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**SECTION 1. GENERAL**

**1.1 Authority:** This zoning bylaw is adopted in accordance with the provisions of General Laws, Chapter 40A, "The Zoning Act".

**1.2 Purpose:** "The purpose of this Zoning Bylaw shall be to promote the health, safety, convenience and general welfare of the inhabitants of West Brookfield; to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air to prevent overcrowding of land, to avoid undue concentration of population; to facilitate the adequate provisions of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the Town; and to preserve and increase amenities within the Town of West Brookfield".

**1.3 Basic Requirements:** All buildings or structures here after erected, reconstructed, altered, enlarged or moved or use of premises in the Town of West Brookfield shall be in conformity with the provisions of this bylaw. Any building, structure, or land shall not be used for any purpose or in any manner other than is permitted in the district in which such building, structure or land is located. Any use not specifically provided for in a district herein shall be deemed prohibited. In accordance with General Laws, Chapter 40A, and notwithstanding any provisions to the contrary, this bylaw shall not prohibit or limit the use of land for any church or other religious purpose or for any educational purpose which is religious sectarian, denominational or public. "With the exception of use regulations, religious and educational facilities shall not be exempt from the general or specific regulations of this bylaw."

**1.4 Definitions:** For the purposes of this bylaw, the following terms shall have the meanings hereby assigned to them.

1) Buildings - an independent structure having a roof supported by columns or walls and designed for the shelter, housing, or enclosure of persons, animal, or property of any kind.

2) Accessory Building or Use - a building or use customarily incidental to and located on the same lot with a principal building or use or and adjoining lot under the same ownership.

3) Farm - any parcel of land which is used primarily for the raising of agricultural products (including dairy, horticultural, floricultural), livestock and/or poultry. It may include the raising of forest products. Necessary farm structures located within the prescribed limits, and the storage of equipment used is included.

4) Dwelling - a building, a modular unit, or portion thereof designed exclusively for residential occupancy, including single family, two family, and multiple family dwellings, but not including hotels, motels, boarding houses, or structures solely for the use of transient or overnight occupants.

5) Dwelling Unit - one or more room providing complete living facilities for one family, including equipment for cooking or provisions for the same, and including rooms for living, sleeping and eating.

6) Family- any number of individuals living together as a single housekeeping unit.

7) Use - the purpose for which land or building is occupied, or

maintained, arranged, designed or intended.

8) Non-Conforming Use - a use of land existing at the time of enactment of this bylaw which does not conform to the regulations for use in the district in which it is situated.

9) Mobile Home - A structure, transportable in one or more sections, which is built on a permanent chassis, and designed to be used as a dwelling with permanent foundation, when connected to the required utilities. A travel trailer, motor home, or modular home is not to be considered as a mobile home.

10) Recorded or Of Record - Recorded or registered in the Worcester County Registry of Deeds or a record title to a parcel of land disclosed by any or all pertinent records.

11) Lot - A single area of land in one ownership defined by meters and bounds or boundary lines in a recorded deed or in a recorded plan.

12) Premises - A lot together with all structures, buildings, and uses thereon.

13) Street - (a) public way or a way which the Town Clerk certifies is maintained and used as a public way or (b) a way shown on a plan approved and endorsed in accordance with the Subdivision Control Law or c) a way in existence when the Subdivision Control Law became effective in West Brookfield having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby.

14) Minimum Yard - A required open space, unoccupied and unobstructed by any structure or portion of a structure, except the following:

- a. fences, walls, poles, posts and other customary yard accessories, ornaments and furniture;
- b. in front yards only, eaves, steps, non-covered porches and signs.
- c. accessory buildings as permitted by Section 4.33.

Yard, Front - A yard extending across the full width of a lot lying between the front lot line and the principal building. The minimum front yard extends from the front lot line for the depth specified in section 4.2. On a corner lot, the two (2) yards lying between the main building and the intersecting streets shall both be deemed front yards.

Yard, Rear - A yard extending across the full width of the lot lying between the rear line of the lot and the rear line of the main building extended to the side lines of the lot. The minimum rear yard extends from the rear lot line for the depth specified in section 4.2.

Yard, Side - The portion of the yard situated between the main building and the side line of the lot, extending from the front yard to the rear yard. The minimum side yard extends from the side lot line for the depth specified in section 4.2.

15) Home Occupation - Occupations such as preserving or home cooking, repair of portable equipment or appliances, real estate agent, craft manufacture, private instruction in music or dancing, resident carpenter, contractor, electrician, painter, plumber, beautician, barber, or other artisan

but not including convalescent or nursing home, tourist home or similar establishment offering services to the general public.

16) Frontage - The horizontal distance measured along the front lot line between the points of intersection of the side lot lines with the front lot line. The minimum required frontage shall be uninterrupted and continuous along one street. For corner lots, frontage shall be measured between one side lot line and the mid-point of the arc made by the corner radius. A lot shall only be deemed to have frontage along a street (as defined under definition #13) to which it has both legal and physical access.

17) Lot Width - The shortest distance from side lot line to side lot line. At no point, between the front lot line and the rear of the principal structure located on the lot, shall the lot have a width less than eighty percent (80%) of the minimum frontage required.

18) Solar Energy Facility  
"AGRICULTURAL SOLAR PHOTOVOLTAIC FACILITY" means a solar photovoltaic system that is for the exclusive purpose of providing electricity for a property that is primarily in agricultural use as defined under M.G.L. c. 40A, §3. The electricity produced to be used solely for the benefit of the agricultural property.

"LARGE-SCALE GROUND-MOUNTED SOLAR ENERGY FACILITY" means a commercial solar photovoltaic system that is structurally mounted on the ground and has a minimum nameplate output capacity of greater than 250 kw DC.

"SMALL-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC FACILITY" means a commercial solar photovoltaic system that is structurally mounted on the ground and has a nameplate output capacity of less than 250 kw DC.

"COMMERCIAL USE"

Where the electricity generated by a solar energy facility is produced, distributed and utilized for use on site or sale or resale off site which allows a monetary gain directly or indirectly to the owner of the property.

"RATED NAMEPLATE CAPACITY" means the maximum rated output of electric power production equipment, such as solar energy facilities or solar photovoltaic facilities. The manufacturer typically specifies this output with a "nameplate" on the equipment.

"RESIDENTIAL GROUND-MOUNTED SOLAR PHOTOVOLTAIC FACILITY" means a residential solar photovoltaic system that is structurally mounted on the ground where the electricity generated by the solar facility is produced and solely utilized, on the residential site, by the owner of the residential property. The output to not exceed 110% of the residential unit's electrical consumption. Requires a special permit in all districts.

"RESIDENTIAL USE" Where the electricity generated by a solar energy facility is produced solely, on a residential site, for the use and benefit of the owner of the residential property.

"SOLAR ENERGY FACILITY" A means a ground-mounted solar photovoltaic installation that is designed, constructed and intended to convert solar energy to electricity generated for residential or commercial use. In this bylaw "Solar Energy Facility" shall include and the bylaw shall apply and not be limited to: solar energy facilities, whether referred to as "Solar Energy

Facility," "Photovoltaic Facility," "Solar Photovoltaic System," or otherwise.

### 1.5 Nonconformity

**1.51 Continuation and Change:** Any structure or the use of any building or land which does not conform to the requirements of Section 3, Use Regulations, Section 4, Dimensional Requirements, or Section 5, Special Regulations, included herein, and which was existing at the time of adoption of this bylaw, or applicable subsequent amendment thereto, may be continued subject to the provisions of this Section. Such structure or use may be changed to conform to the provisions of this bylaw. However, once changed to conform to such provisions, in whole or in part, it shall not subsequently revert to nonconformity.

**1.52 Nonconforming Structures:** A nonconforming structure shall be defined as a structure which does not conform to Section 4, Dimensional Requirements, or to Section 5, Special Regulations, of this bylaw the following regulations shall apply to nonconforming structures:

a. A nonconforming structure may be altered or enlarged provided that such alteration or enlargement is not substantially more detrimental than the existing nonconforming structure to the neighborhood as may be determined by the Board of Appeals upon application for a special permit for such alteration or enlargement.

b. A nonconforming structure which has been damaged or destroyed by fire or other catastrophe may be repaired or rebuilt within two years of such catastrophe, provided that the reconstruction in no way increases the extent of nonconformity of such structure. A one-year extension may be granted by the Board of Appeals provided it can be proven effort has been made to begin reconstruction and/or a hardship can be determined.

c. Construction of a new accessory building, or alteration or enlargement of an existing accessory building, in all cases no larger than 150 square feet, construction of a new swimming pool, or alteration or enlargement of an existing swimming pool, in all cases no larger than 650 square feet, which encroaches on a sideline or rear lot set back requirement, may be allowed provided that such action is not substantially detrimental or more detrimental to the neighborhood, as determined by the Board of Appeals through issuance of a special permit. (Adopted May 12, 1992)

### 1.53 Nonconforming Use of Buildings or Land

a. Extension of Nonconforming Use of Land. The nonconforming use of land shall not be extended beyond the boundaries of the property so used at the time of adoption of this bylaw, or of applicable subsequent amendment thereto.

b. Enlargement of a Building Housing a Nonconforming Use. A building which houses a nonconforming use may be enlarged upon issuance of a special permit by the Board of Appeals, provided that:

1) Such enlargement shall not increase any existing detrimental or injurious effect of said use upon the neighborhood.

2) Such enlargement shall not be extended beyond the boundaries of the property on which the building is situated at the time of adoption of this bylaw.

3) Such enlargement shall conform to Section 4, Dimensional Requirements, of

this bylaw which apply in the district wherein the building is located.

c. Alteration of a Building Housing a Nonconforming Use. A building which houses a nonconforming use may be structurally altered provided that:

1. Such alteration does not increase the total floor area of the building or the extent of building coverage on the property.

2. Such alteration does not increase the extent of any nonconformity in Section 4, Dimensional Requirements, of this bylaw which apply in the district wherein the building is located.

**SECTION 2. ESTABLISHMENT OF DISTRICTS**

**2.1 Classes of Districts:** For the purposes of this bylaw the Town of West Brookfield is hereby divided into the following districts:

**2. ESTABLISHMENT OF DISTRICTS**

**2.1 Classes of Districts:** For the purposes of this bylaw the Town of West Brookfield is hereby divided into the following districts:

RR- -Rural Residential

Purpose and Intent: To encourage low-density residential development and agricultural commercial activity and preserve open space in a manner consistent with the traditional rural, agricultural character of the community.

RN- -Neighborhood Residential

Purpose and Intent: to encourage residential development that meets the housing needs of a broad spectrum of the town's population in a manner consistent with village and residential neighborhood development.

G- -General

Purpose and Intent: to provide sites for small-scale business development for local and transient services compatible with low- and medium-density residential development within village settings which, through landscaping and design or through preservation, enhance the natural landscaping and historic environs; at the same time protecting any existing views, minimizing the visibility of parked cars, avoiding the appearance of commercial strips as well as congestion in the abutting streets and ways, and retaining the character and the quality of life in the rural New England village.

I-Industrial

**2.2 Incorporation of Zoning Map:** Said districts are located and bounded as shown on a map entitled Proposed Zoning Map of West Brookfield, Massachusetts, dated May, 1973, and on file in the Office of the Town Clerk. The Zoning Map with all explanatory matter thereon, is hereby made a part of this bylaw.

**2.3 Lots in Two Districts:** When a district boundary line divides any lot in one ownership of record at the time such line is adopted, a use that



is permitted on one portion of the lot may be extended thirty (30) feet into the other portion provided the first portion includes the required frontage.

**SECTION 3. USE REGULATIONS**

**3.1 Basic Requirements:** No building, structure, or land shall be used for any purpose or in any manner other than is permitted and set forth in the provisions of this bylaw and in accordance with the following notation:

**Y - Use Permitted**

**SP - Use allowed as an Exception under Special Permit by the Board of Appeals as provided in Section 6.44 hereafter.**

**N - Use Prohibited Permitted uses and uses allowed by the Board of Appeals shall be in conformity with all dimensional requirements and all other applicable requirements of this bylaw.**

*If an applicant for a building permit is referred to the Zoning Officer for a determination and; that use is not specifically listed in the Use Regulation Table and; The Zoning Officer determines the proposed use meets the intent & purpose of the bylaw or bylaw section; The Zoning Officer may refer the applicant to the Zoning Board of Appeals for a Special Permit and; The Zoning Board of Appeals may issue a Special Permit upon determining the proposed use meets the intent & purpose of the bylaw and other requirements as determined by the Zoning Board of Appeals.*

An applicant for two or more special permits pertaining to a single property, or adjoining properties under the same ownership, may combine them in a single special permit application and the Zoning Board of Appeals shall subsequently administer the application in the same way as a single application.

The combining of uses may be allowed by special permit provided said uses are allowed either by right or by special permit within the district in which the subject property is situated.

There shall be no more than one residential structure on any lot.

| <b>3.21 Agricultural Use</b>       | <b>Definition, Condition</b>   | <b>RR</b> | <b>RN</b> | <b>G</b> |
|------------------------------------|--|-----------|-----------|----------|
| 1. Farm                            | <i>Agricultural, orchard, plant or tree nursery, livestock and/or poultry, but not including the raising of furbearing animals for commercial use, and which may include one single-family dwelling.</i> | Y         | Y         | Y        |
| 2. Sales room or stand, - seasonal | <i>For the display or sale of agricultural or horticultural products on a seasonal basis - under five acres in size.</i>   | Y         | Y         | Y        |

|  |  |    |    |    |
|--|--|----|----|----|
|  | For the display or sale of agricultural or horticultural products on a seasonal basis - <i>over five acres in size.</i>    | Y  | Y  | Y  |
| 3. Farm sales room or stand - <i>non-seasonal,</i>             | Whose primary business is the sale or display of agricultural or horticultural products - <i>under five acres in size.</i> | Y  | Y  | Y  |
|  | Whose primary business is the sale or display of agricultural or horticultural products - <i>over five acres in size.</i>  | Y  | Y  | Y  |
| 4.1. Commercial Green Houses - <i>under five acres in size</i> |  | SP | SP | SP |
| 4.2. Commercial Green Houses - <i>over five acres in size</i>  |  | Y  | Y  | Y  |
| 5.1. Riding Stables - <i>under five acres in size</i>          |  | SP | SP | SP |
| 5.2 Riding Stables - <i>over five acres in size</i>            |  | Y  | Y  | Y  |

| <b>3.22 Residential Use</b>  | <b>Definition, Condition</b>   | <b>RR</b> | <b>RN</b> | <b>G</b> |
|--|--|-----------|-----------|----------|
| 1. Single-family detached dwelling, together with such accessory structures as are normally incidental thereto, including garage | Garaging or parking of one commercial vehicle with a maximum gross vehicle of 26,000 pounds shall be a permitted accessory use; garaging or parking of larger commercial vehicle or more than one commercial vehicle may be allowed by special permit. Farms are exempt.   | Y         | Y         | Y        |
| 2. Alteration and conversion of a single-family dwelling to two-family dwelling  | Shall apply to single-family dwellings containing at least 6 rooms exclusive of hall and bathroom existing prior to the date of adoption of the Bylaw to accommodate not more than two families, provided that the exterior design of the structure is not changed from the character of a single-family dwelling. | SP        | SP        | SP       |

|  |  |    |    |    |
|--|--|----|----|----|
| 3. Two-family dwellings  |  | SP | SP | SP |
| 4. Multifamily dwellings or apartments                                 |  | N  | N  | SP |
| 5. Mobile home or mobile home park                                     |  | N  | N  | N  |
| 6. Use of Single-Family dwelling as Boarding House / Bed and Breakfast | Renting of one or two rooms and the furnishing of board by a resident family to not more than three non-transient persons provided that sufficient parking is provided on the premises. Use of up to three rooms for provisions of "Bed and Breakfast" facilities for not more than six transient persons, by special permit in Rural Residential.   | Y  | Y  | Y  |
| 7. Use of residential premises for professional purposes               | Professional office or studio of a resident physician, dentist, attorney, architect, artist, musician, engineer, real estate or insurance broker or member of other recognized profession provided that no more than two other persons are regularly employed therein in connection with such use, and further provided that any display or advertising shall be in accordance with provisions of section 5.3. | Y  | Y  | Y  |
| 8. Customary Home Occupation   | Customary home occupation conducted by a resident of the premises provided that no more than one (1) other person is regularly employed therein in connection with such use, and that there is no exterior storage of material or equipment, and there is incidental display of products visible from the street, and that any display or advertising is in accordance with those allowed                      | Y  | Y  | Y  |

|  |   |  |  |  |
|--|---|--|--|--|
|  | for residential uses under Section 5.3. |  |  |  |
|--|---|--|--|--|

| 3.23 Commercial Use  | Definition, Condition   | RR | RN | G  |
|--|---|----|----|----|
| 1. Retail  | Retail store distributing merchandise to the general public.  | N  | N  | Y  |
| 2. Personal Service Establishment  | Craft, consumer, or commercial service establishment dealing directly with the general public.  | SP | SP | Y  |
| 3. Undertaking establishment or funeral home   |   | N  | N  | Y  |
| 4. Animal or veterinary hospital   | Subject to Special Condition No. 1 of Section 3.3   | SP | SP | SP |
| 5. Commercial breeding, sale, grooming or boarding of dogs, cats, or fur-bearing animals | Subject to Special Condition No. 1 of Section 3.3   | SP | SP | SP |
| 6. Commercial Greenhouse   |   | SP | SP | Y  |
| 7. Riding Stable   | Subject to Special Condition No. 1 of Section 3.3   | Y  | SP | N  |
| 8. Restaurant or café  | Whose primary use is serving food and beverages for consumption on the premises   | N  | SP | Y  |
|  | Whose primary use is serving food and beverages for consumption off the premises, provided the applicant shall demonstrate adequate off-street parking and on-site vehicle circulation, the provision of which shall have minimal adverse effects on existing roads, sidewalks and other infrastructure | N  | N  | SP |
| 9. Business or professional office or agency   |   | N  | SP | Y  |

