add'l Affordable + Two Cottage	23    3	2	0	2	0	2	0	6	0	38
	Various Bonus Units to Maximum 1.50(30) = 45	19    3	2	1	3	2	2	2	9	2	45

\*The number of affordable units required by Bylaw Section 5.F.4 = 10% of the BMN and these units are included as part of (not in addition to) the BMN. See Bylaw Section 5.F.6.a for rounding.