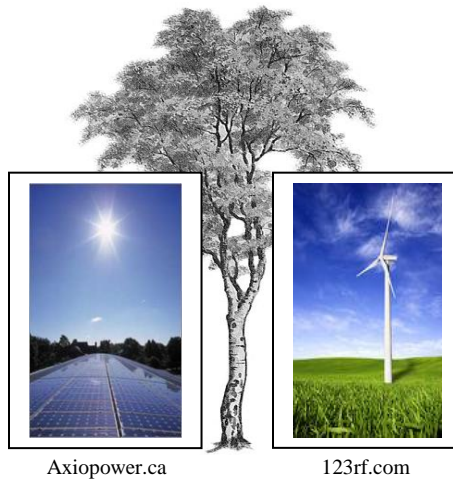


Adopted May 22, 2006  
Last Amended on Oct 28, 2019



## *Winchendon, Massachusetts*

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## **Zoning Bylaw**



Department of Planning and Development  
Town Hall, 109 Front Street  
Winchendon, MA 01475

## **DISCLAIMER**

This publication of the Town of Winchendon Zoning Bylaw includes amendments as they are adopted, and are so noted. However, it is not practically possible to keep any compilation of law perfectly current; therefore, you are advised to independently confirm the status of any particular article or section of this bylaw.

No misprint or omission in this publication shall affect the validity of any bylaw, rule or regulation duly enacted by the Town or any Town board, department or officer.

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## **ARTICLE 1. INTRODUCTION** (amended 5/19/08)

### **1.1 PURPOSE AND SPIRIT OF THE BYLAW**

In the early years of the United States, the perception of the vast spaces of the country allowed landowners in their log cabins remote from civilization to do pretty much as they pleased with their properties, and zoning was not of much interest. However, the desire to have access to the goods, services and functions of civilization (e.g. like water, sewage, healthcare and so forth) overcame the desire for unfettered freedom. As long as individual pursuit of goods, services and functions did not impact their neighbors any more than their neighbors' pursuit, all was relatively copasetic. People cooperated with their neighbors before building or planting for the sake of community.

Unfortunately over time, People began to abuse the cooperative spirit for individual gain. Polluting factories were constructed in the middle of dense urban residential area. Zoning was first enacted to counteract the health implications of these incompatible land-uses in 19<sup>th</sup> century England. Zoning has thus been inclined to regulate land-uses rather than the direct cause of the pollution or impact.

In more recent times, the sophistication of technology has enabled zoning to directly manage the actual impacts and performance of a given landowner or user upon his/her neighbors, recognizing this as more directly what is objectionable to the neighborhood. One could imagine, for instance, a beautiful clock factory building that would not pollute or adversely affect its neighbors and might in fact employ much of the neighborhood within walking distance increasing both land appeal and value, but zoning by land-use alone would probably disallow this type of admittedly-rare arrangement.

### **MISSION:**

This bylaw is thus enacted to encourage the most appropriate use and performance of land throughout the Town, to eliminate or mitigate the adverse impacts of this use, to conserve the value of land and buildings, to preserve and protect lakes, streams, wetlands, aquifers, watersheds and other environmental resources of the Town, to provide careful recognition of variable soil conditions throughout the Town, to prevent overcrowding of land, to preserve the historical character of the Town and to preserve and increase amenities so that all citizens shall have access to the fruits of living in Winchendon and to a quality of life that they choose without preventing their neighbors from doing the same.

1.1.1 It is the intention of this bylaw to encourage practices which will make Winchendon a sustainable community. These include practices that will contribute to the reduction of global warming, discourage the generation of greenhouse gases and encourage their absorption, discourage unnecessary energy use, and encourage the use of renewable energy sources.

This bylaw is enacted with reasonable consideration for the Town's unique physical characteristics and its unique suitability for particular uses with a view toward providing direction to the land development policies and proposals of the Planning Board, including making the Town of Winchendon a more viable and more pleasant community in which to live, work and play, consistent with the objectives laid forth in the master plan for the Town of Winchendon, including its rural character and easy access to modern amenities.

### **1.2 AUTHORITY**

This bylaw is enacted under rights of local self-government granted by the Massachusetts Constitution and by the authority granted under Chapter 40A of the General Laws of Massachusetts and any amendment thereto.

### **1.3 TITLE**

This bylaw shall be known and may be cited by the title: “Winchendon , Massachusetts Zoning Bylaw.”

### **1.4 BASIC SCOPE AND APPLICATION**

All buildings and structures thereafter constructed, reconstructed, altered, enlarged or moved, and all uses of land, premises, buildings and structures within the Town of Winchendon shall be in conformance with the provisions of this bylaw. Effective date should be noted for general purposes and specific deviations accepted as noted.

### **1.5 COMMUNICATION**

The structure of the bylaw is as follows: Article 1 serves as the introduction to the bylaw. Article 2 contains the definitions of terms used in the bylaw. Articles 3 and 4 concern zoning districts and special zoning districts, respectively. Article 5 deals with principal land uses. Article 6 takes up accessory, non-conforming and other special buildings and uses. Articles 7-10 deal with site considerations. Article 7 deals with dimensional and density requirements for lot layouts. Article 8 treats parking and traffic considerations. Article 9 discusses signage. Article 10 deals with the removal and handling of natural materials on a given site. Article 11 provides a flexible means for residential development while also preserving open space in conformity with the objectives of the Master Plan. Article 12 deals with on-site considerations through requirements for site plan approval. Finally, Article 13 deals with the remaining legal and administrative issues.

The Planning Board is authorized, after a public hearing as provided in section 11 of chapter 40A of the Massachusetts General Laws, to adopt by simple majority vote, appendices that may be included after this bylaw. These will not be legally binding but will serve as clarifications and guidelines for those interpreting the bylaws. The appendices may originate from material that changes over time, such as the Institute of Transportation Engineers (ITE) tables. Developers should make sure to use the most up to date version of the sources referenced.

The Department of Planning and Development shall keep up-to-date copies of this zoning bylaw available to and accessible by all the citizens. Copies shall be available for sale. Every attempt, within reason and within reasonable cost, shall be made so that such copies are identical to the definitive reference in the town clerk's office at the Town Hall.

## **ARTICLE 2            DEFINITIONS**

This section is intended to provide definitions of terms used in the bylaw that might require clarification or might have unusual or restrictive usage or meaning specific to urban planning, zoning or this bylaw in particular.

**ACCESS:** An unobstructed means of vehicular entry to or exit from a lot.

**ACCESSORY BUILDING:** A subordinate or secondary building situated on the same lot or parcel with a principal building, the use of which is customarily incidental to that of the main building or land use. (SEE FIGURE A.6.3)

**ACCESSORY APARTMENT:** A dwelling unit constructed within an existing house. It is a unit containing a bathroom (a minimum of a toilet, wash basin, and shower), kitchen and living/bedroom space. An accessory apartment must be subordinate to the principal household and must have an entrance-exit way independent of the principal household.

**ACCESSORY DWELLING UNIT:** A separate, complete housekeeping unit with a separate entrance, kitchen, sleeping area, and bathroom (a minimum of a toilet, wash basin, and shower) which is an attached or detached extension to an existing single-family structure.

**ACCESSORY USE:** A use subordinate to and customarily incidental to the principal use.

**ADDITION:** Any construction which increases the size of a structure or building in terms of site coverage, height, length, width or gross floor area.

**ADULT ESTABLISHMENT:** Establishment which features entertainment or materials of or relating to “sexual conduct”, “nudity” or other “matter”, as these terms are defined in Massachusetts General Laws, Chapter 272, Section 31. Includes Adult Live Entertainment, Motion Picture Theater, Retail and other Adult uses.

**OBSCENE ENTERTAINMENT:** All entertainment which may be considered “obscene” as this term is defined by Massachusetts General Laws, Chapter 272, Section 31.

**ANIMAL FEED LOT:** A plot of land of which ten (10) or more livestock per acre are kept for the purposes of feeding.

**ANTENNA/WIRELESS DEVICE:** See WIRELESS COMMUNICATIONS

**APARTMENT:** See DWELLING

**APPLICANT:** A person or persons, including a corporation, trust, or other legal entity, who applies for issuance of a permit in accordance with this bylaw.

**ASSISTED LIVING FACILITY:** A special combination of housing, supportive services, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities of daily living. Such a facility may include a central or private kitchen, dining, recreational, and other facilities, with separate bedrooms or living quarters, where the emphasis of the facility remains residential.

**AUCTION –** See GALLERY

**AUTO BODY SHOP:** A facility, which provides collision repair services, including body frame straightening, replacement of damaged parts, and painting.

**AQUIFER:** A geological formation, group of formations or part of a formation which contains sufficient saturated permeable material to yield significant quantities of potable groundwater to public or private wells.

**BED AND BREAKFAST:** See COUNTRY INN

**BEDROOM:** A separate room intended for, or customarily used for, sleeping.

**BIG BOX RETAIL:** A retail facility, usually a chain store, with a floor area greater than 15,000 sq. ft. The facility is normally a single story box-shaped building with a large parking lot.

**BOARD, PLANNING BOARD:** The Planning Board of the Town of Winchendon.

**BOARDING HOUSE:** Any dwelling in which more than three persons not members of the family reside on the premises, either individually or as families, are housed or lodged for hire with or without meals. See dwelling.



**BUFFER ZONE:** A strip of land, identified in the zoning bylaw, established to protect one type of land use from another. An example is a dense, wide screen of vegetation around a commercial or industrial area to insulate the commercial or industrial area from an adjacent but incompatible residential area.

**BUILDING:** Any structure erected for the support, shelter or use of animals, goods, persons or property.

**BUILDING COVERAGE:** A percentage figure referring to that portion of a lot covered only with principal and accessory buildings.

**BUILDING INSPECTOR:** Building Official empowered to enforce Massachusetts State Building Code and also construed to be the Building Commissioner for Winchendon.

**BURDEN:** The undue externalization of costs from where they are incurred, the raising of costs to the Town or other entities without paying for those costs over time to cover the full and incidental costs incurred, including imputed value loss based on undesirable or inappropriate development and extra maintenance or security costs associated with development.

**BUSINESS CENTER:** The following three locations are deemed to be business centers: Corner of Central Street and Grove Street; Corner of Main Street and Alger Street; Corner of Glenallan Street and Maple Street.

**CAMPGROUND:** An area or place operated commercially and used for a camp, camping or for a camp meeting.

**CARRIER:** See WIRELESS COMMUNICATIONS

**CO-LOCATION:** See WIRELESS COMMUNICATIONS

**CONSTRAINTS:** Limitations

**CONDOMINIUM:** A multiple dwelling or development containing individually owned dwelling units and jointly owned and shared areas and facilities maintained by a homeowners' association. The homeowners' association is subject to the provisions of applicable state and local laws.

**CONFORMING USE:** The use of buildings, structures or land which fully meets the use, density and dimensional requirements of the zoning district wherein located.

**CONTIGUOUS:** Contiguous means connected. In the case of required open space the connection shall be not less than 100 feet wide. Open space will be considered connected if it is separated by a roadway or accessory amenity.

**CONTRACTOR'S YARD -** A facility used for the provision of general contracting services associated with business which may include office and workshop areas and areas for the storage of equipment, including but not limited to motorized vehicles, machinery, and/or materials used in association with the contractor's business.

**CONVENIENCE STORE:** Any retail establishment offering for sale a limited line of groceries and household items intended for the convenience of the neighborhood.

**CONVERSION:** Changing the original purpose of a building to a different use.

**COUNTRY INN:** Premises with individual sleeping or dwelling units, with a common kitchen and dining area for all guests.

**COVENANT:** A private legal agreement on the use of land, contained in the deed to the property or otherwise formally recorded (cf. constraints and restrictions)

**DEDICATION:** The transfer of property interests from private to public ownership for a public purpose. The transfer may be of fee-simple interest or of an other-than-fee interest, including an easement.

**DENSITY, GROSS:** The quotient of the total number of dwelling units divided by the area of a site.

**DISPOSAL:** The deposit, injection, dumping, spilling, leaking, incineration or placing of any hazardous material into or on any land or water so that such hazardous material or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

**DRAINAGE:** The removal of surface water or groundwater from land by drains, grading or other means. Drainage includes the control of runoff to minimize erosion and sedimentation during and after development and includes the means necessary for water supply preservation or prevention or alleviation of flooding.

**DWELLING:** Any building or portion thereof which is designated or used for residential purposes.

**APARTMENT:** A dwelling unit in a building.

**DWELLING, MULTIPLE FAMILY ATTACHED:** Three (3) or more adjoining dwelling units. (SEE FIGURE A.3.1.1)

**DWELLING, MULTIPLE FAMILY APARTMENTS:** A building with three or more apartments. See APARTMENT. (SEE FIGURE A.3.1.1)

**DWELLING, SINGLE-FAMILY DETACHED:** A dwelling designed for and occupied by not more than one (1) family and having no roof, wall or floor in common with any other dwelling unit. (SEE FIGURE A.3.1.1)

**DWELLING UNIT:** A single unit providing complete, independent living facilities for one family including permanent provisions for living, sleeping, eating, cooking and sanitation.

**EFFICIENCY UNIT:** A single dwelling unit providing living quarters for not more than two persons.

**EASEMENT:** Authorization by a property owner for use by another for a specified purpose of any designated part of his/her property.

**EROSION:** The detachment and movement of soil or rock fragments by water, wind, ice and/or gravity.

**EXTENSIVE USE:** Large scale, expansive, outdoor use of land associated with agriculture, conservation or recreation.

**EXTERIOR STORAGE:** Outdoor storage of fuel, raw materials, products and equipment. In the case of lumberyards, exterior storage includes all impervious materials stored outdoors. In the case of truck terminals, exterior storage includes all trucks, truck beds and truck trailers stored outdoors.

**FAMILY:** Any number of persons living together under one head as a single housekeeping unit and including not more than three (3) persons not related by blood, adoption, marriage or other legal bonding (e.g. foster care) to the family head.

**FABRICATION - Manufacturing Process** in which an item is made (fabricated) from raw or semi-finished materials instead of being assembled from ready-made component parts. Product may be part of or a finished item.

**FILLING:** The depositing on land, whether submerged or not, of sand, gravel, earth or other materials of any composition whatsoever.

**FLOODPLAIN:** Floodplains may be either riverine or inland depressional areas. Riverine floodplains are those areas contiguous with a lake, pond, stream, river or river bed whose elevation is greater than the normal water pool elevation but equal to or lower than the projected 100-year flood elevation. Inland depressional floodplains are floodplains not associated with a stream system but which are low points to which surrounding lands drain.

**FLOOR AREA:** The sum of the gross floor area for each of a building's stories measured from the exterior limits of the faces of the structure, but not including unfinished basements and attics.

**GALLERY (AUCTION):** Site open to the public for use, display and/or sales of art, furniture, and other goods, sold or auctioned.

**GARAGE, COMMERCIAL:** A deck or building (or part thereof) used or intended to be used for the parking and storage of any number of motor vehicles for a fee.

**GAS STATION:** A facility limited to retail sales to the public of gasoline, motor oil, lubricants, motor fuels, travel aides, and minor automobile accessories. In addition, such a facility may provide vehicle servicing, minor repairs, and maintenance, but not reconditioning of motor vehicles, collision services such as body, frame or fender straightening and repair, or painting of automobiles (cf. convenience store).

**GARAGE, PRIVATE:** A building (or part thereof) used or intended to be used for the parking and storage of not more than four (4) motor vehicles.

**GO-CART:** A four-wheeled, SINGLE OCCUPANT vehicle, which is not more than 74 inches long, with tires not larger than 12 inches in external diameter, and powered by an internal combustion engine not greater than 300 cubic centimeters (“300 cc”) displacement. So called all-terrain vehicles are excluded from this definition.

**GO-CART / OFF-ROAD MOTORCYCLE RACETRACK:** A facility for competition and use of go-carts and off-road motorcycles.

**GROUNDWATER:** All the free flowing water beneath the surface of the ground.

**GVW -** The gross vehicle weight rating established by a manufacturer when applied to a motor vehicle, trailer, semi-trailer or semi-trailer unit, including the gross combination weight rating, if any, when applied to a semi-trailer unit or to a tractor-trailer combination.

**HAZARDOUS MATERIALS:** Any substance or combination of substances that because of quantity, concentration or physical chemical or infectious characteristics, poses a significant present or potential hazard to water supplies or to human health if disposed of into or on any land or water in this Town. Any substance deemed a “hazardous waste” in Mass. General Laws Chapter 21C shall also be deemed a hazardous material for the purposes of this bylaw.

**HEIGHT OF STRUCTURE:** The vertical distance measured from the mean ground elevation to the highest point of the structure.

**HOME BASED BUSINESS:** A business, profession, occupation or trade conducted for gain or support and located entirely within a residential building, or a structural accessory thereto, which use is accessory, incidental and secondary to the use of the building for dwelling purposes and does not change the essential residential character or appearance of such a building.

**HOTEL:** Premises used as individual sleeping or dwelling units without kitchens, with primary access to each unit through enclosed corridors.

**HYDROPOWER -** Power derived from the force of energy of moving water

**ILLUMINATION, EXTERNAL:** a projecting spotlight onto the sign, rather than illuminated from within.

**IMPERVIOUS SURFACE:** Any hard surfaced, man-made area that does not readily absorb or retain water. This includes but is not limited to building roofs, parking and driveway areas, graveled areas, sidewalks, and paved recreation areas.

**IMPERVIOUS SURFACE, ON LOT:** The total amount of impervious surface, which is present on a lot.

**INFILL:** Development within an existing urban fabric or within similar existing development

**INTENSITY:** The density or degree to which access to services and functions is available in a given location, e.g. Main Street has a relatively high intensity and a large rural farm has a low intensity.

**INTENSIVE USE:** A use consisting of or requiring high access to resources such as delivery trucks, traffic, people and so forth, probably producing significantly more noise, light, traffic and other impacts than residential.

**INTERIOR WIRELESS TELECOMMUNICATION FACILITY:** See WIRELESS COMMUNICATIONS

**JUNK:** Any article or material or collection thereof, which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or recycling. Any article or material which unaltered or unchanged, or with only minimal reconditioning can be used for its original purpose as readily as when new shall not be considered junk.

**JUNK YARD:** The use of any area of any lot, whether inside or outside a building, for the storage, keeping or abandonment of junk or scrap or discarded materials or the dismantling, demolition or abandonment of automobile(s) or other vehicle(s) or machinery or parts thereof.

**KENNEL STRUCTURE:** A structure which consists of a building, other than a dwelling, and/or one or more fenced enclosures where pets (dogs, cats, etc.) are kept. A “kennel” as used in the general bylaws or in Chapter 140 of the Massachusetts General Laws is not regulated by the zoning bylaw and is not the same as a “kennel structure” as used in the zoning bylaw.

**KENNEL STRUCTURE, COMMERCIAL:** A structure where pets (dogs, cats, etc.) owned by a nonresident are temporarily boarded for hire.

**KENNEL STRUCTURE, HOBBY :** A kennel structure which is accessory to a dwelling where pets are kept for the personal enjoyment of the occupants of the residence and commercial gain is not the primary objective.

**KENNEL STRUCTURE, NON-PROFIT:** A kennel structure where animals (dogs, cats, etc.) are boarded by a non-profit [501c3] animal rescue league or similar organization.

**LAND TRANSPORTATION PASSENGER TERMINAL FACILITY:** A facility at which passengers may board or alight from vehicles such as taxis, busses or limousines. Such facility may provide accessory services including waiting rooms, ticket sales, baggage handling, handling small amounts of goods carried on vehicles which primarily carry passengers, parking, and other amenities.

**LEACHING WASTES:** Waste materials, including solid wastes, sewage sludge and agricultural wastes that are capable of releasing water-borne contaminants to the surrounding environment.

**LICENSE GRANTED UNDER MA GENERAL LAW CHAPTER 140 SEC 59 & 59A -**

Class 1 – Refer to MGL Chapter 140 Section 58

Class 2 –Refer to MGL Chapter 140 Section 58

Class 3 - Refer to MGL Chapter 140 Section 58

**LOT:** A continuous parcel of land undivided by any street or private road. (SEE FIGURE A.7.2.1)

**LOT AREA:** The area contained within the boundary lines of a lot. (SEE FIGURE A.7.2.1)

**LOT FRONTAGE:** Lot width measured at the street lot line and providing access to the lot. When a lot has more than one street lot line, the full lot width shall be required from at least one such street line. (SEE FIGURE A.7.2.1)

**LOT LINE:** A line bounding a lot, which divides one lot from another or from a street or any other public or private space. (SEE FIGURE A.7.2.3)

**LOT LINE, REAR:** That lot line which is most nearly parallel to and most distant from the front lot line of the lot; in case of an irregular, triangular or gore-shaped lot, a line twenty (20) feet in length, entirely within the lot, parallel to and at the maximum possible distance from, the front line shall be considered to be the rear lot line. (SEE FIGURE A.7.2.3)

**LOT LINE, SIDE:** Any lot line other than a front or rear lot line. (SEE FIGURE A.7.2.3)

**MAJOR WIRELESS TELECOMMUNICATION FACILITY:** See WIRELESS COMMUNICATIONS

**MANUFACTURING, GENERAL:**

- 1) The mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials including but not limited to oils, plastics, resins, etc.
- 2.) Fabrication of raw materials or assembly of parts or materials fabricated offsite.

**MANUFACTURING, LIGHT:**

- 1) The manufacturing, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales and distribution of such products, provided all manufacturing activities are contained entirely within a building and noise, odor, smoke, heat, glare and vibration resulting from the manufacturing activity are confined entirely within the building.
- 2.) The processing or fabrication of materials or products where no process involved will produce noise, vibration, air pollution, fire hazard, or noxious emission which will disturb or endanger neighboring properties.

**MILL CONVERSION PROJECT (MCP):** The conversion of an existing mill or portion thereof, to a mixture of residential and nonresidential uses as provided under section 4.2.

**MINIATURE GOLF COURSE:** A novelty version of golf played with a putter and a golf ball on a miniature course, typically with artificial playing surfaces, and including obstacles such as bridges and tunnels.

**MINING OF LAND:** The removal or relocation of geological materials such as topsoil, sand and gravel, metallic ores and bedrock.

**MIXED USE ZONING:** Zoning which permits a combination of usually separated uses within a single development.

**MOBILE HOME:** A structure designed as a dwelling unit for living purposes, capable of being moved on its own wheels by a towing vehicle fixed to a temporary site on wheels, or fixed without wheels to a permanent foundation.

**MOBILE HOME PARK:** Premises, which have been planned and improved for the placement of two or more mobile homes for non-transient use.

**MOTEL:** Premises used as individual sleeping or dwelling units without kitchens, with primary access from each unit directly outdoors. The building or group of buildings may be either detached or in connected units. The term "motel" includes buildings designated as tourist courts, motor lodges, cabins and by similar appellations.

**MOTOR VEHICLE AND EQUIPMENT SALES -** Salesroom and related facilities, including but not limited to open-air display, for the sale or lease of automobiles, motorcycles, recreational vehicles and similar vehicles, boats, or light industrial or farm equipment.

**MOTOR VEHICLE:** All vehicles constructed and designed for propulsion by power other than muscular power including such vehicles when pulled or towed by another motor vehicle, except railroad and railway cars, vehicles operated by the system known as trolley motor or trackless trolley and shall not include motorized bicycles.

**MULTIPLE FAMILY DWELLING/STRUCTURE:** A building containing 3 or more adjoining Dwellings Units.

**MUNICIPAL UTILITIES:** Any person, firm, corporation, municipal department, or board duly authorized to furnish, and furnishing under state or municipal regulations to the public, electricity, gas, steam, communication, telegraph, transportation or water, or the services provided by such entities.

**MUSEUM:** An institution devoted to the procurement, care and display of objects of lasting historical interest or value. In the normal course of its operations, a museum can be expected to host openings, small receptions, collations and similar events with or without charging a fee.

**NONCONFORMITIES:** Existing uses, structures, and/or lots that were legally established prior to the existence or change(s) in the zoning bylaw but which do not comply with currently existing zoning bylaw standards.

**NUISANCE:** Any adverse uses, infringements or impacts of land use or performance. (APPENDIX F)

**NURSERY:** An enterprise which conducts the retail and wholesale sale of plants grown on the site, as well as accessory items (but not power equipment such as gas or electric lawnmowers and farm implements) directly related to their care and maintenance. The accessory items normally sold are clay pots, potting soil, fertilizers, insecticides, hanging baskets, rakes and shovels, and similar items.

**OBSCENE ENTERTAINMENT:** see adult establishment.

**OFFICE BUILDING:** A building used primarily for offices that may include ancillary services for office

**OPEN-AIR SALVAGE YARD -** Open-air storage of materials, merchandise, products or equipment needed in connection with an individual or entity engaged in the business of acquiring or owning salvage automobiles for resale in their entirety or as spare parts.

**OFFICE BUILDING, MEDICAL:** A building used primarily by physicians, dentists, and similar personnel for the treatment and examination of patients solely on an outpatient basis, provided that no overnight patients are kept on the premises.

**OFF-ROAD MOTORCYCLE:** A two-wheeled vehicle for a single occupant, which has a wheelbase not greater than 54 inches, powered by an internal combustion engine not greater than 500 cubic centimeters ("500 cc") displacement, and not licensed or registered for use on public roads.

**ORCHARD:** A cultivated area of fruit trees.

**OWNER:** The person or persons, including a corporation, trust or other legal entity, which has fee simple ownership as evidenced by the most current record instrument at the Worcester District Registry of Deeds or Land Court.

**PARTIES IN INTEREST:** The petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the town planning board and the planning board of every abutting city or town

**PLANNED DEVELOPMENT:** A form of development usually characterized by a unified site design for a number of housing units, clustering buildings and providing common open space, density increases and a mix of building types and land uses.

**PRE-DEVELOPMENT LAND USE:** The state of a property prior to the current development, or a state that land if not damaged would return to without human impact after a large number of years.

**PREMISES:** A lot together with all buildings, structures and uses thereon.

**PRIVATE CLUB:** A building in which members of a community or association may gather for social, educational, or cultural activities.

**RECHARGE AREA:** Any area of porous, permeable geological deposits, especially, but not exclusively, deposits of stratified sand and gravel, through which water from any source drains into an aquifer and includes any wetland or body of surface water surrounded by or adjacent to such area together with the watershed of any wetland or body of surface water adjacent to such area.

**RECREATIONAL VEHICLE:** A portable vehicular structure designed for travel recreational camping or vacation purposes, either having its own motor power or mounted onto or drawn by another vehicle. Including but not limited to travel and camping trailer, truck campers and motor homes.

**RECREATIONAL VEHICLE – MARINE:** A vessel propelled by oars, sails, or an engine designed to float or plane, to work or travel on water, including but not limited to boat, jet ski, personal watercraft, kayak, and canoe.

**RECREATIONAL VEHICLE – OFF ROAD (ORV).** A vehicle designed or modified for use for recreation or pleasure off a public way including but not limited to, All Terrain Vehicle (ATV), Snowmobile, Dirt Bike, Off Road Motorcycle, Golf Cart, and All Terrain Utility Vehicle (i.e., Gator).

**RESEARCH LABORATORY:** A building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products except those that are incidental to the main purpose of the laboratory.

**RESTAURANT, FAST-FOOD:** A restaurant whose primary business is the sale of food for consumption on or off the premises, which is:

- (A) Primarily intended for immediate consumption rather than for use as an ingredient or component of meals;
- (B) Available upon a short waiting time; and
- (C) Packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.

**RESTAURANT, STANDARD:** An establishment whose principal business is the sale of food and/or beverages to customers in a ready-to-consume state, and whose principal method of operation includes one or both of the following characteristics: (1) customers, normally provided with an individual menu, are served their foods and beverages by a restaurant employee at the same table or counter at which food and beverages are consumed; (2) a cafeteria-type operation in which food and beverages are consumed within the building, but are served at a buffet-type area and taken by the customer to a table for consumption.

**RESTRICTIONS:** Prohibitions

**RURAL CHARACTER:** The ability of a place to offer easy access to open space, pristine or agrarian landscapes.

**SALVAGE YARD:** A facility where second hand motor vehicles are remodeled, taken apart or rebuilt, such as to require a license under section 59A of Chapter 140 of the M.G.L.; this includes a junkyard (see above) and also includes an automobile graveyard as defined in section 1 of chapter 140B of the M.G.L.

**SERVICES:** An offering or provision that is above normal minimum expectations, e.g. snow removal, water, sewer, etc.

**SIGN:** A placard, banner or other article used to advertise or inform those who can read the information thereon. See Article 9. (SEE FIGURE A.9.1)

**AREA OF:** The entire display area of a sign. In cases of signs with faces 180 degrees to each other, only one side shall be counted.

**GROUND/POLE:** A sign permanently affixed apart from, not attached to a building. A ground sign is mounted directly on the ground. A pole is a ground sign raised in the air by means of a pole. This bylaw regulates both types as the same category of signs.

**PROJECTING:** A sign attached perpendicularly to the façade of a building.

**TEMPORARY:** Any sign not permanently affixed.

**WALL:** A sign attached directly against and parallel to a building façade.

**SIGN, BLINKING –** To light intermittently.

**SIGN, FLASHING -** Rhythmic light and darkness at predetermined intervals.

**SIGN, INTERMITTENT LIGHTED -** Light alternately ceasing and beginning again sequentially or alternately at predetermined intervals

**SOLAR ENERGY COLLECTION SYSTEM** A system using photo voltaic, thermal, or other means of collecting solar energy and converting it to electricity or other forms of useful energy. Such a system will include collectors, energy transmission lines, and appurtenant devices such as transformers, inverters, pumps, storage facilities and similar devices. Necessary appurtenant structures are also included.

**GROUND MOUNTED SOLAR ENERGY COLLECTION SYSTEM** A system that is structurally mounted on the ground and is not roof-mounted,

**SOLID WASTE:** Useless, unwanted or discarded solid materials with insufficient liquid content to be free flowing.

**STABLE:** A building or land where horses or ponies are kept.

**STABLE, COMMERCIAL:** a stable for hire, sale, boarding, breeding, riding or show.

**STABLE, PRIVATE:** An accessory structure or land use that is designed, arranged, used or intended to be used as a stable for the exclusive use of the occupants of the premises and not for hire, sale or boarding.

**STRUCTURE:** A building or other object constructed or erected the use of which requires a fixed ground location, including mobile homes.

**SUBDIVISION:** The division of land into two (2) or more lots by means of mapping, platting, conveyance, change or rearrangement of boundaries.

**THEATER:** A structure used for dramatic, operatic, motion pictures or other performance, for admission to which entrance money is received and no audience participation or meal service is allowed

**TOWNHOUSES:** Buildings with 2 or more units located side by side either attached or only slightly detached. Refers to style of housing popular in larger urban areas where land is conserved due to expense. (SEE FIGURE A.3.1.1)

**UPLAND:** Land that is not considered a resource area pursuant to the Wetlands Protection Act (M.G.L. c. 131 § 40) and its implementing regulations (310 C.M.R. 10.00 et seq.).

**USE:** The purpose or activity for which land or any building therein is designed, arranged or intended, or for which it is occupied or maintained.

**VOGUE:** Valid at the date and situation under consideration, e.g. parking fees in vogue the fee valid for parking at that spot on that date, also **IN FORCE, DE RIGUEUR**.

**WALKABLE DISTANCE:** Land or lots within one mile of a business center. The distance shall be measured along the most commonly traveled public ways.

**WAREHOUSE:** Facilities characterized by storage, wholesale and distribution of manufactured goods, supplies and equipment, frequent heavy trucking activity, open storage of material, or nuisances such as dust, noise, and odors, but not involved in manufacturing or production.

**WATERCOURSE:** Any natural or man-made stream, pond, lake, wetland, coastal wetland, swamp or other body of water and shall include wet meadows, marshes, swamps, bogs and areas where ground water, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year.

**WIND ENERGY CONVERSION SYSTEMS** - All equipment, machinery, and structures, whether underground, on the surface, or overhead, used to collect, transmit, distribute, store, supply, or sell energy derived from wind, including but not limited to wind turbines (rotors, electrical generators and towers), anemometers (wind measuring equipment), transformers, substations, power lines, control and maintenance facilities, and site access and service roads.