|   |   |    |    |    |
|---|---|----|----|----|
| 10. Bank or other financial institution   |   | N  | N  | Y  |
| 11. Insurance or real estate office   |   | N  | SP | Y  |
| 12. Commercial indoor amusement or recreation place, or place of assembly                   |   | N  | N  | SP |
| 13. Commercial outdoor amusement or recreation place not including an outdoor movie theater |   | SP | SP | SP |
| 14. Hotel or Motel  |   | N  | N  | Y  |
| 15. Beauty and Barber shops   |   | N  | SP | SP |
| 16. The Commercial use of Automatic Amusement Devices                                       | Wherein the use of such devices is the primary commercial use of the premise. | N  | N  | N  |

| <b>3.24 Automotive Sales and Service Use</b>   | <b>Definition, Condition</b>  | <b>RR</b> | <b>RN</b> | <b>G</b> |
|--|---|-----------|-----------|----------|
| 1. Automotive "filling" or service station   | Subject to Special Condition No. 2 of Section 3.3.  | N         | N         | SP       |
| 2. Repair of storage garage for motor vehicles or trailers                           | Which may include body repair, welding or soldering shop for motor vehicles or trailers, provided such operation shall be sufficiently insulated so that any noise, flashing, fumes, gases, smoke and vapor should be confined to the premises. | N         | N         | SP       |
| 3. Salesroom for franchised dealer or recognized agent of motor vehicle manufacturer | Whose principal business is the sale of new motor vehicles, the purchase and sale of secondhand motor vehicles being incidental thereto, together with indoor storage and service facilities reasonably incidental to such salesroom.           | N         | N         | SP       |

|  |  |    |    |    |
|--|--|----|----|----|
| 4. Contracting business and equipment storage yard.  |  | SP | SP | SP |
| 5. Sales room for the purchase of secondhand motor vehicles as an additional use to an automotive repair garage with no more than 1 unit per 2000 square feet of open land area. |  | N  | N  | SP |

| <b>3.25 Industrial Use</b>             | <b>Definition, Condition</b>  | <b>RR</b> | <b>RN</b> | <b>G</b> |
|--|---|-----------|-----------|----------|
| 1. Wholesale warehouse and storage     | Subject to Special Condition No. 1 of Section 3.3   | N         | N         | SP       |
| 2. Any manufacturing or industrial use | Including processing fabrication and assembly, provided that no such use shall be permitted which would be detrimental or offensive or tend to reduce property values by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of explosion fire and subject to Special Condition No. 1 of Section 3.3. | N         | N         | SP       |
| 3. Newspaper printing or job printing  |   | N         | N         | SP       |

| <b>3.26 Institutional, Education, and Recreational Use</b>                  | <b>Definition, Condition</b>                                      | <b>RR</b> | <b>RN</b> | <b>G</b> |
|---|---|-----------|-----------|----------|
| 1. Church or other place of worship   | Parish house, rectory, convent, and other religious institutions. | Y         | Y         | Y        |
| 2. Schools or playgrounds - public, religious, sectarian, or denominational |   | Y         | Y         | Y        |
| 3. Schools - private, including dormitories accessory thereto               |   | SP        | SP        | SP       |

|  |   |    |    |    |
|--|---|----|----|----|
| 4. Nursery school  | Or other use for the day care of children or a privately organized camp, providing any outdoor play area is at such a distance and so screened from any residential structure on an adjoining lot as to avoid nuisance. | Y  | Y  | Y  |
| 5. Public buildings and premises for government use including public libraries   |   | Y  | Y  | Y  |
| 6. Country, golf, swimming, skating, yacht, or tennis club, or other social, civic, or recreational lodge or club, not conducted as a business |   | SP | SP | SP |
| 7. Family campground subject to Special Condition No. 3 of Section 3.3   |   | SP | SP | N  |
| 8. Cable TV Facilities   | The uses defined under Sec. 3.26, No. 8 shall be exempt from dimensional requirements described in Sec. 4.2   | SP | SP | SP |
| 9. Ground-Mounted Solar Energy Facilities (Non-Residential)  |   | SP | SP | SP |
| 10. Wind Energy Systems  |   | SP | SP | SP |

3.27 Energy Generating Equipment: Any equipment, system, design, assembly or device which is used to collect, store and distribute energy derived from solar, hydro power or other alternate energy source, but not wind energy facilities, which shall be governed by Chapter 11 of this bylaw, shall be allowed in all districts provided that the energy derived from such equipment, system, design, assembly or device is primarily for on premise use and conforms to the minimum yard requirements of Section 4.2 and does not constitute a hazard.

Any such equipment, system, design, assembly or device in which the energy derived therefrom will be used primarily or wholly off premises and/or any such

equipment, system, design, assembly or device which cannot reasonably be sited to conform to the minimum yard requirements of Section 4.2, shall be allowed in all districts by Special Permit, upon a determination that the proposed use is in harmony with the general purpose and intent of the bylaw and that such proposed use will not constitute a hazard.

### 3.28 Ground-Mounted Solar energy Facilities (Non-Residential):

#### 3.28.1. Purpose

The purpose of this bylaw is to regulate the development of ground-mounted Solar Energy Facilities by providing standards for their placement, design, construction, operation, monitoring, modifications, and removal; to protect public health, safety or welfare in accordance with M.G.L. c. 40A, § 3; to protect and preserve farmland and open space as promoted by the Commonwealth of Massachusetts; to minimize impacts on the scenic, natural and historic resources of West Brookfield; and in the case of Large-Scale Commercial Solar Energy Facility, to provide adequate financial assurance for the eventual decommissioning of such installations.

**The number of Ground-Mounted Solar Energy Facilities (non-Residential) in the Town Shall be limited to no more than six (6).**

#### 3.28.2. Permit Granting Authority

Subject to the requirements of this bylaw, Solar Energy Facilities shall be permitted by Special Permit only in the RR, RN and G zoning districts.

The Zoning Board of Appeals shall be the Special Permit Granting Authority for a ground-mounted Solar Energy Facility.

#### 3.28.3. Applicability

This bylaw Section 3.28 applies to all proposed Solar Energy Facilities in the Town of West Brookfield. This bylaw also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment. Specifically, Solar Energy Facilities are permitted as follows:

- A. One (1) Solar Energy Facility with nameplate capacity of 250kw or greater for municipal government purposes, sited "As of Right" on one selected parcel of Town-owned land, described in Section 3.28.10(C)(1).
- B. Solar Energy Facilities with nameplate capacity of 250kw or greater shall be sited by Special Permit.
- C. Solar Energy Facilities with name plate capacity of less than 250kw shall be sited by Special Permit.

This bylaw does not pertain to solar photovoltaic panels installed on residential, industrial or commercial structures, i.e., those that are not ground-mounted. Those installations are subject to the State Building Code.

This bylaw does not pertain to an Agricultural Solar Photovoltaic Facility for the exclusive purpose of agriculture, with electrical power generated therefrom to be used on the property where such Solar Energy Facility is located as these are exempt from regulation under zoning bylaw except where necessary to protect public health, safety or welfare in accordance with M.G.L. c. 40A, § 3.

#### 3.28.4. General Requirements for all Ground-Mounted Solar Photovoltaic Installations



The following requirements shall apply to all ground-mounted solar photovoltaic installations:

- A. All Solar Energy Facilities except for those explicitly exempted pursuant to this bylaw shall undergo site plan review, including a public hearing, as part of the special permit process conducted by the Zoning Board of Appeals prior to construction, installation, or modification as provided in Section 3.28.8.
- B. Upon receipt of an application for a Special Permit, the Zoning Board of Appeals may engage, at the applicant's expense, professional and technical consultants, including legal counsel, to assist the Board with its review of the application in accordance with the requirements of M.G.L. c. 44, § 53G. The Zoning Board of Appeals may direct the applicant to deposit funds with the Zoning Board of Appeals for such review at the time the application is accepted and may require the applicant to add additional funds as needed upon notice. Upon approval of the application, any excess amount in the account attributable to the application, including any interest accrued, shall be returned to the applicant.

#### 3.28.5. Compliance with Laws, Bylaws and Regulations

The construction and operation of all ground-mounted Solar Energy Facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to, all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a ground-mounted Solar Energy Facility shall be constructed in accordance with the State Building Code.

#### 3.28.6 Building Permit and Building Inspection

No ground-mounted Solar Energy Facility shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

#### 3.28.7 Fees

The application for a building permit for a ground-mounted Solar Energy Facility must be accompanied by the fee required for a building permit.

#### 3.28.8 Site Plan Review

All ground-mounted Solar Energy Facilities shall undergo site plan review by the Permit Granting Authority prior to construction, installation or modification as provided in this section.

##### A. Required Documents

Pursuant to the site plan review process, the applicant shall also provide the following documents:

1. A site plan showing property lines and physical features, including roads, for the project site;
2. A plan showing proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
3. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any

- potential shading from nearby structures and showing the proposed layout of the facility, views of the site from residences and public ways from which the facility would be visible, and the proposed installation with the planned screening for the facility in place;
4. One-line or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all Massachusetts Electrical Code, 527 CMR § 12.00-compliant disconnects and overcurrent devices;
  5. Technical specifications of the major system components, including the solar arrays, mounting system, and inverter;
  6. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
  7. The names, addresses, telephone numbers, and email addresses of: the owner and applicant, as well as all co-proponents or property owners, if any; and of the proposed system installer and operator and agents authorized to act on their behalf, which information shall be updated within 30 days whenever the land changes ownership, a new installer is retained by the owner or applicant, or a new operator takes over operation of the facility;
  8. Documentation of actual or prospective access and control of the project site (see also Section 3.28.8 (B));
  9. An operation and maintenance plan (see also Section 3.28.8 (C));
  10. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
  11. Proof of liability insurance at an amount approved by the Special Permit Granting Authority; and
  12. Description of financial surety that satisfies Section 3.28.18;
  13. Architectural concepts of sight lines from abutting residential, commercial and industrial structures;
  14. A glare analysis and proposed mitigation, if any, to minimize the impact of glare on affected properties; and
  15. A decommissioning plan.
  16. **Prior to the issuance of a Building Permit the applicant shall provide to the Building Inspector and to the Special Permit Granting Authority Safety Data Sheet (SDS)/Materials Data Sheets (MDS0 for all components of, and products for, construction of the Solar Energy Facility.**

All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts. The Permit Granting Authority may waive documentary requirements, as it deems appropriate.

#### B. Site Control

The applicant, if not the record owner of the property where the Solar Energy Facility is proposed, shall submit documentation evidencing actual or prospective access to and control of the project site sufficient to allow for construction and operation of the proposed Solar Energy Facility, e.g., an easement, lease or license agreement, or an option to enter into the same, fully executed by the record owner of the property and the applicant.

#### C. Operation and Maintenance Plan

1. The applicant shall submit an operation and maintenance plan for the Solar Energy Facility that includes: measures for maintaining safe access to the facility in all weather conditions; storm water controls; vegetation controls; and general procedures for operating and maintaining the facility and surrounding areas of the sites well as general procedures for operational maintenance of the installation.

2. Adherence to the operation and maintenance plan shall be included as a condition of the Special Permit.

D. Insurance

1. At the time of application for a building permit, the applicant shall provide to the Building Inspector evidence of insurance coverage sufficient to build and operate the Solar Energy Facility. Minimum required coverages include: one million dollars (\$1,000,000) in general liability coverage by occurrence and five million dollars (\$5,000,000) in the aggregate; or an excess liability policy in the amount of five million dollars (\$5,000,000).
2. **The Town shall be named as an additional insured in all such policies of insurance.**
3. **It shall be a Condition of every Special Permit that the Special Permit holder shall provide Certificate(s) of Insurance before a Building Permit is issued and at least annually thereafter to evidence that the required insurance coverages are in place. The Special Permit holder shall notify the Town if a policy is going to be cancelled for any reason and shall provide a certificate evidencing replacement coverage is in place before the policy cancellation date.**

3.28.9 Utility Notification

1. No ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Permit Granting Authority that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation applicant's intent to install an interconnected customer-owned generator.
2. Off-grid systems shall be exempt from this requirement.

3.28.10 Dimensional and Density Requirements

A. Setbacks

1. All facilities shall have front, side and rear yard setbacks of at least 50 feet for any fencing that is required by the Zoning Board of Appeals. Fencing shall be required to fully enclose the facility.
2. Solar arrays and related equipment shall have front, side and rear yard setbacks of a minimum of 100 feet.
3. If a front, side or rear lot line abuts one or more residences, the setback for that lot line shall be a minimum of 200 feet.
4. Setback from a public way shall be at least 200 feet.
5. A 50-foot minimum setback shall apply when the abutting parcel has the same owner and the same proposed use as that for the proposed facility.
6. The Zoning Board of Appeals may allow a lesser setback along a property line, where, in its judgment, the proposed facility is not likely to negatively affect an existing or permitted land use on the abutting property.
7. The Zoning Board of Appeals may require a greater setback along a property line, where in its judgment the proposed facility is likely to

negatively affect an existing or permitted land use on the abutting property.

B. Appurtenant Structures

1. All appurtenant structures to ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements.
2. All structures appurtenant to a Solar Energy Facility, including, but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be subject to the set-back and vegetative screening requirements, shall be architecturally compatible with each other.  
Notwithstanding any other provision in the Town of West Brookfield Zoning Bylaw, no batteries or storage of batteries for any Solar Energy Facility shall be installed before July 1, 2021, following the adjournment of the Town of West Brookfield's June 2021 Annual Town Meeting. The purpose of this moratorium is to allow sufficient time to engage in a planning process to address the effects of batteries or storage of batteries in the town and to enact bylaws in a manner consistent with sound land use planning goals and objectives. To the maximum extent legally permissible the Zoning Board of Appeals, as the Town's Special Permit Granting Authority, shall not permit the installation of batteries or storage of batteries during the aforementioned moratorium period. If any provision of this bylaw amendment shall be deemed illegal or unenforceable, such provision shall not affect any other provision hereof, all of which shall remain in full force and effect.
3. Whenever reasonable, structures shall be screened from view by vegetation approved by the Permit Granting Authority and/or joined or clustered to avoid adverse visual impacts on the neighborhood, abutting properties, and public ways.

**4. Battery Storage**

**a. Battery storage shall be considered appurtenant structures to solar energy facilities for the purpose of this Bylaw.**

**b. Battery storage shall not be visible from any public way, private residence, commercial property, or abutting land owned by a land trust or similar entity, which may include Chapter 61A/B/C land if said land is under protection for the purpose or recreation and/or wildlife habitat. Chapter land may be exempt from this if, in the opinion of the Special permit Granting Authority, siting battery storage within view of the Chapter land property boundary is less detrimental to the intent and purpose of this bylaw than siting it elsewhere on the property.**

**c. Battery storage may be visible from a residence only if the battery storage is (per the lease agreement between the solar development company and the property owner) on the same property being leased for the purpose of producing energy and resided on by the owner.**

**d. Battery storage shall not be located within 500' of a residence, school or place children gather, or public park.**

**e. Battery storage will not be located within 200' of any land subject to the Wetland Protections Act (M. G. L. Chapter 131, Section 40),**

vernal pool, water protection district, aquifer, water protection overlay, or private well.

f. If battery storage equipment is replaced, no old equipment may be kept on site. Proper disposal methods shall be used.

g. When battery storage maintenance or replacement occurs, the Fire Department shall be notified in advance. All appropriate permits shall be filed before work is completed, including a confined space if necessary.

h. A decommissioning fee in a cash amount shall be set by the Special Permit Granting Authority and held by the Town Treasurer pursuant to M. G. L. Chapter 44, Section 53 ½. This fee shall include inflation and shall be reviewed every one (1) years and updated as necessary.

i. Sound emitted from a battery storage unit shall be regulated in the following manner:

a. Sound shall be measured at the property line of any abutting properties

b. Sound shall not be over 60 decibel

c. If sound is found to be a nuisance per M. G. L., the solar developer shall have sixty (60) days to mitigate the problem with either built sound barriers, buffering plantings, or changes to the installation.

j. Battery storage shall be buffered with vegetative plantings, berms, sound walls, or other measures if, in the opinion of the Special Permit Granting Authority, buffering is necessary to protect farmland, open space, and viewsheds.

k. Design Standards

a. Battery storage is strongly encouraged to be contained within an accessory structure designed to fit the character and existing architectural style of town. If a structure or vegetation buffering isn't suitable for a site, other measures such as sound walls or opaque fencing are also strongly encouraged to minimize the visual impact.

b. If vegetative buffering is used, battery storage shall be shielded with a 20' vegetative planting area that shall be maintained for the life of the solar project. Plantings shall be specific to New England climate, tolerant or drought conditions, and native when appropriate.

c. Battery storage must comply with 527 CMR 1.00-52

d. Battery storage system shall provide 150% containment per NFPA standards and shall be reviewed by the Fire Department

e. Battery storage must be located in a suitable containment system that complies with NFPA standards and shall be reviewed by the Fire Department

C. Design Standards

1. Town and Private Land

- a. At the time of application for a building permit, the applicant shall provide to the Building Inspector evidence of insurance coverage sufficient to build and operate the Solar Energy Facility. Minimum required coverages include: one million dollars (\$1,000,000) in general liability coverage by occurrence and five million dollars (\$5,000,000) in the aggregate; or an excess liability policy in the amount of five million dollars (\$5,000,000). The Town of West Brookfield shall be named as an additional insured for such policies of insurance, and the applicant shall furnish a certificate of insurance to the Town annually.

2. Large-Scale Solar Energy Facilities:

- a. A Large-Scale Solar Energy Facility means a Solar Energy Facility with a nameplate capacity of 250kw or greater and a solar array footprint that is greater than one acre.
- b. The total number of large facilities in operation concurrently within the Town shall be limited to ten. Included within this number are large facilities that have received a permit to operate from the Zoning Board of Appeals as of the effective date of this Solar Energy Facilities by-law. All large facilities must meet the requirements of Section 4 of the West Brookfield Zoning Bylaw (Dimensional Requirement).

**3. Prohibited Design Features:**

**a. No existing or proposed Solar Energy Facilities shall use, or receive any update or modification for:**

**i. "solar trees", i.e., solar energy facilities using pole-mounted supports for solar panels creating a "tree" with solar panels serving as "leaves";**

**4. Information Requirements SDS/MDS**

**a. The Building Inspector, Special Permit Granting Authority, Board of Health and Planning Board may request such additional information as needed to evaluate the Special Permit application.**

D. Siting Requirements

1. One of the following conditions must be met:

- a. The location of the facility, due to topography, tree lines and/or vegetation, cannot reasonably be seen from a residence or public way during all seasons of the year; or
- b. The location of the facility is so distant from a residence or public way, and/or so obscured by topography, tree lines, and/or vegetation, that the visual impact of the facility is rendered negligible, as determined by the Zoning Board of Appeals, during all seasons of the year.

E. Screening:

- 1. Where the front, side or rear yard faces and/or abuts one or more

residences or a public way, a landscape architectural plan will be required. The plan's object shall be to minimize to the greatest extent reasonable the visual impact of the Solar Energy Facility.

2. The plan shall show how the facility will be screened from view from facing residences and public ways during all seasons of the year, using mature plantings, vegetation, berms, fencing, land contouring, and strategic placement of the solar panels and appurtenant structures.

#### F. Lighting

1. Lighting of solar photovoltaic installations limited to that required for safety and operational purposes and shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.
2. Lighting shall not be intrusive in any way on abutting properties.
3. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

#### G. Signage

1. Signs shall comply with Section 5.3 of the West Brookfield Zoning Bylaws (Signs).
2. The following signs shall be required:
  - a. Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warnings of any danger, and;
  - b. Educational signs providing information about solar photovoltaic panels and the benefits of renewable energy.
3. Signs for solar photovoltaic installations shall not exceed sixteen (16) square feet in area and shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

#### H. Land Clearing, Soil Erosion and Habitat Impacts

1. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.
2. The installation design shall minimize fragmentation of open space areas and shall avoid permanently protected open space when feasible.
3. The installation shall be located in such a manner that it does not have significant negative impacts on rare species in the vicinity.

#### I. Environmental Impacts

1. Proposed structures (including panels) shall be integrated into the existing terrain and surrounding landscape by minimizing use of and impact to wetlands, steep slopes, and hilltops; protecting visual amenities and scenic views; minimizing tree, vegetation, and soil

removal; and minimizing grade changes.

2. Limitations as to cutting trees, removing vegetation, land clearing and prevention of soil erosion shall be included as conditions in the Special Permit.

### 3.28.11. Utility Connections

Reasonable efforts, as determined by the Permit Granting Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider.

### 3.28.12. Safety and Environmental Standards

#### A. Emergency Services

1. The applicant shall provide a copy of the project summary, operation and maintenance plan approved by the Zoning Board of Appeals, electrical schematic, and site plan to the West Brookfield Fire Chief and Police Chief. The applicant and operator shall cooperate with local emergency services in developing an emergency response plan which will ensure that emergency personnel have immediate, 24-hour access to the facility.
2. All means of shutting down the solar photovoltaic installation shall be clearly marked in the plan. The applicant shall identify an official representative for public inquiries throughout the life of the installation.
3. The operation and maintenance plan shall be reviewed annually with local emergency officials and revised as necessary. Safety personnel may request at any time that the operator provide onsite training in accessing and shutting down the solar installation. All means of shutting down the solar energy facility shall be clearly marked. The operator shall identify a qualified contact person who can provide assistance to local officials during an emergency. The operator shall update the contact information immediately, and so notify the West Brookfield Fire Chief and Police Chief, whenever there is a change in the contact person.

#### B. Noise and Glare

1. There shall be no increase in background noise measured "A weighted" at the property line or a noise-sensitive receptor (for example, a higher terrain location that may be impacted or a location with sensitive persons such as a school). A noise analysis must be provided by the applicant and approved by the Zoning Board of Appeals.
2. The solar panels shall be positioned in such a way that there is no possibility of glare on a residence or public way at any time during the day.

### 3.28.13. Monitoring and Maintenance

- A. The applicant shall maintain its solar photovoltaic installation facilities in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures and visual screening components. The operator shall be responsible for maintaining adequate access for emergency vehicles and



maintenance equipment throughout the year with an annual inspection by the Fire Chief and the Police Chief. The applicant shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

- B. The applicant shall annually file an operation and maintenance report with the Zoning Board of Appeals no later than 45 days after the end of the calendar year, confirming that the operation is ongoing and has not been abandoned, and that the operation and maintenance plan is being followed. Failure to file the report within the required time may be considered evidence that the facility has been abandoned and the Zoning Board of Appeals may take action as described in Section 3.28.16.
- C. The applicant shall comply with any and all federal, Massachusetts and local installation and operation requirements, whether adopted before or after approval of a Special Permit.
- D. The Town, through its boards and agents, shall be permitted to enter the premises in the event of emergency, or otherwise upon 48 hours' written notice to the applicant for the purpose of monitoring compliance with the terms of the Special Permit.

#### 3.28.14. Modifications

- A. All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Permit Granting Authority and building inspector.
- B. A change to the specifications of any of the equipment installed at the site or a change that alters the type, configuration or size of the facility shall be considered a material modification.
- C. A change of the supplier for any of the equipment installed at the site shall not be considered a material modification. The Zoning Board of Appeals may specify in the special permit, the specific kinds of, or standards for, modifications which shall be subject to further approval.

#### 3.28.15. Discontinuance and Decommissioning.

- A. Any solar energy facility that has reached the end of its useful life or has been discontinued, decommissioned, or abandoned, as defined in Section 3.28.16 shall be removed no more than 150 days after the date of discontinued operations.
- B. The applicant and/or the land owner shall notify the Zoning Board of Appeals and building inspector by certified mail of the date of discontinued operations or decommissioning of the Solar Energy Facility together with plans for removal of the same. Removal of the Solar Energy Facility upon discontinuance, decommissioning, or abandonment of a Solar Energy Facility shall include:
  - 1. Physical removal of all ground-mounted solar photovoltaic installations, structures, equipment, and transmission lines from the site, including, but not limited to, the solar arrays, structures, appurtenant equipment, security barriers, and electrical transmission line above and below grade; and
  - 2. Stabilization or re-vegetation of the site as necessary to return the site to its original state, and minimize erosion; and

3. Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal laws and regulations.

The Permit Granting Authority may allow the applicant to leave landscaping or designated below-grade foundations to minimize erosion and disruption to vegetation.

#### 3.28.16. Abandonment

- A. It shall be a condition of the Special Permit that the applicant shall provide to the Permit Granting Authority no less than 90 days' notice of dissolution of the applicant's entity or change of entity form, transfer of interest in the Solar Energy Facility or assignment of any interest in the land where the Solar Energy Facility is located, or proposed decommissioning of the Solar Energy Facility. Failure to provide such notice within the required time may be considered evidence that the facility has been abandoned and the Zoning Board of Appeals may take action as described in Section 3.28.16.B-E and 3.28.17.E.
- B. A solar photovoltaic installation shall be considered abandoned:
  1. six months after the occurrence of any of the events set forth in Paragraph A, unless written notice of extenuating circumstances regarding the same is delivered within such time; or
  2. if solar photovoltaic installation fails to operate for more than six months without the written consent of the building inspector.
- C. If the applicant 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, or its agents, may enter the property and physically remove all equipment and structures that comprise the ground-mounted solar photovoltaic installation and restore the site to its original state.
- D. It shall be a condition of the Special Permit that the applicant and landowner shall agree to allow entry to remove an abandoned installation.
- E. The Town's cost for the removal will be charged to the property owner in accordance with the provisions of M.G.L.c 40, § 58.
- F. If the owner or his authorized agent fails to comply with an order issued pursuant to M.G.L. c. 139, § 3 and the town demolishes or removes any burnt, dangerous or dilapidated building or structure or secures any vacant parcel of land from a trespass, a claim for the expense of such demolition or removal, including the cost of leveling the lot to uniform grade by a proper sanitary fill, or securing such vacant parcel shall constitute a debt due the city or town upon the completion of demolition, removal, or securing and the rendering of an account therefor to the owner or his authorized agent, and shall be recoverable from such owner in an action of contract pursuant to M.G.L. c. 139, § 3A as a tax lien on the property.

#### 3.28.17. Financial Surety

- A. At the time of application, the applicant shall submit a decommissioning plan which shall include a fully inclusive estimate of the costs associated with decommissioning and removal of the proposed solar energy facility prepared by a professional engineer licensed in the Commonwealth of Massachusetts with solar development experience,

which estimate shall be subject to review and approval by a similarly qualified professional engineer retained by the Zoning Board of Appeals at the applicant's expense.

- B. It shall be condition of the Special Permit that upon approval of the Special Permit the applicant shall furnish security in the form of a cash deposit to secure the orderly decommissioning of the Solar Energy Facility, and prior to the issuance of a building permit, the sum of US \$35.00 for each crystal silicon panel and US \$62.00 per for each cadmium panel; and the sum of US \$40.00 for each panel comprised of any other material not listed herein. Which sum shall be held by the by the Town Treasurer pursuant to M.G.L. c. 44, § 53 ½ to cover the cost of removal in the event the town must remove the installation and remediate the landscape.
- C. Prior to the issuance of a Building Permit that the applicant shall furnish estimated costs of decommissioning, and thereafter annually no later than 45 days after the end of the calendar year and that an amount equal to the balance of such updated estimated cost of decommissioning less the amounts reserved, if any, will be reserved for decommissioning and site restoration. The amount required to be deposited in said account shall be determined from calculations based upon the all-inclusive costs of removal of the solar panels, removal of all electrical connections and equipment, and the legal proper disposal of all equipment and waste. The calculation shall also include all costs for returning the landfill cap and property to pre-project conditions. The calculations shall include all professional costs, labor costs, trucking, hauling, and disposal costs, landscaping costs, and any other cost not mentioned but which is expected to be incurred.
- D. The surety shall be kept in place until such time as the decommissioning work has been completed, provided, however, that funds on deposit with the Town may be used to offset the costs of the decommissioning. Upon disassembly or decommissioning of the solar field by the Town, any monies remaining shall be returned after one year, given proof of ownership. Monies remaining unclaimed one year from after decommissioning shall be retained by the Town. Such surety shall not be required for municipally owned or state-owned facilities.
- E. The Zoning Board of Appeals shall be authorized to expend from such fund for removal of an abandoned Solar Energy Facility and shall comply with reporting requirements imposed by the Town Treasurer.
- F. Upon approval of the removal of a Solar Energy Facility by the applicant any excess amount in the account attributable to the application, including interest accrued, if any, shall be returned to the applicant.

### 3.28.18. Severability

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby.

3.3 Special Conditions: Special Conditions shall apply as indicated in Section 3.2 to such uses as are designated therein as being subject to one or more of the following Special Conditions:

- 1. The minimum lot size on which such uses will be permitted shall be 2 acres. All buildings not used for residential purposes shall be placed a

minimum of 40 feet from the front, side and rear lot lines.

2. All setback requirements of the district in which the use subject to this Special Condition is located shall prevail, and in addition no filling pump or any structure may be located within 30 feet of a property line or public way.

3. The minimum lot size on which such uses will be permitted shall be 50 acres.

#### **SECTION 4. DIMENSIONAL REQUIREMENTS**

**4.1 Basic Requirements:** No building or structure in any district shall be built, located or enlarged which does not conform to the dimensional requirements as set forth in Sections 4.2 and 4.3 of this bylaw, except those lots in legal existence with structures thereon at the adoption of the bylaw need not meet the sideline requirements and except as provided in Section 9 of the Open Space Residential Bylaw.

#### **4.2 Schedule of Dimensional Requirements**

Rural Residence:

90,000 sq. ft.-Minimum Lot Size  
225 feet - Minimum Lot Frontage  
70 feet - Minimum Front Yard  
50 feet - Minimum Side Yards  
50 feet - Minimum Rear Yard  
2-1\2 - Maximum Stories in Height  
35 feet - Maximum Height

Neighborhood Residence:

45,000 sq. ft.- Minimum Lot Size  
175 feet - Minimum Lot Frontage  
40 feet - Minimum Front Yard  
30 feet - Minimum Side Yards  
30 feet - Minimum Rear Yard  
2-1/2 - Maximum Height in Stories  
35 feet - Maximum Height

General:

25,000 sq. ft.- Minimum Lot Size  
125 feet - Minimum Lot Frontage  
30 feet - Minimum Front Yard  
20 feet - Minimum Side Yards  
20 feet - Minimum Rear Yard  
3 - Maximum Height in Stories  
40 feet - Maximum Height

#### **4.3 Modifications to Dimensional Requirements**

4.31 Corner Lots: A corner lot shall maintain front yard requirements for each street frontage; at least one of the remaining yards shall be a rear yard.

4.32 Projections: Nothing herein shall prevent the projection of steps, stoops (not exceeding thirty (30) square feet in area), eaves, cornices, window

sills or belt courses into any required yard.

4.33 Location of Accessory Buildings: No accessory building shall be located in a front yard except for property abutting the shoreline of Lake Wickaboag or Brookhaven Pond, in which case an accessory building may be allowed by Special Permit issued by the Board of Appeals.

1. Accessory buildings containing six hundred (600) square feet or less of gross floor area may be located in required side and rear yards but not closer than ten feet (10') to a property line.

2. For lots in residential use that have at least four acres and five hundred feet (500') of frontage, accessory buildings of any size may be located within twenty feet (20') of the side or rear lot line provided the principal structure complies with all yard requirements.

4.34 Multifamily Dwellings: In the case of multifamily dwellings there shall be provided for each additional unit constructed in excess of two, an additional land area of not less than ten thousand (10,000) square feet.

4.35 Height: Nothing herein shall prevent the erection of chimneys, spires or antennas which if attached to a building shall not exceed a combined height of 100 ft.

**4.4 Setback from Water Course or Water Body:** In no case shall any primary use building or structure be located less than 25 feet from the normal banks of any water course or water body unless a greater distance is required by the Flood Plain District, Section 7 of this bylaw. Accessory buildings or structures, with the exception of boathouses and docks, shall be located no less than 15 feet from any water course or water body unless a greater distance is required by the Flood Plain District, Section 7 of this bylaw.

## **SECTION 4.5**

### **WEST BROOKFIELD OPEN SPACE RESIDENTIAL DEVELOPMENT BYLAW**

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#### **1. Purpose and intent.**

A. The Primary Purposes for this bylaw are the following:

- (1) To allow for greater flexibility and creativity in the design of residential developments;
- (2) To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, water bodies and wetlands, and historical and archaeological resources;
- (3) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features;
- (4) To minimize the total amount of disturbance on the site;
- (5) To further the goals and policies of the Town of West Brookfield Local Comprehensive Plan and Open Space and Recreation Plan;
- (6) To facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient

manner.

B. The Secondary Purposes for this bylaw are the following:

- (1) To preserve and enhance the community character;
- (2) To protect and enhance the value of real property;
- (3) To provide for a diversified housing stock;

## **2. Definitions**

Basic Maximum Number - The number of units that would be allowed on a site using the standard Zoning Bylaw Provisions and/or Subdivision Rules and Regulations as determined by a Yield Plan.

Structural Stormwater Management Techniques - These techniques generally require heavy infrastructure and often result in significant alteration of the site hydrology, including, but not limited to, catch basins, subsurface piping, stormwater inlets, and subsurface leaching facilities.

Major Residential Development - Any new development that will create more than three (3) residential lots.

Non-Structural Stormwater Management Techniques - Stormwater management techniques that use natural pre-treatment of stormwater in conjunction with on-site groundwater recharge to mimic pre-development drainage to the greatest practicable extent.

Passive Recreation: As defined by MGL Chapter 61B these uses include hiking, camping, nature study and observation, boating, golfing, non-commercial youth soccer, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying, including hang gliding, archery and target shooting. Such recreational use shall not include horse racing, dog racing, or any sport normally undertaken in a stadium, gymnasium or similar structure.

## **3. Applicability**

- A. Any Major Residential Development must be permitted by issuance of a Special Permit from the Planning Board for either Conventional Development or OSRD in accordance with this bylaw. Applicants for a Major Residential Development shall submit both a conventional plan and an OSRD plan in accordance with the applicable provisions of this Bylaw.
- B. Developments of 3 lots or smaller may also apply for an OSRD Special Permit subject to the following criteria:
  - (1) Contiguous Parcels. To be eligible for consideration as an OSRD, the tract shall consist of a parcel or set of contiguous parcels. The Planning Board may determine that two or more parcels separated by a road or other man-made feature are "contiguous" for the purpose of this section, if they will serve as a singular resource and effectively satisfy the Purpose and Intent of this bylaw as listed in Section 1.
  - (2) Land Division. To be eligible for consideration as an OSRD, the tract may be a subdivision or a division of land pursuant to G.L. c. 41, § 81P provided, however, an OSRD may also be permitted when the property is held in condominium, cooperative ownership or other form where the property is not subdivided.