**B. COMMERCIAL WIND ENERGY SYSTEM (CWES):** A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity greater than 10 kW.

**C. RESIDENTIAL WIND ENERGY SYSTEM (RWES):** A wind energy conversion system consisting of a wind turbine, and associated control or conversion electronics, which has a rated capacity of not more than 10 kW, located on a single lot, intended as an accessory use in a designated residential district or in connection with any residential use in a designated commercial district. The rated capacity of not more than 10 kW can be increased at the discretion of the SPGA.

**D. WIND TURBINE:** A single device that converts wind to electricity or other forms of energy, typically consisting of a rotor and blade assembly, electrical generator, and tower with or without guy wires.

**E. OVERALL ENGINEER DESIGNED FALL ZONE:** The area on the ground, determined by a registered professional engineer, within a prescribed radius from the base of a WECS, typically the area within which there is a potential hazard from falling debris or collapsing material.

**F. WIND FARM:** A collection of towers in the same location. See Section 5.D for allowance of more than one (1) tower on the same lot or on contiguous lots held in common ownership.

**WIRELESS COMMUNICATIONS:** All forms of communications that transmit and receive radio frequency or microwave signals.



**ANTENNA/Wireless Device:** A device used to transmit and/or receive electromagnetic waves conducted through the air.

**ANTENNA SUPPORT STRUCTURE:** Any frame, pole, tower, or other mechanical device to which one or more antennas are attached. Examples of antenna support structures are towers, smoke stacks, roof-mounted poles, or wall brackets.

**CARRIER:** A company that provides wireless services.

**CO-LOCATION:** The use of a single mount on the ground by more than one telecommunication carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.

**BUILDING-MOUNTED EXTERIOR ANTENNA SUPPORT STRUCTURE:** Any out-of-doors antenna support structure mounted on, erected on, or supported in whole or in part by an existing building or structure occupied and/or used for purposes other than wireless communications.

**FALL ZONE:** The area on the ground within a prescribed radius from the base of a wireless service facility. The fall zone is the area within which there is a potential hazard from debris (such as ice) or collapsing material.

**FREE-STANDING EXTERIOR ANTENNA SUPPORT STRUCTURE:** Any out-of-doors antenna support structure consisting of any free-standing non-habitable structure, including but not limited to monopoles, lattice towers (with or without guy wires), flag poles, water towers, or smoke stacks.

**FUNCTIONALLY EQUIVALENT SERVICES:** Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.

**INTERIOR WIRELESS TELECOMMUNICATION FACILITY:** Wireless Communication Facilities (WCFs) that are completely inside an existing structure and therefore hidden from view.

**MAJOR WIRELESS TELECOMMUNICATION FACILITY:** Anything that is not a minor facility. This includes new towers or facilities attached to existing structures in areas not specifically allowed under the minor facility definition.

**MINOR WIRELESS TELECOMMUNICATION FACILITY:** Those facilities primarily attached to existing structures. Minor WCFs include those that are attached to the side of buildings or facilities on the top of buildings that extend no more than ten (10) feet above the highest point of a building. It includes new facilities to be collocated on existing towers, facilities to be installed on overhead cable, smokestacks, steeples, water tanks or billboards.

**MONOPOLE:** The type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for one or more arrays of antennas.

**MOUNT:** The structure or surface, upon which antennas are mounted, including the following 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.

**WCF ACCESSORY BUILDING:** A structure designed to house wireless communications equipment that is associated with one or more wireless communications facilities.

**WIRELESS COMMUNICATIONS FACILITY (WCF):** A system of transmission and/or reception equipment operated by an FCC licensee or a communications service installed at one location. The system includes one or more antennas mounted on an antenna support structure, a means to connect the antenna(s) to communications equipment, communications transmitting and/or receiving equipment and related equipment required for the operation of the facility. Such related equipment may be, for example, network interconnection equipment, alternate power sources, or controlling and monitoring systems

**WETLAND:** Those areas that are inundated and saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, including all resource areas as defined by the Wetlands Protection Act (M.G.L. c. 131 § 40) and its implementing regulations (310 C.M.R. 10.00 et seq.).

**WORKING DAYS:** Only those days that the Winchendon Town Hall is officially open for customary business.

**ZONING ENFORCEMENT OFFICER:** Official designated by the municipality to enforce the provisions of the zoning bylaw. For the Town of Winchendon, the zoning enforcement officer is the Building Inspector. (see §13.4)

## ARTICLE 3 ESTABLISHMENT OF ZONING DISTRICTS

### 3.1 DIVISION INTO DISTRICTS

Within the Town of Winchendon are hereby established twelve zoning districts, seven of which comprise the total area of the Town and are contiguous, and five of which are superimposed over portions of the other seven districts.

“R” refers to a district which is principally residential. Preference is given to land-use that entails the building of houses similar in character, type and size to those of the surrounding houses and the typical thereof. Small scale businesses and the like can be allowed if they are not nuisances to the neighbors and burden the Town no more than the equivalent residential construction. (SEE FIGURES A.3.1.1, A.3.1.2 AND APPENDIX F)

“C” refers to a district which is principally commercial and light industrial. Preference is given to land-use that entails the building of businesses and shops similar in character, type and size to those of the surrounding businesses and shops and the typical performance thereof. Residences may be allowed, but only if they are agreeable to, not nuisances or burdens to, and promote the commercial interests of the district. (SEE FIGURE A.3.1.3 & APPENDIX F)

“I” refers to a district which is principally industrial. Preference is given to land-use that entails the building of factories and large-scale commercial facilities similar in character, type and size to those of the surrounding facilities and the typical thereof. Since these are the least compatible with other types of development, care is given to make sure this district can hold and accommodate this intense usage and that it is sufficiently buffered and regulated to reduce impacts on neighboring districts. Residences are usually not allowed as their safety, health and freedom from nuisances cannot be guaranteed. (APPENDIX F)

“PD” refers to a district that caters to both commercial and residential use. Preference is given to facilities that are mixed use with a higher density sharing resources such as on-street parking, parks and so forth. See Article 4.7. (ALSO SEE FIGURE A.3.1.4 & APPENDIX F)

“OVERLAY DISTRICTS” recognize the special conditions and values prevalent in wetlands, flood prone areas, groundwater aquifers, historic districts, and other specially designated areas. These districts are superimposed over portions of the seven contiguous, regular zones designated in the zoning map. Conditions and requirements of the underlying zones apply in general, with exceptions and special conditions as described in the section on each overlay district in Article 4.

Designations are as follows:

**TABLE 3.1. Zoning District Designations**

Designation	Title
R80	Rural Residential
R40	Rural Suburban Residential
R10	Neighborhood Residential
C1	Highway Commercial
C2	Neighborhood Business
PD	Planned Development
I	Industrial
IR	Ice Racing District (overlay)
MCOD	Mill Conversion Overlay District
LMOD	Lake Monomac Overlay District
GAOD	Gateway Overlay District
WF	Wetlands and Flood Conservancy (superimposed)
Rt. 140 COD	Route 140 Corridor Overlay District

## **3.2 LOCATION OF DISTRICTS; ZONING MAP**

3.2.1 The location and boundaries of the twelve zoning districts designated R80, R40, R10, C1, C2, PD, I, IR, MCO, , LMOD, GAOD and WF are hereby established as shown on a map entitled Zoning Map of Winchendon, Massachusetts, which accompanies and is hereby declared to be a part of this bylaw and is on file in the office of the Town Clerk. (SEE FIGURE A.3.2) More specific identification and designation of zoning district boundary lines are as follows:

- A. Boundary lines shown on the zoning map as being approximately on the location of property or lot lines, when exact location is not indicated in dimensions, shall be upon the property lot line as shown on the Winchendon Assessors map January 1, 2005.
- B. Boundary lines shown on the zoning map as following street, road, highway, railroad or utility lines shall be upon the center line of such ways.
- C. Boundary lines shown on the zoning map as being outside of street, road, highway or utility lines, but approximately parallel thereto, shall be deemed as parallel and at such distance there from as shown on the zoning map or as determined by scale.
- D. Boundary lines shown following a stream, lake, watercourse or other water body shall be at the centerline thereof, or the jurisdictional limits of the Town of Winchendon.
- E. Boundary lines shown as intersecting a street, road, highway, railroad or utility line, watercourse or other waterbeds shall be construed to intersect at right angles to the centerline thereof; and
- F. Any questions or uncertainties as to the precise location of a district boundary line shall be determined by the Zoning Board of Appeals of the Town of Winchendon.

3.2.2 Determining zoning district boundaries in general followed the ensuing guidelines: (cf. EXAMPLE A.3.2)

- A. public health, safety and utility considerations are the principal drive forces in zoning determination. Zoning districts make an attempt to recognize and preserve the historic development patterns and character of the neighborhood.
- B. areas located in mixed use districts, along key circulation corridors and central to densely populated areas tend to be zoned PD.
- C. residential areas served by both town water and town sewer and that are walkable were in general zoned as R10. Those that were not walkable and had a development pattern inconsistent with R10 were zoned R40.
- D. Residential areas that were not considered within walkable distance of a business center and had a development pattern inconsistent with R10 were generally zoned R40.
- E. Residential areas not served by town water or town sewer tend to be zoned R80.
- F. Areas targeted for neighborhood-scale commercial development tend to be zoned C2.
- G. Areas targeted for high-intensity commercial and light manufacturing development tend to be zoned C1.
- H. Areas zoned as industrial tend to be located in remote areas and allow for more intense industries to conduct business without being a nuisance to neighbors.

3.2.3 Applicants for projects in residential areas in an R40 zone or an R80 zone which abut an R10 or R40 zone may apply to the Zoning Board of Appeals of the Town of Winchendon for a Special Permit to allow their areas to have the same density and dimensional requirements as if they were in an R10 zone provided that their area is served by both town water and town sewer.

## **3.3 LOTS SPLIT IN SEPARATE DISTRICTS**

In the case of a lot which is split into separate zoning districts, the Board of Appeals may grant a special permit to allow a use located within the district in which the frontage is situated to extend into the adjacent zoning district. In granting such a permit, the Board of Appeals shall consider the compatibility of existing uses in the abutting lots consistent with the spirit of the bylaw and the master plan. The Board of Appeals shall seek input from the Planning Board prior to rendering a decision on the special permit.

### **3.4 LOCATION OF SUPERIMPOSED DISTRICTS; MAP REFERENCES**

Recognizing the special conditions prevalent in wetlands, flood prone areas and areas characterized by poorly drained soils, the Wetlands and Flood Plain Conservancy Districts are considered to be superimposed over portions of the seven regular zones designated on the zoning map.

The Flood Plain Conservancy District includes all areas of Town identified on the Flood Hazard Boundary maps of the U. S. Federal Insurance Administration as special flood hazard areas of the Town, as approved by the Town of Winchendon.

Regulations governing permitted and prohibited uses within the Wetlands and Flood Plain Conservancy District are as set forth in Article 4.

### **3.5 HISTORIC DISTRICT**

Nothing in this bylaw is intended to conflict with any provisions of the Winchendon Centre Historic District bylaw adopted under the provisions of the Chapter 40C, General Laws and amendments thereto.

## **ARTICLE 4        SPECIAL ZONING DISTRICTS**

### **4.1        ICE RACING DISTRICT**

4.1.1 The following land shall be included in an overlay district to be known as the Ice Racing District: the bodies of water known as Whitney Pond and Mill Glen Pond, otherwise known as Carter's Pond, which is located near Old Baldwinville Road and Mill Glen Road. Within this overlay district, ice racing of motor vehicles, including automobiles, and practices therefore shall be permitted subject to the conditions in Section 4.1.2 and 4.1.3. The term "ice racing" shall mean the racing of motor vehicles on frozen water bodies.

4.1.2 A special permit issued by the Zoning Board of Appeals in accordance with Section 9 of Chapter 40A of the General Laws shall be required. Such special permits shall expire on March 15th each year. Permits may be renewed after a new hearing. An applicant for a permit shall demonstrate at the public hearing to the satisfaction of the Zoning Board of Appeals that:

1. The applicant owns or has a legal right to use the body of water involved.
2. The applicant owns or has a legal right to access the body of water from a public way adequate to handle the expected traffic.
3. Issuance of the permit will not create a nuisance to other persons by way of noise, odors, lights, or traffic congestion.
4. Adequate parking will be provided.
5. Ice racing will be conducted only according to the rules and guidelines of the International Ice Racing Association or other recognized sanctioning body.
6. The applicant has secured adequate casualty and liability insurance.
7. The applicant has made arrangements for spills of hazardous materials to be immediately cleaned up by a qualified hazmat cleanup agency.
8. The applicant has made arrangements for adequate sanitary facilities.
9. The applicant has made arrangements for police details adequate to control traffic, parking and crowd control.

4.1.3 Ice racing or practices by ice racing vehicles shall be conducted only on Saturdays and Sundays between January 2 and March 15 in not more than five periods. This restriction shall apply to each body of water separately. Ice racing and practice sessions shall be conducted only between ten o'clock in the morning and sunset. On Sundays the hours shall be noon to sunset.

## **4.2 MILL CONVERSION OVERLAY DISTRICT (MCOD)** (amended 1/29/07)

4.2.1 Purpose. The purpose of this Section is to create an overlay district:

1. To allow for conversion of Winchendon's historic mills while preserving the character of nearby residential and commercial neighborhoods;
2. To encourage the preservation, reuse and renovation of historic mill properties; and
3. To promote diversified housing opportunities and uses such as commercial, retail or office use, or a combination of such uses.

4.2.2 Applicability. The applicant must own, or be the beneficial owner of, all the land included in the proposed Mill Conversion Project (MCP), or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the applicant giving them the right to acquire the land to be included in the MCP.

4.2.3 Establishment. The Mill Conversion Overlay District ("MCOD") is hereby established and shall be construed as an overlay district. Within the MCOd all regulations of the underlying district(s) shall continue to be in full force and effect, except where these regulations supersede such underlying requirements or provide an alternative to such requirements. The MCOd shall consist exclusively of the following properties (as shown on the assessor's map dated January 2005):

1. Former Sanborn Mill Property:
  - Parcel 1: Winchendon Assessors Map 6B1, Parcel 1
  - Parcel 2: Winchendon Assessors Map 6B1, Parcel 6
  - Parcel 3: Winchendon Assessors Map 6B1, Parcel 8
  - Parcel 4: Winchendon Assessors Map 6B1, Parcel 35
  - Parcel 5: Winchendon Assessors Map 6B1, Parcel 5
2. Former N.D. White and Company Property:
  - Parcel 1: Winchendon Assessors Map 5B3, Parcel 95
  - Parcel 2: Winchendon Assessors Map 5B3, Parcel 177
  - Parcel 3: Winchendon Assessors Map 5B3, Parcel 93
  - Parcel 4: Winchendon Assessors Map 5B3, Parcel 96
  - Parcel 5: Winchendon Assessors Map 5B3, Parcel 97
  - Parcel 6: Winchendon Assessors Map 5B3, Parcel 98
  - Parcel 7: Winchendon Assessors Map 5B3, Parcel 99
3. Former Goodspeed Machine Company Property:
  - Parcel 1: Winchendon Assessors Map 5B3, Parcel 100
  - Parcel 2: Winchendon Assessors Map 5B3, Parcel 102
  - Parcel 3: Winchendon Assessors Map 5B3, Parcel 153
  - Parcel 4: Winchendon Assessors Map 5B3, Parcel 157
  - Parcel 5: Winchendon Assessors Map 5B3, Parcel 158
  - Parcel 6: Winchendon Assessors Map 5B3, Parcel 159
  - Parcel 7: Winchendon Assessors Map 5B3, Parcel 160
  - Parcel 8: Winchendon Assessors Map 5B3, Parcel 161
  - Parcel 9: Winchendon Assessors Map 5B3, Parcel 162

4.2.4 Special Permit Required. In accordance with this section, the Planning Board may grant a special permit for a Mill Conversion Project (“MCP”) within the MCOD. No other use or structures shall be permitted in conjunction with an MCP, except as specifically provided herein.

#### 4.2.5 Procedures/Administration.

1. Rules and regulations. The Planning Board shall adopt rules and regulations consistent with the provisions of this section and shall file a copy of the rules and regulations with the Town Clerk. The rules and regulations shall address the size, form, contents, style and number of copies of plans and other submittals and the procedure for review of special permits.

2. Pre-application conference. Applicants are encouraged to request a pre-application conference at a meeting of the Planning Board.

3. Site visit. The Planning Board may conduct a site visit as part of its review. At the site visit, the board and/or its agents shall be accompanied by the applicant and/or its agents.

4. Relationship of special permit to other requirements. The submittals and permits of this section shall be in addition to any other permits or requirements of any other law or regulation, including but not limited to the Wetlands Act (MGL c.131) and the Subdivision Control Law (MGL c. 41).

#### 4.2.6 Application.

1. Application requirements. An application for a special permit shall be submitted to the Planning Board and shall include all of the following:

A. Application form. A completed application form.

B. Plans. The following plans:

1. existing site conditions, including topography, water bodies and streams, wetlands, historic features, existing structures, easements and rights of way, and means of access;
2. proposed grading and landscaping;
3. Proposed lighting;
4. proposed utilities, including but not limited to water, wastewater, electric power, fuel, security and telecommunications systems, and cable television;
5. Proposed storm water system;
6. proposed pedestrian and vehicular access, circulation, parking and loading;
7. Structures to be retained, demolished, and new construction;
8. Building elevations and perspectives;
9. Floor plans for all buildings, including proposed use of floor space, number of units, number of bedrooms, and location of affordable units.



C. Narrative Reports. The following narrative reports or data:

1. A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated date of completion;
2. A development impact statement prepared by qualified professionals detailing the impact of the development, at all phases including construction and operation, on:
  - A. the Town's capacity to furnish services including, but not limited to, roads, police, fire, emergency services, schools, and water; and
  - B. vehicular and pedestrian traffic, water and air quality, noise and light pollution and other environmental concerns;
3. information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium or other ownership organization, including forms and plans to be used to organize and manage the same, for approval as to form by Town Counsel;
4. copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the Town, the Conservation Commission, utility companies, any condominium or other ownership organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by Town Counsel;
5. a concise narrative prepared by a preservation consultant including any and all historical information to be submitted to the Winchendon Historical Commission and the Planning Board. The narrative will include:
  - A. architectural history of all structures on the site, including period, style, method of building construction, and association with any particular architect or builder.
  - B. Any important association with one or more historic persons or events.
  - C. Any cultural, political, economic or social history of the site or any structures that may be significant to the Town, Commonwealth of Massachusetts or the United States of America.
6. Evidence that the proposed MCP is consistent with applicable standards of the National Park Service or the Winchendon Historic Commission; and
7. Any and all other information that the Planning Board may reasonably require in a form acceptable to it to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section.

D. Fees. The following fees:

1. Technical Review Fee. The applicant shall pay a technical review fee pursuant to G.L. c. 44, s. 53G and the rules of the Planning Board.

2. Administrative Fee. The applicant shall pay an administrative fee pursuant to the rules of the Planning Board.

2. Waiver. The Planning Board may waive the submittal of required technical information or documents when, in the Planning Board's opinion, due to the simplicity of the proposal, such information is not necessary for or applicable to the Planning Board's decision pursuant to this section.

4.2.7 Review by Other Boards. Upon receipt of a complete application, the Planning Board will distribute copies of the application, accompanying plans, and other documentation, to the Board of Health, Conservation Commission, Historic Commission, Development Director, Zoning Enforcement Officer, Highway Superintendent, Police Chief, Fire Chief, and such other municipal boards and departments as the Planning Board deems appropriate, for their consideration, review, and report. The applicant shall furnish all copies necessary to fulfill this requirement. Other boards and officials shall submit their reports to the Planning Board within 35 days of receipt of the review materials, and failure to submit a report within 35 days 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 35 day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that 35 day period. The Planning Board's decision shall explain in writing the reason for any departures from the recommendations of the other boards and departments.

4.2.8 Permitted Uses.

1. An MCP shall include one or more of the following residential uses: single family dwelling, duplex dwelling, multi-family dwelling; condominium, apartment, live and work unit; age-restricted housing; independent living unit.

2. In conjunction with these residential uses, an MCP may include one or more of the following non-residential uses:

A. (Commercial uses) Restaurant, retail store, or offices.

B. (Institutional uses) Museum, educational use, charitable or philanthropic institution, municipal use, club or lodge.

C. Appropriate accessory uses.

4.2.9 Standards. In order to be eligible for consideration for a special permit pursuant to this Section, the proposed development shall meet all of the following standards:

1. Buffer. Existing vegetation in the setback areas along the perimeter of the site shall be maintained as a buffer, except for driveways and pedestrian ways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may require suitable landscaping or replacement of vegetation. The Planning Board may waive this buffer requirement where it determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

2. Removal and Replacement of Vegetation. Within the site, no clear cutting shall be permitted, except as authorized by special permit and incidental to construction of buildings, roads, trails and parking areas. The Planning Board may require suitable landscaping or replacement of vegetation.
3. Roadways. The principal roadway(s) within the site shall be adequate for the intended use and vehicular traffic and shall be maintained by the association of unit owners or by the Applicant.
4. Number of Parking Spaces. The applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces. The minimum number of parking spaces shall be computed using the requirements of Sections 8.3 and 8.4 of this bylaw. The Planning Board may increase the required parking by up to 10% to serve the needs of residents, employees, visitors and service vehicles. The Planning Board may reduce the otherwise required number of parking spaces where the applicant demonstrates that an adequate number of spaces will be provided.
5. Commercial Vehicles. Commercial vehicles owned or operated by owners or tenants of the MCP, or their agents, servants, licensees, suppliers and invitees shall be parked inside a garage, or suitably screened or designated area, except for delivery or service vehicles in the active service of receiving and delivering goods or services.
6. Parking Areas. All parking areas shall be screened from view from adjacent residentially zoned or occupied premises located outside the site, including public ways, by a landscaped border at least ten (10) feet in width. Parking lots shall be located to the rear or side of all buildings and shall not be located in front setbacks or in buffer areas; provided, however, that the Planning Board may waive these provisions for existing parking lots and/or existing buildings. Parking lot layouts shall be planned to permit landscaping, buffers, or screening to prevent direct views of parked vehicles from adjacent streets.
7. Sidewalks or Paths. The Planning Board may require sidewalks or paths which shall be attractively designed with proper regard for convenience, separation of vehicular, bicycle and pedestrian traffic, adequate connectivity, completeness of access to the various amenities and facilities on the site and to pathways or sidewalks to adjacent sites.
8. Loading. Loading areas may be required by the Planning Board where deemed necessary for the efficient operation of the MCP. Screening and landscaping shall be provided to block all views of loading areas (except those specifically designated for emergency vehicles) from the public right-of-way and adjacent properties.
9. Stormwater Management. The stormwater management system shall be designed in accordance with the Regulations of the Planning Board.
10. Utilities. All electric, gas, telecommunications, and water distribution lines shall be placed underground, except upon a demonstration of exceptional circumstances. The facility shall be served by the municipal water system.
11. Emergency Systems. The MCP shall have an integrated emergency call, and/or telephone and/or other communications system for its residents and/or other tenants. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Winchendon Fire Department for the emergency evacuation of the residents with emphasis on ensuring the safety of residents with physical impairments.
12. Lighting. There shall be no illuminated signs, parking lot lighting, building floodlighting, or other exterior overspill onto adjacent premises such that it casts observable shadows, and such that it shall not create glare from unshielded light sources.

13. Screening. Exposed storage areas, garbage dumpsters, service areas, loading areas, utility buildings and structures shall be screened from the view of abutting properties and streets using plantings, fences and other methods approved by the Planning Board.

14. Minimum residential use. At least 25% of the gross floor area of the MCP shall be used for residential purposes.

4.2.10 Number of Dwelling Units. The maximum number of dwelling units shall be established by the Planning Board after reviewing the following criteria:

1. Existing structures;
2. Proposed method and efficacy of wastewater disposal;
3. Availability of public water;
4. Trip generation, traffic safety and internal site traffic;
5. Character of the proposed MCP and its relation to the surrounding neighborhood(s);
6. Character of the existing buildings and the potential for reuse thereof;
7. Number of affordable units, beyond the minimum required, proposed by the applicant;
8. Development Impact Statement;
9. Reports of the technical consultants of the Planning Board and all other reviewing boards.

4.2.11 Number of Bedrooms. The Planning Board may ensure the diversification of dwelling units within an MCP by establishing the number of dwelling units with one, two, or three bedrooms; but not more than 10% shall be three bedrooms.

4.2.12 Expansion of Existing Buildings. Existing buildings within an MCP may be expanded, provided that such expansion:

1. is consistent with the existing buildings' historic character and scale; and
2. does not cause substantial detriment after considering the factors set forth in Section 4.2.15

4.2.13 New Buildings. Within the MCP, new buildings may be constructed in accordance with the following requirements:

1. The number, type, scale, architectural style, and uses within such new buildings shall be subject to Planning Board approval.
2. New buildings shall be permitted only to the extent reasonably necessary to provide for essential services such as, but not limited to, wastewater treatment facilities.

4.2.14 Affordable Dwelling Units. (APPENDIX B) As a condition of granting a special permit for a MCP, a minimum of twenty (20%) of the total number of dwelling units shall be restricted in perpetuity in the following manner:

1. Five percent (5%) of the units shall be affordable to persons or families qualifying as low income under the Massachusetts Community Development Block Grant program; five percent (5%) of the units shall be affordable to persons or families qualifying as moderate income under the Massachusetts Community Development Block Grant program; and five percent (5%) of the units shall be affordable to persons or families qualifying as median income under the Massachusetts Community Development Block Grant program. The remaining 5% of affordable units shall be assigned for low income, moderate income or median income persons or families as will, in the Planning Board's opinion, best serve the Town's current housing needs. Fractional units shall be rounded up to the nearest whole number.
2. The restriction shall be approved as to form by legal counsel to the Planning Board, and a right of first refusal upon the transfer of such restricted units shall be granted to the Winchendon Housing Authority for a period not less than 120 days after notice thereof.
3. Affordable units shall be integrated into the overall development of the MCP so as to prevent the physical segregation of such units.
4. The Applicant shall be encouraged to seek designation of the units referenced in paragraphs 4.2.14.1 as affordable units which qualify as part of the subsidized housing inventory as approved and complied by the Department of Housing and Community Development (DHCD). The Planning Board may require that the Applicant affirmatively take steps to utilize the Winchendon Housing Authority, a public agency, a non-profit agency, limited dividend organization, or other appropriate entity, and through a Local Initiative Program petition or other similar mechanism or program, cause application to be made to the DHCD, so as to timely furnish all forms and information necessary to promote the designation of those units referenced in said paragraphs as affordable units qualifying as part of the subsidized housing inventory. The Planning Board may require submission of application, forms and appropriate information to the DHCD as a condition of approval.

#### 4.2.15 Decision

1. Criteria for decision. After considering reports from consultants and other boards and departments, the Planning Board may grant a special permit for a MCP where it makes the following written findings:
  - A. The application documents and supporting materials comply with all applicable sections of the zoning bylaw;
  - B. The proposed MCP complies with the design standards of this section.
  - C. The proposed MCP constitutes an appropriate renovation as defined above;
  - D. The proposed MCP does not cause substantial detriment to the neighborhood after considering the following potential consequences:
    1. Noise, during the construction and operational phases;
    2. Pedestrian and vehicular traffic;
    3. Environmental harm;
    4. Visual impact caused by the character and scale of the proposed structure(s); and
    5. Other consequences as may be set forth in the Development Impact Statement for the MCP.

E. The proposed MCP furthers the goals and objectives of the Master Plan

2. Time limit. A special permit is granted for a period of 2 years and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown.

3. Conditions. The Planning Board may impose conditions, safeguards and limitations in the grant of a special permit including, but not limited to:

A. that all construction or infrastructure improvements shall be completed within a specific time period;

B. that all aspects of the MCP, including authorized uses, building occupancy, and intensity of use, shall remain in substantial conformance with the plans and other documents submitted to the Planning Board as part of the special permit proceeding unless modification of the special permit for the MCP is authorized, after a public hearing, by the Planning Board;

C. that a performance guarantee suitable to the Planning Board may be required.

#### **4.3 WETLANDS CONSERVANCY DISTRICT**

4.3.1 Purpose. The purpose of the superimposed Wetland Conservancy District is as follows:

1. to preserve and protect the lakes, streams, watercourses, floodplains and other wetland types and their associated flora and fauna within the Town together with adjoining land,
2. to protect the health, safety and property of persons against the hazards of contamination,
3. to preserve and maintain the groundwater level,
4. to protect the community against the detrimental use and development of lands and wetlands surrounding bodies of water and adjoining streams and watercourses, and
5. To conserve the watershed and recharge areas of the Town for the health, safety and well-being of its inhabitants.

4.3.2 Permitted Uses. Within the wetlands, the following uses shall be lawful, but only by Special Permit granted by the Board of Appeals:

1. Municipal purposes, including waterworks, pumping stations, essential services, parks and any buildings and structures accessory thereto,
2. Public utility lines, facilities, buildings and accessory structures,
3. Flood control installations, facilities and equipment,
4. Non-profit, non-commercial social, civic or recreational lodge or club, and
5. Single family residences constructed and used in such a manner as not to endanger the health or safety of the occupants and in full compliance with the dimensional and density requirements of the underlying district.

4.3.3 Prohibited Uses. Within the wetlands, the following buildings, structures, installations and uses shall be prohibited:

1. Septic tanks, cesspools and leaching beds or fields,
2. Business, commercial and industrial buildings, structures or uses except provided in Section 4.3.2 above,
3. Libraries, hospitals, museums, sanitariums, nursing or rest homes, charitable institutions and cemeteries, and
4. Residential buildings, structures, dwellings and mobile homes intended for living purposes other than as permitted in Section 4.3.2 above.

4.3.4 Uses Permitted by Right. Woodland, grassland, wetland and agricultural, horticultural and recreational use of land or water not requiring filling or dredging and any building and structures accessory thereto.

## **4.4 FLOOD PLAIN CONSERVANCY DISTRICTS**

4.4.1 Purpose. The purpose of the Flood Plain District is to protect the public safety and general welfare, to protect human life and property from the hazards of periodic flooding, to preserve the natural flood control characteristics and the flood storage capacity of the flood plain and to preserve and maintain the ground water table and water recharge areas within the flood plain.

4.4.2 District Delineation. The general boundaries of the Flood Plain District are shown on the Winchendon Flood Insurance Rate Map (FIRM) dated June 15, 1982 as Zones A, A 1-30 to indicate the 100-year flood plain. The exact boundaries of the District are defined by the 100-year water surface elevations shown on the FIRM and further defined by the Flood Profiles contained in the Flood Insurance Study, dated December 15, 1981. The floodway boundaries are delineated on the Winchendon Flood Boundary Floodway Map (FBFM) dated December 15, 1981 and further defined by the Floodway Data Tables contained in the Flood Insurance Study. These two maps as well as the accompanying Study are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Inspector and Selectmen. Within Zone A where the 100-year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Conservation Commission. If the data is sufficiently detailed and accurate, it shall be relied upon to require compliance with this bylaw.

4.4.3 Use Regulations. The Flood Plain District is established as an overlay district to all other districts. All development, including structural and non-structural activities, whether permitted by right or by Special Permit must be in compliance with Chapter 131, Section 40 of the General Laws and with the requirements of the Massachusetts State Building Code pertaining to construction in a flood plain (currently Section 744).

1. Permitted Uses. The following uses of low flood damage potential and being unlikely to cause an obstruction to flood flows shall be allowed 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 or 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.

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

A. The proposed plan shall comply in all respects with the provisions of the underlying district, and

B. Within ten (10) days of receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, the Planning Board, the Board of Health and the Building Inspector. Final action shall not be taken until reports have been received from the above boards or until thirty-five (35) days shall have elapsed, and

C. All encroachments including fill, new construction, substantial improvements to existing structures and other development are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood, and

D. The Board may specify such additional requirements and conditions it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.

## **4.5 GROUNDWATER PROTECTION OVERLAY DISTRICT**

4.5.1 Purpose. The purpose of this district is to protect public health by preventing the contamination of existing and potential public and private water supplies and to protect the general welfare by preserving limited water supplies for present and future use.