#### **4. Pre-application.**

- A. Conference. The applicant shall arrange a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Historical Commission, and Stormwater Authority. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence discussions with the Planning Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed development including both conventional and OSRD models, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. The Planning Board may engage technical experts at the applicant's expense to review the informal plans of the applicant and to facilitate submittal of a formal application for a Conventional or OSRD Special Permit.
- B. Submittals. In order to facilitate review of the Special Permit at the pre-application stage, applicants shall submit the following information:
- (1) Site Context Map. This map shall illustrate the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it shall show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.
  - (2) Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map shall locate and describe noteworthy resources that could be protected through sensitive subdivision layouts. These resources shall include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property. Where appropriate, photographs of these resources should accompany the map. By overlaying this plan onto a development plan, the parties involved can clearly see where conservation priorities and desired development overlap/conflict.
  - (3) Other Information. In addition, applicants are invited to submit the information set forth in 5.A. in a form acceptable to the Planning Board.
- C. Site Visit. Applicants shall arrange a site visit by the Planning Board and/or its agents in order to facilitate pre-application review of the Special Permit. The Planning Board shall invite the Conservation Commission, Board of Health, Historical Commission, and Stormwater Authority.
- D. Design Criteria. The design process and criteria set forth below in Sections 6 and 7 should be discussed by the parties at the pre-application conference and site visit.

#### **5. Major Residential Development/OSRD Application for Special Permit.**

The Planning Board, acting as the Special Permit Granting Authority (SPGA), may authorize a Conventional Development Special Permit or an OSRD Special

Permit pursuant to the procedures outlined below.

A. Application. An application for the Special Permit shall be submitted on the form(s) provided by the Planning Board. Applicants for OSRD shall also file with the Planning Board five (5) copies of the Concept Plan. The Concept Plan shall include a Conventional Yield Plan and an OSRD Sketch Plan, described below, prepared by a multi-disciplinary team including a registered land surveyor, a registered professional engineer and a registered landscape architect. The applicant shall also submit both the Site Context Map and Existing Conditions/Site Analysis Map prepared according to Section 4.B. above. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps.

(1) Yield Plan. The Basic Maximum Number of allowable units shall be derived from a Yield Plan. The Yield Plan shall show a conventional development conforming to the applicable Zoning Bylaw provisions and Subdivision Rules and Regulations to show the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional approach. The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots resulting from the design and engineering specifications shown on the Yield Plan. The Yield Plan shall contain, at a minimum, the following information:

(a) Parcel boundaries, north point, date, legend, title "Yield Plan," and scale.

(b) The name and address of the record owner or owners, the applicant, and the design engineer and/or land surveyor that prepared the plan.

(c) The names, approximate location, and widths of adjacent streets.

(d) Existing topography at 2-foot contour intervals.

(e) Map of soils using NRCS soils mapping.

(f) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the Yield Plan.

(g) Lot lines with approximate areas and frontage dimensions, or unit placements and proposed common areas.

(h) Location and extent of parking, landscaping, stormwater management, water supply and wastewater management service areas that would be required to accommodate the use.

(i) If available, the location and results of any test pit investigations for soil profiles, percolation rates and determination of seasonal high ground water levels.

(2) Sketch Plan. The Sketch Plan shall address the general features of the land, and give approximate configurations of the proposed lots, of unit placements if treated as a condominium, of open space, and roadways. The Sketch Plan shall incorporate the Four-Step Design Process, according to Section 6 below, and the Design Standards, according to Section 7 below, when determining a proposed design for the development. In addition to those requirements for a Yield Plan listed in Section 4.A(1), a Sketch Plan shall contain the following information:



(a) The proposed topography of the land shown at a contour interval no greater than two feet. Elevations shall be referred to mean sea level.

(b) The location of existing landscape features, including forests, farm fields, meadows, wetlands, riverfront areas, water bodies, archaeological and historic structures or points of interest, rock outcrops, boulder fields, stone walls, cliffs, high points, major land views, forest glades, major tree groupings, noteworthy tree specimens, and habitats of endangered or threatened wildlife, as identified as primary and secondary resources according to Section 6.A. Proposals for all site features to be preserved, demolished, or altered shall be noted on the Sketch Plan.

(c) The existing and proposed lines of streets, ways, common driveways, easements and any parcel of land intended to be dedicated for public use or to be reserved by deed covenant for use of all property owners in the subdivision, or unit development, or parcels of land or lots to be used for any purpose other than private residential shall be so designated within the subdivision in a general manner.

(d) Proposed roadway grades.

(e) Official soil percolation tests for the purpose of siting wastewater treatment options shall be required as determined by the Planning Board. However, a narrative explanation shall be prepared by a Massachusetts Certified Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods will be utilized.

(f) A narrative explanation prepared by a Massachusetts Certified Professional Engineer proposing systems for stormwater drainage and likely impacts onsite and to any abutting parcels of land. For example, the narrative will specify whether Structural or Non-structural Stormwater Management Techniques will be used and the number of any detention/retention basins or infiltrating catch basins; it is not intended to include specific pipe sizes. Any information needed to justify this proposal should be included in the narrative. The approximate location of any stormwater management detention/retention basins shall be shown on the plan and accompanied by a conceptual landscaping plan.

(g) A narrative explanation prepared by a Massachusetts Certified Professional Engineer, detailing the proposed drinking water supply system.

(h) A narrative explanation of the proposed quality, quantity, use and ownership of the open space. Open space parcels shall be clearly shown on the plan.

(i) All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative.

(j) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds or condominium

documents, with an accompanying narrative explaining their general purpose.

(k) A narrative indicating all requested waivers, reductions, and/or modifications as permitted within the requirements of this bylaw.

- B. Procedures. Whenever an application for a Conventional/ OSRD Special Permit is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plan, and other documentation, to the Board of Health, Conservation Commission, Zoning Officer, Historical Commission, Building Inspector, Highway Department, Police Chief, Fire Chief, and Stormwater Authority, for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board within thirty-five (35) days of receipt of the reviewing party of all of the required materials. Failure of the reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Planning Board is held prior to the expiration of the review period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that review period. The Decision and Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.
- C. Site Visit. Whether or not conducted during the pre-application stage, the Planning Board shall conduct a site visit during the public hearing. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or its agents.
- D. Other Information. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for any application for a Special Permit for Conventional or OSRD Special Permit with the public hearing required for approval of a definitive subdivision plan.

## **6. Design Process.**

At the time of the application for the Special Permit, in conformance with Section 5.A., applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a multidisciplinary team of which one member must be a certified Landscape Architect and considered in determining the layout of proposed streets, house lots, unit placement if treated as a condominium, including designation of all common areas and open space.

- A. Identifying Conservation Areas. Identify land to be preserved as Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural
- B. Landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archaeological sites and scenic views) shall be identified and

delineated. The Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

- C. Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community.
- D. Aligning the Streets and Trails. Align streets in order to access the house lots or units. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.
- E. Lot Lines. Draw in the lot lines using assumed lot lines if the ownership is in condominium, cooperative or other similar form of common ownership.

## **7. Design Standards.**

The following Generic and Site Specific Design Standards shall apply to all Sketch Plans for OSRD's and shall govern the development and design process:

### **A. Generic Design Standards.**

- (1) The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, surface water buffers, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.
- (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 and vistas on or off the subject parcel.
- (3) Mixed-use development shall be related harmoniously to the terrain and the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings.
- (4) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.
- (5) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

### **B. Site Specific Design Standards.**

- (1) Mix of Housing Types. The OSRD may consist of any combination of single-family and two-family structures in Rural Residential and Neighborhood Residential Districts. Multifamily structures of not more than four (4) units may also be permitted by the Planning Board in the General District if they serve the purpose and intent of the OSRD Bylaw stated in Section 1.
- (2) Parking. Each dwelling unit for single or two-family homes shall be served by two (2) off-street parking spaces. Parking spaces in front

of garages may count in this computation. For dwelling units with fewer than two bedrooms AND in structures containing four or more units, the applicant shall provide two (2) parking spaces per unit. Calculations for parking spaces in these developments shall be rounded up to the nearest integer where necessary. The Planning board may choose to modify these requirements during the review process in response to conditions specific to an individual proposal.

- (3) Drainage. The Planning Board shall encourage the use of Non-structural Stormwater Management Techniques and other Low Impact Development techniques that reduce impervious surface and enable infiltration where appropriate.
- (4) Screening and Landscaping. All structural surface stormwater management facilities shall be accompanied by a conceptual landscape plan.
- (5) On-site Pedestrian and Bicycle Circulation. Walkways, trails and bicycle paths shall be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate.
- (6) Disturbed Areas. Every effort shall be made to minimize the area of disturbed areas on the tract. A disturbed area is any land not left in its natural vegetated state.

#### **8. Open space requirements.**

- A. Open Space Requirement. A minimum of fifty percent (50%) of the site shall be open space. The percentage of this open space that can be wetland shall not exceed the percentage of wetland for the entire site under existing conditions as shown on the Sketch Plan.
- B. Description of Restriction on Open Space. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a permanent Conservation or Agricultural Preservation Restriction in accordance with G.L. c. 184 § 31, approved by the Planning Board and Board of Selectmen/Town Council and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, or Department of Agricultural Resources. Such land shall be perpetually kept in an open state, shall be preserved exclusively for the purposes set forth herein, and shall be maintained in a manner which will ensure its suitability for its intended purposes. Any proposed open space that does not qualify for inclusion in a Conservation Restriction or Agricultural Preservation Restriction or that is rejected from inclusion in these programs by the Commonwealth of Massachusetts shall be subject to a Restrictive Covenant, which shall be approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the Town.
  - (1) The open space shall be contiguous. Open Space will still be considered contiguous if it is separated by a roadway or an accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing noncontiguous open space will promote the goals of this bylaw and/or protect identified primary and secondary conservation areas.
  - (2) The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation uses at the discretion of the planning board, aquifer protection,

agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths) so long as it supports the primary and secondary purposes of the OSRD and is consistent with state and local level environmental protections.

- (3) Wastewater and stormwater management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required.

C. Ownership of the Open Space. The open space shall, at the Planning Board's election, be conveyed to:

- (1) The Town or its Conservation Commission;
- (2) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
- (3) A corporation, homeowners association or trust owned jointly or in common by the owners of lots or units within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot and unit. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such homeowners association, trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.
- (4) A private owner for agricultural, horticultural or forestry.

D. Maintenance of Open Space. In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance.

## **9. Reduction of Dimensional Requirements.**

Applicant may propose to modify lot size, unit placement, shape, and other dimensional requirements for lots within an OSRD, subject to the following limitations:

- A. Frontage. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw. The minimum frontage may be

reduced from the frontage otherwise required in the zoning district; provided, however, that no lot shall have less than 50 feet of frontage.

- B. Setbacks. Each lot shall have at least fifty percent (50%) of the required setbacks for the District unless a reduction is otherwise authorized by the Planning Board. Where structures containing three to four dwelling units are being proposed, the side lot lines between units may be 0 feet, however the distance between structures shall be a minimum of 20 feet.
- C. Lot Size. Lots may be reduced in area. The minimum lot size in the Rural Residential District shall be 40,000 square feet. The minimum lot size in the Neighborhood Residential District shall be 20,000 square feet. The minimum lot size in the General District shall be 12,000 square feet.

#### **10. Decision of the Planning Board.**

A. Criteria for Approval. The Planning Board will review all data and hold a public hearing in accordance with M.G.L.c.40A, section 9. Prior to the close of the public hearing, the Planning Board shall recommend the development plan (either the Yield Plan showing Conventional Development or the Sketch Plan showing OSRD), that it considers the most beneficial to the Town. The public hearing will be continued for seven days, and during this time the Applicant shall then elect which plan he wishes to pursue and communicate this choice in writing to the Board. The Board may approve such Plan with or without conditions. The Board shall disapprove both plans only if it finds that either the Conventional Development (Yield Plan) or OSRD Development (Sketch Plan) is not a good faith design, or that the Plan that the Applicant elects to pursue does not conform to the requirements of the Bylaw. The Board may grant a Special Permit for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract than a conventional subdivision of the property and finding that the following eight (8) factors are present:

- (1) That the OSRD achieves greater flexibility and creativity in the design of residential or unit developments than a conventional plan;
- (2) That the OSRD promotes permanent preservation of open space, agricultural land, forestry land, other natural resources including water bodies and wetlands, and historical and archaeological resources;
- (3) That the OSRD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
- (4) That the OSRD reduces the total amount of disturbance on the site;
- (5) That the OSRD furthers the goals and policies of existing community planning documents including, but not limited to, the Town's Local Comprehensive Plan, Open Space and Recreation Plan, Planned Production Strategy for Affordable Housing and EO418 Community Development Plan;

- (6) That the OSRD facilitates the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
- (7) That the Concept Plan and its supporting narrative documentation complies with all sections of this zoning bylaw.
- (8) That the proposed design does not create undo risk to public health, safety and welfare.

B. Relationship between Concept Plan and Definitive Subdivision Plan. Any Special permit for a Major Residential Development or any Special Permit for OSRD that is granted a Special Permit and shows a subdivision must be followed by the submittal of a Definitive Subdivision plan in accordance with the Subdivision Rules and Regulations of the Town. The Planning Board will review all data and hold a public hearing in accordance with M.G.L.c.40A, section 9. An OSRD Special Permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan. A substantial variation shall be any of the following:

- (1) An increase in the number of building lots and/or units;
- (2) A significant decrease in the open space acreage;
- (3) A significant change in the lot layout or unit placement;
- (4) A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
- (5) Significant changes to the stormwater management facilities; and/or
- (6) Significant changes in the wastewater management systems.

**12. Severability.**

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

**SECTION 5. SPECIAL REQUIREMENTS**

**5.1 SITE PLAN REVIEW**

**5.11 General:**

A site plan review is a prerequisite for a special permit, when a special permit is required by the Board of Appeals, for uses in any District as specified in Section 3.2.

Such Site Plan review shall be in accordance with the standards set forth below and only after a public hearing by the Board of Appeals, with due notice given, on application in writing to said Board for site plan review of any initial proposal, or proposal for exterior alteration or building. Approval of such site plan or expansion or alteration thereof shall be endorsed by said Board in writing on the plan with such conditions as the Board may impose.

Each application to the Board of Appeals for site plan review of such an initial proposal or such an alteration or expansion proposal shall be submitted in duplicate in writing and shall include the following information which is to

be prepared by a registered Engineer or Registered Land Surveyor, registered architect, or registered landscape architect.

Applicants shall submit to the Board of Appeals plans, drawings, supporting documents and other related information as specified above no later than the time of the public hearing.

1. A diagram and a statement of the ownership, area, dimensions, boundaries and principal elevations of land for which site plan review is sought, with the names of all adjoining owners as found in the most recent tax list and the locations of existing public or private ways nearest such land;

2. A plan, profile and representative cross-sections of all proposed driveways and parking areas, loading areas, service areas and proposed surface drainage systems.

3. A diagram (which may be the same plan) showing to scale the true location, ground coverage outline and dimensions of buildings or structures then proposed to be erected together with generalized indications of all future additions or expansions then contemplated; other information shall

be shown as may be required to insure compliance with all provisions of this bylaw and the purposes of the Site Plan Review.

4. Plan showing proposed circulation of traffic within the proposed development and in all public ways adjacent thereto.

5. All facilities for sewerage, refuse and other waste disposal.

6. Provisions for surface water run off and applicable landscape features.

#### **5.12 Notice of Hearing:**

Notice of public hearing on each such application shall be given by the Board of Appeals in the manner prescribed in Section 17 of Chapter 40A of the General Laws.

#### **5.13 Building Permit:**

No permit to build or alter or expand any building or structure requiring a site plan review under this bylaw shall be issued by the Board of Selectmen or their designated agent until he shall have received from the Board of Appeals a written statement of final approval by said Board. The Board of Selectmen or their designated agent shall enforce the fulfillment of any conditions or revisions which the Board of Appeals may impose in order to satisfy any of the factors upon which the Site Plan review is based.

#### **5.14 Review:**

In reviewing each such application the Board of Appeals shall study the site plan with reference to the health, safety and welfare of the prospective occupants, the occupants of neighboring properties and users of the adjoining streets or highways, and the welfare of the Town generally including its amenities. In addition to compliance with all of the land space and building requirements set forth herein the Board shall look for:

1. Traffic safety and ease of access at street and highway entrances and exits of driveways, taking account of grades, sight distances, and distances between such driveway entrances, exits and the nearest existing street or highway intersections;

2. Safety and adequacy of driveway layout, off-street loading areas for materials and products, off-street loading sites for customers, and



sufficiency of access for service vehicles such as electricity, gas, fuel, telephone, laundry, rubbish removal, water, sewer, fire, police, ambulance or other routine or emergency vehicles;

3. Safe and adequate means of disposal of sewage, of garbage and rubbish, safety and adequacy of water supply and distribution, and of fire fighting facilities on the site, safety and adequacy of heating and ventilating as proposed, also of cooking facilities, if such are to be furnished;

4. Assurance of positive storm water drainage and snow-melt runoff from all driveways and from all parking and loading areas on the site.

#### **5.15 Report by Planning Board:**

The Board of Appeals shall within 10 (ten) days of receiving the plan submit 1 (one) copy to the Planning Board and shall within 30 (thirty) days meet with them to consider the plan, which if it complies with the provisions and requirements of this bylaw, may be approved by the Board of Appeals with or without conditions; if it does not comply with the provisions and requirements of this bylaw, it can be disapproved or approved with conditions which will bring about compliance. The applicant shall be notified within sixty (60) days from the date of submission of the plan of action taken or approval will be assumed. A building permit shall not be issued in a case requiring site plan approval unless such approval has been obtained.

#### **5.2 ACCESSORY BUILDINGS**

Every private outdoor inground swimming pool shall be enclosed by a fence or wall, it may be the pool wall itself, of not less than 48 inches in height and shall be equipped with a self-latching device located not less than 42 inches aboveground. A natural barrier, hedge or other protective device may be used so long as the degree of protection is not less than the protection afforded by the enclosure, gate and latch herein described as to be determined by the Building Inspector.

#### **5.3 SIGNS**

**PURPOSES:** This Section of this by law is adopted for the regulation and restriction of signs within the Town of West Brookfield in order to prevent or minimize damage to the environment, to protect and enhance the visual environment of this town and the safety, convenience and welfare of its residents.

**AUTHORITY AND INTERPRETATION:** This Section of this bylaw is adopted as a general bylaw pursuant to Amendments 50 and 89 of the Constitution of the Commonwealth and Chapter 93, 93D, 40, and 43B of the General Laws of Massachusetts and any and all other applicable enabling authority. This Section of this bylaw is hereby declared to be remedial and protective, and to be so construed and interpreted as to secure the beneficial interests and purposes hereof.

Any exterior sign, lettered surface, or other display used to identify or advertise shall, except as expressly provided, conform to the following restrictions:

A. The following signs are permitted in any district:

1. One (1) sign displaying the street number or name of the occupant of the premises or both, not exceeding two (2) square feet in area. The sign may be attached to the building or may be on a rod or post and shall be located at least three (3) feet from the street lot line.

2. One (1) sign announcing professional or home occupations, or membership of the occupant, not exceeding five (5) square feet in area. In the case of a professional office building, each use therein shall be entitled to a

sign not to exceed five (5) square feet in area.

3. One (1) temporary "For Sale", "For Rent" or "Sold" sign, not exceeding six (6) square feet in area and advertising only the premises on which the sign is located and information pertaining to the seller or agent.

4. One (1) unlighted temporary sign of an architect, engineer or contractor, erected during the period such person is performing work on the premises on which the sign is erected, shall be permitted provided it shall not exceed ten (10) square feet in area.

5. Churches and institutions shall be allowed two (2) bulletin or announcement boards for each building, one of which may not exceed twenty (20) square feet in area, and one of which may not exceed ten (10) square feet in area.

B. Commercial, Industrial or other advertising signs or devices shall conform to the following requirements:

1. Signs shall be constructed of good material, firmly supported and maintained in good condition and repair. No sign shall be attached to a tree or utility pole.

2. Any West Brookfield commercial business or industrial firm shall maintain not more than six (6) signs within the limits of the Town of West Brookfield, of which no more than three (3) may be located on the property itself; no more than three (3) signs may be located off the premises. The above controls shall not apply to signs on the property less than five (5) square feet in area, which are limited to designating entrances, exits and parking areas.

3. Each business or firm shall be allowed one (1) primary and two (2) additional on premise signs.

a. The primary on premise sign shall not exceed twenty-eight (28) square feet in area.

b. The total square footage of the two (2) additional on premise signs shall not exceed ten (10) square feet.

c. The off premise sign shall not exceed three (3) square feet.

4. The top of any sign shall not be more than thirty-five (35) feet above ground level.

5. A sign shall not project over or into any pedestrian or vehicular way customarily used by the public, unless it is attached to a building and pertaining to a use therein, providing it does not project more than six (6) feet from the building and has a minimum clearance of twelve (12) feet.

**6. Signs shall be non-flashing, non-moving, non-animated, and shall not interfere with traffic visibility. Lumination provided for signs shall be internal or by direct or indirect method. The light source shall be shielded so as to prevent light rays from extending beyond the lot line or interfering with pedestrian or vehicular traffic. Fluttering streamers shall not be permitted.**

7. No red or green illuminated signs shall be located within two hundred (200) feet of a traffic signal.

8. Signs painted or placed on the inside of a window shall be permitted, provided that the aggregate area of such signs does not exceed fifty (50) per cent of the area of the window glass.

9. No sign on which the principal product or service advertised is not regularly produced or available on the premises, shall be erected, except as provided in Section B.2. No billboards shall be erected, in the Town of West Brookfield.

10. All signs erected for a permitted use, use by a Special Permit, or a special event, including signs advertising the sale or rental of premises, shall be promptly removed when the circumstances leading to their erection no longer apply.

C. Signs affecting vehicular or pedestrian traffic shall be modified as to position or location at the discretion of the Building Inspector.

D. Signs legally in existence prior to the adoption of this bylaw may continue to be maintained or replaced as nonconforming uses. They may be maintained or replaced provided they are not made more nonconforming.

Any nonconforming sign which has not been maintained for a period of twelve (12) consecutive months shall be removed within sixty (60) days after notice from the Building Inspector.

Any off-premise signs must not be located in any areas zoned residential.

E. The Building Inspector shall administer this Bylaw.

F. Nothing herein shall affect provisions relating to temporary signs permitted by the Selectmen or posted by the Town, State or Federal Government.

#### **5.4 TRAILERS**

Not more than one house trailer, mobile home, motor home or camping trailer, may be kept or stored on any parcel of land, and no house trailer, mobile home, or camping trailer may be used as temporary or permanent living quarters while so located. Space shall not be leased for trailers. The foregoing regulations, however, shall not prohibit the establishment of a family campground under the provisions of Chapter 140 of the General Laws.

#### **5.5 CONVERSIONS**

In the General district and in other districts as specified in Section 3.2, conversion of uses are permitted in conformity with the provisions of this bylaw, such as from a residential use to a commercial use or an industrial use provided that the exterior design of the structure is not changed from the character of a residential dwelling.

### **SECTION 6. ADMINISTRATION**

#### **6.1 Enforcement:**

This Zoning Bylaw shall be enforced by the Zoning Enforcement Officer of the Town of West Brookfield.

#### **6.2 Building Permit:**

No permit shall be issued until the construction or alteration of a building or structure, as proposed, shall comply in all respects with the provisions of this bylaw or with a decision rendered by the Board of Appeals. No alteration or construction of a building or structure or improvement upon a parcel of land shall proceed without obtaining a building permit.

Any amendment to this Bylaw shall apply to building permits issued after the first notice of public hearing on such amendment is advertised.

### **6.3 Certification of Occupancy:**

No land shall be occupied or used, and no building or structure hereinafter erected or structurally altered shall be occupied or used unless a certificate of occupancy has been issued by the Building Inspector. Such certificate shall state that the structure and use of structure and land comply in every respect with the provisions of this bylaw in effect at the time of issuance or with a decision of the Board of Appeals.

A certificate of occupancy shall be conditional on the maintenance of full compliance with the provisions of this bylaw in effect at the time of issuance or with restrictions imposed in a decision of the Board of Appeals, and shall lapse if such compliance fails.

### **6.4 Board of Appeals**

#### **6.41 Appointments:**

The Board of Selectmen shall make appointments to a Board of Appeals, established pursuant to Chapter 40A of the General Laws and all amendments thereto, which shall consist of three members and two associate members, one associate to be designated by the Chairman of the Board to act in the place of any member, incapacitated by personal interest or absence. The first appointments shall be made for one, two, and three year terms respectively, and thereafter one appointment for a three year term shall be made on or before the first day of March in each year. Associate members shall be appointed for two year terms, the first appointments being for one year and a two year term.

#### **6.42 Appeals:**

Any person aggrieved by the refusal of the Building Inspector to issue a permit or license on the grounds of noncompliance with these bylaws may appeal to the Board of Appeals as provided in Chapter 40A of the General Laws and any amendments thereto.

Within 65 days from the date of the filing of a claim of appeal as provided herein, the Board of Appeals shall hold a public hearing thereon. The appellant shall file in advance of the hearing such plans and information as the Board of Appeals deem necessary, and give notice of the hearing by causing a notice thereof to be posted in a conspicuous location upon the property in respect to which the appeal is claimed.

The decision of the Board of Appeals shall be rendered within 75 days of the filing of the application with the Town Clerk. Failure of the Board of Appeals to act within said 75 days shall be deemed to be the grant of the relief sought in the application, subject to an applicable judicial appeal as provided for in the Zoning Act.

#### **6.43 Variances**

1. After a public hearing upon an application of variance, the Board of Appeals may grant a variance from the terms of any applicable Section of this Bylaw. However, the Board of Appeals shall not grant a variance relating to the use of land or structures.

2. An application for a variance shall be filed with the Town Clerk

who shall within two (2) business days, transmit a copy of such application to the Board of Appeals.

3. The decision of the Board of Appeals shall be rendered within seventy five (75) days of the filing of the application with the Town Clerk. Failure of the Board of Appeals to act within said seventy-five (75) days shall be deemed to be the grant of relief sought in the application, subject to an applicable judicial appeal as provided for in the Zoning Act.

4. The Board of Appeals shall not grant a variance unless it specifically finds that each of the following conditions are fulfilled:

a) That owing to the circumstances relating to the soil conditions, shape, or topography of the land or structure.

b) That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.

5. The Board of Appeals may impose conditions, safeguards and limitation, both of time and of use, including the continued existence of any particular structure, but excluding any condition, safeguard or limitation based upon continued ownership.

6. Upon the granting of a variance, or an extension, modification or renewal thereof, the Board of Appeals shall issue to the owner and to the applicant, if other than the owner, a copy of its decision, certified by the Board of Appeals, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such variance and certifying that copies of the decision and all plans referred to in the decision have been filed with the Town Clerk.

7. No variance or extension, modification or renewal thereof shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, or that if an appeal has been filed, it has been dismissed or denied, is recorded in the Worcester County Registry of Deeds and indexed in the grantor index under the name of the owner of record, or is recorded and noted on the owner's certificate of title. The recording or registration shall be the responsibility of the owner or applicant who shall, thereafter, provide the Board of Appeals with a copy of the decision bearing the stamp of the Registry of Deeds or Land Court indicating the date and time of recording or registration and the book and page number assigned the document.

8. The rights authorized by a variance shall lapse unless construction is commenced within one (1) year of the grant of the variance and is continued through to completion as continuously and expeditiously as is reasonable. In the event of such a lapse, the variance may be reestablished only after notice and a new hearing.

9. It shall be unlawful for any owner or person to reconstruct, convert or alter a structure to change the use, increase the intensity of use, or extend or displace the use of any building, other structure or lot, or change any required limitations or special conditions imposed by the Board of Appeals in authorizing a variance without making new application to the Board of Appeals for approval of such action.

#### **6.44 Special Permits:**

For the purposes of this Bylaw, the West Brookfield Board of Appeals shall be the Special Permit Granting Authority and the Permit Granting Authority.

Where a special permit may be authorized by the Board of Appeals under this Bylaw; said Board may grant, upon written application, and after a public hearing, such special permit if it finds, among other things:

- a. That the premises in question are appropriately located and reasonably adaptable to the proposed use;
- b. That, in Residence Districts, the use will be reasonably compatible with other uses permitted as of right in the same district;
- c. That the use will not be a nuisance, or a serious hazard to vehicles or pedestrians.
- d. That adequate and proper facilities will be provided for the proper operation of the proposed use;

The Board of Appeals, acting as the Special Permit Granting Authority, shall act within 90 days after the public hearing. Failure of said Board to act within said 90 days shall be deemed approval of the special permit application.

**6.5 Penalty:** Any person, or firm or corporation violating any section or provision of this bylaw shall be fined not more than one hundred (100) dollars for each offense. Each day that willful violation continues shall constitute a separate offense.

**6.6 Amendment:** This bylaw may be amended from time to time in accordance with the provisions of General Laws, Chapter 40A, Section 6.

**6.7 Repetitive Petitions:** No proposed change in this bylaw which has been unfavorably acted upon by the Town Meeting shall be considered on its merits by the Town Meeting within two (2) years after the date of such unfavorable action unless adoption of the proposed change is recommended in the final report of the Planning Board. No application for a special permit under Section 6.4 and no appeal or petition for a variance under Section 6.4 which has been unfavorably acted upon by the Board of Appeals shall be considered on its merits by said Board within two (2) years after the vote of such unfavorable action except with the consent of all but one of the members of the Planning Board.

**6.8 Validity:** The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

**6.9 Other Regulations:** This bylaw shall not interfere with or annul any other Town bylaw, rule, regulation, or permit provided that, unless specifically excepted, where this bylaw is more stringent, it shall control.

**6.10 Effective Date:** The effective date of this Bylaw or any amendment thereto or to the zoning map shall be the date of favorable action by Town Meeting.

Notice of hearing - June 5, 1973  
Hearing - June 19, 1973  
Voted - September 20, 1973

**SECTION 7. FLOOD PLAIN DISTRICT**

**I. Purposes: The purposes of this District are:**

A. To provide that lands in the Town of West Brookfield subject to seasonal or periodic flooding as described hereinafter shall not be used for residence or other purposes in such a manner as to endanger the health or safety of the occupants thereof, or of the general public, or as to burden the

public with costs resulting from unwise individual choices of land use.

B. To protect, preserve and maintain the water table and water recharge areas within the municipality so as to preserve present and potential water supplies for the public health and safety.

C. To assure the continuation of the natural flow pattern of the water courses within the municipality in order to provide adequate and safe floodwater storage capacity to protect persons and property against the hazards of flood inundation.

**II. District Delineation:** The general boundaries of the Flood Plain District are shown on the West Brookfield Flood Insurance Rate Map (FIRM), dated June 1, 1982 and as amended, 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 1, 1981. The floodway boundaries are delineated on the West Brookfield Flood Boundary Floodway Map (FBFM), dated June 1, 1982 and as amended, 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 and Building Commissioner.

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 Planning Board. If the data is sufficiently detailed and accurate, it shall be relied upon to require compliance with this bylaw and the State Building Code.

"Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones." (added May 9, 1995)

### **III. Use Regulations**

A. The Flood Plain District shall be considered as overlying other Districts. Any uses permitted in the portions of the Districts so overlaid shall be permitted subject to all the provisions of this section.

B. In the Flood Plain District no new building shall be erected or constructed, and no existing structure shall be altered, enlarged or moved; no dumping, filling or earth transfer or relocation shall be permitted; nor shall any land, building or structure be used for any purpose except:

1. Outdoor recreation, including play areas, nature study, boating, fishing and hunting where otherwise legally permitted, but excluding buildings and structures.
2. Noncommercial signs, wildlife management areas, historic sites, foot, bicycle, and/or horse paths and bridges, provided such uses do not affect the natural flow pattern of any water course.
3. Conservation of water, plants and wildlife.
4. Grazing and farming, including truck gardening and harvesting of crops.
5. Forestry and nurseries.
6. Town water system.
7. Dwellings lawfully existing prior to the adoption of these

provisions, but not including substantial improvements as defined in the "Massachusetts State Building Code, Section 2102.0, "Flood Resistant Construction"." (added May 9, 1995)

**IV. 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 hereunder (subject to other applicable provisions of this bylaw) if the application is compliant with the following provisions:

1. The proposed use shall comply in all respects with the provisions of the underlying District, and;

2. Within 10 days of receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Town Engineer, and Building Commissioner. Final action shall not be taken until reports have been received from the above Boards or until 35 days have elapsed, and;

3. All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless 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;

4. 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.

5. All development in the district 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 MGL and with the following: 1) Massachusetts State Building Code, 780 CMR 2102.0, "Flood Resistant Construction", 2) Wetland Protection Regulations, DEP, 310 CMR 10.00, 3) Inland Wetlands Restriction, DEP, 302 CMR 6.00, and 4) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP, 310 CMR 15, Title 5. Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.  
(added May 9, 1995)

6. All subdivision proposals will be reviewed to assure that a) such proposals minimize flood damage, b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage, and c) adequate drainage is provided to reduce exposure to flood hazards.

**V. Notification of Watercourse Alteration:** In the event of any alteration or relocation of a watercourse the following will be notified: a) All adjacent communities, b) NFIP State Coordinator, Massachusetts Office of Water Resources, and c) NFIP Program Specialist, FEMA Region I. (added May 9, 1995)

**SECTION 8. TOWN COMMON OVERLAY DISTRICT**

**8.1 Purposes: The purposes of this district are:**

1. To protect the historic center of the Town of West Brookfield.
2. To retain the residential character of the Town Common area and to enhance the quality of life for residents therein.



**8.2 District Delineation:** The boundaries of the Town Common Overlay District are shown on a map entitled Zoning Map of West Brookfield, Massachusetts, dated January 26, 1987, and placed on file in the office of the Town Clerk.

**8.3 General:** The Town Common Overlay District shall be considered as overlying the General District, and governed by all regulations thereof except as provided in this Section.