4.5.2 District Delineation. The general boundaries of the Groundwater Protection Overlay District are those areas identified as potential municipal well sites in the July, 1988 “Exploratory Drilling Program” conducted by the engineering firm of Dufresne and Henry and shown on a “Groundwater Protection Overlay District Map” on file with the Town Clerk. This map, as it may be amended from time to time, is hereby made a part of this bylaw. Where the bounds of the Groundwater Protection Overlay District, as shown on the Groundwater Protection Map, are in doubt or in dispute, the burden of proof shall be upon the owner(s) and/or applicant of/for the property in question to show where the boundaries should properly be located.

### **4.5.3 Use Regulations**

1. Permitted Uses. Within the Groundwater Protection Overlay District, the following uses are permitted subject to the provisions of Section 4.5.3(2), Prohibited Uses provided that all necessary permits, orders and approvals required by local, state and federal law are also obtained:

A. Conservation of soil, water, plants and wildlife;



- B. Outdoor recreation not involving the use of motor vehicles or motorboats, including boating, fishing, nature study and hunting where otherwise legally permitted;
- C. Foot, bicycle and horse paths and bridges;
- D. Maintenance and repair of any existing structure, provided there is no increase in impervious pavement;
- E. Normal operations and maintenance of existing water bodies and dams, splash boards and other water control supply and conservation devices;
- F. Residential development permitted in the underlying zoning district provided that not more than 10% of a building lot is rendered impervious;
- G. farming, gardening, nursery, conservation, forestry, harvesting and grazing uses, provided that fertilizers, herbicides, pesticides and other leachable materials are not stored outdoors and that manure is not stored outdoors uncovered.

2. Prohibited Uses. Within the Groundwater Protection Overlay District, the following uses are prohibited:

- A. Storage of liquid petroleum products of any kind, except for storage in a freestanding container of fuel within a building for the purpose of heating of that building;
- B. Disposal of hazardous wastes as defined in chapter 21C of the Massachusetts General Laws ;
- C. Storage of hazardous wastes, as defined in Mass. General Laws, Chapter 21C, as amended;
- D. Disposal of solid wastes other than brush;
- E. disposal of leachable wastes except for subsurface waste disposal from one-family or two-family residential units, with the approval of the Board of Health ;
- F. Storage of road salt or other de-icing chemicals;
- G. Disposal of snow that contains de-icing chemicals and that has been brought in from outside the Groundwater Protection Overlay District;
- H. Industrial uses that discharge process waste water on-site;
- I. Outside storage of fertilizers, herbicides and pesticides and outdoor uncovered storage of manure;
- J. Animal feed lots;
- K. Dry cleaning establishments;
- L. Boat and motor vehicle service, washing and repair establishments;
- M. Junk and salvage yards;
- N. The rendering impervious of more than 10% of any lot;

N. Mining of land except as incidental to a permitted use.

3. Special Permit Uses. The following uses, unless prohibited by a specific provision of Section 4.5.3(2) of this bylaw, may be permitted by a Special Permit from the Special Permit Granting Authority, which in the case of Winchendon is the Planning Board, under such conditions as the Planning Board may require:

A. commercial and industrial activities permitted in the underlying district and involving the manufacture, storage, transportation or use of any hazardous materials other than hazardous wastes as defined by Mass. General Laws Chapter 21C (as amended);

B. The application of fertilizers for uses that are non-domestic and non-agricultural provided that such application shall be made in a manner as to minimize adverse impacts on surface water and ground water due to nutrient transport and deposition of sedimentation.

4. Special Permit Review Procedure. Any application for a Special Permit shall be made, reviewed and acted upon in accordance with the following procedures:

A. Each application for a Special Permit shall be filed in writing with the Planning Board, and shall contain a complete description of the proposed use, together with any supporting information and plan which the Planning Board may require.

B. The Planning Board shall refer copies of the application to the Board of Health, the Conservation Commission, the Town Engineer (if any) and the Department of Public Works. Each of which shall review, either jointly or separately, the application and shall submit their recommendations to the Planning Board. Failure to make recommendations within 35 days of the referral of the application shall be deemed lack of opposition.

C. The Planning Board shall hold a public hearing on the application in conformity with the provisions of Mass. General Laws, Chapter 40A, within 65 days after the filing of the application with the Planning Board.

D. After notice and public hearing, and after due consideration of the reports and recommendations of the local boards and departments, the Planning Board may grant such a Special Permit provided that it finds the proposed use:

1. is in harmony with the purpose and intent of this bylaw and will promote the purposes of the Groundwater Protection Overlay District;
2. is appropriate to the natural topography, soils and other characteristics of the site to be developed;
3. will not, during construction or thereafter, have an adverse environmental impact on the aquifer or recharge area;
4. will not adversely affect an existing or potential water supply.

## **4.6 LAKE MONOMONAC OVERLAY DISTRICT (LMOD)**(added 10/28/19)

4.6.1 Purpose. Recognizing that the parcels in this area of Town do not meet the requirements of the R40 zone in which they are located, the purpose of the Lake Monomonac Overlay District is to allow owners reasonable use of their properties without detriment to abutters and the general community.

4.6.2 District Delineation The Lake Monomonac Overlay District is hereby established and shall be construed as an overlay district, and such District is shown within the bounded area adjacent to Lake Monomonac, as more particularly shown on a plan entitled "Lake Monomonac Overlay District, Town of Winchendon, MA," Scale 1 inch = 1700 feet, dated August 25, 2019 which is attached. (SEE FIGURE A.4.6). The boundaries of the overlay district shall follow property lines as shown on the plan.

4.6.3 Use Regulations. The Lake Monomonac Overlay District is established as an overlay district to all other districts. All development, including structural and non-structural activities, whether permitted by right or by Special Permit must be in compliance with Chapter 131, Section 40 of the General Laws and with the requirements of the Massachusetts State Building Code.

### **4.6.4 Modifications to the Underlying Districts**

1. Permissible setbacks from property lines within the Lake Monomonac Overlay District shall match those of the R10 zoning district.
2. No other property regulations, dimensional or otherwise, shall be altered by the Lake Monomonac Overlay District.
3. All commercial occupancies within the Lake Monomonac Overlay District shall require full site plan review.

## **4.7 PLANNED DEVELOPMENT DISTRICT** (amended 11/08/07)

4.7.1 A planned development district (PD) is an area characterized by a cluster of commercial, industrial, residential, institutional, and public uses at moderate to high density. Commercial, industrial, and institutional uses in easily walkable proximity will form the essential center that defines a planned development district. Adjacent multifamily housing and mixed uses may extend the planned development district from this center.

A. Planned development districts are directed more towards pedestrian travel than vehicle travel. Distances between buildings will generally be short. Mixed commercial and residential uses are encouraged. It should be accented with vegetated open spaces such as small public parks. Commercial uses will include retail stores, personal and professional service businesses, restaurants, and entertainment uses. Home based businesses are appropriate. Buildings will generally be close to the street with sidewalks provided. Signage will be directed toward pedestrians on sidewalks rather than motor vehicle users.

### **4.7.2 Requirements applying to all uses in the Planned Development District.**

A. Unless otherwise provided the required lot dimensions shall be those shown in table 7.2.

B. All new development, redevelopment, or building construction shall be in conformity with the planned development district concept as stated in section 4.7.1.

C. A minimum of 10% of the total land area of a development site which has more than 1.5 acres shall be dedicated as common open space for recreational use. Developers of smaller projects are encouraged to preserve the maximum possible open space on site. Such land may be included in the determination of the site capacity.

D. On developments with water frontage, public access must be established or maintained by way of linear walkways and/or parks. The waterfront access for the public may be included as a portion of the required open space.

E. A development proposal by a single developer or by related developers that includes work on more than one parcel may be considered as a whole and require only a single application to each of the applicable local boards in lieu of separate applications for each parcel.

F. New side lot lines adjacent to the frontage shall be at an angle of more than 75° to the frontage line. A 90° angle is preferable.

G. Preferably, parking should be to the side or rear of the main building. Parking shall conform to the parking standards in article 8.

H. Newly developed or redeveloped lots shall have concrete sidewalks and street trees along the entire lot frontage typical of those on Central Street between Blair Square and Peterson Square. If such do not exist or are not in good condition, they shall be installed at the expense of the applicant.

I. Public water and sewer lines are required, provided that connections are available. If such are not up to Department of Public Works standards, they shall be installed or replaced at the expense of the applicant.

J. Low impact development principles as provided in the Massachusetts Stormwater Handbook are required except that conventional drainage structures may be allowed by a planning board special permit based on an engineering demonstration (which must include plans and calculations not just a statement) that application of low impact principles to the site will be unreasonably difficult.

K. Except for allowed one and two family homes, any new construction project (whether one or more buildings on one or more lots) shall have a lot area to gross floor area ratio of less than 4:1.

L. Redevelopment of properties within the planned development district, whether by tear down and rebuild or by an extension of size greater than twenty percent (20%) shall conform to the standards for the planned development district.

#### **4.7.3 Reserved**

#### **4.7.4 Additional provisions for multifamily housing units (more than two units per structure):**

A. Townhouses having common walls but located on adjacent separately owned lots will be permitted provided no more than five such townhouses will be contained in a single structure and that the end townhouses have a 20 foot side setback on the exposed end and there is adequate road or driveway access to the rear of the combined structures.

B. The minimum lot width shall be 24 feet and the minimum lot area shall be 3600 square feet per dwelling unit. Townhouses must be served by public water and sewer.

#### **4.7.5 Requirements for all other projects including mixed use projects.**

A. In commercial areas, side setbacks may be waived, as part of site plan review, to allow buildings on adjacent separately owned lots to be directly connected provided there is adequate road or driveway access to the rear of the combined structures. The combined frontage length of such connected buildings shall not exceed 100 feet.

B. For new construction for mixed residential and commercial use, the minimum lot area shall be not less than 1.5 times the non-residential gross floor area plus 2000 square feet for each residential unit.

**4.7.6 Extended Planned Development District.** Development Developments using Planned development district standards in other zones are permitted if such development will have public water and sewer and is within 500 feet of the planned development district boundary provided special permits therefore are granted concurrently by the Zoning Board of Appeals and the Planning Board.

## **4.8 GATEWAY OVERLAY DISTRICT**

**4.8.1 Purpose.** In order to avoid sprawl and dangerous strip development patterns, development nodes have been created along the major highways as an attempt to effect responsible, sustainable development in a commercially advantageous setting. Smart Growth development patterns are hereby encouraged to place high intensity uses like large-scale retail, cinemas and similar commercial occupancies in these nodes with consideration of safe traffic access, rather than in allowing sprawl-type strip development. Residential development adjacent to these nodes and thereby serviced by the commercial area is encouraged to reduce

car traffic. Similarly, walkability and other alternative circulation modes (cf. bike traffic) are also encouraged in the development patterns, again eliminating unnecessary car traffic and enhancing the quality of life in the development area.

A Gateway Overlay District is created that will prevent direct access from the highway to abutting commercial occupancies outside the nodes. Strip commercial development will be seen as sprawl, is unsightly, and is a deterrent to smooth traffic flow. Accordingly access to commercial occupancies outside of the development nodes will be restricted.

### **4.8.2 Modifications to the Underlying Districts**

1. That portion of each lot used for commercial purposes, except an allowed home based business, that fronts on the highway to a depth of not less than 50 feet from the property line shall be preserved or established as a buffer zone of dense vegetation so as to hide all structures, parking lots, outdoor storage, and other evidences of commercial activity when viewed from the highway.

2. Access to properties is encouraged via roads other than access to the high speed road. If no other access is feasible, the buffer zone vegetation may be broken for access roads or driveways at appropriate points. Such breaks shall not be more than 50 feet wide and shall be spaced not closer than 500 feet apart. The use of a shared driveway or road by two or more commercial occupancies is encouraged.

3. All commercial occupancies within the Gateway Overlay District shall require full site plan review.

## **4.9 ROUTE 140 CORRIDOR OVERLAY DISTRICT (Rt. 140 COD)**

### **4.9.1 Purpose**

The purposes of the Route 140 Overlay District are to:

1. Encourage commercial and industrial development on Route 140 to provide local employment and enhance the tax base, while also protecting surrounding neighborhoods from land use conflicts;

2. Enhance the appearance, function, and safety of Route 140;
3. Facilitate shared access and connections to adjoining properties, thereby reducing the number of curb cuts and improving traffic safety on Route 140; and
4. Promote distinctive architecture, efficient site planning, and improved design standards that will achieve high quality development and preserve the scenic, natural, and cultural resources of the Route 140 Corridor.

#### 4.9.2 Application of Overlay District Regulations

This Overlay District sets forth design standards and flexible development options that apply in the Route 140 Corridor. The Use and Dimensional Regulations of the underlying district remain in place and other provisions of the Zoning Bylaw apply unless superseded by this Overlay District. The location of the District is shown on a map entitled Route 140 Corridor Overlay District, which is on file in the office of the Town Clerk. The Overlay District consists of all parcels within the Highway Commercial (C1) district where the district has frontage on Routes 140 and 12.

#### 4.9.3 Application Process

##### 1. Site Plan Review

Applicants shall comply with Section 12 of this Bylaw, Site Plan Review, for development in the Route 140 Overlay District. Developments that meet the thresholds in Section 12.2, Projects Requiring Site Plan Review, shall require site plan approval by the Planning Board. Developments that are exempt from site plan review by Section 12.3 of this Bylaw are exempt from the application of the Overlay District.

##### 2. Waivers

The Board may modify or waive any requirement of the Overlay District upon finding that due to topography, location, or unusual conditions affecting the property, the requirements of this section would unreasonably restrict development of the property. In modifying or waiving these provisions, the Board may impose conditions it deems necessary to protect the public interest and promote the orderly development of the Corridor.

##### 3. Inter-Municipal Review

The Planning Board shall send a copy of the application to the Gardner Planning Board and the Montachusett Regional Planning Commission, which shall have thirty-five (35) days to submit comments to the Board. The purpose of this review is to insure that regional implications are considered by the Board, and that significant impacts of the project on corridor communities can be mitigated.

##### 4. Coordination with Abutting Landowners

Applicants shall submit documentation that they have contacted owners of abutting land within the Overlay District regarding their proposed plans. The intent of this notice is to give those landowners the opportunity to coordinate existing uses or future development plans with the project before the Board. Where feasible, the parties should work cooperatively to solve common issues such as improving traffic access, sharing parking, creating frontage roads, allowing connections between properties, buffering incompatible uses, or preserving open space and wetland resources.

#### 4.9.4 Design Standards

##### 1. General

Buildings and landscape treatments, not parking, should serve as the focal points for development along Route 140. Site design should contribute to a sense of continuity and coherence from Route 140 and distant vantage points.

##### 2. View Protection

The Route 140 Corridor offers many scenic views of the surrounding countryside. Each development shall preserve the visual quality of its site in relation to the scenic qualities of the immediate area and the Corridor as a whole. The applicant shall submit photographs of the area to the Board and describe the most prominent features of existing visual quality. Through means of sketches or computer simulations, the applicant shall document the impacts of the proposed development on visual quality. This analysis shall present how the project will be viewed from Route 140 in both directions and how views from the site to the surrounding area can be integrated into the development to

enhance the project design. Within the development, the applicant shall preserve open vistas of important features such as Wachusett Mountain, lakes, farms, forests, historic sites, etc.

3. Access Management

1. Each new development within the Overlay District shall be limited to one entrance and one exit per street. For multiple building developments, one combined entrance/exit location is preferable at the main entrance to facilitate traffic movement; such an entrance shall be separated by a traffic island with separate in and out movements. If needed, the applicant shall construct separate right and/or left turning lanes to facilitate entry and exit from the site.
2. To reduce turning movements onto Route 140, developers are encouraged to connect internal roadways with adjacent developments. When adjacent lots have contiguous frontage on Route 140, the Board may require such lots to share a single driveway, or that the lots be accessed by an internal service road. Where such sharing cannot be achieved in the short run, the means and location for future long term inter-parcel connections may be required through right-of-way reservation and/or dedication.
3. Where it is proposed to re-develop property, the Board will evaluate existing access to Route 140 and work with the applicant to re-design curb cuts to improve safety and traffic flow. Where appropriate, the Board may require a reconfiguration to the existing access or the removal of unnecessary driveway openings onto Route 140 in favor of fewer access points with a greater level of traffic control.
4. Where a property proposed for development abuts the North Central Pathway rail trail, the developer shall consider a proposed connection to the trail and access to the principal uses on the lot to promote alternative modes of commuting and/or public access.

4. Lighting and Utilities

1. All lighting shall be arranged and shielded so as to prevent direct glare from the light source into any public street or private way or onto adjacent property.
2. Each outdoor luminaire shall be a full cutoff luminaire to prevent light trespass into the night sky. The design of light standards and fixtures shall be consistent with the style and character of architecture existing or proposed on the site.
3. All lights and illuminated signs shall be designed to prevent objectionable light and glare from crossing property lines. Externally lit signs, display, building and aesthetic lighting must be lit from the top and shine downward.
4. All electric, telephone, television and other communication lines, both main and service connections, shall be provided by underground wiring.

5. Preservation of Sensitive Natural Features

Development shall preserve the natural features of the site, avoid areas of environmental sensitivity, and minimize alteration of natural features. The following resources shall be identified on the site plan and remain undeveloped unless otherwise approved by the Board:

1. Unique or fragile areas including wetlands, vernal pools, and 100-year flood plains;
2. Habitats of rare species listed by the Mass. Natural Heritage and Endangered Species Program; and
3. Streams and water bodies.

6. Shared Parking<sup>1</sup>

1. The number of parking spaces required shall be determined by using the standards for each use as provided elsewhere in this Zoning Bylaw. The Board may allow a reduction of the required number of spaces by up to twenty percent (20%) if the applicant demonstrates that two or more uses within a development can share parking areas due to different hours of activity. A change in use of one of the businesses shall require the construction of the full amount of parking otherwise required unless the Board grants site plan approval to allow the parking reductions to remain in effect.

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<sup>1</sup> The provisions of Section 8.2.1 shall also apply in the Overlay District.

2. When adjacent property owners agree to share parking and a combined entrance, the Planning Board may allow a reduction in the number of required parking spaces by as much as twenty (20) percent for each business. In addition, the side yards (including associated landscaping) between the two parcels are not required. The property owner(s) shall file a written agreement to guarantee long-term joint use of the shared parking, which shall be recorded at the Worcester District Registry of Deeds. The parties may only revoke this agreement by constructing the full number of spaces required by the Zoning Bylaw and Planning Board approval of a revised plan.
7. Parking Lot Design
1. The provisions of Section 8.5, Parking Lot Design Requirements, shall apply unless superseded by the following standards.
  2. Parking lots shall generally be sited to the side or rear of buildings in order to minimize the obtrusiveness of large parking areas on the visual quality of the Corridor. Up to fifteen percent (15%) of the parking spaces may be in the front of the building to accommodate short-term parking needs of the proposed uses.
  3. Parking lots of twenty (20) or more spaces shall contain interior landscaping covering not less than five percent (5%) of the total area of the lot. Landscaping shall also be provided around the perimeter of the lot for a width of ten feet (10') and planted with trees and shrubs. There shall be two shade trees or three ornamental trees for every ten (10) spaces. Dead or diseased trees shall be replaced during optimal planting times.
  4. Sidewalks and pedestrian paths shall connect the lots to the principal uses they will serve. Such walkways shall be constructed with brick, decorative pavers, or other materials, and may be bordered with fencing or shrubbery to clearly separate pedestrians from automobile traffic. Facilities and access routes for deliveries, service and maintenance shall be separated, where practical, from public access routes and parking areas. Car stops shall be provided to prevent parked cars from damaging trees and shrubs or disrupting pedestrian walkways.
  5. The Planning Board may modify the above requirements for any interior landscaped areas or islands that serve as vegetated swales or bioretention cells.
8. Bicycle Accommodation. Bicycle parking facilities shall be provided for any new building, addition or enlargement of an existing building, or for any change in the occupancy of any building that results in the need for additional vehicular parking facilities. One bicycle space shall be provided for every 10 vehicle parking spaces, up to a maximum of 25 spaces.
1. Parking for bicycles shall include provision for secure storage of bicycles. Such facilities shall provide lockable enclosed lockers or racks or equivalent structures in or upon which the user may lock a bicycle.
  2. Bicycle parking facilities shall be sufficiently separated from motor vehicle parking areas to protect parked bicycles from damage by motor vehicles. The separation may be accomplished through grade separation, distance or physical barrier, such as curbs, wheel stops, poles or other similar features.
  3. Bicycle parking facilities shall be located in a clearly designated safe and convenient location. Whenever possible, the bicycle parking shall be placed within 50 feet of building entrances and in well-lit areas.
9. Landscaping and Screening
1. Sections 4.8.2.1 and 7.2.5 shall apply in the Overlay District.<sup>2</sup>
  2. A registered landscape architect shall prepare a landscape plan drawn to scale, including dimensions and distances. The plan shall delineate all existing and proposed parking spaces or other vehicle areas, access aisles, driveways, and the location, size and description of all landscaping materials and tree cover.
  3. The development shall have one central gathering place of unique visual interest. This may include elements such as a fountain, pond, sculpture, gazebo or similar open space or structure. The area shall be

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<sup>2</sup> Ed. Note: Section 4.8.2.1 requires a vegetated buffer zone along the highway of at least 50' to screen views of structures, parking lots, and outdoor storage areas from the highway. Section 7.2.5 applies where C1, C2, and I districts abut residential property and requires a buffer zone/yard of 50' to screen the residential properties.



provided with benches, stone walls, and similar amenities, and shall be accessible to individuals in wheelchairs.

4. Loading areas and service facilities (dumpsters, storage areas, utility boxes, etc.) shall be placed to the rear of buildings in visually unobtrusive locations. Screening and landscaping shall prevent direct views of such areas from adjacent properties or from public ways. Screening shall be achieved through walls, fences, landscaped berms, evergreen plantings, or combinations thereof. Fences made of wood, stone, or brick are preferred; chain link or concrete materials are prohibited.
  5. HVAC units, telephone boxes, electrical transformers, etc. shall be screened through use of landscaping, berms, or fences and shall be as unobtrusive as possible. HVAC units may be located behind roof ridge lines so they are not visible from the front view of the building.
  6. When a proposed development abuts a Residential district, whether presently developed or not, landscaped buffers shall be employed to shield the residential property from view of the proposed development, and to minimize lighting and noise impacts. Such a buffer shall contain a screen of plantings not less than three feet (3') in width and six feet (6') in height at the time of planting, and shall thereafter be maintained by the owner or occupant so as to provide a dense screen year-round. At least fifty percent (50%) of the plants shall consist of evergreens. A solid wall or fence, not to exceed six feet (6') in height, complemented by suitable plantings may be substituted for such landscaped buffers.
10. Architectural Standards
1. The site plan application shall contain elevations of all proposed buildings, prepared and stamped by a registered professional architect.
  2. Exterior materials may include clapboard, wood shingles, stone, brick, or materials of comparable appearance. Applicants are encouraged to use green building technologies and materials, wherever possible, to limit environmental impacts.
  3. Buildings should contain variation in detail to provide visual interest and to avoid monotony. Use of pitched roofs, breaks in roof and wall lines, towers, cupolas and building ornamentation should be incorporated into building design. The Planning Board may authorize a flat roof that includes green-roof technology with plants suited for the local climate.
  4. Architecture based upon generic franchise design is prohibited. Rather, architects should rely upon models of regional building types to incorporate elements of historic design into the development.
  5. Except for industrial, warehousing, and similar uses, windowless buildings with standardized facade treatments are prohibited. No building shall have more than 100 linear feet of unbroken wall area.
  6. Architectural Focal Points. In any development with 10,000 square feet or more of retail use, the principal building on a lot shall have clearly defined, highly visible customer entrances featuring at least two (2) of the following: canopies or porticos; overhangs; recesses/projections; raised corniced parapets over the door; peaked roof forms; arches; outdoor patios; display windows; planters or wing walls that incorporate landscaped areas and/or places for sitting,

## **ARTICLE 5            USE REGULATIONS** (Amended May 15, 2017)

### **5.1        BASIC REQUIREMENTS**

In each zoning district, land, buildings and other structures may be used as a principal use but only as set forth in Section 5.2 and in accordance with the following:

- Y (Yes)** Use permitted as a matter of right
- SP (Special Permit)** Use may be permitted by Special Permit of the Board of Appeals as provided in Section 13.6.3 B
- N (No)** Use prohibited

All uses permitted as a matter of right or by Special Permit shall conform to all dimensional requirements and other pertinent rules of this bylaw. Any use not listed shall be construed to be prohibited.

**5.1.2 ADDITIONAL REQUIREMENTS**

Any proposed use may be subject to the Site Plan Review provision of this Bylaw per Article 12.

**5.2 SCHEDULE OF USE REGULATIONS** (Last amended May 15, 2017)

5.2.1Principal Use Categories		Zoning Districts					
Residential Uses	R80	R40	R10	C1	C2	I	PD
				Hwy	Nbhd		

	Comm				Bus.		
A. Single family detached dwelling	Y	Y	Y	N	Y	N	Y
B. Two-family detached dwelling	SP	SP	Y	N	Y	N	Y
C. Conversion of a single family dwelling existing at the adoption of this bylaw to not more than four family use (Note 10)	SP	SP	SP	N	Y	N	SP
D. Buildings or lots containing dwellings in combination with retail stores or other permitted business use (Note 1)	N	N	SP	SP	Y	N	Y
E. Boarding House	SP	SP	SP	N	SP	N	SP
F. Multi-family dwellings, up to four units per lot	N	N	SP	N	SP	N	SP
G. Residential Development - detached/attached units (See Article 11) amended 5/23/11	Y	Y	Y	Y	Y	N	Y
H. Accessory dwelling unit (Note 11) (SEE 6.3 ACCESSORY USES)	SP	SP	SP	N	SP	N	Y
I. Mobile home park or court; sales of demonstration models allowed (Note 5)	SP	SP	SP	N	N	N	N
J. Home based business (SEE 6.5 HOME BUSINESS)	Y	Y	Y	Y	Y	N	Y

5.2.2 Principal Use Categories	Zoning Districts						
Commercial Uses	R80	R40	R10	C1 Hwy Comm	C2 Nbhd Bus.	I	PD

A. Retail store or larger scale retail services larger than 15,001 sq. ft including sales room or market for sale of merchandise to the public	N	N	N	Y	Y	SP	Y
B. Small scale retail services that do not exceed 15,000 sq. ft.	SP	SP	SP	Y	Y	SP	Y
C. Convenience Store without gas station	SP	SP	SP	Y	Y	N	Y
D. Restaurant, tavern, café or similar establishment for serving food and/or beverages	N	N	SP	Y	Y	N	Y
E. Restaurant - take out, fast food, drive through, walk-up window	N	N	N	SP	SP	N	SP
F. Theater, movie theater, bowling alley or other indoor amusement or entertainment use	N	N	N	Y	Y	SP	SP
G. Commercial parking lot or parking garage	N	N	SP	Y	SP	SP	SP
H. Kennel structure, commercial or veterinary hospital	SP	SP	SP	SP	SP	SP	SP
I. Hotel, motel or similar lodging	N	N	SP	SP	SP	SP	SP
J. Bed & breakfast or similar lodging	SP	SP	SP	SP	SP	N	Y
K. Country Inn	SP	SP	SP	SP	SP	N	SP
L. Bank or financial institution	N	N	N	Y	Y	SP	Y
M. Real estate, insurance or professional office	N	N	N	Y	Y	N	Y
N. Professional medical office or clinic	N	N	N	Y	Y	N	Y

5.2.2 Principal Use Categories				Zoning Districts			
Commercial Uses	R80	R40	R10	C1 Hwy Comm	C2 Nbhd Bus.	I	PD
O. Office Building	N	N	N	Y	Y	N	Y

P. Self-service storage facility	N	N	N	SP	SP	SP	N
Q. Big-box retail establishment	N	N	N	SP	N	N	N
R. Sales and/or service establishment for motor vehicles, Class I, II) recreational vehicles to include off road and marine, including storage of motor vehicles and recreational vehicles.(all types)(Note 12)	N	N	N	SP	SP	N	SP
S. Mobile home sales	N	N	N	SP	N	SP	N
T. Gas station and/or motor vehicle repair	N	N	N	SP	SP	SP	SP
U. Auto body shop and painting	N	N	N	SP	N	SP	N
V. Mixed-use (retail or office with residential above) (Note 8)	N	N	SP	SP	Y	N	Y
W. Adult uses	N	N	N	N	N	SP	N
X. Retail sales & service facility for boats and marine equipment	N	N	N	Y	SP	SP	N
Y. Undertaking or funeral establishment	N	N	SP	N	Y	N	N
Z. Retail sales and service of farm equipment	SP	N	N	Y	SP	SP	SP
AA. Mall or enclosed shopping plaza	N	N	N	SP	SP	SP	SP
BB. Carwash	N	N	N	Y	SP	N	SP
CC. Small engine repair for lawnmowers, motorcycles, etc. to be enclosed in a barn or garage and not to include automobiles or auto body repair	SP	SP	SP	SP	SP	N	N
DD. Land transportation passenger terminal facility	N	N	N	SP	SP	SP	SP
EE. Sales of Motor Vehicles as an accessory use to motor vehicle repair shop or auto body shop.	N	N	N	SP	SP	SP	SP
FF. Gallery	N	N	N	SP	SP	SP	SP

5.2.3 Principal Use Categories				Zoning Districts			
Industrial Uses	R80	R40	R10	C1	C2	I	PD

				Hwy Comm	Nbhd Bus.		
A. Warehouse or other building for storage, assembly or marketing wholesale products or equipment	N	N	N	Y	N	Y	SP
B. Enclosed heavy manufacturing, processing, fabrication, packaging, assembly and storage	N	N	N	N	N	Y	SP
C. Printing or publishing plant	N	N	N	SP	SP	Y	SP
D. Research, experimental or testing laboratory	N	N	N	Y	SP	Y	SP
E. Building materials or contractor's yard, including exterior storage of materials, products or equipment but with all such material to be screened by a fence or appropriate landscaping	N	N	N	Y	N	Y	N
F. Open air salvage yard, junk yard (Class III) (Note 6)	N	N	N	N	N	SP	N
G. Above ground storage of heating fuel	N	N	N	SP	N	SP	N
H. Enclosed light manufacturing processing, fabrication, packaging, assembly and storage, marketing	N	N	N	Y	SP	Y	SP
I. Expansion, conversion or rehabilitation of existing light industrial uses	N	N	N	Y	Y	Y	Y
J. Hydropower generation	SP	SP	SP	SP	SP	SP	SP
K. Windpower generation	SP	SP	SP	SP	SP	SP	SP
L. Solar Energy Collection System (see Section 6.11 for limitations)	Y	Y	Y	Y	Y	Y	Y
M. Mobile Car Crushing conducted commercially (Note 13)	N	N	N	N	SP	SP	N

5.2.4 Principal Use Categories		Zoning Districts						
Agricultural and Forestry Uses		R80	R40	R10	C1 Hwy Comm	C2 Nbhd Bus.	I	PD
A. Commercial Forestry		Y	Y	Y	Y	Y	Y	Y
B. Orchard, market garden or other commercial agricultural use:		Y	Y	Y	Y	Y	Y	Y
C. Commercial nursery, greenhouse or sales of produce								
(5 acres or less)		Y	Y	Y	Y	Y	SP	Y
(More than 5 acres)		Y	Y	Y	Y	Y	Y	Y
D. Commercial poultry or livestock farm including riding stable or commercial stable (Note 2)								
(5 acres or less)		SP	SP	N	SP	SP	SP	SP
(More than 5 acres)		Y	Y	Y	Y	Y	Y	Y
E. Accessory poultry or livestock for noncommercial use, private stable, or kennel structure, non-profit (Note 2 and 3)								
(Under 5 acres)		Y	Y	SP	SP	SP	SP	SP
(5 acres and above)		Y	Y	Y	Y	Y	Y	Y
(SEE 6.3 ACCESSORY USES)								
F. Accessory non-commercial agriculture excluding poultry and livestock (SEE 6.3 ACCESSORY USES)		Y	Y	Y	Y	Y	Y	Y
G. Commercial earth removal		N	N	N	N	N	SP	N

5.2.5 Principal Use Categories		Zoning Districts						
Conservation and Recreation		R80	R40	R10	C1 Hwy Comm	C2 Nbhd Bus.	I	PD
A. Conservation and wildlife preserve		Y	Y	Y	Y	Y	Y	Y
B. Private club, lodge or cultural civic or other non-profit social or recreation use		SP	SP	SP	SP	SP	SP	SP
C. Recreational activity conducted commercially, i.e. campground, ski area or golf course		SP	SP	SP	SP	N	SP	SP
D. Go-cart / off road motorcycle racetrack (Note 9)		N	N	N	N	N	SP	N
E. Ice Racing (Note 7)								
F. Miniature golf, batting cage or driving range		SP	SP	SP	SP	SP	SP	SP
G. Public recreational boating or swimming area.		SP	SP	SP	SP	SP	SP	SP
H. Commercial recreational boating or swimming area.		N	N	N	SP	SP	SP	SP

5.2.6 Principal Use Categories		Zoning Districts						
Institutional Uses	R80	R40	R10	C1	C2	I	PD	
				Hwy	Nbhd			
				Comm	Bus.			