**8.4 SCHEDULE OF USE REGULATIONS:** Only those uses indicated in the schedule below shall be allowed in the Town Common Overlay District. The provisions of Section 3.1 shall apply hereto.

| <b>8.41 Agriculture</b>   | <b>TC Overlay District</b> |
|---|----------------------------|
| 1. Farm - agricultural orchard, plant or tree nursery, including one single family dwelling for the resident proprietor.  | Y                          |
| 2. Farm - livestock and poultry, but not including the raising of fur-bearing animals for commercial use, including one single-family dwelling for the resident proprietor.   | Y                          |
| 3. Sales room or stand for the display or sale of agricultural or horticultural products on a seasonal basis.   | SP                         |
| 4. Sales room or stand whose primary business is the sale or display of agricultural or horticultural products.   | SP                         |
| <b>8.42. Residential</b>  |                            |
| 1. Single-family detached dwelling, together with such accessory structures as are normally incidental thereto, including garage for not more than 3 motor vehicles. Garaging or parking of one commercial vehicle with a maximum gross vehicle weight of 11,000 pounds shall be a permitted accessory use, garaging or parking of larger commercial vehicles or more than one commercial vehicle may be allowed by a special permit. | Y                          |
| 2. Alteration and conversion of a single family dwelling containing at least 6 rooms exclusive of hall and bathroom existing prior to the date of adoption of this bylaw to accommodate not more than two families, provided that the exterior design of the structure is not changed from the character of a single family dwelling.   | SP                         |
| 3. Two family dwelling  | SP                         |
| 4. Renting of one or two rooms and the furnishing of board by a resident family to not more than three non-transient persons provided that sufficient parking is provided on the premises.  | Y                          |
| 5. Professional office or studio of a resident physician, dentist, attorney, architect, artist, musician, engineer, real estate or insurance broker or member of other recognized profession provided that no more than two (2) other persons are regularly employed therein in connection with such use, and further provided that any   | SP                         |

signs shall be in accordance with Section 8.5.14.

6. Customary home occupation conducted by a resident of the premises provided that no more than one (1) other person is regularly employed therein in connection with such use, and that there is no exterior storage of material or equipment, and there is incidental display of products visible from the street, and that any display or advertising is in accordance with Section 8.5.14. SP

7. Bed and Breakfast. SP

**8.43 Commercial - subject to Special condition in Section 8.5.**

1. Antique store. SP

2. Art gallery. SP

3. Crafts shop. SP

4. Coin or stamp shop. SP

5. Custom frame shop. SP

6. Jewelry shop. SP

**8.44 Institutional, Educational, and Recreational Uses**

1. Church or other place of worship parish house, rectory, convent, and other religious institutions. Y

2. Schools or Playgrounds - public, religious, sectarian, or denominational. Y

3. Schools - Private, including dormitories accessory thereto. SP

4. Nursery school or other use for the day care of children or a privately organized camp, providing any outdoor play area is at such a distance and so screened from any residential structure on an adjoining lot as to avoid nuisance. SP

5. Public buildings and premises for government use including public libraries. Y

6. Country - golf, swimming, skating, yacht, or tennis club, or other social, civic, or recreational lodge or club, not conducted as a business. SP

**8.5 Special Conditions:** The uses in Section 8.43 above may be permitted subject to the following conditions:

1. Maximum retail floor area, not including storage areas, restrooms, or stairwells, shall be 1,200 square feet.

2. Off - street parking shall be provided behind the front yard setback in the ratio of one space per 200 square feet of net floor area devoted to the none residential use or portion thereof.

3. The business use shall be owned by the resident occupant of the

dwelling.

4. The property shall be owned by the resident occupant.

5. Hours of operation shall be no earlier than 9 A.M. nor later than 8 P.M.

6. The business use may occupy a portion of the dwelling, an outbuilding, or both.

7. Abutters shall be protected from activity resulting from the business use by fences, plantings, or other means.

8. If the business use is intended to occupy a portion of the dwelling, Section 5.5 Conversions shall apply.

9. No outside storage of goods or materials shall be permitted.

10. No outdoor sales shall be allowed. This section is not construed to mean sales licensed by the Board of Selectmen for the benefit of religious, educational or charitable organizations not to exceed three consecutive days per event. Tag sales and yard sales not more than twice annually and not more than three consecutive days by the resident are exempt.

11. Adequate methods for storage and disposal of refuse shall be provided.

12. No more than two full - time nonresidents may be employed.

13. There shall be no more than one driveway entrance per 125 feet of frontage.

14. In place of Section 5.3.A.2, the following Section on signs shall be substituted:

One (1) sign announcing profession or occupation and/or affiliation of the occupant(s) of the premises, not exceeding eight (8) square feet in area, and one (1) additional secondary sign, not to exceed six (6) square feet in area, that is mounted on the face of a building.

## **SECTION 9. Ground Water Protection District**

### **9.1 Purpose:**

The purpose of the Ground Water Protection District are:

1. To promote the health, safety, and general welfare of the Town by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of West Brookfield.

2. To preserve and protect existing and potential sources of drinking water supplies;

3. To conserve the natural resources of the Town; and

4. To prevent temporary and permanent contamination of the environment.

### **9.2 Scope of Authority**

The Ground Water Protection District is an overlay district and shall be superimposed on other zoning districts established by this by-law. This overlay district shall apply to all new construction, reconstruction or expansion of existing buildings, and new or expanded uses. Applicable activities or uses which fall within the Ground Water Protection District must comply with the requirements of this district as well as with the underlying zoning. Uses that are prohibited in the underlying districts shall not be permitted in the Ground Water Protection District.

### **9.3 Definitions**

**Impervious Surface:** Materials or structures on, above, or below the ground that do not allow precipitation or surface water to penetrate directly into the soil.

**Hazardous Waste:** A waste which is hazardous to human health or the environment. Hazardous wastes have been designated by the Regulations of the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C.

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

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

**Zone I:** The protective radius required around a public water supply well or wellfield; for purposes of this By-law, the required radius is four hundred feet (400').

**Zone II:** That area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield, with no recharge from precipitation). It is bounded by the ground water divides which result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend up gradient to its point of intersection with prevailing hydro-geologic boundaries (a ground water flow divide in contact with till or bedrock, or a recharge boundary).

**Interim Wellhead Protection Area (IWPA) :** Where the Zone II has not yet been delineated and approved by the Massachusetts Department of Environmental Protection (DEP), an interim wellhead protection area shall consist of the area within a one-half mile radius (2640 feet) measured from the well or wellfield for sources whose approved pumping rate is 100,000 gpd or greater. Regulations applying to a Zone II shall apply equally to an interim wellhead protection area.

### **9.4 Establishment and Delineation of Ground Water District**

The Ground Water Protection District includes the Zone Q and interim wellhead protection area for the West Brookfield municipal wells. These areas are delineated on a map entitled "Ground Water Protection District". This map is hereby made a part of the Zoning By-Law and is on file in the Office of the Town Clerk.

## **9.5 Resolution of Disputes**

Where the bounds delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should properly be located. At the request of the owner(s) the Town may engage a professional hydrogeologist to determine more accurately the location and extent of a Zone II, and may charge the owner(s) for all or part of the cost of the investigation.

## **9.6 Permitted Uses**

Unless prohibited or restricted by the regulations of the Ground Water Protection District or other state or local regulations, uses or activities permitted in the underlying district are controlled by the requirements of the underlying district.

## **9.7 Prohibited Uses**

The following uses are prohibited within the Ground Water Protection District:

1. Landfills and open dumps as defined in 310 CMR 19.006.
2. Landfilling of sludge or septage as defined in 310 CMR 32.05.
3. Automobile graveyards and junkyards, as defined in M.G.L. c. 140B, s.1.
4. Stockpiling and disposal of snow or ice removed from highways and streets located outside of the Ground Water Protection District that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
5. Facilities that generate, treat, store, or dispose of hazardous waste subject to M.G.L. c. 21C and 310 CMR 30.00, except the following:
  - a. very small quantity generators as defined under 310 CMR 30.00;
  - b. household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;
  - c. waste oil retention facilities required by M.G.L. c. 21, s. 52A;
  - d. treatment works approved by the Mass. DEP and designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters.
6. Industrial uses that discharge process wastewater to the ground.

## **9.8 Restricted Uses**

The following uses are prohibited within the Ground Water Protection District unless designed in accordance with the specified performance standards:

1. Storage of sludge and septage, as defined in 310 CMR 32.05, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.
2. Storage of sodium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, unless such storage is

within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

3. Storage of commercial fertilizers as defined in M.G.L. c. 128, s. 64, unless such storage is within a structure designed to prevent the generation and escape of contaminate runoff or leachate.

4. Storage of animal manures, unless such storage is covered or contained, or in accordance with the specifications of the United States Soil Conservation Service.

5. Storage of liquid hazardous materials, as defined in M.G.L. c. 21E, unless in a free standing container within a building or in a free standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity.

6. The removal of soil, loam, sand, gravel, or any other mineral substances within four (4) feet of the historical high ground water table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are redeposited within forty-five (45) days of removal on site to achieve a final grading greater than four (4) feet above the historical high water mater, and except for excavations for the construction of building foundations or the installation of utility works.

7. Storage of liquid petroleum products of any kind, except those incidental to:

a. normal household use and outdoor maintenance or the heating of a structure;

b. waste oil retention facilities required by M.G.L. c. 21, s 52A;

c. emergency generators required by statute, rule, or regulation;

d. treatment works approved by the Massachusetts DEP designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters;

provided that such storage listed in items a. through d. above, is either in a free standing container within a building or in a free standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity.

### **9.9 Special Permit Uses**

The following uses and activities require a special permit within an interim wellhead protection area:

1. Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for ground water recharge must be provided which does not degrade ground water quality. For non-residential uses,

recharge shall be by stormwater infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

2. Commercial or industrial uses which are allowed in the underlying district and which are not prohibited by this By-Law.

3. Any enlargement, intensification, alteration, or change of use of an existing commercial or industrial use.

#### **9.10 Enforcement and Remediation**

Enforcement: Written notice of any violations of this section shall be given by the Building Inspector to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice of the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the nature of the violation, and may also identify the actions necessary to remove or remedy the violations, preventive measures required for avoiding future violations, and a schedule of compliance. The cost of containment, clean-up, or other action of compliance shall be borne by the owner and operator of the premises.

### **CHAPTER TEN**

#### **WIRELESS COMMUNICATIONS FACILITIES OVERLAY DISTRICT**

##### **10.01 PURPOSE**

The purpose of this section is to establish a bylaw, which regulates wireless communication facilities such that these services may be provided with minimal harm to the public health, safety and general welfare. This bylaw has been created to:

- (a) Protect the general public from hazards associated with wireless communication facilities.
- (b) Minimize adverse visual impacts from wireless communication facilities.
- (c) Prevent adverse impact on local property values.
- (d) Comply with the letter and the spirit of the Telecommunication Act of 1996

This section does not apply to satellite dishes and antennas for residential use.

##### **10.02 DEFINITIONS**

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

Camouflaged - A personal wireless facility that is disguised, hidden, painted, screened, part of an existing or proposed structure or placed within an existing or proposed structure is considered camouflaged.”

Canopy - Cover and shade created by trees.

Carrier - A company that provides wireless services.

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

Elevation - The measurement of height above the ground at a given point.

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

Facility - see Wireless Communication Facility.

Fall Zone - A 360 radius on the ground equal to 120% of the height of a facility from ground level at the base of the facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material. Therefore, no roads, habitable dwellings, business or institutional uses, or public recreation facilities shall be located within the Fall Zone.

Functional Equivalent Services - Cellular, Personal Communication Services (PCS). Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.

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

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

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

Omni directional (whip) antenna - A thin rod that beams and receives a signal in all directions.

Panel Antenna - A flat surface antenna or dish antenna usually developed in multiples.

Wireless Communication Facility - Any and all materials, equipment storage structures, monopoles, towers, satellite dishes and/or antennae intended for transmitting or receiving telecommunications services, equivalent to Personal Wireless Service Facility as defined by the Telecommunications Act.

Radio Frequency (RF) Engineer - A registered engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

Radio Frequency Radiation (RFR) - The emissions from wireless communication facilities.

Security Barrier - A locked, impenetrable wall or fence that completely seals an area from unauthorized entry or trespass. This area shall include the base of the structure, all equipment shelters and the outreach of all antennas and panels so as to prevent falling ice, etc., from harming someone below. The minimum height of the impenetrable wall or fence shall be 10 feet.

Separation - The distance between one carrier's array of antennas and another carrier's array.

Transmitter Receiver - Equipment that sends or receives telecommunications service signals.



**10.03 USE REGULATIONS**

No Wireless Communication Facility shall be placed, constructed or modified except as set forth below, and upon issuance of a special permit by the Zoning Board of Appeals pursuant to this Section and Section 6.44 of this By-law, and site plan approval by the Zoning Board of Appeals pursuant to Section 5.1 of this By-law:

I. No permits for Wireless Communication Facilities (including communication towers) will be issued in the West Brookfield Neighborhood Residence Zoning District (RN), the General District (GD), or in the area shown as Section A on the attached map, which is described as follows: from the intersection of the centerline of Route 9 and the easternmost intersection of the centerline of Ridge Road, thence southwest in a straight line to the most northern boundary point between West Brookfield and Brookfield which adjoins the rail road tracks, thence south-southwest along said boundary to the centerline of the Quaboag River, thence westerly along said boundary of the centerline of the river to the zoning boundary line separating the RR and G districts, thence northeasterly along said boundary to the centerline of Route 9, thence easterly along said centerline to the point of beginning.

II. In the Rural Residential zoning district (RR) all wireless communication facilities (including their towers) on any parcel of land must be set back from the centerline of public and private roads 350' or more, and are subject to height restrictions of 10.03 IV (a).

III. It is strongly recommended in the RR district on any given parcel of land where a wireless facility and its tower is located that there is enough of a tree canopy (composed of trees with leaves or trees with pine needles) to provide more than 50% shade on the ground (the absence of direct sunlight) during the summer daylight hours in the zone between the center line of the road and a 350' setback, even if the wireless facility is located at a greater setback on that parcel of land. The purpose of having trees in this zone is to improve the viewshed from the road for the public by providing the greatest screening effect from seeing a wireless communication facility and its tower, which becomes less visible the farther from the road it is and the thicker the trees are near the road.

IV. In any parcel of land in the RR district where wireless communication facilities (including their towers) are located, all the set backs from public and private roads of said facilities be measured by the shortest lines between proposed wireless communication facilities to the nearest centerline of public or private roads.

(a) On any parcel of land that a wireless communication facility may be located in the RR district within a 350' to 850' setback from the centerline of a public or private road that is parallel to the road, the maximum height of a tower located between a 350' to 850' setback is determined by a linear scale between the maximum heights allowed at those two respective setbacks (350' and 850'). This linear scale ranges between a maximum tower height of 80' at a 350 foot setback and a maximum tower height of 180' at an 850' setback. This linear scale ranges between a maximum tower height of 80' at a 350' setback and a maximum tower height of 180' at an 850' setback above the existing ground level at the point where the tower will be located. For example, a wireless communication facilities tower with a set back of 600' could be no higher than 130' above the ground located on the facilities parcel of land at the given point the tower will be located.

The following chart illustrates the linear scale for the allowable heights of towers as described in the above paragraph:

| <u>Setback From Road</u> | <u>Maximum Allowed Height Of Wireless Communications Facility</u> |
|--------------------------|---|
| 350 feet                 | 80 feet high  |
| 400 feet                 | 90 feet high  |

|          |               |
|----------|---------------|
| 450 feet | 100 feet high |
| 500 feet | 110 feet high |
| 550 feet | 120 feet high |
| 600 feet | 130 feet high |
| 650 feet | 140 feet high |
| 700 feet | 150 feet high |
| 750 feet | 160 feet high |
| 800 feet | 170 feet high |
| 850 feet | 180 feet high |

(b) This Wireless Communications Facilities Overlay District Bylaw is not intended to be overly restrictive of the wireless communications industry or carriers. The Rural Residential Zone is the largest zone in West Brookfield with the highest elevations. In the RR zone, any Wireless Communication Facilities' tower shall not exceed 180 feet in height at a setback of 850 feet or greater from the centerline of the nearest public or private road. The special permit granting authority may allow a greater height than the maximum allowed at any setback of 350 feet or more from a public or private road, only if the applicant demonstrates to its satisfaction that a greater height is required to meet the communications needs in West Brookfield, and that no other site or combination of sites could be used to service the area less obtrusively than by the increased height.

V. Wherever a wireless communication carrier seeks to build a facility the company should build its tower to the minimum height necessary, rather than to the maximum height allowed at that location according to this zoning bylaw.

(a) In the "4.2 Schedule of dimensional Requirements" for the Rural Residence zone, the minimum size for side yards and rear yards is waved for wireless communication facilities and their towers, to facilitate increasing set backs of these facilities from public and private roads. Therefore, where fall zones encompass more than one parcel of land it is necessary for the wireless applicant to obtain permission from all landowners involved to ensure that the fall zone is maintained pursuant to this Bylaw and definition.

(b) Any new wireless communication facility in the RR zone meeting the previously stipulated set back and height requirements shall be a freestanding monopole. Lattice style towers and similar facilities requiring three or more legs and/or guy wires for support are not allowed in any district. All towers shall be camouflaged.