A. Church or place of worship including	Y	Y	Y	Y	Y	Y	Y
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parish house or rectory

B. Religious, sectarian or denominational, private or public school building or related use	Y	Y	Y	Y	Y	Y	Y
C. School, hospital, medical institution or government building	Y	Y	Y	Y	Y	Y	Y
D. Cemetery	SP	SP	SP	N	N	N	N
E. Day nursery or other similar agency for day care of children or adults	Y	Y	Y	Y	Y	Y	Y
F. Nursing, rest or convalescent home, assisted living facility	SP	SP	SP	N	SP	N	SP
G. Museum	SP	SP	SP	SP	SP	SP	SP

5.2.7 Principal Use Categories		Zoning Districts						
Governmental and Public Service Uses		R80	R40	R10	C1 Hwy Comm	C2 Nbhd Bus.	I	PD
A. Administration building, police or fire station or other government-related use		SP	SP	SP	Y	Y	SP	Y
B. Uses related to water supply or sewerage treatment		SP	SP	SP	SP	SP	SP	SP
C. Wireless Communications Facility (WCF) (See Section 6.6)		Y	Y	Y	Y	Y	Y	Y
Minor WCFs (June 12, 2000) * only allowed if located on a water tank, or as a co-location on an existing wireless facility (Building Permit Required)								
Interior WCFs (Building Permit Required)		Y	Y	Y	Y	Y	Y	Y
Major WCFs		SP	SP	SP	SP	SP	SP	SP
D. Public Utility Installations		SP	SP	SP	SP	SP	SP	SP
5.2.8 Special Use Categories		Zoning Districts						
		R80	R40	R10	C1 Hwy Comm	C2 Nbhd Bus.	I	PD
A. Non-retail Marijuana Facilities. Non-retail Marijuana Facilities are subject to the provisions set forth in Art. 6.12. <i>* see note 14</i>		SP*	N	N	SP	SP	SP	SP

## NOTES (Amended Nov. 8, 2007)

1. Requirements for mixed use buildings. Residential space is not permitted below commercial or industrial space. The main or ground floor must be commercial or industrial. However, one residential apartment of not less than 350 square feet nor more than 900 square feet and that does not occupy more than 25% of the ground floor area may be allowed by special permit. No such apartment may occupy building frontage beyond a doorway.
2. Provided that no structures housing poultry or livestock or kennels are within 100 ft. of any street or property line.
3. Raising and keeping of livestock or other farm animals for non-commercial use by owner of record provided said use is accessory to single family residence.
4. Demonstration models must be placed on individual building lots.
5. An owner and occupier of a residence which has been destroyed by fire or other natural holocaust shall be allowed to place a mobile home on the site of such residence for a period of twelve months while the residence is being rebuilt, or such further time as may be approved by a majority of the Zoning Board of Appeals. Any such mobile home shall be subject to approval by the Board of Health and the Building Inspector.
6. Requires a minimum lot size of fifteen (15) acres.
7. See Section 4.1 - Ice Racing Overlay District
8. When dealing with mixed uses, note that "use is limited to those commercial uses allowed within each specific zone".
9. (A) Requires a minimum lot size of ten (10) acres.  
(B) Restricted to go-carts and off-road motorcycles only. Racing of all other motor vehicles is prohibited.  
(C) Hours of activity shall be restricted as follows: Sunday 12:00 P.M. to 6:00 P.M.; Monday through Thursday 11:00 A.M. to Dusk, Friday and Saturday 9:00 A.M. to 10:00 P.M.  
(D) Sound emissions shall comply with 310 CMR 7.10.  
(E) A buffer area of twenty-five (25) feet from the front lot line and one hundred (100) feet from all other lot lines shall be maintained in a natural vegetative state and not used for any other purpose. Installation of signage and driveway access is allowed in the buffer.  
(F) Requires Site Plan Approval by the Planning Board.
10. Provided there is no external structural evidence of occupancy by more than one family other than a second exit for fire purposes from each unit and further provided that each dwelling resulting from such conversion shall not have less habitable floor space than:  
efficiency unit – 450 sq. ft.  
1 bedroom unit – 550 sq. ft.  
2 bedroom unit (or more) – 750 sq. ft
11. If an accessory dwelling unit is proposed within the footprint of an existing single-family home, no special permit is required.
12. Any motor vehicle or recreational vehicle (all types) not immediately registerable if required or inspectable if required through the Massachusetts Registry of Motor Vehicles shall be screened from view.
13. Requires a minimum lot size of five (5) acres.
14. R80 zone requires a minimum five (5) acre lot with double the setback distance as outlined in Art. 7.2

## **ARTICLE 6            NON-CONFORMING AND SPECIAL BUILDINGS AND USES** (amended 5/19/08)

### **6.1        APPLICABILITY**

The provisions of this section apply to actions in connection with non-conforming, special and accessory uses, structures, and lots as created by the initial enactment of this bylaw or by any subsequent amendment thereto.

### **6.2        NON-CONFORMING USES**

6.2.1 Continuation of Use. Any lawful building or structure or use of a building, structure or land or any part thereof existing at the time of adoption of this bylaw may be continued. A nonconforming building or structure shall not be structurally altered, enlarged or reconstructed except as hereinafter set forth.

6.2.2 Re-establishment of Nonconforming Uses. Any building, structure or use of land devoted to a nonconforming use, or any building, structure or use of land considered a nonconforming use at the time of adoption of this bylaw may, if damaged or destroyed by fire or other accidental cause, be reconstructed or restored within the same portion of the lot as used before, provided that such reconstruction or restoration is started within twenty-four (24) months following damage or destruction.

#### **6.2.3 Pre-existing Non-conforming Structures or Uses**

A. Any lawful pre-existing nonconforming structures or buildings or uses may be reconstructed, extended or altered provided that such alteration or extension does not create any new nonconformity and further provided that no such reconstruction, extension or alteration shall be permitted unless the Zoning Board of Appeals determines, by special permit, that such reconstruction, extension or alteration shall not be substantially more detrimental than the existing non-conforming use or structure to the neighborhood. No special permit is needed if the reconstruction, extension or alteration is to be a nonconforming single or two-family dwelling and said reconstruction, extension or alteration does not increase the nonconforming nature of the dwelling. In addition, no such building shall be added to, enlarged, or reconstructed to an extent greater than fifty percent (50%) of its area at the time of the adoption of this Bylaw or such amendment or except as provided for in Section 4.7.2M.

B. Upon a determination by the Building Commissioner, the reconstruction, extension or alteration to a nonconforming single- or two-family residential structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted by right under the following circumstances:

1. normal repairs or replacement of parts of any nonconforming structure does not constitute an extension of a nonconforming use of such structure;
2. the reconstruction, extension or alteration to a structure located on a lot with insufficient area complies with all current minimum setback requirements;
3. the reconstruction, extension or alteration to a structure located on a lot with insufficient frontage complies with all current minimum setback requirements
4. the reconstruction, extension or alteration to a structure which encroaches upon one or more required setback areas complies with all other current minimum setback requirements; or
5. the reconstruction, extension or alteration to a structure occurs within the existing footprint of a nonconforming structure.

C. In the event that the Building Commissioner determines that the nonconforming nature of a single- or two-family residential structure would be increased by the proposed reconstruction, extension

or alteration, the Zoning Board of Appeals may, by special permit, allow such reconstruction, extension or alteration where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

6.2.4 Non-Use. Wherever a nonconforming use, as determined by state statute, has not been in use for a period of more than two (2) years, it shall not be re-established and any future use shall conform with this bylaw, and any amendment thereto.

## **6.3 ACCESSORY USES AND DWELLINGS**

6.3.1 Any use of land or subordinate building which is customarily incidental to that of the main building or use of land shall be permitted as a matter of right on the same lot with said principal use, or lot adjacent thereto in the same ownership, provided that such accessory use is not hazardous or detrimental to the property in the vicinity, and subject further to the following provisions. A parcel that is separated from the principal parcel only by a public or private way shall be considered adjacent for the purposes of this section. (SEE FIGURE A. 6.3)

6.3.2 Purpose. The purpose of this bylaw is to encourage accessory dwelling units as an alternative housing choice.

6.3.3 Applicability. An accessory dwelling unit shall be permitted by right in zoning districts as delineated in the Schedule of Use Regulations if it is to be added to an existing dwelling unit as long as it does not add to the footprint of the existing dwelling unit. If the accessory dwelling unit involves new construction that adds to the footprint or will alter the exterior of the structure, the applicant shall submit an application for a special permit to the Zoning Board of Appeals. The number of accessory dwelling units in a Residential Development created under the provisions of Article 11 are limited by the provisions of that article.

### **6.3.4 Requirements for Accessory Dwellings in All Zoning Districts**

The following requirements apply in all zoning districts in which an accessory dwelling unit is permitted:

- A. The accessory dwelling unit shall clearly be a subordinate part of the single-family dwelling.
- B. One private off-street parking space shall be available for use by occupants of each accessory dwelling unit.
- C. No new driveway or curb cut shall be created to service the accessory dwelling unit.
- D. The accessory dwelling unit must be designed so that the appearance of the building remains unchanged, and there shall be no change to the façade of the house. Unless otherwise required by the Massachusetts Building Code, any new exterior stairs needed to provide primary or secondary means of egress for the accessory dwelling unit shall be located on the side or rear of the building.
- E. The lot where the accessory dwelling unit is located shall conform to the minimum setbacks and frontage requirements in accordance with Section 7.2 Table of Dimensional and Density Regulations.
- F. Not more than one accessory dwelling unit shall be permitted in a single-family home.
- G. The living space in an accessory dwelling unit shall not exceed a maximum of seven hundred and fifty (750) square feet or thirty-three (33) percent of the total square footage of the primary dwelling, whichever is smaller, and shall contain no more than two bedrooms. For purposes of this section, the computation of maximum floor area shall be limited to the principal residence and shall exclude the floor area in an attached or detached structure.

6.3.5 Contractors Home Base Of Operations. The use of property in connection with his trade by a resident plumber, carpenter, electrician, contractor, painter etc provided that no manufacturing or assembly work requiring substantial continuous employment shall be carried on and provided that all storage shall be carried on within the principal building or within suitable accessory buildings. Standards from 6.4 apply for parking.

6.3.6 Home Business Office. The use of an area within a dwelling unit for use by a resident for conducting business by phone, mail, fax and which does not generate any traffic and has no employee outside the household (see Article 6.5 Home Based Business ).

6.3.7 Dwellings Accessory to Commercial or Industrial Uses. (Voted May 19, 2008)

If the particular use of a commercial or industrial property in the industrial zone is such that a caretaker or attendant is required to live on that property on a 24 hours a day/seven days a week basis, the Zoning Board of Appeals may grant a special permit to allow one dwelling unit on such commercial or industrial property or immediately adjacent to the property for the use of such caretaker or attendant and his/her family. Such a permit shall be supported by a finding by the Board which states in detail the use which requires such caretaker or attendant and the reasons that necessitate such a dwelling unit. Any such permit shall be limited to a period of not more than five years but may be renewed. Should such use change or be discontinued during such permit period, the dwelling space must be converted to non residential use or removed unless a new permit is granted.

**TABLE 6.3 SCHEDULE OF ACCESSORY USE REGULATIONS** (Amended 5/19/08)

<b>Principal Use Categories</b>		<b>Zoning Districts</b>						
<b>Accessory Uses</b>		<b>R80</b>	<b>R40</b>	<b>R10</b>	<b>C1</b> Hwy Comm	<b>C2</b> Nbhd Bus.	<b>I</b>	<b>PD</b>
A. Accessory dwelling unit 6.3.1 through 6.3.4		SP	SP	SP	N	SP	N	SP
B. Accessory poultry or livestock for noncommercial use, private stable or kennel structure, non-profit. (See Section 5.2.4)								
(Under 5 acres)		Y	Y	SP	SP	SP	SP	SP
(5 acres and above)		Y	Y	Y	Y	Y	Y	Y
C. Accessory non-commercial agriculture excluding poultry and livestock		Y	Y	Y	Y	Y	Y	Y
D. Home based business		Y	Y	Y	Y	Y	N	Y
E. Wireless Communications Facility (WCF) (See Section 6.8)		Y	Y	Y	Y	Y	Y	Y
Minor WCFs								
* only allowed if located on a water tank, or as a co-location on an existing wireless facility								
(Building Permit Required)								
Interior WCFs		Y	Y	Y	Y	Y	Y	Y
(Building Permit Required)								
Major WCFs		SP	SP	SP	SP	SP	SP	SP
F. Parking of Heavy Vehicle under 26,000 GVW. (See section 6.4)		Y	SP	SP	Y	Y	Y	SP
G. Parking of Heavy Vehicle over 26,000 GVW. (See section 6.4)		SP	SP	SP	SP	SP	SP	SP
H. Non-Commercial passenger vehicles		Y	Y	Y	Y	Y	Y	Y
I. Kennel Structure, Hobby		Y	Y	SP	SP	SP	SP	SP
J. Dwelling accessory to Commercial or Industrial Use. (6.3.A)		N	N	N	N	N	Y	N
K. Solar Energy Collection System to produce energy to be consumed entirely on the premises (See Section 6.11)		Y	Y	Y	Y	Y	Y	Y

## **6.4 PARKING OF HEAVY VEHICLES**

6.4.1 Parking of not more than two heavy vehicles, other than non commercial passenger vehicles, on residential property will be an accessory use and is subject to the conditions imposed by this section.

- A. Vehicles subject to this section include trucks over 10,000 GVW (even if registered as a passenger vehicle), tractor trailer units, busses, school busses, bulldozers, and other heavy off road vehicles. Large sport utility vehicles and motor homes are non commercial passenger vehicles.
- B. Weights specified in the accessory use table are gross vehicle weights (GVW) or gross combined weights (GCW) for tractor trailer units will be determined according to the rules of the Massachusetts Registry of Motor Vehicles.
- C. The principal operator of the vehicle must be a resident of the property.
- D. Vehicles shall be parked so as not to be generally visible from the street. Visibility from abutting property is allowed only when the vehicle operator has obtained the written consent of the abutter. In the event a new person occupies the abutting property, a new consent shall be required.
- E. Such vehicles shall not be operated except to take them to or from the property. A vehicle may be allowed to idle as allowed by law. The use of a vehicle mounted auxiliary engine for refrigeration or other purpose while the vehicle is parked shall require a special permit. Only minor repairs or service to such vehicles are allowed on site. Loading or off-loading of goods in transit is not permitted.

## **6.5 HOME BASED BUSINESS**

6.5.1 Purpose. The purpose of this section is to allow residents of the Town of Winchendon to operate a home-based business as an accessory use in residence zones subject to the following conditions.

6.5.2 Use Regulations. Home based-businesses shall be allowed in Winchendon as an accessory use in residential zoning districts and the PD and C2 district provided the following use conditions in section 6.5.3 are met. Examples of a home based business include but are not limited to: professional offices, tax preparation, tutoring, real estate, insurance, and craft businesses.

### **6.5.3 Use Conditions**

- A. No changes to the property may be made that will seriously deter its future use for completely residential purposes.
- B. The principal operator of the business shall be a resident of the property.
- C. Not more than 25% of the total floor area of the buildings may be used for the business.
- D. The business does not create a nuisance to others in the area by reason of noise, odors, vibration, unsightly conditions, significantly increased traffic, improper disposal of wastes, or other reason.
- E. Not more than two commercial vehicles whose gross vehicle weight does not exceed 10,000 pounds may be stored or parked out of doors on the property.

6.5.4 Parking Standards. Home based businesses shall not generate nonresidential traffic or vehicle parking above and beyond what is normal for the typical residential occupancy for the area. A residential structure shall have not more than two parking spaces to serve the home business. Parking on the street without causing an inconvenience may be allowed. (See ARTICLE 8)

6.5.5 Signage. Signs are permitted and shall conform to standards set forth in Article 9.9.3 of this bylaw.



## **6.6 SWIMMING POOLS**

- 6.6.1 All swimming pools shall be subject to the State Building Code as applicable with the following restrictions:
- A. A fifteen foot (15') setback from all property lines.
  - B. Supporting beams of decks shall be included as part of the setback restriction.

## **6.7 MOBILE HOME PARKS AND COURTS**

6.7.1 Mobile home parks and courts may be established by special permit in any residential district and shall be subject to site plan approval as per Article 12 and to the following additional requirements:

- A. a parcel minimum of fifteen acres,
- B. a lot minimum for each mobile home, including parking space and access drive, of 10,000 square feet,
- C. lot frontage of not less than 75 feet,
- D. Consistent with setbacks in R10 in Article 7.2 and also fifty (50) feet from any tract boundary,
- E. each lot to be serviced with water, electricity and sanitary drainage suitable for permanent connection,
- F. each mobile home to meet the requirements of Article II of the State Sanitary Code and any applicable regulations of the Winchendon Board of Health,
- G. site plan to designate lots, roadways, vehicular access, parking facilities, water and sewerage systems, landscaping and street lighting arrangements, and licensing, maintenance and operation of each mobile home park or court to be in accordance with the provisions of Chapter 140, General Laws of Massachusetts.

## **6.8 WIRELESS COMMUNICATIONS FACILITIES**

6.8.1 Purpose. The purpose of this bylaw is to:

- A. Minimize adverse visual and environmental impacts of wireless communications facilities, satellite dishes, antennas, and their support structures to abutting properties and traveled ways;
- B. Provide dependable wireless communication service to all areas of the town;
- C. Minimize the overall number and height of such facilities to only those that are essential;
- D. Promote the integration of such facilities with existing buildings and the shared use of existing tower facilities;
- E. Reduce the need for new individual towers;
- F. And to ensure the safety of such facilities.

6.8.2 Permit Requirements

- A. Minor Wireless Communications Facilities shall be allowed by right in all zoning districts except residential districts. Minor facilities are allowed by right in a residential zone only if they are located on a water tank, or as a co-location on an existing wireless facility.

The Town reserves the right to prohibit facilities on some or all-municipal property by not issuing requests for proposals on undesirable sites. Building permits issued by the Building Commissioner shall be required for all Minor WCFs prior to installation and all such installations shall comply with all applicable provisions of these bylaws. Minor WCF's shall be considered accessory structures and uses.

- B. Interior Wireless Communications Facilities shall be allowed by right in all zoning districts. Building permits issued by the Building Commissioner shall be required for all such WCFs prior to installation and all such installations shall comply with all applicable provisions of these bylaws.

C. Major Wireless Communications Facilities are allowed only under a Special Permit granted by the Zoning Board of Appeals in accordance with the provisions of this bylaw. Major WCF's shall be considered principal uses and shall be subject to the minimum requirements of the zoning district in which they are located relative to lot size, frontage, and access, except as provided under section 6.7.4 of this bylaw.

- D. A permit shall not be granted for a tower or facility to be built on speculation.

### 6.8.3 General Standards for all WCFs

A. An applicant who seeks to install its first WCF in the town or to install a WCF not in conformity with its build-out plans previously provided shall provide the town with:

1. A town-wide map showing the location of other existing WCFs and the WCF proposed by this application in the town and within one (1) mile of the town;
2. A town-wide map showing the applicant's projected build-out plans.

B. Each year, on the anniversary of the issuance of the Building Permit and/or the Special Permit, the Operator of each WCF shall submit to the Building Commissioner:

1. Certification of their compliance with all applicable federal and state requirements;
2. Certification of their possession of all necessary licenses to operate such a facility;
3. Certification that the WCF is still in use;
4. For towers on Town property, a Certificate of Insurance for liability coverage naming the Town as an additional insured;
5. For any tower, proof of a current tower removal guarantee bond as required by section 6.8.5(S)(1).
6. Should any Operator fail to produce such certifications, the owner of that facility shall remove the WCF within sixty (60) days or the town may remove the WCF (and any now unused tower) under the provisions of section 6.8.5(S).

C. For all WCFs, the Operator shall maintain the WCF - including painted finish, security barrier, and landscaping - in good condition.

D. Applicants proposing to erect a WCF on municipally owned land or structures shall provide evidence of contractual authorization for such use from the Town department in charge of the property as part of their application.

E. The visual impacts of each WCF shall be minimized by employing the Best Available Technology for the industry.

### 6.8.4 Special Permit Applications

A. No WCF or part thereof shall be erected or installed outdoors except in compliance with the provisions of this bylaw. The provisions of this section 14.2 shall apply to all WCFs whether installed or erected as a principal or an accessory use and to any additions to, or replacement of, existing WCFs.

B. Procedurally, the Zoning Board shall act on an application for a Special Permit for the placement of a WCF pursuant to M.G.L. Chapter 40A, Section 9. In issuing a Special Permit under this subsection, the Zoning Board may waive or otherwise reduce the effect of any requirements or prohibitions of any zoning bylaw, providing, however, any zoning bylaw limiting the number of permitted uses or structures on a lot shall not apply to a WCF authorized this section. Any denial shall be in writing and supported by substantial evidence contained in the record.

C. The Zoning Board shall review the Special Permit application for conformance with the Special Permit Review Criteria as provided by section 13.6 of the Winchendon Zoning Bylaw and for conformance with WCF standards under section 6.7 of this bylaw. Where a WCF already exists and is a legally nonconforming structure or use, then any change, extension or alteration of the use or structure shall require a determination by the Zoning Board that the proposed change, extension or alteration is not more substantially detrimental to the neighborhood than the existing use or structure.

D. To make an informed review of an applicant's proposal, the Board shall request the following information:

1. A locus plan at a scale not smaller than 1 inch = 200 feet showing all property lines, streets, landscape features, and all buildings within 500 feet of the facility. It shall show the exact location of the proposed facilities including antennas, mounts, equipment shelters, security barriers, and parking. It shall also show all proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.

- E. The Zoning Board may also require existing (before condition) photographs and proposed (after condition) renditions. The before condition photographs shall illustrate what can currently be seen from any public road within 300 feet. The after condition renditions shall show the same view with the proposed facility superimposed.
- F. The Zoning Board may require the applicant to pay reasonable fees for professional review of the applicant's proposal by a professional or radio frequency engineer, attorney, or other qualified professional.
- G. Any WCF located on or within an historic structure shall employ the Best Available Technology for the industry to minimize any alteration to the character-defining features, distinctive construction methods, or original historic materials of the building and to completely conceal from view the proposed WCF. Any alterations made to an historic structure to accommodate the WCF shall require the approval of the appropriate Historical Commission and be fully reversible.

6.8.5 General Standards for Towers. Any application for a WCF that includes a tower shall be subject to the following standards, in addition to those described for all WCFs.

- A. Any application for a WCF that includes a Tower shall be considered only after a finding by the Zoning Board that existing or previously approved towers, buildings, or structures cannot accommodate the proposed users. New towers shall be considered only upon a finding by the Zoning Board that:
  - 1. The applicant has used reasonable efforts to co-locate its proposed WCF on existing or approved facilities; and
  - 2. The applicant either was unable to negotiate commercially reasonable lease terms with the owner of an existing or approved facility that could accommodate the proposed facilities from both structural and radio frequency engineering perspectives; or that no structure exists or is proposed.
- B. A Tower shall be either a freestanding monopole or be disguised as a naturally occurring object such as a tree or context-sensitive feature.
- C. Any proposed tower shall be the minimum height necessary to accommodate the use. However, any new tower shall be of sufficient height to accommodate the antennas of at least two WCFs. The visual impact of the Tower shall be minimized by use of the Best Available Technology for the industry.
- D. To demonstrate the visual impact of a proposed Tower, the applicant shall fly a 3-ft diameter balloon or place a crane at the proposed site at the maximum height of the proposed Tower on a weekend day between the hours of noon and 3 p.m. The date and location of the demonstration shall be advertised at least 14 days, but not more than 21 days, before the demonstration in a newspaper of general circulation in the Town. Photographs of the demonstration showing the impact of the proposed Tower on abutting streets, adjacent property owners and residential neighborhoods shall be submitted. If, during the demonstration, visibility is obscured by poor atmospheric conditions, the demonstration shall be repeated.
- E. The tower site shall have access from a public road or through an adequate easement.
- F. Landscaping shall be provided to screen the foundation and the equipment from abutting properties.
- G. The maximum feasible amount of vegetation shall be preserved.
- H. The tower site shall be suitably fenced to prevent unauthorized entry.
- I. Lighting shall be limited to minimal security lighting, emergency lighting, and that required by federal, state or local regulations.
- J. The applicant shall provide evidence that the tower meets the current structural standards for structural antenna towers and antenna support structures published by the Electrical Association/Telecommunications Industry Association.
- K. Each tower site shall have at least one parking space, to be used in connection with the maintenance of the facility, and shall not be used for the storage of vehicles or other items.
- L. WCF shall not generate noise in excess of 50dB measured at the site property line.
- M. The WCF shall meet setback requirements for the zoning district in which it is located, unless the Zoning Board finds that a greater setback would be more appropriate for the facility and/or the surroundings.
- N. A suitable "fall-zone" shall be provided at each site to ensure public safety. Suitability shall be determined through fact-finding by the Zoning Board. The fall-zone shall be within the required perimeter fence.

- O. Towers shall not be sited in or within 500 feet of a historic district or where their location adversely impacts the visual aesthetics of a historic district.
- P. There shall be a sign identifying the facility, the operator and an emergency telephone number where the operator can be reached at any time. Other permitted signs are "Danger/Warning" and "No Trespassing" signs. Advertising signs are prohibited. All signs must conform to Article 9 of the Winchendon Zoning Bylaw.
- Q. For Towers located on Town property, the Operator shall execute an agreement with the Town whereby the Operator indemnifies and holds the Town harmless against any claims for injury or damage resulting from or arising out of the use or occupancy of the Town owned property by the Operator.
- R. For all Towers, the Operator shall execute an agreement with the Town whereby the Operator will allow other carriers to lease space on the Tower so long as such use does not interfere with the Operator's use of the Tower.
- S. For all Towers, the owner of the tower, which owner may be different from the owner of the land, shall execute an agreement with the Town whereby each Operator shall, at its own expense, not more than one (1) year after its use of the tower ceases, remove all of its WCF thereon, and, if the tower is no longer used for WCF, shall remove the tower and restore the premises to its original condition, all at the owner's expense. To protect the Town's interest, in the event that the owner or any Operator breaches this agreement, the owner shall provide the Town with:
  - 1. A bond in an amount sufficient to pay for this removal and restoration, which shall be kept current and effective; and
  - 2. Written authority from the owner of record of the subject property to bind its successors and assigns to allow the Town to enter onto the subject property to perform this work.

#### 6.8.6 Standards for Accessory Buildings and Structures

- 1. Accessory structures and buildings shall comply with the setback requirements of the zoning district in which they are located.
- 2. Any additional accessory building(s) added to a site shall abut the original accessory building and shall be compatible in appearance.

6.8.7 Exceptions. Amateur radio towers used in accordance with the terms of any amateur radio license issued by the Federal Communications Commission shall be exempt from the provisions of this bylaw, provided that the tower is not used or licensed for any commercial purpose.

## 6.9 ADULT ENTERTAINMENT

6.9.1 Purpose. The special regulations itemized in this section are for the purpose of preventing a concentration of adult use establishments in any one area of town, to prevent the associated secondary effects of such establishments and to promote the health, safety and welfare of the citizens of Winchendon.

6.9.2 Adult use establishments are permitted only in the Industrial (I) zoning district with a special Permit as herein provided.

6.9.3 Adult use establishments require a Special Permit from the Zoning Board of Appeals. An applicant for a Special Permit to operate an adult use establishment must file an application on a form approved by the Zoning Board of Appeals, with the Zoning Board of Appeals and the Town Clerk. Such form shall require any information required by the Zoning Board of Appeals, but shall include as a minimum:

- A. Name and Address of the legal owner of the establishment;
- B. Name and Address of all persons having lawful, equity or security interests in the establishment;
- C. Name and Address of the manager(s);
- D. The number of proposed employees, including performers;
- E. Proposed security precautions;
- F. Physical layout of the premises in a format established by the Zoning Board of Appeals;
- G. The exact use(s) to be made of the premises.

6.9.4 Adult use establishments require Site Plan Approval from the Planning Board. The applicant for site plan approval for an adult use establishment must file an application on a form approved by the Planning Board, with the Planning Board and the Town Clerk. Such form shall contain any information required by the Planning Board, but shall include as a minimum:

- A. Name and Address of the legal owner of the establishment;
- B. Name and Address of all persons having lawful, equity or security interests in the establishment;
- C. Name and Address of the manager(s);
- D. The number of proposed employees, including performers;
- E. Proposed security precautions;
- F. Physical layout of the premises in a format established by the Planning Board;
- G. The exact use(s) to be made of the premises.

6.9.5 Adult use establishments may be permitted under this section only on lots not less than three (3) times the lot size required in the Industrial (I) zone.

6.9.6 Location

Adult use establishments may not be located less than five hundred (500) feet from the nearest lot line of:

- A. other adult use establishments;
- B. a public or private nursery school or day care center;
- C. a public or private kindergarten;
- D. a public or private school;
- E. a playground;
- F. a church or other place of worship;
- G. an establishment serving alcoholic beverages which are consumed on its premises;
- H. a hotel, motel, motor court or lodging house;
- I. a residential zoning district or residence;
- J. an establishment selling alcoholic beverages.

6.9.7 A Special Permit granted under this Article, pursuant to the provisions of the Massachusetts General Laws, Chapter 40A, Section 9A, shall lapse within six (6) months of issuance, not including the time required to pursue or await the determination of an appeal as allowed under Massachusetts General Laws, Chapter 40A, Section 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause.

6.9.8 The Zoning Board of Appeals shall apply the following criteria in the granting of a Special Permit under this section:

- A. It shall determine that the proposed site will meet, or be altered to meet, all provisions of this Zoning Bylaw including coverage, densities, buffer areas and parking requirements.
- B. Appearance of buildings for adult uses shall be consistent with the appearance of buildings in similar (but not specifically "adult") uses in Winchendon, and shall not employ unusual color, graphics, lighting or building design which would attract attention to the premises.
- C. No Special Permit shall be issued to any person convicted of violating the Massachusetts General Laws, Chapter 119, Section 63, or Chapter 272, Section 28 or convicted of any felony in any jurisdiction.
- D. Each Special Permit shall be issued with such conditions as may be required by the Zoning Board of Appeals and shall have at least the conditions specified below:
  - 1. No one under the age of twenty-one (21) shall be allowed on the premises;
  - 2. "Obscene" merchandise or services shall not be available;
  - 3. No one, including employees and patrons, shall be permitted on the premises while such person is unclothed or in such state of attire as may be considered "nudity" as that term is defined in Massachusetts General Laws, Chapter 272, Section 31, except an entertainer hired by the owner thereof.
  - 4. A uniformed police officer shall be on duty, at the expense of the owner, at any establishment when live entertainment takes place.
  - 5. Use of unusual color, graphics, lighting, or building design which would attract attention to the premises is prohibited;
  - 6. No hostess or other employees or persons may mingle with the patrons while such hostess, or other person is unclothed or in such state of attire as may be considered "nudity" as this term is defined in Massachusetts General Laws, Chapter 272, Section 31;

7. No person may be encouraged or permitted to engage in "sexual conduct", as that term is defined in Massachusetts General Laws, Chapter 272, Section 31 on the premises of such establishment;
  8. No person shall be employed or permitted to perform an act or acts, or to simulate an act or acts of "sexual conduct" or engage in any activity which may be considered causing or encouraging a state of "sexual excitement" as defined in Massachusetts General Laws, Chapter 272, Section 31;
  9. The permitted uses specifically exclude disseminating or offering to disseminate, adult material or matter to minors or suffering minors to view displays of such matter or material;
  10. Entertainers are required to remain in a designated area such as a stage during performances and are prohibited from mingling with patrons during their performance;
  11. The sale or dispensing of alcoholic beverages is prohibited on a premises where an adult use establishment exists, except as otherwise permitted by the local licensing authorities following the issuance of an appropriate license therefor;
  12. Noncompliance with any of the conditions of a Special Permit issued under this section shall be deemed a zoning violation. If more than three (3) zoning violations occur within thirty (30) days, forfeiture of all special permits issued hereunder shall occur, subject to review at a public hearing of the Zoning Board of Appeals and Planning Board, which may be a joint hearing at the request of either Board or the Applicant. Repeated abuses (more than two (2) public hearings in one (1) year - 365 days) shall result in the revocation of all permits issued under this section. In the event of such revocation, the applicant may not reapply for five (5) years from the date of such revocation.
- 6.9.9 The Planning Board shall apply the following standards in the issuance of a Site Plan Special Permit:
- A. Appropriate landscaping and fencing buffers to protect neighboring properties from light and noise, and to restrict public access to the adjacent properties is required;
  - B. Lighting of the exterior of the building and parking lot to reduce congestion, improve public safety and increase visibility for public safety is required, as specified by the Town Safety Officer;
  - C. No displays or sexually explicit advertising shall be visible from areas used by the general public, including areas in and around the exterior of the establishment;
  - D. Adequate parking, entrances and exits from the public way(s) or other ways to which the public has access to or from the premises, including but not limited to safe and appropriate sight distances for a reasonably safe ingress and egress, shall be reviewed for public safety and to address traffic congestion.
  - E. Noncompliance with any of the conditions shall be deemed a zoning violation. If more than three (3) zoning violations occur within thirty (30) days, forfeiture of all special permits and licenses granted shall occur, subject to review at a joint public hearing of the Select Board, Zoning Board of Appeals and Planning Board. Repeated abuses (more than two (2) public hearings in one (1) year - 365 days) will result in complete revocation of permits and licenses. If such an event occurs, the applicant must wait five (5) years before reapplying.

## **6.10 WIND ENERGY CONVERSION SYSTEMS (WECS) (Added May 19, 2008)**

1. Purpose. The purpose of this section is to provide for the development and use of wind power as an alternative energy source, while protecting public health, safety and welfare, preserving environmental, historic and scenic resources, controlling noise levels and preventing electromagnetic interference.
2. Applicability. Construction and use of a Wind Energy Conversion System (WECS) or any part thereof shall comply with this by-law.
3. Definitions.
  - A. Wind Energy Conversion Systems (WECS) - All equipment, machinery, and structures, whether underground, on the surface, or overhead, used to collect, transmit, distribute, store, supply, or sell energy derived from wind, including but not limited to wind turbines (rotors, electrical generators and towers), anemometers (wind measuring equipment), transformers, substations, power lines, control and maintenance facilities, and site access and service roads.

- B. Commercial Wind Energy System (CWES): A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity greater than 10 kW.
  - C. Residential Wind Energy System (RWES): A wind energy conversion system consisting of a wind turbine, and associated control or conversion electronics, which has a rated capacity of not more than 10 kW, located on a single lot, intended as an accessory use in a designated residential district or in connection with any residential use in a designated commercial district. The rated capacity of not more than 10 kW can be increased at the discretion of the SPGA.
  - D. Wind Turbine: A single device that converts wind to electricity or other forms of energy, typically consisting of a rotor and blade assembly, electrical generator, and tower with or without guy wires.
  - E. Overall Engineer Designed Fall Zone: The area on the ground, determined by a registered professional engineer, within a prescribed radius from the base of a WECS, typically the area within which there is a potential hazard from falling debris or collapsing material.
  - F. Wind Farm: A collection of towers in the same location. See Section 5.D for allowance of more than one (1) tower on the same lot or on contiguous lots held in common ownership.
4. Special Permit Granting Authority: The Planning Board is hereby established as the Special Permit Granting Authority (SPGA) in connection with construction of Wind Energy Facilities (WECS). WECS are allowed in all districts by special permit. Special scrutiny will be given to WECS to be located in a Historic District. The SPGA may grant a Special Permit only if it finds that the proposal complies with the provisions of this bylaw and is consistent with the applicable criteria for granting special permits.
5. Development Requirements. The following requirements apply to all Wind Energy Conversion Systems (WECS).
- A. Proposed WECS shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements.
  - B. WECS serving neighborhoods or multiple residences are encouraged however; proposals shall be permitted as a CWES allowed in residential districts. If applicable, any necessary easements between property owners must be recorded.
  - C. RWES and CWES shall be limited to one (1) tower per lot including one (1) tower per lot on contiguous lots held in common ownership. The SPGA may exceed this limit if the applicant can demonstrate that additional number is necessary to serve the purposes of this bylaw and that the additional towers will not create an adverse impact in comparison to the siting of one tower as outlined in this bylaw with respect to factors including, but not limited to, Noise (Section 5.H.), Shadowing/Flicker (Section 5.I.), Visual Impact (Section 5.K.), and Electromagnetic Interference (Section 5.L.).
  - D. Tower height.
    - 1. CWES. Maximum height three hundred feet. The SPGA may allow the height restriction to be exceeded as part of the special permit process if it finds that the applicant has demonstrated that additional height is needed and that increased height does not create a greater adverse impact than a facility built in compliance with this section with respect to factors including, but not limited to, Noise (Section 5.H.), Shadowing/Flicker (Section 5.I.), Visual Impact (Section 5.K.), and Electromagnetic Interference (Section 5.L.).
    - 2. RWES. Maximum height one hundred and fifty feet. The SPGA may allow the height restriction to be exceeded as part of the special permit process if it finds that the applicant has

demonstrated that additional height is needed and that increased height does not create a greater adverse impact than a facility built in compliance with this section with respect to factors including, but not limited to, Noise (Section 5.I.), Shadowing/Flicker (Section 5.J.), Visual Impact (Section 5.L.), and Electromagnetic Interference (Section 5.M.).

- E. Monopole towers are the preferred type of support.
- F. Height Calculation. Overall height of the wind turbine, including any roof mounted wind turbine, shall be measured from the ground level (the land in its natural state prior to grading or filling) to the highest point reached by any part of the wind turbine.
- G. Fall Zone Setbacks. (*See figure A*) The minimum setback for the WECS shall be maintained equal to the overall engineer designed fall zone plus ten (10) feet from all boundaries of the site on which the WECS is located.
  - 1. No part of the WECS support structure, including guy wire anchors, may extend closer to the property boundaries than the standard structure setbacks for the zone where the land is located.
  - 2. WECS shall be set back a distance of the overall engineer designed fall zone plus ten (10) feet, from ways, drives, access easements, trails, ascertainable paths and above ground utility lines (*See Figure A*).

The SPGA may waive the Fall Zone Setbacks in Section 5.G. if it determines that such a waiver does not derogate from the purpose of this bylaw, and is in the public interest. If any portion of the fall zone setback area referred to in Section 5.G includes abutting property, in order for the SPGA to grant such a waiver, the applicant must present evidence that he or she has secured a permanent “fall zone easement” from the abutting property owner(s). The area of the “fall zone easement” shall be shown on all applicable plans submitted to the SPGA. The easement shall prohibit the placement of temporary or permanent buildings or structures within the “fall zone” and state that it is for the benefit of the applicant’s property and that the easement shall run with the land and forever burden the subject property. The easement shall be recorded no later than ten (10) days from the grant of said waiver, and a copy of the recorded easement shall be provided to the SPGA promptly. In addition, the SPGA may waive the setback requirement in Section 5.G. for setbacks from a public way for good cause.

- H. Noise. The WECS and associated equipment shall conform to the Massachusetts noise regulation (310 CMR 7.10). If deemed necessary by the SPGA, an analysis, prepared by a qualified engineer, shall be presented to demonstrate compliance with these noise standards and be consistent with Massachusetts Department of Environmental Protection guidance for noise measurement.
  - 1. Manufacturers specifications may be accepted when, in the opinion of the SPGA, the information provided satisfies the above requirements.
  - 2. If noise levels are determined to be excessive, the Zoning Enforcement Officer shall require the property owner to perform ambient and operating decibel measurements at the nearest point from the wind turbine to the property line of the complainant and to the nearest inhabited residence.
- I. Shadowing/Flicker. The WECS shall be sited in a manner that does not result in significant shadowing or flicker impacts. The applicant has the burden of proving that a WECS does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.
- J. Prevention of Access. The applicant/owner shall ensure that all related components of the WECS are protected from unlawful access. Climbing access to the tower shall be limited by the following methods: by placing climbing apparatus no lower than twelve feet from the ground and by installation of a six foot high fence with locked gate set back no less than ten (10) feet from the base of the WECS (*See Figure B*).



- K. Visual Impact. The applicant shall employ all reasonable means, including landscaping and alternative locations, to minimize the visual impact of all WECS components. All components of the WECS and its support structure shall be painted plain non-reflective muted colors without graphics or other decoration.

The WECS shall not unreasonably interfere with any scenic views, paying particular attention to such views from the downtown business area, public parks, natural scenic vistas or historic building or districts. WECS shall, when possible, be sited off ridgelines where there visual impact is least detrimental to scenic views and areas. In determining whether the proposed WECS will have an undue adverse impact on the scenic beauty of a ridge of hillside, the SPGA consider, among other things, the following:

1. The period of time during which the proposed WECS will be viewed by the traveling public on a public highway, public trail, or public body of water;
2. The frequency of the view of the proposed WECS by the traveling public;
3. The degree to which the view of the WECS is screened by existing vegetation, the topography of the land, and existing structures;
4. Background features in the line of sight to the proposed WECS that obscure it or make it more conspicuous;
5. The distance of the WECS from the viewing vantage point and the proportion that is visible above the skyline;
6. The number of travelers or vehicles traveling on a public highway, public trail, or public body of water at or near the critical vantage point, and
7. The sensitivity or unique value of the particular view affected by the proposed WECS.

To assist the SPGA in its review it may require the applicant to fly or raise a three-foot diameter balloon at the maximum height of the proposed WECS at a location within fifty (50) horizontal feet of the center of the proposed facility. The applicant shall provide photographs of the balloon test taken from at least four vantage points previously designated by the SPGA.

- L. Electromagnetic interference. No WECS installation shall cause electromagnetic interference. The applicant may be asked to bring in consultants at his/her own expense to certify that the system will not cause interference. If neighbors can demonstrate that there is excessive interference, the Building Commissioner shall notify in writing the owner of the WECS to correct the violation. If the interference is not remedied within 30 days the WECS shall remain inactive until the interference is remedied, which may include relocation or removal.

6. Procedural Requirements:

- A. Site Plan. A site plan must be submitted, prepared to scale by a registered land surveyor or civil engineer showing the location of the proposed WECS, distances to all property lines, existing and proposed structures, existing and proposed elevations, public and private roads, above ground utility lines and any other significant features or appurtenances. Any portion of this section may be waived if in the opinion of the SPGA the materials submitted are sufficient for the SPGA to make a decision.

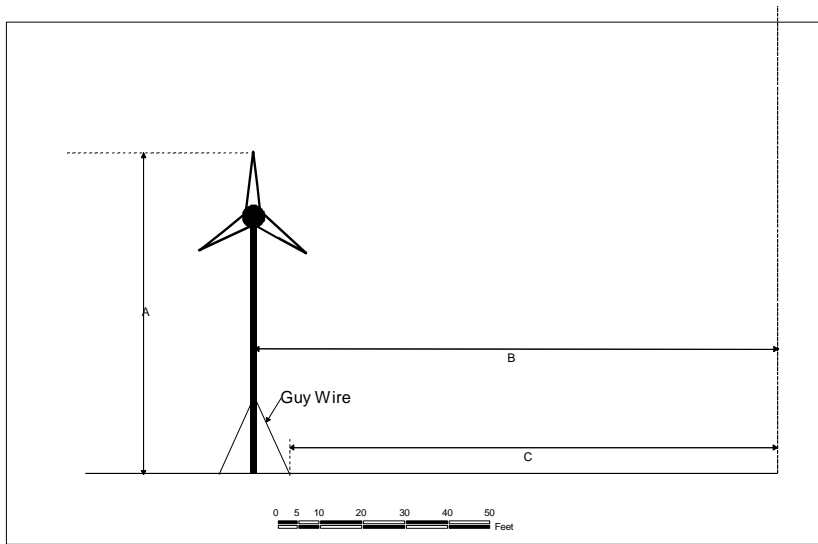
1. Vegetation. Existing vegetation must be shown including average height of trees and any proposed vegetation removal on the subject property or abutting properties. The SPGA may also consider the height of vegetation at maturity.
2. Lighting. If lighting is proposed (other than required FAA lights) the applicant shall submit a plan indicating the horizontal foot candles at grade, within the property line and twenty-five (25) beyond the property lines. The plan shall also indicate the locations and types of luminaries proposed.

3. The Site Plan shall be accompanied by any additional documentation necessary to provide a complete description of WECS including technical, economic, environmental, and other reasons for the proposed location, height and design.
- B. Proof of Liability Insurance. The applicant shall be required to provide evidence of liability insurance in an amount and for duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.
  - C. Compliance with FAA Regulations. WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
  - D. Utility Notification. No WECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
  - E. Discontinuance: A WECS shall be considered to be discontinued if it is not operated for a period of two years. Once a WECS is designated as discontinued, the owner shall be required to physically remove the WECS within 90 days of written notice. "Physically remove" shall include, but not be limited to:
    1. Removal of WECS, any equipment shelters and security barriers from the subject property.
    2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
    3. Restoring the location of the WECS to its natural condition, except that any landscaping and grading shall remain in the after-condition.

If the applicant fails to remove the WECS in accordance with the requirements of this section, the town shall have the authority to enter the property and physically remove the facility at the owners cost, which may include placing a lien on the property and/or taking other actions.

- F. Modifications. All modifications (excluding routine repairs and maintenance) to a WECS made after issuance of the Special Permit shall require approval by the SPGA.
- G. Professional Fees. The SPGA may retain a technical expert/consultant to verify information presented by the applicant. The cost for such a technical expert/consultant will be the expense of the applicant.
- H. Unsafe Installation. Should a WECS be deemed unsafe by the appropriate town authority because of its construction or condition, it shall be repaired or removed at the owner's expense.

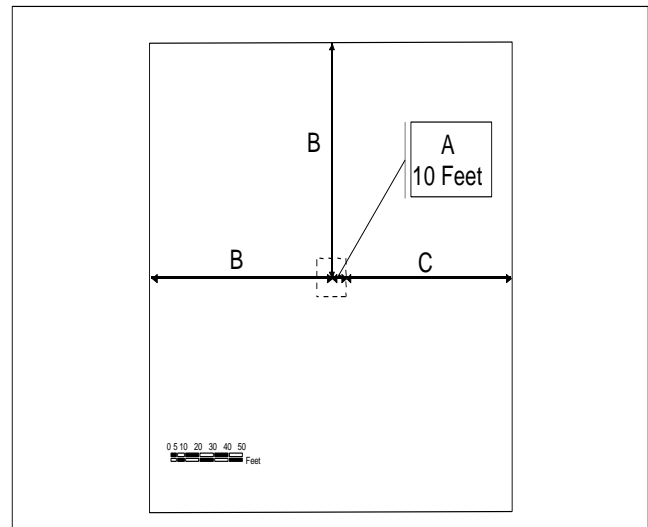
**FIGURE A: WIND ENERGY CONVERSION SYSTEM (Illustrative Example Only)**



**A =** Overall Height of WECS. Maximum Height of a Residential WECS is 150 Feet and Maximum Height for a Commercial WECS is 300 Feet. Maximum Height may be exceeded as part of the special permit process if there is a demonstrated need.  
**B =** Fall Zone Setback: A minimum of the overall engineer designed fall zone plus 10 feet. This setback does not apply to any residential or commercial structure that is owned by the applicant.  
**C =** Standard Structure Setback.

**FIGURE B: WIND ENERGY CONVERSION SYSTEM (Illustrative Example Only)**

**A =** Six foot high fence with locked gate set back no less than ten (10) feet from the base of the WECS  
**B =** Fall Zone Setback: A minimum of the overall engineer designed fall zone plus 10 feet. This setback does not apply to any residential or commercial structure that is owned by the applicant.  
**C =** Standard Structure Setback.



## **6.11 SOLAR ENERGY COLLECTION SYSTEMS** (Added May 24, 2010)

6.11.1 The purpose of this bylaw is to promote the creation of solar energy collection systems to further the goal of making Winchendon a sustainable community as provided in section 1.1.1 of this bylaw. This section seeks to provide standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

6.11.2 Solar Energy Collection Systems are permitted as follows:

- a. Solar Energy Collection Systems which produce energy to be used exclusively on the premises and systems which generate electricity that is sold to the electric utility, provided the site is/will be a net purchaser of electricity, are permitted by right in all zones as an accessory use. This shall include recharging electric automobile batteries on site.
- b. Solar Energy Collection Systems which are mounted on buildings are allowed by right in all zones.
- c. Ground mounted Solar Energy Collection Systems are allowed by right in the R40, R80, C1, C2, and I zones but shall be subject to the site plan review requirements of article 12 and the requirements of section 6.11.5 through 6.11.18.
- d. Other Solar Energy Collection Systems are allowed in all zoning districts by special permit issued by the Planning Board and the site plan review requirements of article 12 and the requirements of section 6.11.5 through 6.11.18.

6.11.3 The construction or installation of any Solar Energy Collection System shall require a separate building permit.

6.11.4 The construction and operation of all Solar Energy Collection Systems shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of the installation shall be constructed in accordance with the State Building Code.

- a. Lots containing Solar Energy Collection Systems shall conform to the lot area and setback requirements for the zone in which it is located.
- b. Appropriate installation of wooded buffers to protect neighboring residential properties, and to restrict visual access the adjacent properties is required; In those cases where a required wooded buffer would shade the collectors, the Planning Board may allow substitution of a fence.

6.11.5 Sections 6.11.6 through 6.11.18 shall apply only to systems requiring site plan review under section 6.11.2 c and 6.11.2 d.

6.11.6 In addition to the other requirements for site plan review, each application shall include:

- a. One or three line electrical diagram (if electrical generation is proposed) detailing the solar installation, associated components, and electrical interconnection methods, with all National Electrical Code and National Electrical Safety Code compliant disconnects and over current devices;
- b. Documentation of the major system components to be used, including the collector panels, mounting system, and appurtenant devices;
- c. A statement bearing the seal of a licensed professional engineer stating the measured normal pre construction noise levels at points (generally 100 feet apart) along the property lines and the expected operational noise levels at the same locations. Particular attention shall be paid to property lines abutting developed sites. A properly calibrated sound level meter meeting ANSI class 2 standards shall be used for all measurements.

- d. Name, address, and contact information for proposed system installer;
- e. An operation and maintenance plan (see also Section 6.11.9);
- f. Proof of liability insurance; and
- g. Description of financial security that satisfies Section 6.11.18.

6.11.7 If the area where the collector panels are installed is so designed that all stormwater will be returned to the soil within the area, the whole area will be considered as pervious area. Otherwise the actual ground area covered by collector panels will be considered impervious.

6.11.8 A Low Impact Development Permit under article 31 of the general bylaws will be required for Solar Energy Collection Systems.

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

6.11.10 Utility Notification No installation proposed to generate electricity for use off site shall be approved until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar installation owner or operator's intent to install an interconnected customer-owned generator.

6.11.11 Appurtenant Structures All appurtenant structures to installations; including but not limited to, equipment shelters, storage facilities, transformers, substations; pumps, and turbines shall be included in the required site plan review and shall be evaluated based on the criteria in section 12.6. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

#### 6.11.12 Design Standards

Solar energy collections systems shall be surrounded by a chain link or similar fence adequate to prevent entry by unauthorized persons.

- a. If the noise level measured at any property line of the system in normal operation is more than 10 db greater than the reported pre construction noise level at the same location, sound deadening measures may be required as a condition of allowing further operation of the system.
- b. Each installation shall have a sign showing the name and address of the operator thereof and a telephone number where a responsible representative of the operator may be reached at any time.
- c. Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the 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.

#### 6.11.13 Safety and Environmental Standards

- a. Emergency Services The system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the system shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation. This contact information and telephone number shall also be provided to the local emergency dispatch center.

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

#### 6.11.14 Modifications

- a. All material modifications to a Solar Energy Collection System installation made after approval of the site plan shall require a modification of the approval.
- b. The Planning Board shall review each site plan at intervals of not less than five years and may, after public notice and hearing, modify the approved plan to insure the public safety and compliance with the town bylaws and regulations.

6.11.15 Abandonment or Decommissioning Any installation which has reached the end of its useful life or has been abandoned as defined in section 6.11.17 of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- a. Physical removal of the solar collectors, appurtenant structures, equipment, security barriers and transmission lines from the site.
- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

6.11.16 Stabilization or revegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

6.11.17 Abandonment Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the installation shall be considered abandoned when the system fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

6.11.18 Financial Surety Operators of installations shall provide security, either escrow account, bond, or otherwise, to cover the cost of removal of the system in the event the town must remove it and remediate the landscape. The form and amount of the security shall be determined by the Planning Board. The amount of the security shall reasonably reflect the anticipated cost of such removal and remediation. If the Board and the operator disagree, it shall be determined by an disinterested and qualified independent engineer. Such surety will not be required for municipally- or state-owned facilities. The amount shall include a mechanism for calculating increased removal costs due to inflation.

## **Article 6.12 Medical/Adult Use Marijuana Facilities and the Medical/Adult Use Marijuana Retail Overlay District** (added May 21, 2018)

### *1. Purpose.*

- 1.1. To provide for the limited establishment of Medical/Adult Use Marijuana Facilities (collectively, known hereafter as Marijuana Facilities) in appropriate places for such use and under conditions in accordance with Chapter 334 of the Acts of 2016, entitled, “Regulation and Taxation of Marijuana Act”, as amended by Chapter 55 of the Acts of 2017, “An Act to Ensure Safe Access to Marijuana”, and all regulations which have or may be issued by the Department of Public Health (“DPH”) and the Cannabis Control Commission (“CCC”), including, but not limited to 105 CMR 725.00, et seq. and 935 CMR 500.00, et seq.

- 1.2. To minimize the adverse impacts of Marijuana Facilities on adjacent properties, residential neighborhoods, schools and other places where children congregate, and other land uses potentially incompatible with Marijuana Facilities.
- 1.3. To regulate the siting, design, placement, safety, monitoring, modification, and removal of Marijuana Facilities.
- 1.4. To limit the overall number Marijuana Facilities in the Town of Winchendon to what is essential to serve the public convenience and necessity.

## *2. Applicability.*

2.1 The commercial cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of Marijuana for Medical Use or Adult Use is prohibited unless licensed by all applicable Massachusetts licensing authorities and permitted as a Marijuana Facility under this Bylaw.

2.2. No Marijuana Facility shall be established except in compliance with the provisions set forth herein.

2.4 If any provision of this Section or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this Section and to this end the provisions of this Section are severable.

## *3. Administration*

3.1 The Planning Board shall be the Special Permit Granting Authority (SPGA) and shall also conduct Site Plan Review for an applicant for a Marijuana Facility.

3.2 A special permit is required for all Marijuana Facilities.

## *4. Definitions.*

Any term not specifically defined herein shall have the meaning as defined in 105 CMR 725.00 and 935 CMR 500.00 as such regulations may from time to time be amended.

*Designated contact persons* – Any and all persons whose names appear on the Special Permit and Formal Site Plan Approval Applications as the applicant’s designee.

*Independent Testing Laboratory* - An entity licensed to test marijuana and marijuana products.

*Locked Area* –An area equipped with locks or other security devices, which is accessible only to consumers 21 years of age or older, employees or owners of a Marijuana Facility or agents thereof, registered qualifying patients that are 18 years or older, or care givers.

*Marijuana* – The same substance defined as “marihuana” or “marijuana” under Chapter 94C and 94G of the Massachusetts General Laws.

*Marijuana cultivator* - An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Facilities, but not to consumers.

*Marijuana for Adult Use* – Marijuana that is regulated by 925 CMR 500.00 and cultivated, processed, manufactured, transported or sold for recreational purposes for individuals 21 years of age or older.

*Marijuana Facility* – A commercial marijuana cultivator, independent testing laboratory, product manufacturer, research facility, transporter, retailer, or any other type of licensed marijuana-related business, including a Marijuana Treatment Center.

*Marijuana for Medical Use* – Marijuana that is regulated by 105 CMR 725.00 and designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions.

*Marijuana product manufacturer* - An entity licensed to obtain, manufacture, process and package marijuana and marijuana products and to transfer these products to other Marijuana Facilities, but not to consumers.

*Marijuana products* - Products that have been manufactured and contain marijuana or an extract from marijuana, including, but not limited to concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

*Marijuana retailer* - An entity licensed to purchase and transport marijuana and marijuana products from Marijuana Facilities and to, sell or otherwise transfer marijuana and marijuana products to Marijuana Facilities and to consumers.

*Medical Marijuana Treatment Center* – An entity register under 105 CMR 725.100 that acquires, cultivates, possesses, processes, transfers, transports, sells distributes, dispenses, or administers marijuana, products containing marijuana for medical use, related supplies, or educational materials to registered qualifying patients or their personal caregivers.

*Non-Medical Marijuana*- Any marijuana that is NOT regulated by 105 CMR 725.00 and designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions.

#### *5. Eligible Locations for Marijuana Facilities.*

5.1 Non-Retail Marijuana Facilities which shall include marijuana cultivator, product manufacturer, independent testing laboratory, research facility, transporter of marijuana and Medical Marijuana Treatment Centers engaged in any of the above-listed non-retail uses may be permitted in certain zoning districts pursuant to a Special Permit and Site Plan Approval as set forth in the Zoning Bylaw Article 5.2.8, Use Regulations.

#### *5.2 Adult Use/Medical Marijuana Facilities Retail Overlay District*

##### *5.2.1 Establishment*

The Medical/Adult Use Marijuana Facilities Retail Overlay District (the “MFROD”) is hereby established and is identified on the Town of Winchendon Zoning Map. The boundaries of the MFROD are shown on the Zoning Map on file with the Town Clerk.

Within the MFROD, all requirements of the underlying zoning district remain in effect, except where these regulations provide an alternative to such requirements. Land within the MFROD may be used for adult use marijuana retailers and Medical Marijuana Treatment Centers engaged only in the dispensing of medical use-marijuana for retail sale, in which case the requirements set forth in this section shall apply; or a use allowed in the underlying district, in which case the requirements of the underlying district shall apply. If the provisions of the MFROD are silent on a zoning regulation, the requirements of the underlying district shall apply. If the provisions of the MFROD conflict with the requirements of the underlying district, the requirements of the MFROD shall control. A Medical Marijuana Treatment Center that is proposing to operate all of the uses permitted under its license in a single location will be permitted only on sites located within the MFROD.

#### *6. Application Requirements for all Marijuana Facilities.*

6.1 All Marijuana Facilities shall be subject to the application requirements set forth in Rules and Regulations for the Review and Approval of Site Plans and Site Development in Winchendon, Ma. for Formal Site Plan Review.

6.1.2 In addition to the application requirements set forth in in the Regulations for Site Plan Review, a special permit/site plan application for a Marijuana Facility shall also include the following:

- (a) a statement from the Applicant, setting forth the following information:



- (i) the name and address of each owner of the Facility.
- (ii) the source of all marijuana that will be sold or distributed at the Marijuana Facility, if applicable;
- (iii) the source of all marijuana that will be cultivated, processed, and/or packaged at the Marijuana Facility, if applicable;
- (iv) the quantity of marijuana that will be cultivated, processed, packaged, sold and/or distributed at the Marijuana Facility; and

Plans must show all proposed security measures for the Marijuana Facility, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

(b) If the Applicant is a non-profit organization, a copy of its Articles of Organization, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report; if the Applicant is a for-profit corporate entity, a copy of its Articles of Incorporation or equivalent documents, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report; if the Applicant is a public agency-

(c) Copies of all licenses issued by the CCC or DPH, and any materials submitted to these entities by the Applicant for purposes of seeking licensing.

(d) A detailed floor plan of the premises of the proposed Marijuana Facility that identifies the square footage available and describes the functional areas of the facility, along with a deed, lease, purchase and sale agreement or other legally-binding document for the site of the proposed Marijuana Facility;

(e) The resume(s) of the Applicant, including company history, references, and relevant experience, where applicable;

## 6.2 *Additional Requirements*

### 6.2.1 Use Requirements

- (a) No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises of any Marijuana Facility absent a positive vote by ballot question presented to the voters of the city or town at a biennial state election pursuant to G.L. c.94G, §3(b). The prohibition on on-site consumption shall also include private social clubs or any other establishment which allows for social consumption of marijuana or marijuana products on the premises, regardless of whether the product is sold to consumers on site.
- (b) Marijuana Facilities shall provide the Special Permit Granting Authority and all abutters located within 500 feet of the Marijuana Facility with the name, phone number and email address of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment.
- (c) The hour of operation of Retail Marijuana Facilities shall be set by the Special Permit Granting Authority.

6.2.2 Limitation on number of Retail Marijuana Facilities – No more than three (3) Adult Use Marijuana Retailers and no more than one (1) Medical Marijuana Treatment Center retail dispensary shall be permitted to be located in the Town of Winchendon.

### 6.2.3 Locational and Physical Requirements

All aspects of a Marijuana Facility relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the business.

No outside storage of marijuana, related supplies, or educational materials is permitted.

- (a) No Retail Marijuana Facility shall have a gross floor area accessible to patients or customers which is in excess of 2,500 square feet. Space which is dedicated to administration or operations and is accessible only to employees of the Retail Marijuana Facility shall not be included in this limitation.
- (b) In the R80 District all Marijuana Facilities shall be subject to siting on a parcel no less than 5 acres. In addition, all Marijuana Facilities in the R80 district shall be subject to double the setback distance requirements to those outlined in Article 7.2 of the Winchendon Zoning Bylaws.

6.2.4 All Marijuana Facilities shall provide adequate ventilation such that the application of pesticides shall be performed in compliance with M.G.L. c. 132B and the regulations promulgated at 333 CMR 2.00 through 333 CMR 14.00.

No use shall be allowed at a Marijuana Facility which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive sound or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

6.2.5 Buffer. No Marijuana Facility shall be located within 500 feet of any of the following pre-existing uses:

- (a) any public or private school providing education in kindergarten or grades 1 through 12;
- (b) any drug or alcohol rehabilitation facility;
- (c) any correctional facility, half-way house, or similar facility; or
- (d) any playground or athletic fields, recreational facilities, youth centers such as a YMCA, and parking areas for the bike path, or similar facility in which children commonly congregate.

6.2.6. The distance specified above shall be measured by a straight line from the point of the front door for which the proposed Marijuana facility is to be located to the property line of the facility in question.

6.2.7. No Marijuana Facility shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck.

6.2.8 Signage for Marijuana Facilities will be subject to the Town of Winchendon Zoning Bylaw Article 9 and the provisions for marketing set forth in 935 CMR 500.105 (4).

## *7. Reporting Requirements*

7.1 All Special Permit holders for uses under this section shall provide the Police Department, Fire Department, Building Commissioner, Board of Health, and Special Permit Granting Authority with the names, phone numbers, mailing and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facilities identified as designated contact persons to whom notice should be made if there are operating problems associated with any use under this section. All such contact information shall be updated as needed to keep it current and accurate.

7.2 The designated contact persons shall notify the Police Department, Fire Department, Building Commissioner, Board of Health and Special Permit Granting Authority in writing a minimum of thirty (30) days prior to any change in ownership or management of a facility regulated under this section.

7.3 All Marijuana Facilities shall file an annual report with the Special Permit Granting Authority and owner or operations manager for the Marijuana Facility shall appear before said Authority to present the report no later than January 31st of each year, providing a copy of all current applicable state licenses to demonstrate continued compliance with the conditions of the Special Permit.