(c) Whenever feasible, wireless communication facilities shall be located on existing structures, including, but not limited to buildings, water towers, existing telecommunication facilities, utility and light poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures, regardless of set back requirements in the RR zone. In particular, applicants are urged

to consider use of existing telephone and electric utility structures as sites for one or more wireless communication facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

- (d) Co-Location - Licensed carriers shall share wireless communication facilities and sites where feasible and appropriate, thereby reducing the number of wireless communication facilities that are stand-alone facilities. All applicants for a Special Permit for a wireless communication facility shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes:
  - (1) A survey of all existing structures that may be feasible sites for co-locating wireless communication facilities;
  - (2) Contact with all other licensed carriers for commercial mobile radio services operating in the County; and
  - (3) Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.
- (e) In the event that co-location is found not to be feasible, a written statement of the reasons for the unfeasibility shall be submitted to the Town.
- (f) The Town may retain a technical expert in the field of RF engineering to verify if co-location at the site is not feasible or is feasible given the design configuration most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant. The Town may deny a Special Permit to an applicant that has not demonstrated a good faith effort to provide for co-location.
- (g) In no case shall any facility, allowed pursuant to this Section 10.03, be located closer than one (1) mile to any other such facility.
- (h) In order to ensure public safety, the minimum distance from the base of any ground-mounted facility to any, road, habitable dwelling, business or institutional use, or public recreational areas shall be 120% of the height of the facility, inclusive of any appurtenant devices. A fall zone and security barrier shall be maintained around the facility as per the definitions.
- (i) Facilities shall be painted or otherwise screened or camouflaged to minimize their visibility to abutters, adjacent streets and residential neighborhoods. Wireless communication facilities equipment and fixtures visible against the sky or other background shall be colored to minimize visibility against such background. A different coloring scheme shall be used to blend the facility with the landscape below and above the tree or building line. Existing on-site vegetation shall be preserved to the maximum extent practicable.
- (j) Antennas, panel antennas or dishes located on any structure shall not exceed ten (10) feet above the structure. Such attachments shall be colored, molded and/or installed to blend into the structure and/or the landscape.
- (k) Equipment Shelters - Equipment shelters for wireless communication facilities shall be designed consistent with one of the following design standards:
  - (1) Equipment shelter shall be located in underground vaults; or
  - (2) Equipment shelter shall be designed consistent with traditional West Brookfield architectural styles and materials, with a pitched roof and wood clapboard or shingle

siding; or

- (3) Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence.
- (l) Lighting shall be limited to minimal security lighting and that required by the Federal Aviation Administration (FAA) only.
- (m) There shall be at least one parking space at each facility to be used in connection with the maintenance of the facility and the site, and not to be used for storage of vehicles or other items.
- (n) All ground mounted wireless communication facilities and a security barrier shall surround related equipment.
- (o) No signage or advertising of any kind including carrier identification signs, shall be mounted on telecommunications towers. Only warning signs and safety signs shall be allowed.
- (p) The Zoning Board of Appeals when conducting site plan review and special permit review may grant waivers from this Wireless Communications Facilities Bylaw in the RR Zone if it finds that it is in the best interest of the Town of West Brookfield.

VI. A Wireless Communications Facility shall be located a minimum of 1500 feet away from any home, residence, dwelling or school.

#### **10.04 SAFETY STANDARDS**

- (a) All equipment proposed for a wireless communication facility shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation.
- (c) No hazardous wastes shall be discharged on the site of any wireless communication facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.
- (c) Ground mounted equipment for wireless communication facilities shall not generate noise in excess of 50dB at the property line. If there is a question as to the noise levels being generated, the Town may hire an acoustical engineer to verify noise levels at the carrier's expense.

#### **10.05 PROCEDURE**

In addition to the usual procedures and information required to file for a Special Permit under Section 6.44 and 5.1. of this bylaw, the following shall also be required:

- (a) A report prepared by one or more registered professional engineers who specializes in radio frequency engineering certifying that the proposed wireless communication equipment shall be installed, erected, maintained and used in compliance with all applicable Federal, State and local regulations, including, but not limited to: the radio frequency emissions regulations set forth in the 1996 Federal Communications Act, applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts

Department of Public Health;

A description of the facility and the technical and other reasons for the proposed location, height and design, including reasons for not co-locating on other existing facilities or structures;

A description of the capacity of the facility including the number and type of panels, antenna and/or transmitter receivers that it can accommodate and the type(s) of Functionally Equivalent Services that are being used at the facility;

Evidence that the monopole meet the current structural standards for steel antenna towers and antenna support structures published by the Electrical Association/Telecommunications Industry Association.

- (b) A clear and accurate locus plan which shall show all property lines, the exact location of the proposed facilities, streets, landscape features, and all buildings within five-hundred (750) feet of the facility shall be submitted.
- (c) A color photograph or rendition of the facility with its antennas and/or panels at the proposed site.
- (d) A view test to be conducted utilizing balloons or other means to document the extent of visual impact. The Zoning Board of Appeals and Planning Board are to be notified at least 72 hours prior to the testing date.

Photographs of the view test showing the impact of the proposed facility on abutting streets, adjacent property owners and residential neighborhoods shall be submitted.

- (e) The Town acting through its Zoning Board of Appeals may require the applicant to pay reasonable fees for review of the applicant's proposal by a professional or radio frequency engineer or other qualified professional.

#### **10.06 MONITORING AND MAINTENANCE**

After the wireless communication facility is operational, the applicant shall submit, within 90 days of beginning operations, and at annual intervals from the date of issuance of the Special Permit, existing measurements of RFR from the wireless communication facility. Such measurements shall be signed and certified by an RF engineer, stating that RFR measurements are accurate and meet FCC guidelines.

The applicant shall maintain the wireless communication facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and any security barrier, and maintenance of the buffer area and landscaping.

#### **10.07 MODIFICATIONS**

A modification of a wireless communication facility may be considered equivalent to an application for a new wireless communication facility and will require a Special Permit and/or Site Plan Approval when the following events apply:

- (A) The applicant and/or co-applicant wants to alter the terms of the Special Permit by altering any condition of approval or by changing the wireless communication facility in one or more of the following ways:

- (1) Change in the number of wireless communications facilities permitted on the site;
  - (2) Change in technology used for the wireless communication facility.
- (B) The applicant and/or co-applicant wants to add any equipment or additional height not specified in the original design filing.

**10.08 ABANDONMENT AND DISCONTINUANCE**

At such time that the licensed carrier plans to abandon or discontinue operation of a wireless communication facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuance of operations.

Such notice shall be given no less than 30 days prior to abandonment or discontinuance of operations. In the event that a carrier fails to give notice, the wireless communication facility shall be considered abandoned upon such discontinuance of operations.

Upon abandonment or discontinuance of use, the carrier shall physically remove the wireless communication facility within 90 days from the date of abandonment or discontinuance of use. “Physically Remove” shall include, but shall not be limited to:

- (a) Removal of monopole, antennas, mount, equipment shelters and security barriers from the subject property.
- (b) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
- (c) Restoring the location of the wireless communication facility to its natural condition, except that any landscaping and grading shall remain in the “after” condition.

The applicant shall provide the Town with written authority from the owner or owners of record for the subject property where the facility is located to bind successors and assigns to allow the Town to enter onto the subject property to physically remove the facility in the event that the carrier fails to remove the facility in accordance with the requirements of this Zoning Bylaw. The applicant shall provide the Town with a bond in an amount determined by the Zoning Board of Appeals to cover the cost for the removal of the wireless communication facility in the event that the Town must remove the facility. The bond shall be in a form acceptable to Town Counsel.

**10.09 EXCEPTIONS**

This Bylaw shall not prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator, as provided in G.L.c40A section 3.

**10.10 SEVERABILITY**

In the event that one or more of the provisions of this Zoning Bylaw are deemed invalid by a court of competent jurisdiction, then all remaining provisions shall remain in full force and effect.

**CHAPTER 11-WIND ENERGY SYSTEMS**

**1.0 Purpose and Applicability**

**1.1 Purpose**

The purpose of this bylaw is to provide for the construction and operation of wind energy facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind energy facilities that address public safety, minimize impacts on scenic, natural and historic resources of the town and provide adequate financial assurance for removal of discontinued facilities.

**1.2 Applicability**

This bylaw applies to all wind energy facilities proposed to be constructed after the effective date of this section, and to modifications of existing wind energy facilities that materially alter the type, configuration, or size of such facilities or other related equipment.

**1.3 Permit**

Small wind energy facilities meeting the requirements of the Bylaw shall be allowed in all zoning districts pursuant to a permit issued by the Building Inspector.

**1.4 Special Permit**

Large wind energy facilities and utility-scale wind energy facilities meeting the requirements of the Bylaw shall be allowed in all zoning districts pursuant to a special permit issued by the Zoning Board of Appeals.

A special permit shall be granted if the special permit granting authority finds in writing that:

- 1. The specific site is an appropriate location for such use;
- 2. The wind energy facility will not pose a hazard to persons, animals, buildings or vehicles;
- 3. The wind energy facility will not create a nuisance or otherwise adversely affect the surrounding neighborhood;
- 4. Adequate and appropriate facilities will be provided for the proper operation and maintenance of the use;
- 5. The proposed design is adequate and appropriate for the site.

The special permit granting authority may impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement reasonable measures to mitigate or eliminate potential adverse impacts caused by use of the wind energy facility.

**2. Definitions**

**Building Integrated Wind Energy Facility:** A wind energy facility permanently mounted on a building or other inhabitable structure. This definition applies to wind turbines of any capacity that are designed to be operated in direct contact with a building.

**Bylaw:** The Town of West Brookfield Zoning Bylaw.

**Height:** The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

**Large Wind Energy Facility:** a wind energy facility with a rated nameplate capacity of greater than 100kW/0.1MW.

**On-Site Wind Facility:** A large wind energy facility located at a commercial, industrial, agricultural, institutional, or public facility that will generate electricity primarily for on-site use.

**Rated Nameplate Capacity:** The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a “nameplate” on the equipment.

**Shadow/Flicker:** Shadow flicker is caused by sunlight passing through the swept area of the wind turbine’s blades, creating a stroboscopic effect.

**Site (or Project Site):** The lot or lots on which a wind energy facility is located, together with all mandatory setback areas, if any, extending beyond the boundaries of such lot or lots.

**Small Wind Energy Facility:** a wind energy facility with a rated nameplate capacity of not more than 100kW/0.1MW.

**Utility-Scale Wind Energy Facility:** A commercial wind energy facility, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.

**Wind Energy Facility:** All equipment, machinery and structures utilized on a single site in connection with the conversion of wind to electricity. This includes, but is not limited to: transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

**Wind Monitoring or Meteorological Tower:** A temporary tower equipped with devices to measure wind speeds and direction. A meteorological tower is used to determine how much wind power a site can be expected to generate.

**Wind turbine:** A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

### **3. General Requirements for Wind Energy Facilities**

The following requirements are common to all wind energy facilities and must be followed in addition to the technology or class specific requirements. All wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts.

#### **3.1 Compliance with Laws, Ordinances and Regulations**

The construction and operation of all wind energy facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and FAA aviation requirements.

#### **3.2 Proof of Liability Insurance**

The applicant shall be required to provide evidence of liability insurance in an amount, and for a duration sufficient to cover loss or damage to persons and property occasioned by the construction and use of any wind



energy facility.

### **3.3 Site Control**

The applicant shall submit proof of control of the project site sufficient to allow for installation and use of the proposed wind energy facility. Documentation shall include proof of control over setback areas and adequate access to the wind energy facility from a public way. Control shall include the legal authority to prevent the use or construction of any structure for human habitation within the setback areas.

### **3.4 Utility Notification**

No wind energy facility shall be installed until evidence has been given that the applicable utility company has been informed of its customer's intent to install such facility, and has approved such installation as necessary. Off-grid systems shall be exempt from this requirement.

### **3.5 Utility Connections**

To the extent reasonably possible, depending on soil conditions, shape, and topography of the site and the requirements of the utility provider, utility connections from the wind energy facility shall be located underground. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

### **3.6 Accessory Structures**

All structures accessory to a wind energy facility, including, but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Whenever reasonable, such structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

### **3.7 Meteorological Towers (Met Towers)**

Met towers shall be permitted under the same standards applicable to small wind energy facilities, except that a permit for a temporary met tower shall be valid for only 3 years.

## **4. General Site Standards**

### **4.1 Minimum Site Areas**

Building integrated wind energy systems must be located on a site within the control of the applicant having a continuous area of no less than 5000 sq. ft. Small wind energy facilities and on-site wind energy facilities must be located on a site within the control of the applicant having a continuous area of no less than one acre per tower. All other wind energy facilities must be located on a site within the control of the applicant having a continuous area of no less than five acres per tower.

### **4.2 Setbacks:**

Wind turbines shall be set back a distance equal to 110% of the total height of the wind turbine from all inhabited structures, overhead utility lines, public or private ways or access easements, and property boundaries. No wind energy facility may be installed in a front yard or between a way or access easement and the front of an inhabited building.

Pursuant to a special permit, the special permit granting authority may reduce the minimum setback distance as appropriate, based on site-specific considerations, or written consent of the affected abutter(s), if the project satisfies all other criteria for the granting of a special permit under the provisions of the Bylaw.

#### 4.3 Height

The height of Wind energy facilities in the general and neighborhood residence districts will be limited to the maximum structure height for building or structures in the respective district. The height of small wind energy facilities in the rural residence district shall be no higher than 100 feet. Large wind energy facilities in the rural residence district shall have a height of no more than 175 feet.

Pursuant to a special permit, the special permit granting authority may allow wind energy facilities of greater height than set forth herein only upon the applicant’s demonstration that such greater height is necessary for operation of the facility, and the facility satisfies all other criteria for the granting of a special permit under the provisions of the Bylaw.

| Allowable Wind Turbine Height |                    |                    |
|-------------------------------|--------------------|--------------------|
| District                      | Small Wind Turbine | Large Wind Turbine |
| Rural Residence               | 100 ft             | 175 ft             |
| Neighborhood Residence        | 35 ft              | N/A                |
| General                       | 40 ft              | N/A                |
| Town Common Overlay           | N/A                | N/A                |

#### 4.4 Multiple Turbines

A wind energy facility may have multiple turbines. Each turbine on a site must meet all requirements applicable to the type of wind energy facility approved for the site.

### 5. Design Standards

#### 5.1 Appearance, Color and Finish

The wind generator and tower shall remain painted or finished with the non-reflective color or finish that was originally applied by the manufacturer, unless approved otherwise in the special permit. FAA safety considerations concerning color and appearance must be adhered to as applicable.

#### 5.2 Lighting and Signage

##### 5.2.1 Lighting

Wind turbines shall be lighted only as required by the Federal Aviation Administration. Lighting of other parts of the wind energy facility, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

### **5.2.2 Signage**

Signage on the wind energy facility shall comply with the requirements of the town's sign regulations and shall be limited to that necessary to reasonably identify the owner and manufacturer, provide 24-hour emergency contact information, and warn of any danger.

### **5.2.3 Advertising**

Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer and/or operator of the wind energy facility.

## **6. Safety, Aesthetic and Environmental Standards**

### **6.1 Emergency Services**

The applicant shall provide a copy of the project summary, an electrical schematic, and plot or site plan to the local emergency services entity, as designated by the special permit granting authority. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan. All means of disconnecting the wind energy facility shall be clearly indicated on the materials provided, and marked on each wind energy facility. The applicant or facility owner shall maintain a phone number and identify a responsible person for the public and Zoning Enforcement Officer to contact throughout the life of the facility.

### **6.2 Unauthorized Access**

Wind turbines or other structures that are part of a wind energy facility shall be designed to prevent unauthorized access. For instance, the tower shall be designed and installed so as to not provide step bolts or other climbing means readily accessible to the public for a minimum height of 8 feet above the ground. Electrical equipment shall be locked where possible.

### **6.3 Shadow/Flicker**

Wind energy facilities shall be sited in a manner that minimizes shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses.

### **6.4 Land Clearing, Soil Erosion and Habitat Impacts**

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind energy facility and is otherwise prescribed by applicable laws, regulations, and ordinances.

### **6.5 Noise**

The wind energy facility shall conform with the provisions of the Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10).

A wind energy facility will be considered to be in violation of these regulations if it: (a) Increases the broadband sound level by more than 10 dB(A) above ambient, or (b) Produces a "pure tone" condition – when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by three (3) decibels or more. These criteria are measured both at the property line and at the nearest inhabited

structure. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment operating hours. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards if required by the special permit granting authority incidental to its consideration of a special permit application.

## **7. Monitoring, Maintenance and Modifications**

### **7.1 Facility Conditions**

The applicant shall maintain the wind energy 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 project owner shall be responsible for the cost of maintaining the wind energy facility and adequate access to the facility from a public way, and the cost of repairing any damage occurring as a result of operation and construction.

### **7.2 Discontinuance and Removal**

Any wind energy facility not used for a period of two years or more without written permission from the special permit granting authority, or that has reached the end of its useful life, shall be considered discontinued, and shall be removed. When an applicant intends to decommission and/or remove a wind energy facility, the applicant shall notify the Zoning Enforcement Officer and Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind energy facility no more than 150 days after the date of discontinued operations. At the time of removal, the affected portion of the site shall be restored as near as possible to the state it was in before the facility was constructed, unless put to another legally authorized, active use. Decommissioning and removal shall consist of:

1. Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site;
2. Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations;
3. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Zoning Enforcement Officer may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

Upon request, the applicant shall provide evidence to the Zoning Enforcement Officer demonstrating continued use of the wind energy facility. Failure to provide such evidence within thirty days of a written request from the Zoning Enforcement Officer addressed to the contact address provided and maintained by the applicant as required above shall be conclusive evidence that the wind energy facility has been discontinued.

If the applicant fails to remove the wind energy facility in accordance with the requirements of this section, the town shall have the right, to the extent it is otherwise duly authorized by law, to enter the property and remove the facility at the expense of the facility owner and the owner(s) of the site on which the facility is located.

### **7.3 Expiration**

A permit or special permit issued pursuant to this bylaw shall automatically expire if: (a) The wind energy facility is not installed and functioning within 24 months from the date the permit is issued; or, (b) The wind energy facility is discontinued.