7.4 Within twenty-four hours of contact by a municipal official concerning the operation of a Marijuana Facility, the designated contact persons shall be required to respond by phone or email to any such inquiry.

## *8. Transfer/Discontinuance of Use*

- 8.1 A Special Permit granted under this Section is non-transferable and shall have a term limited to the duration of the applicant's ownership or leasing of the premises as a Marijuana Facility.
- 8.2 Any Marijuana Facility permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia upon registration or licensure revocation, expiration, termination, relocation to a new site or any other cessation of operation as regulated by the CCC or DHP in compliance with applicable state regulations.

## *9. Outside Consultants and Review Fees.*

9.1 An outside consultant review escrow deposit shall accompany the Application for special permit. The escrow for review fees is intended to cover the Planning Board's potential cost of hiring consultants to review the Applicant's compliance with the special permit requirements under this Bylaw to include provisions set forth in Section 6.2.2 of the Winchendon Planning Board Site Plan Rules and Regulations and may include legal counsel. The initial escrow deposit amount shall be set by the Special Permit Granting Authority on a case-by-case basis, when such consultants or counsel are deemed necessary. Any unexpended monies in the escrow account will be returned to the applicant only after all obligations are satisfied. Failure to fulfill escrow requirements may render an Application incomplete and be considered sufficient grounds for its denial.

9.2 The Applicant may appeal the selection of a consultant(s) whose fees are to be paid from the escrow deposit to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. Pursuant to M.G.L. c. 44, § 53G, the required time limits for action upon the Application by the Special Permit Granting Authority shall be extended by the duration of the appeal. If no decision is made by the Board of Selectmen within one month following the filing of the appeal, the Special Permit Granting Authority's selection shall stand.

9.3 The escrow deposit shall be deposited in a special account established by the Town Treasurer pursuant to M.G.L. c. 44, § 53G. Funds from the special account shall be administered in accordance with M.G.L. c. 44, § 53G, and may be expended only for the purposes described above.

## *10. Findings.*

The Special Permit Authority shall not issue a special permit for a Marijuana Facility unless it finds that:

- (a) the Facility is designed to minimize any adverse visual impacts on abutters and other parties in interest, as defined in G.L. c. 40A, §11;
- (b) the Facility has received a provisional certificate of registration or provisional license from the appropriate licensing authority and is in compliance with all applicable state laws and regulations;
- (c) the applicant has provided a copy of a signed Host Agreement with the Town of Winchendon, in accordance with M.G.L. Chapter 94G;
- (d) the applicant has provided adequate security measures to protect the health and safety of the public, and that the storage and/or location of cultivation of marijuana is adequately secured in an enclosed, locked area;
- (e) the applicant has adequately addressed issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility.

## *11. Waiver.*

The Planning Board may, in its discretion, may waive or modify any of the requirements set forth in this section, if the Board determines that such a waiver does not derogate from the purpose of this bylaw, and is in the public interest.

*12. Violations.*

Any violation of this Section shall be grounds for revocation of a special permit issued under this Section.

## **ARTICLE 7            SITE CONSIDERATIONS – DIMENSIONAL AND DENSITY REGULATIONS**

### **7.1        PURPOSE** (Amended May 23, 2011)

The purpose of this section is to ensure that building lots conform to and are conducive to land usage patterns designed by the town of Winchendon, that they do not restrict the acceptable land uses of others either through land-locking, limiting access or gerrymandering lots to such an extent that it limits the value of developable land in the town, except where topography or environmental considerations dictate. Normal polygonal lot shapes with ample width to allow for attractive, neighborhood-consistent buildings well-suited to their purpose that do not impact their neighbors adversely, shall be allowed without requiring a burdensome review process (lots).

The purpose of this section is also to ensure that building designs, land development and the public setting retain the charm and appeal of a small rural town with walkable neighborhoods, reasonable privacy and easy access to green spaces (buildings).

The provisions of this article do not apply to new construction built under the provisions of Article 11, Residential Development. For those projects, the provisions of Article 11, shall supersede those contained in this article.

### **7.2        BASIC REQUIREMENTS** (Amended May 21, 2012)

7.2.1 Each lot shall have a street frontage line which conforms to the minimum stated in table 7.2, side lines and a rear line. Lots other than a reduced frontage lot permitted under Section 7.3 of the Bylaw, shall have an area in square feet greater than the square of its perimeter divided by 30 and shall have no non-adjacent side lines closer than one half of the minimum frontage distance at any point between the frontage and the buildable portion of the lot.

- A. The area of a lot required to meet the minimum stated in table 7.2 shall be the area of the lot determined by excluding from the actual area of the lot the areas of any streams, ponds, wetlands, vernal pools and areas with a slope greater than 1:4. The areas of such wetland related areas shall be as determined by Chapter 131 of the General Laws and any state or local regulations adopted thereunder.
- B. The street frontage of a buildable lot must be on;
  - 1. A public way maintained by the state or town; or a way which the Town Clerk certifies is maintained and used as a public way; or
  - 2. A private way which has been built and is currently maintained adequately for the uses to which it is to be put as determined in a finding by the planning board. Such a finding shall be made only after the board has sought advice from the fire department, the police department and the department of public works; or
  - 3. A way shown on a subdivision plan approved and endorsed by the planning board the construction of which is guaranteed under the provisions of Massachusetts General Laws, Chapter 41 section 81U.

7.2.2 Buildings and structures erected, reconstructed or enlarged in any zoning district shall conform to the dimensional and density regulations set forth in the Table 7.2. (SEE FIGURES A.7.2.3 & A.7.2.5)

7.2.3 No more than one principal building or use shall be permitted per lot unless specifically provided for below or in another part of this bylaw, such as the MCOB districts described in Article 4.

7.2.3.1 The Planning Board may authorize by special permit more than one principal building and/or more than one use per lot in connection with the approval of a definitive subdivision or site plan if such action will allow more orderly development of the lot. All of the following requirements shall be met:

- 7.2.3.1.1 The Board must determine that such action will not be detrimental to area property values, the neighborhood, or the intent of the Master Plan;
- 7.2.3.1.2 The Board must determine that the area of the lot is fully sufficient to provide for the existing and proposed buildings as well as for driveways, walkways, parking, and any other proposed or required amenities

A. For residential uses the requirements of section 11.12.2.1 shall also be met.

7.2.3.1.3 The lot frontage and setbacks conform to those required in table 7.2 or, in the case of residential development, by section 11.12.2;

7.2.3.1.4 Principal buildings are separated by not less than 20 feet;

7.2.3.1.5 Each principal building has adequate access from the lot frontage.

7.2.3.1.6 If multiple uses are allowed, all such uses are allowed in the zoning district as provided in article 5;

7.2.3.1.7 Any change to the lot, either by the construction of additional buildings or changes of use, shall require a modification of the special permit.

#### 7.2.4 Special Conditions

- A. Limitations on height of buildings and structures in the dimensional table shall not apply to chimneys, towers, ventilators, spires or ornamental features.
- B. A previously plotted lot or parcel of land containing less than the area or frontage required by the dimensional table may be developed for single residential use only in accordance with the provisions of Chapter 40A of the General Laws of Massachusetts.

#### 7.2.5 Buffer Zone/Yard

In areas where Highway Commercial (C1), Neighborhood Business (C2), and Industrial (I) zones abut residential property, a minimum buffer zone of 50 feet in the C1 and C2 districts and 100 feet in the I district shall be required to screen the residential properties. In the buffer zone, every effort shall be made to preserve the existing trees and ground vegetation. Where suitable vegetation is non-existent, a dense mixture of native or non-invasive trees shall be planted. The trees planted shall have a minimum height of six (6) feet and shall be of at least two (2) inch diameter at the height of forty-two (42) inches from ground level. (SEE FIGURE A.7.2.4)

## 7.2 TABLE OF DIMENSIONAL & DENSITY REGULATIONS (Amended Nov. 8, 2007)

These provisions do not apply to projects built under the provisions of Article 11, Residential Development, unless that article so provides.

Zoning District	Minimum Lot Area Square Feet	Frontage Note 6	Front Setback Note 7,8	Side Setback Note 7,8	Rear Setback Note 7,8	Maximum Structure Height (floors)	Maximum Man Made Structure Height	Maximum Impervious Area as % of Lot (1)
R80	80,000	200	40	25	50	2-1/2	35'	10%
R40	40,000	150	40	25	50	2-1/2	35'	15%
R10	10,000	75	20	10	20	2-1/2	35'	25%
C1	75,000	250	75	25	25	3	45'	45%
C2	20,000	100	30	15	30	3	45'	45%
I	43,560	150	40	25	50	no	50'	no
PD except residential Note 2	5,000	75	5	0	0	3	45'	70%
PD 1 & 2 family residential	10,000	75	20	20	20	2 1/2	35 feet	25%
PD Other residential	10,000 Note 3, 9	75 Note 9	20	Com- bined 30 feet Note 4	50	3	45 feet	70%
LMOD	40,000	150	20	10	20	2-1/2	35'	15%
WF Note 4								

Notes:

1. Includes all buildings, structures, and paved surfaces.(SEE FIGURES A.7.2.3-6)
2. Includes mixed use developments.
3. But not less than 3600 square feet of lot area per dwelling unit. Measured parallel to the frontage, except where attached buildings are allowed in sections 4.7.4 and 4.7.5.
4. As per special use regulations of Sections 4.3 and 4.4, lots partially within the Wetlands and Flood Plain Conservancy Districts may be governed by dimensional and density requirements of the underlying district as determined by the Board of Appeals, provided that more than 50 percent of the lot area and all non-sewered sanitary facilities, lie outside the WF district.
5. RESERVED
6. Lots having frontage on more than one street shall maintain the front setback for all such frontage streets appropriate for the zone in which it lies. Any remaining lot lines shall be considered side lot lines for setback purposes.
7. The distances shown in table 7.2 for front setback, side setback, and rear setback are the minimum distances from the respective lot lines on which any structure, whether temporary or permanent, other than a fence, a retaining wall, a driveway, a walkway, a lamppost, or an allowed sign may be placed unless allowed by the Planning Board under site plan review. The Planning Board may also waive the maximum height and maximum impervious area requirements as part of site plan review neither shall there be any regular storage of materials allowed closer to the property line than the setback unless allowed by the Planning Board through Site Plan Review. (added May 18, 2015)
8. Temporary structures of less than 125 square feet gross floor area may have a side set back of 5 feet and a rear setback of 10 feet in the R10 zone only.
9. Except as provided in section 4.7.4.B.

### **7.3 REDUCED FRONTAGE LOTS** (amended 1/29/07)

7.3.1 Purpose. The purpose of this section is to allow for optional limited development of lots with deep back land in order that the efficient use of land will be encouraged, the rural character of Winchendon will be retained and that adequate access to lots is ensured.

Parcels located in residential "R" districts with frontage on an accepted town road may, with the issuance of a Special Permit by the Planning Board, be divided into lots, one of which may be a "reduced frontage lot " for use by a single family dwelling only, under the alternative lot area and frontage requirements described below. Special Permit approval may be granted by the Planning Board if the Board finds that:

- a) the standards described in this section have been met,
- b) adequate access to the lot is provided,
- c) public safety, including that of the lot inhabitants, is protected.
- d) The existence of the lot will not create a nuisance for neighbors.

7.3.2 Applicability. The provisions of this section may be applied only to lots being created from lots of record in existence for not less than ten years. A lot from which any portion has been removed and thus has become a new lot during that time will not qualify.

- A. A lot that meets the requirements of this section and has been in existence for more than ten years may be granted a Special Permit by the Planning Board to create a Reduced Frontage Lot and the provisions of Sections 7.3.3, 7.3.4, 7.3.5 and 7.3.6 shall apply.

7.3.3 Standards for Reduced Frontage Lots. Each such lot shall meet the following standards. All plans for such lots shall indicate how these standards are met.

- A. There shall be a minimum building location area on each reduced frontage lot; where a circle with a diameter equal to the "normal" frontage requirement can be placed. Such area shall contain an area of land which, in the opinion of the Planning Board, provides a suitable dwelling site (SEE FIGURE A.7.3).
  - 1. House circle shall be drawn on plan.
  - 2. The house shall be located in the house circle.
  - 3. House circle shall not contain any wetlands.
  - 4. Adequate access to the house circle from the pipestem (i.e. the narrower portion of the lot connecting the building area with the street frontage) shall be designated on the plan.
  - 5. Center of the circle shall be flagged on the site.
  - 6. Pipestem shall be flagged on the site.
  - 7. The minimum street frontage shall be 50 feet on an accepted town way.
  - 8. The minimum lot size shall be twice the required zoning area.
  - 9. The reduced frontage lot and all residual land shall have accessible frontage on an accepted and maintained town road.
  - 10. No more than two such reduced frontage lots shall have contiguous frontage.
  - 11. Once approved as a "reduced frontage" lot, such lot shall not be subsequently subdivided, nor be approved by variance for other than single family residential use.
  - 12. Yard requirements in Section 7.2 shall also apply to buildings on reduced frontage lots.
  - 13. Only one reduced frontage lot may be created from applicable lots. In all cases where a reduced frontage lot is created, the remainder of the original lot shall meet all applicable zoning requirements in that district. The approval of a reduced frontage lot may not result in the creation of a nonconforming situation. The applicant shall supply proof that no other reduced frontage lots have been taken from the original parcel. This proof shall be in such form as may be required by the Planning Board.
  - 14. Access to a reduced frontage lot is restricted to along the pipestem of the lot. This access is subject to the review and approval of the Department of Public Works and the Fire and Police.
  - 15. An occupancy permit shall not be issued until a driveway has been constructed which complies with all standards required in the zoning bylaw and the regulations of the Planning Board as determined by the Superintendent of the Department of Public Works.
  - 16. Width of the pipestem along its entire length shall not be less than the width of the frontage required for a reduced frontage lot in the district in which the lot is located.



17. Pipestem length is limited to the length of a cul de sac allowed in the subdivision rules and regulations of the Planning Board for the zoning district in which the lot is located.
18. To ensure proper drainage and to ensure the lot remains buildable under Title V and other regulations, loam and topsoil shall remain on the property. Gravel removal from the lot shall not exceed nineteen (19) cubic yards except as may be waived by the Planning Board.
19. The Planning Board may apply other conditions, safeguards and limitations to the plan as they deem necessary.

7.3.4 Standards for Plan. The Special Permit Application shall comply with the requirements of the subdivision regulations or other regulations duly adopted by the Planning Board. This requirement may include a site visit.

7.3.5 "Approval Not Required" Plan. Once a Special Permit for the creation of a reduced frontage lot has been granted, a plan showing the lot is entitled to endorsement as an "Approval Not Required" plan as provided in M.G.L. Chapter 41 Section 81P.

7.3.6 Lapse of Permit. Special Permit lapses if not exercised within two years from the date of filing of the permit with the Town Clerk by the Planning Board. "Exercised" shall be deemed to mean construction in accordance with a duly issued building permit, including excavation of a cellar hole or pouring of a foundation, but not including landscaping or driveway construction.

## **7.4 ACCESS TO LOT**

All residential uses shall be accessed from the way on which the lot has legal frontage for zoning purposes. Driveways shall be constructed over the lot's frontage except as provided below;

- 7.4.1 The Planning Board may grant a special permit to access a residential use over a lot line other than the frontage if:
  - A. access over the lot frontage is not possible or is impractical;
  - B. the lot can be assigned an address on the way from which the access is obtained that will insure that emergency services can locate the residence;
  - C. up to three dwelling units may share a common driveway; provided that the shared portion of the driveway shall not be used to meet parking space requirements; and further provided that each dwelling is on a conforming lot; and further provided that suitable easements to guarantee access to each lot are in place.
  - D. the granting of the special permit will not derogate from the intent of the Zoning Bylaw.

## **ARTICLE 8        TRAFFIC, PARKING AND CIRCULATION REGULATIONS**

### **8.1    GENERAL REQUIREMENTS**

Since our society is heavily based on the use of motor vehicles, parking for these vehicles will be required for all uses of property within the town. This is for the purpose of lessening roadway congestion and decreasing safety hazards. If such is required for a particular use, facilities and space for the loading and off loading of vehicles will be required in addition. The provision of parking facilities for bicycles and other conveyances is encouraged. The layout of parking spaces, the number and size of spaces required will vary by use and by zoning district. While all required parking may be provided on-site, other parking options will be considered as provided in this article.

Any variations from or interpretation of the requirements of this article will require site plan review by the Planning Board even if such review is not otherwise required. In this article the word *Board* shall mean the Planning Board.

### **8.2    PARKING LOCATIONS**

The required parking may be located on the same site as the use by right. Parking spaces inside garages or other structures shall be counted.

The use of shared parking, off site parking, and on street parking where such parking is available is encouraged so as to reduce the number of required on site parking spaces and thus the amount of impervious surface. Permission to count such spaces as meeting the parking requirement will be determined by site plan review. (SEE FIGURE A.8.2)

8.2.1    Shared Parking. In the R10, C1, C2, I, and PD Districts, the Town encourages shared parking for different structures or uses, or for mixed uses. At the applicant's request, the Board may permit shared parking, subject to the following conditions:

- A. A reciprocal agreement shall be executed by all parties concerned that ensures the long-term joint use of such common parking, and that a copy has been submitted, and is acceptable to the Board.
- B. The Board may require the applicant to provide a parking study with all information it deems necessary to render a decision. The study shall include:
  - 1. The hours of operation and parking demand for each use;
  - 2. The hours of operation and peak demand for parking;
  - 3. The number of spaces required for each individual use pursuant to Section 8.4 of this bylaw;
  - 4. A description of the character of the land use and the parking patterns of adjacent uses;
  - 5. An estimate of the anticipated turnover in parking space use over a 24 hour period of time; and
  - 6. A site plan showing the shared use spaces in the lot and the walking distance to the uses sharing the lot.
- C. Uses sharing the parking facility do not need to be contained within the same lot, but shall be a maximum of 500 feet from the closest parking space.
- D. The applicant shall demonstrate that vehicles occupying a particular number of spaces are unlikely to require the use of those spaces at the same time of day or same day of the week.

E. In making its decision on shared parking, the Board shall consider the degree to which the applicants are committed to implementation of transit demand management measures such as those to promote car and van pooling, bicycling, and public transit.

F. In the event that the conditions for shared parking change, or if the shared parking arrangement is discontinued, the applicant shall notify the Board within 10 days. The Board may then require the applicant to meet the applicable parking requirements found in this bylaw without credit for the shared parking.

8.2.2 Off Site Parking. Off site off street parking may be provided on another lot. The spaces may be owned by the user or rented. It shall be within walkable distance of the use for which it is provided. For the purposes of this section a walkable distance is defined as 500 feet. The Planning Board may reduce or increase this distance because of topographical or street layout conditions. If municipal or other public parking lots are available, consideration will be given to counting some or all of such spaces toward meeting the parking requirement.

8.2.3 On Street Parking. On street parking spaces may be counted as part of the required parking for a particular use if the Board so allows. A user will have the first claim to count spaces in front of his/her premises. Counting spaces in front of other uses may require the consent of the other user. In general 22 feet of available street frontage will count as one space. Time of use differentials will be given consideration.

### **8.3 NUMBER OF PARKING SPACES REQUIRED**

8.3.1 The current guidelines of the Institute of Transportation Engineers (ITE) will be used in determining the number of spaces required. These figures will be considered as a maximum and any proposal to provide more than this number plus 10% will require Board approval. If a proposed use is not listed in the ITE standards the Board will set the requirements for the use. (SEE FIGURE A.8.3)

8.3.2 In zoning districts R80, R40, C1, C2, and I each use of property shall be provided with parking spaces in accordance with the ITE guidelines with an allowed variance of plus or minus 10%.

A. Alternately, two parking spaces may be provided for each dwelling unit of more than 500 square feet floor area and one space for smaller units.

8.3.3 Because of the walkable distances expected in these districts, in zoning districts R10 and PD each use of property shall be provided with parking spaces at 75% of the ITE guidelines with an allowed variance of plus or minus 10%.

A. In these districts, the Board may modify or waive minimum parking requirements when, in its judgment, standard parking is not required.

### **8.4 SIZE AND NUMBER OF SPACES**

8.4.1 In general, parking must accommodate, as a minimum, the number of the employees on a given shift plus two extra spaces for security purposes. Off-street parking shall meet the ITE standards for sizes and layout of parking spaces. Up to twenty-five percent (25%) of the total number of parking spaces required may be designed for compact cars. A compact car space shall not be less than 8 feet in width and 16 feet in length.

A. Alternately, the applicant may use a layout as shown in the *Design Standards for Off Street Parking* included in this bylaw. (SEE FIGURE A.8.5.1)

8.4.2 Parking spaces for the exclusive use of handicapped individuals shall be provided in accordance with the most recent rules and regulations of the Architectural Barriers Board. (ADA or 521 CMR).

## **8.5 DESIGN REQUIREMENTS**

8.5.1 All parking areas shall be shown on a plan which shall be filed with the Building Commissioner if site plan review is not required, otherwise with the Board indicating the layout of the parking area including access, location of trees and shrubs, and provisions for lighting and drainage, if any. The parking spaces and aisles shall conform to the ITE suggested design requirements. (SEE FIGURE A.8.2 & A.8.5)

8.5.2 All proposed curb cuts, access drives and parking areas shall comply with all applicable requirements of the Department of Public Works.

8.5.3 Off-street parking and loading areas shall have durable and dustless surfaces and shall be so graded and drained as to dispose of all surface water accumulation. The surface of the parking area shall be delineated so that the parking spaces are apparent.

8.5.4 Surface materials shall be asphalt, bituminous concrete, concrete, or other properly bound pavement. As impervious pavement surfaces are included in the maximum allowed impervious surface for a lot, special consideration will be given to pervious paving systems.

A. Provided there is a proper stormwater handling and maintenance system in place,

1. Parking areas covered with a pervious paving system shall be considered as being 50% of its actual area when calculating total impervious lot coverage.
2. Parking areas covered with managed gravel shall be considered as being 90% of its actual area when calculating total impervious lot coverage.

8.5.5 Illumination shall be required for any parking area to be used at night. All parking areas which are proposed to be illuminated shall provide an illumination level of at least one foot candle (10 lumens). All illumination shall be shielded so as not to shine directly onto a public or private way or onto any property in a residential district (not to exceed 20 lumens at lot line unless agreed to in writing by abutters).

8.5.6 For all parking lots requiring 10 or more spaces, landscaped areas shall be provided. Such areas shall be at least 5% of the total parking area and shall include trees and shrubs. One tree shall be provided for every 10 spaces or fraction thereof. Such trees shall be located within the lot and shall be at least 2 inches trunk diameter. Not less than 40 square feet of soil or other permeable surface area must surround each tree. Planting beds shall be at least 4 feet wide.

## **8.6 LOADING AND UNLOADING REQUIREMENTS**

8.6.1 Adequate off-street loading facilities and space with unimpeded access shall be provided for all new construction and for all building additions greater than 200 square feet of net floor area for businesses, commercial or public buildings.

8.6.2 The necessity for loading and unloading facilities will be determined by the Building Commissioner unless the use is undergoing site plan review, in which case it will be part of the review.

## **8.7 STACKING REGULATIONS FOR DRIVE-UP AND DRIVE-THROUGH LINES**

8.7.1 Any establishment installing a drive-up window or service must provide for the safe stacking of vehicles and an escape lane from the drive-up lane. (SEE FIGURE A.8.7)

8.7.2 An escape lane shall be adjacent to the stacking lane so as to allow a patron to exit from the stacking lane prior to reaching the service area. Multiple service areas may use common escape lanes.

8.7.3 Both stacking and escape lanes shall be a minimum of 10 feet in width except that curved sections shall be a minimum of twelve 12 feet wide.

8.7.4 All drive-up and escape lanes must be laid out in a way so as not to block or interfere with the parking lot internal traffic circulation and parking spaces.

Table 8.7 Stacking & Escape Lane Requirements	
Principal Use	Number of spaces
Fast food restaurant	
Stacking per window	10
Escape lane per window	1
Bank – automated or full service	
Stacking per window/machine	5
Escape lane per window/machine	1
Pharmacy/retail services/offices	
Stacking per window	5
Escape lane per window	1
Gas station (Note 1)	
Stacking per service lane	3
Escape lane per service lane	1

Note 1 – Stacking requirements start at end of service island and do not include the space directly in front of the service area.

## 8.8 DRIVEWAY STANDARDS

8.8.1 All driveways shall meet the following standards:

- A. All driveway work may be subject to the review of the DPW Director or his designee at any point. The DPW Director may impose other conditions at his discretion that are necessary to ensure safe access to the public way and to prevent any damage or dangerous situation because of drainage, icing, pooling, etc.
- B. All driveways shall be a minimum of 12 feet in width and be kept clear of branches and other obstructions above said width to a height of 12 feet. The internal radius of any curve shall be no less than 32 feet to allow for safety vehicle access.
- C. All driveways shall have an apron from the pavement to the property line. This apron shall be composed of Type I bituminous concrete over 2 inches of processed gravel over 10 inches of 4 inch or smaller gravel.
- D. No non-residential driveway slope shall be greater than 10% at any point and the apron shall not exceed 4% positive slope.

- E. No residential driveway slope shall be greater than 20% at any point and the apron shall not exceed 4% positive slope.
- F. Dust, debris, excess runoff or other nuisance shall not be allowed to enter the paved way. Any such occurrence shall require prompt remediation by the property owner.
- G. The driveway drainage system design shall be approved by the DPW Director. If the Wetland Protection Act applies to the driveway area, the proposed driveway shall meet all conditions imposed by the Conservation Commission.

## **8.9 TRAFFIC GENERATION**

8.9.1 If development shall occur outside of areas targeted for a given type of development, or a given development is larger than 2 acres, a traffic impact study may be required and any adverse impacts may require redress or remediation at the expense of the applicant or developer.

## **8.10 OTHER MEANS OF ACCESS**

8.10.1 All developments shall be designed so that there will be pedestrian, bicycle and ADA-friendly access to all structures or it may trigger a review by the board and remediation or redress at the expense of the applicant may be required.

## **ARTICLE 9        SIGNS** (amended 1/29/07)

### **9.1        PURPOSE**

The purpose of this article of the Zoning Bylaw is to:

1. Preserve the character of the community while allowing all residents and businesses their constitutional right to freedom of speech;
2. Protect the public health, safety, convenience, comfort, and general welfare.
3. Permit only signs that do not constitute a hazard to public safety or create a nuisance either by their location, their appearance, their message or their condition;
4. Provide Winchendon businesses an opportunity to promote themselves as well as the goods and services they offer in order to enhance their viability and profitability;
5. Permit commercial signs appropriate to each business with reasonable consideration of aesthetics, lot size, building size, the type of traffic, nearby signs, and nearby land uses; (SEE FIGURE A.9.1)
6. Enhance the scenic and natural beauty of Winchendon and its visual environment by reducing the hazards, distractions, and visual clutter common with signs; and by creating a more aesthetically pleasing community;
7. Enhance the overall property values by encouraging signs that have appropriate size, quantity, clarity and innovation;
8. Provide guidance to businesses and residents to design signage that is attractive, positive and purposeful.

### **9.2        GENERAL PROVISIONS**

9.2.1 A sign shall be designed, erected, altered, reconstructed, moved and maintained in accordance with the provisions of this section unless specifically modified by another section of this section of this Zoning Bylaw. (SEE FIGURE A.9.2)

- A. The Building Commissioner may require design changes for any sign or decline to issue a building permit if he determines the sign would be inappropriate as measured by the purposes of this bylaw. His decision shall be subject to appeal as is provided in Chapter 40A, section 8 of the Massachusetts General Laws.
- B. Permits Required: A building permit shall be required for the construction, erection, relocation or alteration of any sign except as specifically exempted by this section. A sign shall comply with all applicable zoning, building, electrical and fire codes.
- C. Maintenance of Signs: Every sign, whether requiring a permit or not, shall be maintained in a safe, presentable and structurally sound condition at all times, including the replacement of defective parts and painting and cleaning of said sign.
- D. Removal of Dangerous or Defective Signs: The Building Commissioner may immediately remove or cause to be removed any sign deemed to be defective and/or to be a danger to public health or safety. The costs of said removal shall be charged to the owner of the property where said sign is located.
- E. Removal of unlawful signs in the Public Right of Way: The Building Commissioner may remove or cause to be removed any unlawful sign located in the public right of way. Fines per sign may be levied against the owner of said sign(s) under the provisions of Chapter 40 Section 21D of the Massachusetts General Laws.
- F. Commercial messages: Except as otherwise permitted, all information conveyed by any sign shall pertain to the premises on which the sign is located.

### **9.3 TEMPORARY SIGNS**

A temporary sign refers to a small sign that is usually stuck by hand in the ground, is meant to provide information of temporary significance and is removed shortly after the period of significance has passed. Such a sign does not usually require a permit or inspection. Larger signs and those intended for posting for longer periods can become dangerous if they are not more structurally sound than are traditionally found in temporary signs and hence are reviewed by the building inspector for structural integrity.

9.3.1 Display of Temporary Signs: Temporary signs as permitted by these Zoning Bylaws may be erected for a period not to exceed 60 days, except as otherwise provided in these Zoning Bylaws. Signs related to an event or period of time (e.g. festival...) shall be posted no more than thirty (30) days prior to said event or period and shall be removed within forty-eight (48) hours of the completion of said event or period. Extensions to this limitation may be granted by the Building Commissioner upon application and demonstration of reasonable justification, proof of safety and structural integrity by the agent or owner of the temporary sign.

9.3.2 Temporary signs may not exceed six (6) square feet in size without a permit. They may not be directly illuminated internally or externally in any zone. Temporary signs larger than six (6) square feet are permitted in zones that allow for larger signs, but these require a permit from the building inspector to ensure safety and structural integrity. These shall conform to the size and height requirements of the zone in which they are located. No signs may be posted on utility poles or trees in a public way.

9.3.3 Temporary Sign(s) allowed by this bylaw are listed below. Up to two (2) temporary signs shall be permitted per lot subject to the following requirements:

- A. Signs displaying information which pertain only the "For Sale", "For Rent", "For Lease" status of the premises on which the sign is located.
- B. Pertains to future use status of property under construction.
- C. Local activity advertising of a temporary nature (e.g. yard sales, sales, reunions).
- D. Political signs referring to an election or town meeting.
- E. Portable signs (e.g. unattached, not stuck in ground, on wheels – cf. Appendix A.9.1) are permitted to announce special events. These shall be considered temporary signs, shall require a permit, and must comply with stated zoning requirements for the zone in which they are located. Portable signs must be located on the premises of the sponsoring organization or at the location of the special event.

### **9.4 SIGNS PERMITTED IN ALL ZONES**

9.4.1 The following signs are permitted in all zones and do not require a permit.

- A. Temporary or permanent signs, including banners, erected and maintained by the Town, County, State or Federal Government for traffic direction, direction to or identification of an historic site or structure, government facility or event as approved by the Board of Selectmen.
- B. Any privately posted sign, not to exceed two square feet and posted on private property, giving warning or notice e.g. No Trespassing, Beware of Dog, No Hunting Allowed.
- C. Markers indicating the street number of each numbered building as required by general bylaw are allowed.
- D. Flags, emblems and insignias of national, state or local political subdivisions.
- E. Name and/or address descriptions mounted to the front of a building, lamp post or similar post in the front yard of the building not to exceed (2) two square feet in area.
- F. Flags which are considered to be home flags that are placed to show spirit, pride or some type of seasonal activity.
- G. Flags which advertise that an organization is open for activity such as “open” or “welcome” flags.



- H. Signs located within a property that are situated in such a manner to only be visible to persons on said property and not beyond the property lines.

## **9.5 SIGNS PROHIBITED IN ALL ZONES**

1. Abandoned signs
2. Billboard and off premise signs with the exception of those permitted by this bylaw.
3. Beacons and searchlights, except for emergency health and safety purposes;
4. Blinking, flashing, intermittent lighted, moving, animated or rotating signs including electronic message center signs;
5. Roof signs which extend above or beyond the roof line;
6. Signs on public property attached to any tree, utility pole or fence;
7. Any sign or other feature that may constitute a traffic hazard or a detriment to public safety or may be confused with a traffic control signal or device or the light of an emergency or road equipment vehicle;
8. Signs painted directly onto buildings, rocks, trees or the ground, with the exception of the demarcation of parking spaces reserved for the disabled;
9. Signs which make use of words, symbols or characters in such a manner as to interfere with, mislead or confuse vehicular or pedestrian traffic;
10. Signs or parts thereof that are erected within or above a public right of way, except as may be permitted by the Board of Selectmen;
11. Spinning devices or strings of spinning devices. ( pennants or other moveable distractions to motorists)

## **9.6 SPECIFICATIONS APPLYING TO ALL SIGNS**

9.6.1 Projecting signs shall be mounted or installed with a minimum clearance of (9) nine feet above the ground under the sign. The maximum height of a projecting sign shall be (15) fifteen feet above ground.

9.6.2 A wall sign shall not extend more than twelve inches from the wall of the building to which it is mounted, shall not extend beyond the limits of the wall to which it is attached, and shall have hidden structural supports.

9.6.3 Sign Spacing Requirements: No ground, pole or projecting sign shall be located within (50) fifty feet of another ground, pole or projecting sign.

9.6.4 Where a sign is adjacent to a paved surface accessible to vehicular traffic, a raised non-mountable curb to prevent the encroachment of vehicles shall be required.

9.6.5 Awning signs may not be illuminated internally or externally.

9.6.6 The equivalent area of any sign which has a reflective colored type message, lettering in more than two colors, or a background color other than white, black, or a dark color shall be two times its actual area. (SEE EXAMPLE A.9.6.6)

9.6.7 The area of a sign consisting of illuminated neon tubing or signs having an appearance similar to illuminated neon tubing, regardless of color, shall be calculated as twice the actual area. (SEE EXAMPLE A.9.6.7)

9.6.8 In those instances where a sign is not a separate physical object, the size of the sign shall be that of a common geometrical shape that fully encloses the message and artwork, if any, that comprises the sign.

9.6.9 Posts or brackets supporting a sign shall not be regarded as part of the sign unless the posts or brackets contain lettering or are decorated so as to attract attention to the sign.

9.6.10 Two face signs which are mounted perpendicular to the street from which they are primarily visible and have the same or similar message on each side shall be regarded as one sign.

9.6.11 Ground signs shall not be allowed on any lot with less than (50) fifty feet of frontage on a public right of way.

9.6.12 Window signs are allowed and calculated at the same rate as wall signs.

## **9.7 LANDSCAPE REQUIREMENTS**

9.7.1 A permanent ground or pole sign shall require a single continuous landscaped area to be maintained beneath the sign in accordance with the following standards:

- A. The minimum landscaped area shall be equal to the area of the sign face.
- B. The landscaped area shall include all points where sign structural supports attach to the ground.
- C. Where the required landscaping area is adjacent to a paved surface accessible to vehicular traffic, a raised non-mountable curb to prevent the encroachment of vehicles shall be required.
- D. The landscaped area shall contain living plantings aesthetically located and maintained.

## **9.8 OFF PREMISES DIRECTIONAL SIGNS**

- A. Off premises signs directing persons to a specific business at another location may be allowed in all zones.
- B. Such signs shall not be greater than two square feet in area and shall not be illuminated. The maximum height shall not be greater than that allowed for a ground sign in the zone in which it is located.
- C. Not more than three such directional signs per business may be allowed directing persons to a particular business location.
- D. Whether to allow such sign(s), the location(s) thereof, and the content of the sign(s) shall be at the discretion of the Building Commissioner subject to appeal to the Board of Appeals. The decision shall be made on the basis of a demonstrated need for the sign(s) and the appropriateness of the proposed location(s).
- E. An off premise directory sign located within the right of way of a street or immediately adjacent thereto will be allowed when that street is the principal access to one or more commercial properties. Such sign shall be included in the basic sign area for the property to which it relates. The area of such sign shall be no more than thirty two (32) square feet. Only one such sign may be located within fifty (50) feet of any intersection.
- F. Permits are required for such signs.

## **9.9 SIGNS IN RESIDENTIAL ZONES**

- A. Permanent signs may be externally illuminated with a white light during business hours. Lighting is limited to the sign face only and shall not exceed sign face area.
- B. Each dwelling unit that has a separate outside entrance may have one sign of not more than one square foot. This may be a wall sign, hanging sign or projecting sign. No such sign shall be more than 10 feet above the street level.
- C. Each home based business may have one or more signs with a total area of not more than six square feet: Wall signs, ground signs, pole signs, projecting signs, and hanging signs are allowed. The highest point of any such sign shall not be greater than ten feet above ground level.
- D. When a use other than a residence or home based business is allowed in a residence zone; either by right, by special permit, or as a non conforming use; it may have signs as allowed under section 9.10, for businesses in the PD zone, provided that any buffers required by section 7.1.2 are in place.
- E. Permanent subdivision signs may be erected subject to the following requirements:
  - 1. One (1) ground sign may be erected at each major entrance to a subdivision.
  - 2. The sign face shall not exceed (16) sixteen square feet in sign area and (6) six feet in height.
  - 3. Each sign base shall be landscaped in an area equal to the total sign area.
  - 4. Each sign may be externally illuminated by white light, provided that the illumination does not extend beyond the face of said sign
  - 5. A permit shall be required for each approved sign allowed under this subsection.
  - 6.
- F. Temporary signs are allowed as provided in section 9.3 but the area of such signs is limited to six square feet.

## **9.10 SIGNS ALLOWED IN THE C-2 & PD DISTRICTS**

### **9.10.1 Ground signs shall be allowed as follows:**

- A. Only one (1) sign shall be permitted on each premises. Alternately, two single face ground signs may be situated at the main entrance of a development, provided that each face does not exceed the maximum dimensions allowed by this subsection.
- B. The sign height shall not exceed (8) eight feet.
- C. The allowed sign area shall not exceed one (1) square foot of sign area per ten (10) linear feet of lot frontage and not exceed a total of thirty-two (32) square feet in sign face area and sixty-four (64) square feet in sign area.

### **9.10.2 Wall signs shall be allowed as follows:**

- A. Wall signs shall not exceed eight (8) square feet in sign face area.
- B. The aggregate area of signs on any single building shall not exceed forty (40) square feet in sign area.
- C. Temporary signs may be allowed in accordance with section 9.3
- D. Signs may be externally illuminated with white light. Illumination shall be limited to sign face only and not extend beyond the sign area.

- E. On a premises where non-residential tenants occupy upper floors, business plaques may be displayed at each major entrance up to a maximum of six (6) square feet of sign area at each entrance, identifying said tenants.
- F. All permanent signs require building permits.

9.10.3 Projecting Signs shall be allowed as follows:

- A. Projecting signs, where used, shall be mounted or installed at a minimum of nine (9) feet above the surrounding ground level and shall not extend within twenty-four (24) inches of the curb line of any street.

## **9.11 SIGNS ALLOWED IN C-1 & I DISTRICTS**

9.11.1 All permanent signs may be illuminated.

9.11.2 No sign or lighting for said sign shall be located in such a manner as to be viewed from residential used or zoned property.

9.11.3 Permanent pole signs shall be permitted as follows: (SEE EXAMPLE A.9.11)

- A. Only one (1) pole sign shall be allowed on a premise.
- B. The pole sign shall not exceed one-half (1/2) square foot of sign area per one (1) linear foot of lot frontage and not exceed sixty-four (64) square feet in sign face.
- C. If pole sign is located in an area where the speed limit is greater than 40mph, the sign area may be increased by 50% not to exceed (96) square feet.
- D. Pole signs shall be a maximum height of twenty (20) feet at the street right-of way line and for each additional five (5) feet of sign set-back, one (1) foot may be added in sign height not to exceed total sign height of thirty (30) feet.

9.11.4 Permanent wall or projecting signs shall be permitted as follows:

- A. There is no restriction on the number of wall signs permitted per premise, however, the total area of all wall signs shall not exceed one and one-half (1 1/2) square feet of sign area per one (1) linear foot of building frontage.
- B. Projecting signs shall not exceed twelve (12) square feet in total sign face.

9.11.5 Temporary signs shall be allowed in accordance with Section 9.3.

## **9.12 NONCONFORMING SIGNS**

Signs legally existing at the time of adoption of this bylaw may continue as a nonconforming use subject to the provisions of Section 6.2.4.

## **ARTICLE 10 SOIL, VEGETATION, ROCK AND GRAVEL REMOVAL**

### **10.1 PURPOSE**

The purpose of this section is to prevent the degradation of the town's natural resources including its soil, surface and groundwater and naturally occurring vegetation due to the improper or uncontrolled removal or redistribution of soils, vegetation and earth materials. Unless otherwise provided for in this bylaw, this section shall not apply to the removal of less than 19 cubic yards of material from a lot for noncommercial purposes for maintenance or improvement of the lot or the removal or alteration of existing vegetation upon a lot for noncommercial purposes related to the routine maintenance or improvement of the lot.

### **10.2 GENERAL REMOVAL PROVISIONS**

10.2.1 Excavation, removal, stripping, or mining of any earth material, soil and vegetation except as hereinafter permitted on any parcel of land, public or private, in Winchendon is prohibited.

10.2.2 The Building Commissioner shall have the authority to enforce all conditions of any permit issued under this section of the zoning bylaw.

10.2.3 All earth removal operations in existence in Winchendon on the effective date of this section shall be subject to the requirements stated herein. However, all Earth Removal Permits issued prior to the effective date of this section shall remain in effect until their expiration date. At such time, said operation shall be subject to the provisions of this section, unless otherwise allowed by the Board of Appeals for a period not to exceed six (6) months.

10.2.4 An annual fee shall be required for an earth removal permit as established by the Board of Appeals.

10.2.5 Any earth removal over 19 yards for the sole purpose of commercial processing and/or sale may only be done in an Industrial Zone.

### **10.3 APPLICATION FOR SOIL, VEGETATION, ROCK AND GRAVEL REMOVAL**

10.3.1 Materials For Submission. An applicant for a Soil, Vegetation, Rock and Gravel Removal Permit must, at a minimum, submit to the Board of Appeals such number of copies as that Board may require of the following materials:

- A. A plan or plans to scale, (1" = 40') prepared and stamped by a Registered Engineer and a Registered Land Surveyor, showing the property lines of the parcel of land under consideration along with all abutters to the property. The parcel shall be sub divided into five acre sections. For each section, the existing and final contours in two foot (2') elevation increments, existing and proposed final drainage of the site, including all culverts, streams, ponds, swamps, and siltation basins, and all wetlands pursuant to MGL Ch. 131, Sec. 40, the means of entrance and egress from the property, a locus map, and any other pertinent data deemed necessary by the Board of Appeals shall be shown.
- B. A plan, study, or report showing the proposed ultimate use of the land which must conform with the existing zoning bylaw. Proper planning for future land use shall be a primary consideration in determining whether to issue a Soil, Vegetation, Rock and Gravel Removal Permit.
- C. A complete list of the names and addresses of current abutters of the property where such removal is proposed. Such list shall be certified by the Board of Assessors
- D. An operation schedule showing the active area (not to exceed five (5) acres) where the removal will begin and also how the total parcel will be developed in progressive five (5) acre increments.
- E. A log of soil borings taken to the depth of the proposed excavation with a minimum of five borings per five acre section. Additional borings may be requested by the Board of Appeals if necessary.

- F. A plan showing all refuse and debris burial sites on or off the property. (May be shown on plan as required in (a) above).
- G. The full legal name and address of the owner of record, the operator of the removal operation and of the applicant.

#### **10.4 PLAN DISTRIBUTION**

Within ten (10) days of receipt of application and plan, the Board of Appeals shall furnish the Planning Board and the Conservation Commission with a copy of said plan. Each board may investigate the case and make a written report of its recommendations to the Board of Appeals. The Board of Appeals shall not take final action on an application until it has received reports thereon from the Boards or until thirty-five (35) days have elapsed since the those boards received the plan without the submission of a report.

#### **10.5 PERMIT FOR SOIL, VEGETATION, ROCK AND GRAVEL REMOVAL**

10.5.1 General. The Board of Appeals may issue Soil, Vegetation, Rock and Gravel Removal Permits in accordance with provisions of this Section of the bylaw, complete with conditions imposed, for areas not to exceed twenty (20) acres. All permits shall conform to the minimum restoration and operating standards contained herein and such other conditions as the Board of Appeals may deem necessary. Said permit shall allow the working of only five (5) acres at any one time. Upon completion of the earth removal operation on a five (5) acre parcel, or a part thereof, and substantial restoration of said parcel as determined by the Board of Appeals, according to the restoration standards and the permit conditions, application may then be made to the Board of Appeals for a permit renewal. Such permit renewal may allow the removal of earth on another five (5) acre section, as shown by the operating schedule submitted with the permit application.

This procedure shall be followed until the operation is completed. No soil being removed under Special Permit may take place within 300 feet of a street or way, nor within 100 feet of the high water mark of any natural water course, nor within 100 feet of a lot line. Soil may be disturbed within these established boundaries if it is considered part of the site restoration work and has received prior approval by the Board of Appeals.

No removal of material shall take place below a level that is considered by the Board to be an undesirable grade for the future development of the area, or to a level less than six (6) feet above the springtime high water table unless such elevation has been approved by the Board of Appeals as being a desirable improvement that will enhance the future development of the area. A monitoring well shall be installed by the property owner to verify groundwater elevations.

The Board of Appeals may require an engineering review of the application and plan. The registered professional engineer shall be specified by the Board of Appeals and fees shall be borne by the applicant.

10.5.2 Conditions of the Permit. The permit shall be considered a non-transferable revocable permit to remove earth materials. If it is found that incorrect information was submitted in the application, or that conditions of the permit are being violated, or that the governing regulations are not being followed, the permit may be suspended until all the requirements have been met and promises made to conform. Failure of the permit holder to comply within the time specified by the Board of Appeals for correction of violations shall be cause for the permit to be revoked, and may permit forfeiture of the security to the town, and the imposition of all allowable fines.

10.5.3 Compliance Review. The Board of Appeals shall discuss and review the permit periodically, and at a minimum, annually. Written progress reports showing conformance with regulations and permit conditions shall be submitted to the Board of Appeals by the Building Commissioner or his designated agent every three (3) months at a minimum, or when otherwise deemed appropriate by the Board of Appeals. The Building Inspector may employ a registered professional engineer to act as his agent in the inspection of the work to insure compliance with this section of the zoning bylaw and to report to the Building Commissioner his recommendations as to the approval or disapproval of the work. In the event that the Board of Appeals employs an engineer under Section 10.5.1 of this bylaw for plan review, then the Building Commissioner will, if possible, employ the same engineer for site inspection. Inspection fees shall be at the permittee's expense.

10.5.4 Effective Date. A Soil, Vegetation, Rock and Gravel Removal Permit shall not be in effect until the applicant has filed the proper security as required in Section 10.9, paid the required fees as required by Section 10.2.4, recorded the Special Permit at the Registry of Deeds, and paid for an engineering review under Section 10.5.1.

## **10.6 REMOVAL INCIDENTAL TO DEVELOPMENT, CONSTRUCTION OR IMPROVEMENT**

10.6.1 The Planning Board, as part of a definitive subdivision approval or site plan review, may allow the redistribution on or removal of earth materials from that site. Such permission may allow only such minimal alteration of the site as may be necessary for the permitted development and may not allow mining of earth materials.

10.6.2 Conformance with the standards provided in Section 10.7 below shall be required insofar as they are applicable. A permit from the Board of Selectmen under the Winchendon General Bylaw shall not be required. Suitable security from the applicant shall be required to ensure that the project is carried out as permitted. This requirement shall be in addition to any performance guarantee that may otherwise be required.

10.6.3 Where material is to be removed in connection with the preparation of a specific site for building, removal may take place only after the issuance of a building permit by the Building Commissioner. Removal will be allowed only from the area for the building, driveways, parking areas, and from areas where removal is specifically required by the Board of Health in connection with disposal systems. Mechanical crushing, screening and/or processing is not allowed on site.

## **10.7 OPERATION STANDARDS FOR REMOVAL AND RESTORATION**

10.7.1 All soil, vegetation, rock and gravel removal activities controlled by this section shall be subject to the following standards:

### **A. Time of Operation**

1. Excavation and site maintenance may be carried on from 8:00 a.m. until 4:30 p.m., Monday through Friday excluding state and national holidays.
2. Trucking from the site may be carried on from 9:00 a.m. through 5:00 p.m., Monday through Friday only excluding state and national holidays.

### **B. Site Preparation**

1. Only the active area described in the permit application may be made ready for earth removal.
2. No standing trees are to be bulldozed over, or slashed and bulldozed into piles. All trees must be cut down. All wood and brush must be piled for removal or chipping. Wood chips may remain on the site. No trees are to be buried on the site.
3. Stumps shall be buried in pre-designated areas as shown on application plans.
4. Any change in stump burial must be submitted to the Zoning Board of Appeals for approval.
5. All topsoil removed from the active removal area shall be piled and adequately protected from erosion for future site restoration.
6. Prior to any excavation or earth removal, adequate siltation basins shall be constructed to prevent the runoff of silted water from the site.
7. All excavation shall be done so as to create contours to channel runoff waters into the siltation basins.
8. No siltation basin shall exceed seven (7) feet in depth.

9. Siltation basins must be cleaned when sediment deposits are within eighteen (18) inches of the outfall invert.

C. Site Maintenance

1. No open face excavation shall exceed twenty-five (25) feet in height.
2. No excavation shall be closer than one hundred (100) feet to a property line.
3. No slope shall exceed a three (3) foot horizontal to a one (1) foot vertical (3:1) grade.
4. No earth removal operation shall create excessive amounts of dust or allow roads leading into or from a site to become excessively dust producing.
5. Proper dust control methods shall be employed and approved by the Board of Appeals.

D. Screening and Access

1. An immediate program of site screening shall start when site preparation begins.
2. All visual access to the site shall be screened with natural vegetation, evergreens, or other suitable natural methods, so as to prevent a direct view into the earth removal area at any time.
3. All areas within a hundred (100) feet of a traveled way or abutting property lines shall be reforested immediately upon completion of the earth removal operation of that area. Said reforestation shall be done in accordance with the standard as stated in 10.8.6 of this section.
4. A minimum of one hundred fifty (150) trees per acre shall be used for this reforestation.
5. All access roads shall be level with intersecting streets for a distance of sixty (60) feet.
6. A STOP sign shall be installed so as to warn any vehicle entering onto a town street.
7. All access roads shall be equipped with a suitable locking gate to prevent unauthorized entry.
8. The Board of Appeals may prescribe routes for transporting material in and out of the site within the town boundaries.
9. If no route is deemed adequate by the Board of Appeals, it may require the improvement of a transport route at the expense of the permittee.
10. The permittee shall be responsible for the cleaning, repair and/or resurfacing of streets used in removal activity which have been adversely affected by such activities.

E. Temporary Buildings

1. All temporary structures shall be specified in the Special Permit application and shown on the plan.
2. Any structure erected on the premises for use by personnel or storage of equipment shall be located at least forty (40) feet from any existing roadway and at least thirty (30) feet from any lot line.
3. Any temporary structure will be removed no later than ninety (90) days after the expiration date of the permit.

F. Mechanical Crushing and Screening

1. The crushing and screening of material on a removal site shall require a separate special permit from the Board of Appeals.



2. All crushing and screening permits shall be granted for a period not to exceed six (6) months.
3. Washing of processed materials will not be allowed.
4. Operation of crushing or screening equipment shall be from 8:00 a.m. until 4:30 p.m. Monday through Friday.
5. All crushing and screening equipment shall be equipped with suitable dust and noise control devices.
6. Under no conditions shall the crushing and screening cause a nuisance beyond the property line.
7. Crushing and screening operations are only allowed in an Industrial Zone.

## **10.8 RESTORATION STANDARDS**

10.8.1 All restoration, if such is being required, must be completed within sixty (60) days after the termination of a Soil, Vegetation, Rock and Gravel Removal Permit or by the first of June if the permit terminates between December first through March thirty-first.

10.8.2 No slope shall be left with a grade steeper than a three (3) foot horizontal to a one (1) foot vertical (3:1).

10.8.3 All siltation basins shall be filled with earth, and a natural drainage pattern must be reestablished. No area upon the site which will collect water shall remain unless approval is granted by the Board of Appeals or unless the area was shown on the original application plans.

10.8.4 All topsoil which was on the site prior to earth removal operations shall be replaced to a minimum depth of six (6) inches on all disturbed areas. Sites that had less than six (6) inches of topsoil shall be restored with a minimum of four (4) inches over the entire area.

10.8.5 Seeding: The entire area shall be seeded with grass or legume which contains at least sixty percent (60%) perennials. The planted area shall be protected from erosion during the establishment period using good conservation practices. Areas which wash out shall be repaired immediately.

10.8.6 Reforestation: Except as hereafter provided, all areas which are disturbed in the earth removal operation shall be reforested with fifty percent (50%) coniferous and fifty percent (50%) deciduous trees planted at the rate of one hundred fifty (150) trees per acre. All trees used are to be a minimum of two (2) year transplants. Areas which are to be used for agricultural or other purposes after earth removal operations are completed may be reforested in the following manner:

- A. Trees shall be planted fifty (50) feet deep from a public road or property line.
- B. The remaining area shall immediately be planted with grass or other suitable agricultural planting material.

10.8.7 Within ninety (90) days of completion of operations, all equipment, accessory buildings, structures, and unsightly evidence of operation shall be removed from the premises.

## **10.9 SECURITY REQUIREMENTS**

There shall be filed with the Town Treasurer a continuous security in the form of a bond or deposit of money as has been approved by the Board of Appeals, the Board of Selectmen, and Town Counsel in the minimum amount determined in order to return entire property to its original condition. Not less than one (1) year after the completion of the total project, the Board of Appeals and the Board of Selectmen may issue a final release of the security, at the applicant's written request, if, in the opinion of the Board of Appeals and the Board of Selectmen no damage or deterioration to the finished project has developed. If, during the year following the completion of the project, slumping, gullying, erosion, or any other unsatisfactory condition appears, the applicant shall be responsible for, and shall make any necessary repairs, before final release of security is granted. The bonding agent shall be required to give the Board of Appeals, the Board of Selectmen, and Town Counsel, by Registered or Certified Mail, a sixty (60) day notice prior to any termination or cancellation of the bond.

## **ARTICLE 11      RESIDENTIAL DEVELOPMENT** (Added May 23, 2011)

### **Section 11.1 Purpose**

The purposes of this article are:

To ensure that the housing needs of the people are met in a manner that preserves a maximum amount of open space and helps to retain the rural character of the town.

To encourage the permanent preservation of open space, undeveloped land, agricultural land, forest land, wildlife habitat, and other natural resources including aquifers, bodies of water, wetlands, and historical and archeological resources in a manner that is consistent with the Town of Winchendon's Master Plan and Open Space and Recreation Plan;

To allow for greater flexibility and creativity in the design of residential developments;

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 conventional or grid subdivision;

To minimize the total disturbance on the site;

To enhance the quality and cohesiveness of our neighborhoods and reduce the cost of serving the homes created under the provisions of this article.

**Section 11.1.1 References within article 11.** Unless it is otherwise stated, all references to the *board* in this article shall refer to the Planning Board. The Planning Board shall be the special permit granting authority for all special permits mentioned in this article unless otherwise stated..

**Section 11.2 Applicability** The provisions of this article will apply to all new residential development within the town except as specifically exempted in section 11.3.

**Section 11.2.1 Compliance with Subdivision Regulations Required** All residential projects subject to this article shall be built in conformity to the current Subdivision Regulations as promulgated by the Winchendon Planning Board. If the development will not constitute a subdivision, compliance with the site plan regulations of the Winchendon Planning Board will be required. The Planning Board may grant waivers from their regulations as provided therein when such action serves to further the purposes of this article.

### **Section 11.3 Exceptions**

**Section 11.3.1 Existing Lots** The application of this article to a lot or two adjacent lots for single and two-family residential use which at the time of recording or endorsement, whichever occurred earlier was/were not held in common ownership with any adjoining land, conformed to zoning requirements in effect when the lot(s) was/were created, and contain not more than 160,000 square feet per lot excluding from the actual area of the lot(s) the areas of any streams, ponds, wetlands, stream buffers, wetland buffers, vernal pools and areas with a slope greater than 1:4 shall be optional with the property owner. The areas of such wetland related areas shall be as determined by article 29 of the Winchendon Town Bylaws or by Chapter 131 of the General Laws and any state or local regulations adopted thereunder. Common ownership shall include lots held by separate legal entities, persons, or trusts under common control or having common beneficial interests.

**Section 11.3.2 Existing Buildings** Except as provided in sections 11.10.6 and 11.10.7 this article shall not apply to the conversion of residential buildings in existence prior to the adoption of this article to provide more dwelling units therein.

## **Section 11.4 Open Space Requirements**

**Section 11.4.1 Open Space Required** All residential development subject to this article shall require the preservation in perpetuity of open space in conjunction with the development project.

**Section 11.4.1.1** Open space in larger tracts will be preferred, as will open space contiguous with other already preserved open space. Except land reserved as public parkland or playgrounds in the PD and R10 zones, no parcel smaller than two acres that is not contiguous with such other open space may be counted as part of the required open space in projects larger than ten acres.

**Section 11.4.1.2** The open space should protect valuable natural and cultural elements including waterbodies, streams, wetland buffers, unfragmented forest, wildlife habitat, open fields, scenic views, trails, stone walls, archeological sites and to avoid development in hazardous areas such as floodplains and on steep slopes. In areas where public sewage disposal is not available, consideration shall be given to the suitability of soils for on site disposal systems both within and outside the protected open space. Particular consideration for protection will be given to land that expands land that is already protected or which is recommended for protection under the town master plan or opens space and recreation plan, or will tend to expand or complete wildlife or recreational corridors between such parcels

**Section 11.4.1.3 R80 and C2 zones** Of that portion of a residential development project that is located in the R80 and C2 zones, not less than 50 percent of the area (without any deduction for streams, ponds, wetlands, stream buffers, wetland buffers, vernal pools and areas with a slope greater than 1:4) shall be preserved as dedicated open space. If the total wetlands related areas (streams, ponds, wetlands as defined by law, and vernal pools) within the dedicated open space will exceed 33 percent of the total area of the development site, only that 33 percent may be counted in making up the required 50%.

**Section 11.4.1.4 R40 zone** Of that portion of a residential development project that is located in the R40 zone, not less than 33% of the area (without any deduction for streams, ponds, wetlands, stream buffers, wetland buffers, vernal pools and areas with a slope greater than 1:4) shall be preserved as dedicated open space. If the total wetlands related areas (streams, ponds, wetlands as defined by law, and vernal pools) within the dedicated open space will exceed 25% of the total area of the development site, only that 25% may be counted in making up the required 33%.

**Section 11.4.1.5 R10, and PD zones** Of that portion of a residential development project that is located in the R10, and PD zones, not less than 25% of the area (without any deduction for streams, ponds, wetlands, stream buffers, wetland buffers, vernal pools and areas with a slope greater than 1:4) shall be preserved as dedicated open space. If the total wetlands related areas (streams, ponds, wetlands as defined by law, and vernal pools) within the dedicated open space will exceed 15% of the total area of the development site, only that 15% may be counted in making up the required 25%.

**Section 11.4.1.6 C1, Highway Commercial and I, Industrial Zone** Residential development is not allowed in these zones.

## **Section 11.5 Use of the Dedicated Open Space**

**Section 11.5.1 Agriculture** Dedicated open space may be used for agriculture. This includes the growing of crops and the keeping of livestock or poultry. Open space dedicated to agriculture may be combined with other land that is within 1000 feet used for agricultural purposes by the same farmer when calculating the 5 acre minimum for zoning as commercial agriculture under section 5.2.4.

**Section 11.5.2 Conservation** Dedicated open space may be used for conservation purposes. Such uses may include protection of flora and fauna, trails for hiking, hunting, fishing, camping, swimming, and boating.

**Section 11.5.3 Commercial Forestry** Dedicated open space may be used for commercial forestry. Such land shall be managed using best management practices for long term sustained forest yield under a management plan approved by the state forester. Best management practices shall be used in cut areas to insure immediate regrowth.

**Section 11.5.4 Storm water management systems.** Subject to the approval of the Board, storm water management systems may be located within the required open space. Surface systems, such as retention and detention ponds shall not qualify towards the minimum open space required.

**Section 11.5.5 Recreation** Dedicated open space may be used for recreational purposes on tracts of more than ten acres. by Planning Board Special Permit. This may include structured uses such as a campground. However, the restrictions contained in section 11.8 shall apply and no special permit may be granted under that section for such uses. This shall not prohibit the use of unprotected land in the same ownership for purposes prohibited on the protected land.

**Section 11.6 Restrictions on the Use of Dedicated Open Space** Except as are allowed by special permit under section 11.8 , the following are prohibited in the dedicated open space:

**Section 11.6.1** Any structure for residential, commercial or industrial use.

**Section 11.6.2** Any building having a floor or ground area in excess of 600 square feet.

**Section 11.6.3** The total of all buildings shall not exceed one quarter of one percent of the total area of the open space.

**Section 11.6.4** The total man made impervious area shall not exceed 1% of the total area of the open space.

**Section 11.6.5** Paved roads or driveways.

**Section 11.6.6** Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit.

**Section 11.6.7** Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;

**Section 11.6.8** The subdivision of the Premises;

**Section 11.6.9** Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation;

**Section 11.6.10** Any other use of the Premises or activity which would materially impair significant conservation interests.

**Section 11.7 Specific Uses Allowed in the Dedicated Open Space :**

**Section 11.7.1** Fences as necessary to enclose pastures, protect livestock from natural hazards, or to protect crops from animals. Specific approval by the Winchendon Agricultural Commission may be required.

**Section 11.7.2** Underground sewage disposal systems for dwellings in the development.

**Section 11.7.3** Underground sewer lines which must necessarily run through the area to meet grade requirements.

**Section 11.7.4** Necessary access roads, including fire roads that are unpaved and minimally improved. Bridges and culverts to properly handle stormwater are permitted when necessary.

**Section 11.8 Improvements that may be allowed by Special Permit:**

**Section 11.8.1** Road or driveway paving on slopes so steep that washouts would otherwise be likely. Steps on steep trails.

**Section 11.8.2** Parking areas to serve the permitted open space uses provided the surfaces shall be pervious to stormwater.

**Section 11.8.3** Impervious area greater than that allowed by section 11.6.4 .

**Section 11.8.4** Buildings having a floor or ground area greater than 600 square feet.

**Section 11.9 Legal Protection Requirements** All land dedicated as open space under this article shall be protected in a manner that will afford it full protection under the law. The dedicated open space shall be protected from development by one of the following means:

**Section 11.9.1** Such open space shall either be conveyed to the town and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the town, a restriction enforceable by the town shall be recorded providing that such land shall be kept in an open or natural state except as required in this bylaw. The named agency and the terms and conditions of such transfer must be acceptable to the Board. Such open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.

**Section 11.9.2** Property that is owned by any other entity but is protected by a suitable conservation easement that will protect the land from development or uses, except as provided in this article, in perpetuity. All the conditions of such easement must be acceptable to the Board.

**Section 11.9.3** A single parcel may include both protected open space and other uses provided proper easements are in place to secure the protection of the required open space.

**Section 11.9.4** The title or easement holder other than a governmental unit of each parcel accepted as protected open space under this bylaw shall and governmental units should, within six months after its dedication as open space, complete an assessment of the property detailing its location, boundaries, the condition of the vegetation, streams, wetlands, walls, roads, improvements and other features; and any restrictions or requirements for its future use or development. Thereafter not less than annually the title or easement holder shall physically view the property and prepare a detailed statement as to the present condition of the property with particular reference to the features recorded in the initial assessment. Copies of each such report shall be filed with the board. Any failure to file such reports shall be a violation of the zoning bylaw and shall be subject to the penalties therefor.

#### **Section 11.10 Maximum Number of Dwelling Units**

**Section 11.10.1** The maximum number of dwelling units for land in the R80 and C2 zones shall be equal to number of acres of such land divided by two.

**Section 11.10.2** The maximum number of dwelling units for land in the R40 zone shall equal to the number of acres of such land.

**Section 11.10.3** The maximum number of dwelling units for land in the R10 and PD zones shall equal to six times the number of acres of such land.

**Section 11.10.4** If the land is located in more than one zone, the allowed dwellings shall be calculated for the land in each zone and then combined.

**Section 11.10.5** In those cases where the total of allowable dwelling units as determined in section 11.10.4 results in a fraction, the number shall be rounded down to the lower whole number.

**Section 11.10.6** If a residential development project includes existing residential buildings, the dwelling units in those buildings shall be considered as part of the maximum number of units. The number of units in such building(s) may be increased or decreased provided the lot can accommodate the dwellings under sections 5.2.1 and 11.12.2.

**Section 11.10.7** Unless a greater number is allowed under section 11.12.1.5, principal residential buildings in the R80, C2 and R40 zones shall be limited to three dwelling units per building. One additional accessory dwelling may be allowed in those zones by special permit provided the maximum for the project is not exceeded and the lot area is adequate under section 11.12.2.

**Section 11.10.8** The Board may, by special permit, allow any number of units per building or more than one residential building per lot on lots in the R10 and PD zones provided the maximum number of dwelling units is not exceeded.

## **Section 11.11 Development Procedures**

**Section 11.11.1** Residential development other than on sites exempt from this article under section 11.3, and those that may be allowed by a special permit shall be undertaken only in accordance with the following procedure.

**Section 11.11.1.1** Before any work, including but not limited to, brush removal, tree cutting, and grading, is done on a development site, the developer shall submit a sketch plan to the Board. Cutting of vegetation necessary for surveys and soil testing is permitted.

**Section 11.11.1.1.1** The sketch plan shall be drawn to scale and shall show the total tract that includes the land on which development is proposed. It shall also show the surrounding area, wetlands, contours, vegetation and other features as the Board may require by its regulations. It need not have been prepared by a professional engineer or land surveyor.

**Section 11.11.1.2** Following submission of the plan, the Board or its designee(s) shall undertake a site visit so the Board will fully understand the site and its features.

**Section 11.11.1.3** The Board will then meet with the developer at a regular or special meeting and discuss which land is most appropriately preserved as open space, which are the locations most suitable for houses and other factors that may enter into the choice of open space. However, no plan showing house lots or new roads may be presented or considered at this time. An agreement between the Board and the developer on the land to be preserved is required as a condition of moving forward.

**Section 11.11.1.4** After the open space has been agreed upon, the developer may locate the houses on the property.

**Section 11.11.1.5** The developer may now locate any road or roads needed to properly access the houses and other amenities. Open space shall not be landlocked. Access over other land in common ownership is acceptable. Otherwise adequate provision shall be made for access to each tract of preserved open space from a road.

**Section 11.11.1.6** Then and only then may the developer or an engineer or surveyor on his behalf lay out proposed property lines for the various house lots. Neither shall any preliminary or definitive subdivision plan be prepared prior to this time.

**Section 11.11.1.6.1** Following the layout of property lines, the developer shall submit a definitive subdivision plan or an application for site plan review, as the case may be, in accordance with the board's regulations. Such plan shall include, without limitation,;

1. Existing site conditions, including topography, water bodies and streams, wetlands, historic features, existing structures, easements and rights of way, and means of access;
2. Proposed grading and landscaping;
3. Proposed utilities, including but not limited to water, wastewater, electric power, fuel, security and telecommunications systems, and cable television;
4. Proposed storm water system;
5. Proposed pedestrian and vehicular access, circulation, parking and loading;
6. Structures to be retained, demolished, and new construction;

**Section 11.11.1.6.2** Copies of the application shall be circulated to the Board of Health, the Conservation Commission, the Department of Public Works, the Police Department, the Fire Department, and such other town agencies as the Board

deems appropriate with a request for their comments and suggestions. Failure of any such agency to respond within 35 days shall be deemed lack of opposition to the proposal.

## **Section 11.12 Design Standards**

### **Section 11.12.1 General requirements**

**Section 11.12.1.1** Insofar as practicable, the landscape shall be preserved in its natural state by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. Individual building sites shall be oriented so as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage shall be treated as fixed determinants of road and lot configuration rather than as elements to be altered to follow a preferred development scheme.

**Section 11.12.1.2** Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views on or off the parcel(s).

**Section 11.12.1.3** Development shall be related harmoniously to the terrain and the use, scale and architecture of existing buildings in the vicinity. Proposed buildings shall be related to their surroundings.

**Section 11.12.1.4** The removal or disruption of historic, archeological, or cultural uses, structures, or sites shall be minimized.

**Section 11.12.1.5** A project serviced by municipal water and sewer services may consist of any combination of single-family, two-family and multiple family residential structures. A multiple family structure shall not contain more than 5 dwellings except by special permit. The architecture of all multiple family buildings shall be residential in character, particularly providing gabled roofs, an articulated footprint and varied facades. Residential structures shall be oriented toward the street serving the lot and not toward a required parking area.

**Section 11.12.1.6** Sidewalks and trails. In place of sidewalks a system of internal trails that provide connections to other existing or proposed sidewalks and trails, public parks or recreation areas or protected lands may be substituted.

**Section 11.12.1.7** In the R10 and PD zones, each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

**Section 11.12.1.8** In the R80, R40, and C2 zones, each dwelling unit shall be served by at least three (3) off-street parking spaces. .

**Section 11.12.1.9** Common Shared driveways. Up to three residential buildings may share a common driveway; provided that the shared portion of the driveway shall not be used to meet parking space requirements of this section. Maintenance of shared driveways shall be clearly provided for.

**Section 11.12.1.10** There shall be no more than one curb cut per lot which includes 5 or fewer dwelling units. Lots with more than 5 dwelling units may have curb cuts as the board determines.

### **Section 11.12.2 Requirements for Individual Lots**

**Section 11.12.2.1** In the R80, R40, and C2 zones, each individual lot shall contain not less than 7500 square feet for the first dwelling unit and 1500 square feet for each additional unit. In the R10 and PD zones, each individual lot shall contain not less than 3750 square feet for the first dwelling unit and 1500 square feet for each additional unit. If a lot lies in more than one zoning district, the minimum for the more restricted zone shall apply. .

**Section 11.12.2.2** The Board may, however, allow lesser minimum lot area per dwelling unit for the development of dwelling units in existing buildings

**Section 11.12.3** Except as provided above, there shall be no minimum area per lot, The minimum required setback (front, sides or rear) shall be five feet. Lot shapes should, as nearly as possible, conform to the standard of section 7.2.1. Except for lots served by an approved common driveway, lots shall have not less than 50 feet of street frontage. Lots which provide street access for a common driveway shall have not less than 75 feet of street frontage. Maximum Structure heights and maximum impervious area shall meet the requirements of table 7.2. If separate sewage disposal systems are required, the requirements of the Board of Health shall be met. This may be accomplished by providing an easement for sewage disposal works in the open space.

**Section 11.12.3.1** Each lot served by a common driveway shall have an address on the way from which access is obtained that will insure that emergency services can locate the residences.

### **Section 11.13 Approval of the Plan**

**Section 11.13.1 Approval by Right** Upon findings by the Board (adopted by a majority of the members voting) that the proposed development meets the minimum requirements of this article for preservation open space and the location thereof, contains no more than the maximum number of dwelling units, meets the requirements of its subdivision regulations for a definitive residential subdivision (or of its site plan regulations if it is not a subdivision), a Low Impact Development Plan for the site has been approved (if such plan is required), the required open space has been fully protected by conveyance or easement, an Order of Conditions has been issued by the Conservation Commission (if required), the Board of Health has approved the septic systems (if required), the subdivision plan (or site plan) shall thereby be approved, and the project may then be built according to that plan by right.

**Section 11.13.1.1 Conditions.** The Board may impose conditions, safeguards and limitations in its plan approval as necessary to ensure compliance with the purposes of this article.

**Section 11.13.1.2** No residential lot created under this article shall be further subdivided or any alteration of lot lines or layout of ways be allowed except by a special permit which special permit shall be in compliance with the requirements of this article and the subdivision (or site plan) rules and regulations.

**Section 11.13.1.3** Upon the approval and filing in the registry of deeds of a definitive subdivision plan for the development and further provided that all roads, utilities, and other improvements required by the plan were installed within two years, not including the time required to pursue or await the determination of an appeal as allowed under Massachusetts General Laws, Chapter 40A, Section 17, the lots shown thereon shall become conforming lots. Should such work not be accomplished within two years, the plan approval shall lapse. Any structures shown on the approved plan and actually built within two years, not including the time required to pursue or await the determination of an appeal as allowed under Massachusetts General Laws, Chapter 40A, Section 17 shall be considered conforming structures. The Board may extend any of the required times for cause.

**Section 11.13.1.4** Should a subdivision plan not be required, site plan review shall be required. All roads, utilities, and other improvements required by the plan must be installed within two years, not including the time required to pursue or await the determination of an appeal as allowed under Massachusetts General Laws, Chapter 40A, Section 17, or the plan approval shall lapse. Any structures shown on the approved plan and actually built within two years, not including the time required to pursue or await the determination of an appeal as allowed under Massachusetts General Laws, Chapter 40A, Section 17 shall be considered conforming structures. The Board may extend any of the required times for cause.

**Section 11.13.1.5** No work, including but not limited to, brush removal, tree cutting, and grading, shall be done on a development site and no building permits shall issue for buildings on the site prior to the end of any required appeal period following approval of the required plan.

**Section 11.13.1.6** Any change to open space dedicated under this article and owned by the town will require a two thirds vote of the town meeting. Where the open space is not conveyed to the town, a restriction enforceable by the town shall be recorded providing that such land shall be kept in as open space under the provisions of this bylaw unless the town meeting agrees to a modification by a two thirds vote. No such vote shall be taken until after the planning board has held a public hearing thereon at which interested persons shall be given an opportunity to be heard. Notice of the time and place of such public hearing and the subject matter hereof shall be published in a newspaper of general circulation in the



town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, No town meeting vote thereon shall be taken until a report with recommendations by the planning board has been submitted to the town meeting or twenty-one days after said hearing has elapsed without submission of such report

**Section 11.13.1.7** Any changes to the house locations, house lots, streets, or other provisions of the approved subdivision shall require the modification of the subdivision plan or site plan by the Board.

**Section 11.13.2 Special Permit Development** Any plan for residential development that does not meet the requirements of this article may be built only according to a special permit upon a finding that development on the parcel according to the requirements of this article is not feasible.

## **ARTICLE 12        SITE PLAN REVIEW** (amended 1/29/07)

### **12.1    PURPOSE**

Development of land is the means by which a community grows. How and where this development or redevelopment occurs, how it affects the environment; the neighborhood; and the entire community are matters of concern to everyone. Zoning districts, use tables and dimensional tables address these matters on the lot level. These matters are generally considered zoning issues and dealt with by the Zoning Board of Appeals or its agents.

What happens in the way a particular site is developed is of equal concern. This is the role of site plan review. Since any development will have impacts on the total environment and particularly on the neighborhood and the community, site plan review seeks to prevent or to minimize adverse impacts that may occur as an owner seeks to develop his or her property. The process intends to conform to the spirit of this bylaw (SEE ARTICLE 1 & APPENDICES C, D & E).

### **12.2    PROJECTS REQUIRING SITE PLAN REVIEW**

12.2.1 The following types of activities and uses require site plan review by the Planning Board:

- A. Construction, exterior alteration or exterior expansion or change of use of a municipal, institutional, commercial, industrial, or multiple-family structure;
- B. Three or more dwelling units started within one year by entities controlled by one person on land that at any time within the ten years preceding was a single parcel or were abutting parcels. No building permits may be issued for additional work that will make such projects subject to this section until site plan approval has been granted for all units involved. A single site plan application may cover contiguous lots. For the purposes of this section, the term “person” shall include an individual, joint owners, or any other entity commonly recognized by law as a person.
- C. Any use or change in use of any structure or group of structures in common ownership that requires 10 or more parking spaces under this zoning bylaw, or the construction, reconstruction, alteration or expansion of a stand alone parking area that has 10 or more parking spaces.
- D. Grading, clearing, or other land development activity which will require disturbance of more than 10,000 square feet of land area or 35% of the area of the lot, whichever is less, with the exception of agricultural activity, or work in conjunction with a approved subdivision plan or earth removal permit.
- E. Any use requiring a special permit in accordance with section 5.2 Schedule of Use Regulations if required by the Board of Appeals and which does not qualify for an exemption under Article 12.3 of this Zoning By-law.
- F. A property owner or occupant may apply for site plan review for a project even if such review is not required. Such an application may not be withdrawn except with the consent of the planning board.

At the request of the applicant, the Planning Board may waive any or all requirements of site plan review for exterior enlargements of less than 25% of the existing floor area, and for building or site alterations where the Board determines that the standards set forth in this bylaw are not relevant to the alterations.

### **12.3    EXEMPTIONS FROM SITE PLAN REVIEW**

12.3.1 Except as provided in section 12.2.1 B, site plan review shall not be required for:

- A. The construction or enlargement of any single family or two family dwelling or building accessory to such dwelling unless the accessory building contains more than 500 square feet of floor area;
- B. Any building used exclusively for agriculture, horticulture or floriculture;
- C. Projects not involving (a) additional coverage of the lot, either in the form of construction of or addition to a structure, whether permanent or temporary, (b) grading changes, or (c) additional paving, asphaltting or other equivalent method of lot coverage;
- D. Projects involving only the construction, reconstruction or alteration of any feature, which the building inspector or other duly authorized town inspector certifies in writing, that are required by public safety in order to correct an unsafe or dangerous condition.

## **12.4 REQUIRED SUBMITTALS**

12.4.1 Applicants are encouraged to meet with the Planning Agent or Board prior to making a formal submission of plans to discuss site plan requirements and possible waivers. The agent or board may provide a set of guidelines to assist applicants in meeting site plan, architectural, and landscaping objectives. (APPENDICES C, D,E, & F)

12.4.2 Each request for site plan evaluation shall include:

- A. A completed application with the applicant's original signature;
- B. A plan set prepared in accordance with Planning Board Rules and Regulations;
- C. A fee determined by the current fee schedule adopted by the planning board;
- D. Any additional applicable information including but not limited to drainage reports, traffic studies, historical data, National Heritage data, hydrogeological data, and soil testing logs.

## **12.5 PROCEDURE**

12.5.1 The applicant shall submit a complete application as detailed above to the Department of Planning and Development.

12.5.2 Upon determining the application is complete the Planning Agent shall, transmit copies of the application and reduced size plans to the Building Commissioner, the Police Chief, the Fire Chief, the Conservation Commission, the Board of Health, the Zoning Board of Appeals and the Board of Selectmen for their advisory review and comments. Each board shall be requested to provide its comments to the planning board within 35 days of such submittal. A failure to respond shall be considered as lack of objection to the project as submitted.

12.5.3 The Planning Board reserves the right to hire a review engineer or other services as necessary at the applicant's expense under the provisions of section 53G of Chapter 44 of the General Laws.

12.5.4 The Planning Board shall hold a public hearing to consider the application in accordance with the requirements of M.G.L. 40A, s.11. The decision of the Planning Board shall be upon a majority of those present and shall be in writing. Failure of the Board to take final action on an application within 90 days after the completed application was filed plus any extensions that have been mutually agreed upon shall constitute constructive approval. All decisions of the Board shall be subject to judicial appeal as is provided in section 17 of Chapter 40A of the General Laws.

## **12.6 SITE PLAN EVALUATION**

12.6.1 Particular effects of development must be considered in the process of site plan review. These include, but are not limited to the following:

- A. Adequacy of Traffic Access. Curb cuts should be so arranged and limited in number as to reduce congestion and improve traffic safety. Proper sight triangles and sufficient turnarounds for vehicles should be provided to reduce the potential for accidents at points of egress;
- B. Adequacy of Traffic Circulation and Parking. Plans should maximize pedestrian and vehicular convenience and safety both within the site and in relation to adjacent ways. Internal and external traffic circulation, and pedestrian and bicycle access should be adequately provided. Potential traffic impacts both on and off the site, should be mitigated as may be prescribed by the Board, including, but not limited to, measures designed to reduce automobile trip generation, especially on roadways with demonstrated deficiencies in capacity. There should be sufficient parking as required in Article 8 laid out in a manner to provide ease in maneuvering of vehicles and so as not to be detrimental to the surrounding properties or to create an undesirable visual effect from the street. Sufficient area for loading and unloading may be required if the need for such loading zone is found to be necessary;
- C. Provide efficient and effective circulation. With respect to vehicular and pedestrian circulation, special attention shall be given to the location and number of access points to public streets and sidewalks, to the separation of vehicles and pedestrians, to the arrangement of parking areas and to service and loading areas, and to the location of accessible routes and ramps for the disabled;
- D. Adequacy of Landscaping and Screening. There shall be a sufficient amount of landscaping and screening, as may be reasonably determined by the board, to insure protection of and to enhance the quality of the project in question and the adjacent properties. Plans should minimize the visibility of parking, storage or other outdoor service areas as viewed from public ways or premises residentially used or zoned;
- E. Exterior and parking lot lighting should be adequate to provide for security and public safety
- F. Plans should minimize light pollution and lighting intrusion onto other properties and public ways with proper arrangement and shielding, and minimize glare from headlights through plantings or other screening.
- G. Adequacy of Protecting the Use of Renewable Energy Resources. Where appropriate and feasible, the site plan shall be so designed as to not unreasonably deter the actual or potential use by the subject property or adjacent properties of energy available for collection or conversion from direct sunlight, wind, running water, or organically derived fuels.
- H. Relate development to its environment. The proposed development shall relate appropriately to its context. It shall relate harmoniously to the terrain and to the use, scale and architecture of existing buildings in the vicinity that have a functional or visual relationship to the proposed structure(s). Proposals that deviate substantially from established neighborhood patterns are discouraged;
- I. Preserve the landscape. The landscape, existing terrain, and any significant trees and vegetation shall be preserved in its natural state insofar as practicable. Tree and soil removal shall be minimized and any grade changes shall be in keeping with the general appearance of neighboring developed areas. If natural features and existing landscaping are proposed to be removed, special attention shall be accorded to plans to replace such features and landscaping;
- J. Provide open space. All open space shall be designed to be visually and physically accessible to the extent feasible. Open space shall add to the visual amenities of the vicinity by maximizing its visibility for persons passing or overlooking the site from neighboring properties. If open space is intended for active use, it shall be so designed as to maximize its accessibility for all individuals, including the disabled, encourage social interaction, and facilitate ease of maintenance;

- K. Provide for nature's events. Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. Plans should allow no net increase in the rate of flow of stormwater runoff (calculated using a 100-year storm event) from the project site consistent with the Massachusetts Stormwater Handbook. Attention shall also be accorded to design features which address the affects of rain, snow and ice at building entrances and to provisions for snow and ice removal from circulation areas;
- L. Make advertising features understandable. The size, location, design, texture, lighting, and materials of all exterior signs and advertising features shall not detract from the use and enjoyment of proposed buildings or surrounding properties. Signs and similar features shall be appropriately sized and located in a manner that does not detract from nor disrupt the immediate visual environment.
- M. Integrate special features with the design. Exposed storage areas, machinery and equipment installation, service areas, truck loading areas, utility connections, meters and structures, mailboxes, lighting, and similar accessory structures shall be subject to such setbacks, screen planting or other mitigation or screening methods as shall reasonably be required to prevent their being incongruous with or offensive to existing or proposed structures and surrounding properties. Special features, which are essential to a structure's function, shall be incorporated into the original structure design, not added as an afterthought;
- N. Make spaces secure and safe. With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation, maximize accessibility by fire, police or other emergency personnel and equipment, and, to the extent feasible, provide for adequate and secure visibility for persons using and observing such spaces;
- O. Protect Winchendon's heritage. The removal or disruption of historic, traditional or significant, uses, structures or architectural features or neighborhood patterns shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties. Significant structures and/or structures with important architectural features shall be identified by the Winchendon Historical Society. New structures, additions, and alterations shall be sympathetic to and complement the scale and design of surrounding historic structures and locally significant buildings of architectural merit; and
- P. Consider the microclimate. A developer who proposes new structures, additional lot coverage, or the installation of machinery or equipment which emits heat, vapor, fumes, or noise shall endeavor to minimize, insofar as practicable, any adverse impact on light, air, and water resources, or on the noise and temperature levels of the immediate environment.
- Q. Consider Winchendon's Resources. The applicant should be prepared to adequately describe the likely demands on local infrastructure, schools and municipal services and offer proposals to mitigate such demands on the Town's ability to provide such services to the project.
- R. Achieve design excellence. Endeavors to achieve design excellence in all new structures are encouraged. Where the existing character and quality merit change, the design of new structures shall be directed towards a specific design objective. In every case the structure shall be made compatible with the character of Winchendon by means of the following factors:
  - 1. A silhouette harmonious with the natural landforms and building patterns produced by height limits;
  - 2. Maintenance of an overall height similar to that of surrounding buildings, or a sensitive transition, where appropriate, to development of a dissimilar character; and
  - 3. Use of materials, colors and scales similar to or harmonizing with those of nearby structures and neighborhoods.

## **12.7 PLANNING BOARD REGULATIONS**

The Planning Board shall adopt rules and regulations governing the submission and review of site plans. These regulations shall include a statement of the maximum impacts of a proposal that may be approved without review by the Board, the application procedure including the required contents of an application, the review procedure, and any requirements for implementing its decision.

## **12.8 ENFORCEMENT**

12.8.1 The Planning Board may require the posting of a bond or other adequate security to assure compliance with the site plan and conditions and may suspend any permit or license when work is not performed as required.

12.8.2 Any site plan approved under this section shall lapse within two (2) years, unless specifically noted otherwise in this bylaw, if the project has not been completed, except for good cause. The time required to pursue and await determination of a judicial appeal pursuant to Chapter 40A of the General Laws shall be excluded from the two (2) year time limit.

## **12.9 VIOLATIONS**

Failure to conform to any conditions, safeguards or limitations imposed on a site plan by the Board shall be a violation of the zoning bylaw. Penalties for violations may include the issuance of a cease and desist order and are otherwise provided in section 13.4.

## **12.10 SPECIAL PERMITS** (amended 11/2014)

**12.10.1 Granting Authority.** Special permits may be granted by the Planning Board or by the Board of Zoning Appeal as specified elsewhere in this Bylaw. Each of said boards shall be considered a “permit granting authority”

**12.10.2 Criteria.** Special permits will normally be granted where specific provisions of this Bylaw are met, except when particulars of the location or use, not generally true of the district or of the uses permitted in it, would cause granting of such permit to be to the detriment of the public interest because:

- A. It appears that requirements of the Bylaws cannot or will not be met, or
- B. Traffic generated or patterns of access or egress would cause congestion, hazard, or substantial change in established neighborhood character, or

C. The continued operation of or the development of adjacent uses as permitted in the Zoning Bylaw would be adversely affected by the nature of the proposed use, or

D. Nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the Town, or

E. For other reasons, the proposed use would impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this Bylaw.

**12.10.3 Conditions.** In acting upon special permits the special permit granting authority shall take into account the general purpose and intent of this Bylaw and, in order to preserve community values, may impose conditions and safeguards deemed necessary to protect the surrounding neighborhood, in addition to the applicable requirements of this Bylaw, such as, but not limited to the following:

F. Front, side or rear yards greater than the minimum required by this Bylaw.

G. Screening of parking areas or other parts of the premises from adjoining premises or from the street by specified walls, fences, planting, or other devices.

H. Modification of the exterior features or appearance of the structure.

I. Limitations of size, number of occupants, method or time or operation, or extent of facilities.

J. Requirement of off street parking or other special features beyond the minimum required by this or other applicable codes or regulations.

K. Control of the number, location, size and lighting of signs.

L. Requirement of number, design, and location of access drives or other traffic features.

Any development application requiring a special permit from the Planning Board that contains elements requiring a special permit from the Board of Zoning Appeal may be allowed by the Planning Board within the scope of the Planning Board special permit and shall not require a separate application to the Board of Zoning Appeal.

## **ARTICLE 13      ADMINISTRATION, ENFORCEMENT AND AMENDMENT**

### **13.1      EFFECTIVE DATE**

This zoning bylaw shall become effective upon adoption of the Town, subject to its approval by the Attorney General of Massachusetts and the publication and posting required by Massachusetts General Laws. All language of this bylaw which remains unchanged from previously adopted language shall be considered to have been adopted on the date of its initial adoption by the Town.

### **13.2      SEVERABILITY OF BYLAW**

If any provision of this bylaw or boundary depicted on the zoning map is held invalid, the validity of the remaining bylaw provisions and boundary lines shall not be affected thereby. Each article may be updated separately by Town approval and be valid based on a date posted on the Article; the definitive version of the most up-to-date bylaw is available in the Town Clerk's office.

### **13.3      BYLAW INTERPRETATION**

To the extent that any specific provisions of this bylaw shall conflict with any general provisions thereof, the specific provisions shall prevail.

### **13.4      ENFORCEMENT**

This bylaw and the conditions and stipulations of permits and variances issued thereunder shall be enforced by a Building Commissioner, acting as Zoning Enforcement Officer in accordance with any or all action necessary to enforce full compliance, as prescribed by the bylaws of this Town and Massachusetts General Laws.

### **13.5      BUILDING PERMITS**

In processing an application for a building permit, the Building Commissioner shall determine by direct reference to the Zoning Map, Soil Limitation Map and Flood Plain Hazard Boundary Maps the extent to which any constraints imposed by such maps within the zoning district in question are applicable, and shall adhere to and be guided by such constraints.

### **13.6      BOARD OF APPEALS**

13.6.1 A Board of Appeals of five (5) members and three (3) associate members shall be appointed by the Board of Selectmen in accordance with the provisions of the General Laws of Massachusetts and the Winchendon Home Rule Charter. The Board of Appeals shall possess and exercise those powers granted by the Massachusetts General Laws and shall establish procedures consistent with the provisions of this bylaw.

13.6.2 All applications received by the Board of Appeals shall immediately be referred to the Planning Board for its comments. Comments by the Planning Board are not required, but should be considered by the Board of Appeals, if such are received.

13.6.3 The Board shall carry out the following specific powers and duties:

A. Appeals. To hear and decide appeals taken by any person aggrieved by reason of inability to secure a permit or enforcement action from the Building Commissioner pursuant to Massachusetts General Law and the bylaw of this Town.

B. Special Permits. Section 5.2 of these bylaws provide for specific types of uses which are only permitted in specific districts upon the issuance of a special permit ("SP"). Special Permits may be issued only for uses which are in harmony with the general purpose and intent of these bylaws and shall be subject to the general or specific provisions set forth therein, in addition to which the Board shall consider whether the future use is



detrimental to adjacent uses or to the existing or planned future character of the neighborhood, whether the proposed use will create undue traffic congestion or unduly impair pedestrian safety, whether the proposed use will overload any public water, drainage or sewer facility, or whether the proposed use will be offensive, dangerous or harmful to abutters or to the general public due to excessive noise, odor, vibration, dust, smoke or for any similar reason.

1. Special Permit Time Limitations. Special Permits shall lapse if not exercised within twenty-four (24) months from the date of filing with the Town Clerk. "Exercised" shall be defined as having obtained any necessary building or other permits and having begun the use of or construction. More particular requirements for the "exercise" of a special permit may be contained in specific sections of this zoning bylaw.

C. Variances. To hear and decide petitions for variances from the requirements of this bylaw, and to authorize such variances upon appeals, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon.

1. Variances shall be granted only when:

- a. owing to conditions specifically affecting such parcel or building but not affecting generally the zoning district in which located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the applicant, and
- b. desirable relief may be granted without substantially derogating from the intent and purpose of this bylaw, but not otherwise.

## **13.7 SCHEDULED DEVELOPMENT**

(Amended May 13, 2002)

13.7.1 Purpose. The purpose of this section, "Scheduled Development", is to promote orderly growth in the Town of Winchendon, to phase growth so that it will not unduly strain the community's ability to provide basic public facilities and services to the town, to provide its boards and its agencies information, time and capacity to incorporate such growth into the Master Plan for the community, and to preserve and enhance existing community character and the value of property. (Amended May 13, 2002)

13.7.2 General. Beginning on January 1, 2003, building permits for not more than fifty (50) dwelling units shall be issued in each of the five (5) calendar years following said date, for the construction of new residential dwellings. Further no person or entity nor their successors in interest, nor any entity in which they hold a legal or beneficial ownership shall be issued more than six (6) of the total number of permits available in any one year. For the purpose of this section, an accessory apartment shall constitute a dwelling unit. (Amended May 13, 2002)

13.7.3 Procedures. Any building permits issued shall be issued with the following procedure:

- A. The Building Commissioner shall act on each permit in order of submittal. Any permit application that is incomplete or inaccurate shall be returned to the applicant within five (5) business days and shall require a new submittal.
- B. The Building Commissioner shall accept applications and issue permits one year at a time.
- C. The Building Commissioner shall mark each application with the time and date of submittal.
- D. Any building permits not issued in any calendar year shall not be available for issuance in any subsequent year.
- E. At the end of each calendar year in which this bylaw is in effect, the Building Commissioner shall retain all applications for which a building permit has not been issued. Upon being informed in writing by the applicant before the end of January of the succeeding calendar year that the applicant desires the application to remain in effect, the Building Commissioner shall treat said application in accordance with section 13.7.3(1) above. (Amended May 13, 2002)

13.7.4 Exemptions. The provisions of this section shall not apply to, nor limit in any way, the granting of building or occupancy permits required for enlargement, restoration, or reconstruction of dwellings existing on lots as of the date of

passage of this bylaw, or assisted living facilities, but shall apply to the conversion of single-family to two-family dwellings. (Amended May 13, 2002)

13.7.5 Time Limitation and Extension. This section shall expire on January 1, 2008; provided however, that this section may be extended without lapse of its provisions and limitations, by vote of the Town Meeting prior to January 1, 2008. (Amended May 13, 2002)

## **13.8 PENALTIES**

Any person, firm or corporation violating any article or provision of this bylaw shall be fined the maximum amount allowed by statute, and each day shall constitute a separate violation.

As an alternative to criminal prosecution in a specific case, the Building Commissioner may issue citations under the non-criminal disposition procedure set forth in General Laws Ch. 40, Section 21D.

## **13.9 AMENDMENT**

This bylaw may be amended from time to time in accordance with the provisions of Chapter 40A, General Laws of Massachusetts.

## **13.10 PLANNING BOARD** (amended Fall 2019)

13.10.1 A Planning Board of five (5) members and one (1) associate member shall be appointed by the Board of Selectmen in accordance with the provisions of the General Laws of Massachusetts and the Winchendon Home Rule Charter. The Planning Board shall possess and exercise those powers granted by the Massachusetts General Laws and shall establish procedures consistent with the provisions of this bylaw.

13.10.2 All applications received by the Planning Board shall immediately be referred to the Zoning Board of Appeals for its comments. Comments by the Board of Appeals are not required, but should be considered by the Planning Board, if such are received.

13.10.3 The Planning Board shall carry out the following specific powers and duties:

A. Responsibilities outlined in MGL C. 41, § 81A to 81GG with all the powers and duties therein

B. Special Permits. Section 5.2 of these bylaws provide for specific types of uses which are only permitted in specific districts upon the issuance of a special permit ("SP"). Special Permits may be issued only for uses which are in harmony with the general purpose and intent of these bylaws and shall be subject to the general or specific provisions set forth therein, in addition to which the Board shall consider whether the future use is detrimental to adjacent uses or to the existing or planned future character of the neighborhood, whether the proposed use will create undue traffic congestion or unduly impair pedestrian safety, whether the proposed use will overload any public water, drainage or sewer facility, or whether the proposed use will be offensive, dangerous or harmful to abutters or to the general public due to excessive noise, odor, vibration, dust, smoke or for any similar reason.

1. Special Permit Time Limitations. Special Permits shall lapse if not exercised within twenty-four (24) months from the date of filing with the Town Clerk. "Exercised" shall be defined as having obtained any necessary building or other permits and having begun the use of or construction. More particular requirements for the "exercise" of a special permit may be contained in specific sections of this zoning bylaw.

13.10.4 Associate Member The Planning Board, which consists of five (5) members, shall also include one (1) associate member who shall be appointed in the same manner as regular members for terms of one year. Associate member should attend board meetings and may participate in board deliberations but shall not count in determining a quorum nor have voting powers except as provided herein. Any associate member may, from time to time, be designated by the

Chairman of the Planning Board in the case of the absence, inability to act or conflict of interest of a regular member, or a vacancy on said board, to act as a regular member of the Planning Board.