## **8. Permitting Process and Requirements**

### **8.1 Wind Energy Systems Permit Submission Requirements**

An application for a wind energy facility permit or for a wind energy facility special permit shall be accompanied by detailed documentation referenced in section 8.2 below. An application for a wind energy facility special permit shall also meet the submission requirements set forth in section 8.23 below.

### **8.2 General Required Documents**

#### **8.2.1 A plot plan showing:**

1. Property lines and physical dimensions of the wind energy facility site;
2. Location, dimensions, and types of existing structures on the site;
3. Location of the proposed wind energy facility tower, foundations, guy anchors and associated equipment;
4. Public and private ways and access easements contiguous with or passing through the site;
5. Overhead utility lines on the site;
6. Location and approximate height of tree cover on the site.

#### **8.2.2 Technical Documentation:**

1. Wind energy facility technical specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed);
2. Tower blueprint or drawing signed by a Professional Engineer;
3. Electrical diagram detailing wind turbine, associated components, and electrical interconnection methods including all NEC compliant disconnect and over-current devices;
4. Foundations for towers less than or equal to 100 ft must have blueprints or drawings signed by a Professional Engineer;
5. Foundations for towers greater than 100 ft must have blueprints or drawings signed by a Professional Engineer licensed by the Commonwealth of Massachusetts;
6. A maintenance plan.

#### **8.2.3 General:**

1. Documentation of the legal right to use the wind energy facility site;
2. The name, contact information and signature of any agents representing the applicant;

3. Name, address, phone number and signature of the applicant, as well as all co- applicants or property owners.

### **8.3 Additional Submission Requirements for Large and Utility-Scale Wind Energy Facilities**

#### **8.3.1 Location Map**

The applicant shall submit, to the special permit granting authority, a copy of a portion of the most recent USGS Quadrangle Map, at a scale of 1:25,000, showing the proposed wind energy facility site, including turbine sites, and the area within at least two miles from the facility. Zoning district designation for the subject parcel should be included; however a copy of a zoning map with the parcel identified is suitable.

#### **8.3.2 Site Plan**

A one inch equals 200 feet plan of the proposed wind energy facility site, with contour intervals of no more than 10 feet, showing the following:

1. Property lines for the site parcel and adjacent parcels within 300 feet;
2. Outline of all existing buildings, including purpose (e.g. residence, garage, etc.) on site parcel and all adjacent parcels within 500 feet. Include distances from the wind energy facility to each building shown;
3. Location of all roads and access easements, public and private, on the site parcel and adjacent parcels within the setback distance of 1.1 times the blade tip height, and proposed roads or driveways, either temporary or permanent;
4. Existing areas of tree cover, and average height of trees within the setback distance of 1.1 times the blade tip height;
5. Proposed location and design of the wind energy facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc;
6. Location of view representations, as defined herein.

#### **8.3.3 View Representations for Large and Utility-Scale Wind Energy Facilities**

The applicant shall provide, upon the request of the special permit granting authority, up to three view representations for large wind energy facilities and four view representations for utility-scale wind energy facilities. View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the wind facility (e.g. superimpositions of the wind facility onto photographs of existing views) as taken or seen from fixed points selected by the special permit granting authority within populated areas or on public ways within a 2-mile radius of the proposed wind energy facility. Such fixed points shall include the nearest building with a view of the wind energy facility. All view representations will include existing, or proposed, buildings or tree coverage, and shall further include a description of the technical procedures followed in producing the view representation (distances, angles, lens, etc.).

#### **8.3.4 Operation & Maintenance Plan**

The applicant shall submit a plan for maintenance of site access and storm water drainage facilities serving the site, as well as general procedures for operational maintenance of the wind energy facility.

### **8.3.5 Compliance Documents**

The applicant will provide with the application;

1. Proof of adequate financial surety, as set forth below;
2. Proof of liability insurance;
3. Certification of height approval from the FAA, as required;
4. Evidence of existing site sound levels and maximum sound levels for the proposed wind energy facility demonstrating compliance with this Bylaw.

### **8.3.6 Required Supporting Documentation for Building-Integrated Wind Energy Facilities**

A special permit application for a building-integrated wind energy facility shall include:

1. Analysis and design documents, completed by a structural engineer licensed by the Commonwealth of Massachusetts, demonstrating that the proposed building is structurally sufficient to support the permanent installation of the proposed building integrated wind energy facility. At a minimum, the analysis should address vibration, wind load, and ice load;
2. Elevation drawings of building with building-integrated wind energy facility installed, viewed from north, south, east, and west;
3. Building schematic detailing point(s) of connection and associated supports for the building-integrated wind energy facility;
4. Schematic of attachment method for connecting the building-integrated wind energy facility to the building;
5. Specification sheets for wind turbine and all related components (inverters, controllers, disconnects, etc.);
6. Electrical diagram detailing wind turbine, associated components, and electrical interconnection methods and showing all NEC compliant disconnects and over-current devices.

### **8.3.7 Landscape Plan for Utility Scale Projects**

A special permit application for a utility scale project shall include a plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.

### **8.3.7 Financial Surety for Utility Scale Projects**

An applicant for a utility-scale wind energy facility special permit must provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the facility, of an amount and form determined to be reasonable by the special permit granting authority. Such surety will not be required for municipally or state-owned facilities. Provision and continued maintenance of the bond shall be a condition of the special permit. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment.

#### **8.4 Independent Consultants**

Upon submission of an application for a wind energy facility special permit, the special permit granting authority may engage, at the applicant's cost, professional and technical consultants, including legal counsel, to assist the authority with its review of the application, in accordance with the requirements of section 53G of chapter 44 of the Massachusetts General Laws.

The applicant shall pay to the special permit granting authority an initial deposit of \$1,000.00 for such review at the time of submission of the permit application, which shall be deposited into a special account established by the Town Treasurer under M.G.L. Chapter 44, Section 53G. The balance of this account shall at no time be less than one-half (1/2) the initial deposit, and the applicant shall deposit with the Treasurer such additional funds as are required to restore the account to the amount of the initial deposit upon notice from the special permit granting authority, by first class mail, that the amount on deposit has been decreased by the expenditures described herein to an amount at or below one-half (1/2) of the initial deposit. If the Applicant fails to restore the account balance and the balance is insufficient to pay incurred professional and technical review fees, the special permit granting authority shall send the invoice directly to the Applicant for immediate payment. Failure to comply with this section shall be good grounds for denying the special permit application. Upon approval of the special permit application, any excess amount in the account attributable to that project, including any interest accrued, shall be repaid to the Applicant or the Applicant's successor in interest.

### **SECTION 11**

#### **Town of West Brookfield - Back Lot Zoning Bylaw**

##### **1. Purpose:**

The purpose of this bylaw is to allow for the limited development of lots with deep back land by special permit for a single dwelling unit with less than the required frontage, in exchange for increased square footage for the purposes of preservation of open space, minimizing density in given areas, and maintaining the rural character of the town.

1.1 This bylaw does not allow for the creation of more than one back lot from a single parcel.

1.2 The creation of more than one lot shall be covered by the Subdivision Control Law.

##### **2. Definition:**

A back lot shall be defined as a lot having less than the required frontage to meet the zoning bylaw requirements but having adequate frontage on a street to allow driveway access to the lot and having additional acreage, as set forth in this bylaw.

##### **3. Applicability:**

The provisions of this bylaw shall be applicable to any lots that pre-exist this bylaw, or lots approved by the Planning Board that are created after the enactment of this bylaw. The bylaw shall not apply to more than one lot created from a single parcel.

##### **4. Access:**



A back lot shall have at least 50 feet of frontage on a street and the access strip width to the back lot must meet the 50 foot minimum width requirement at all points from the street to the principal structure on the lot.

4.1 The access strip length shall be determined to be from the frontage to the point at which the lot width meets minimum frontage requirements for the district.

4.2 No structures shall be allowed to be constructed in the access strip.

4.3 An access driveway shall be constructed and maintained within the access strip which provides:

4.3.1 Adequate access by driveway and turn around area for emergency vehicles

4.3.2 A width of at least 15 feet with adequate drainage and culverts

4.3.3 A maximum grade of 12%

4.3.4 The access driveway must be shown on the plan and approved by the Planning Board as part of the special permit application. The Planning Board will seek recommendations from the highway superintendent, fire chief, and building inspector on the adequacy of the access drive.

#### **5. Lot Dimensions:**

The area of the back lot must be at least two times the minimum lot size requirement for the zoning district in which it is located.

5.1 The width of the lot where the principal building is to be constructed shall equal or exceed the distance normally required for street frontage in the district, and all minimum front, side and rear yard setback requirements for the district must be met.

5.2 The access strip square footage shall not be included in the minimum lot size calculation.

#### **6. Filing Fee:**

An application filing fee of \$250 will be paid by the applicant to the Town of West Brookfield at the time of application. Any additional fees including those for advertising and mailing of notices will be paid by the applicant.

#### **7. Governing Body:**

The Planning Board shall be the Special Permit Granting Authority for special permits for back lots.

#### **8. Approval Process:**

All back lot applications will be acted upon by the Planning Board only after a public hearing. The Planning Board may grant a special permit under this bylaw if it finds that all of the requirements of this bylaw are met, and further, if it finds that the criteria set forth in Section 6.44 of the Zoning Bylaw have been met to the extent applicable. Upon approval by the Planning Board, a plan showing the approved lot shall bear the statement "Approved for Back Lot Development" and will be entitled to endorsement as an "Approval Not Required" plan as provided in General Laws Chapter 41 Section 81P, and such plan will be recorded at the Registry of Deeds.

8.1 An approved back lot shall not be further divided to reduce its area or create additional lots. A notation to that effect will be included on any "Approval Not Required Plan" endorsed by the Planning Board pursuant to this Bylaw.

8.2 The special permit may contain reasonable conditions, safeguards, or limitations on use, and may require performance guarantees, as well as construction and inspection requirements.

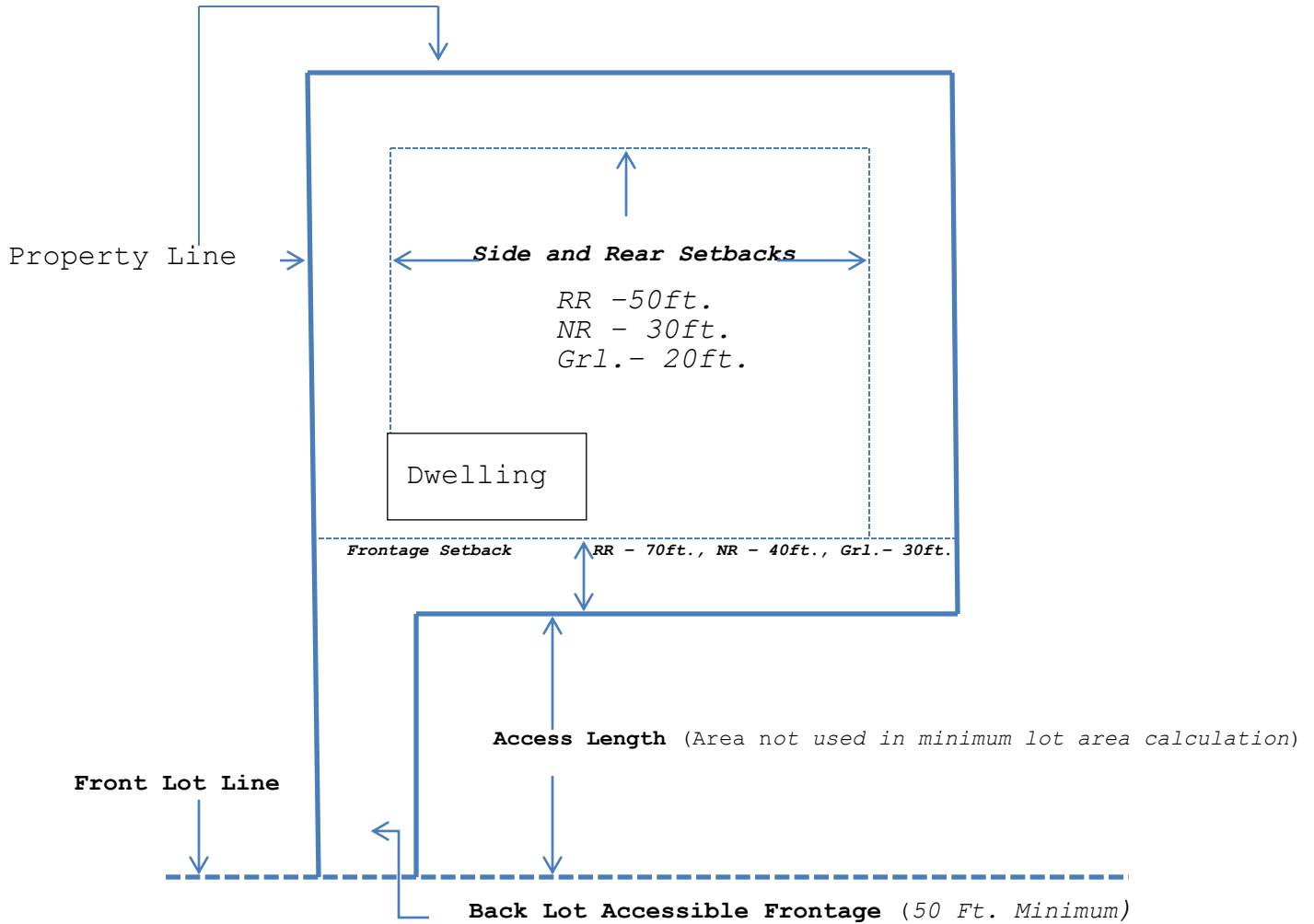
8.3 The special permit will lapse if not exercised within two years from date of approval. "Exercised" shall be deemed to mean construction in accordance with a duly issued building permit.

#### **9. Restrictions:**

No more than two back lots shall have contiguous frontage.

9.1 If two back lots have contiguous frontage, a twenty foot separation shall be required between the two access driveways.

9.2 The separation area between the two access driveways shall be maintained or kept a naturally occurring or planted vegetation buffer area sufficient to provide privacy between the two lots.



Road - Public Way

| Minimum Lot Size for Back Lot Zoning |                |
|--------------------------------------|----------------|
| Rural Residential                    | 180,000 sq.ft. |
| Neighborhood Residential             | 90,000 sq.ft.  |
| General                              | 50,000 sq.ft.  |

# West Brookfield Back Lot Zoning Diagram

## **Section 13. ADULT USE MARIJUANA OVERLAY DISTRICT**

**13.1 Purposes:** The purposes of this section are:

- 1) To regulate the time, place, and manner of Marijuana Establishments in the Town of West Brookfield in accordance with the provisions of Massachusetts General Law Chapter 94G, Section 3, and the regulations promulgated by the Cannabis Control Commission as 935 CMR 500.000.
- 2) To preserve the character of the community and create spaces for responsible, legal access to marijuana by adults
- 3) To mitigate the potential impacts of Marijuana Establishments on adjacent properties, residential neighborhoods, schools, road, sewer and water systems and the general welfare of the community.
- 4) To regulate the siting, design, placement, security, safety, monitoring, modification, and discontinuance of Marijuana Establishments.
- 5) To support the public's right to access legal marijuana; to protect public health, safety and well-being; and to promote new economic growth to expand the tax base.

**13.2 District Delineation:** The boundaries of the Adult Use Marijuana Overlay District are shown on a map titled "West Brookfield Adult Use Marijuana Overlay District" placed on file in the office of the Town Clerk.

**13.3 General:** The Adult Use Marijuana Overlay District shall be considered as overlying portions of the General Business District and Rural Residential District as defined in §13.2 of this bylaw. All Marijuana Establishments permitted in accordance with this section shall be governed by all regulations of the underlying zone except as provided herein.

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**13.4 Applicability:** Nothing in this section shall be construed to supersede state laws governing the sale and distribution of intoxicating substances not defined herein, nor federal law regarding the interstate transportation of the same.

This bylaw does not apply to the cultivation of industrial hemp as is regulated by the Massachusetts Department of Agricultural Resources pursuant to General Laws, Chapter 128, Sections 116-123.

**13.5 DEFINITIONS:** For the purposes of this section, the following terms shall have the meanings hereby assigned to them.

- 1) Cannabis Cultivation: The use of land and/or buildings for planting, tending, improving, harvesting, processing and packaging, the preparation and maintenance of soil and other media and promoting the growth of cannabis by a cannabis cultivator, micro-business, research facility, craft marijuana cultivator cooperative, registered marijuana dispensary or other entity licensed by the Commission for cannabis cultivation. Such use is not agriculturally exempt from zoning. The cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning.
- 2) Cannabis or Marijuana or Marihuana: All parts of any plant of the genus Cannabis, not excepted in 935 CMR 500.002: Cannabis or Marijuana or Marihuana(a) through (c) and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; clones of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin

including tetrahydrocannabinol as defined in M.G.L. c. 94G, § 1; provided that cannabis shall not include:

- (a) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;
  - (b) hemp; or
  - (c) the weight of any other ingredient combined with cannabis or marijuana to prepare topical or oral administrations, food, drink or other products.
- 3) Cannabis or Marijuana Products: Cannabis or marijuana and its products unless otherwise indicated. These include products have been manufactured and contain cannabis or marijuana or an extract from cannabis or marijuana, including 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.
- 4) Ceases to Operate: Marijuana Establishment closes and does not transact business for 60 days, as defined by state regulations and/or this section, with no substantial action taken to reopen. The Special Permit Granting Authority may determine that an establishment has ceased to operate based on its actual or apparent termination of operations.
- 5) Commission: The Massachusetts Cannabis Control Commission established by M.G.L. c. 10, § 76, or its designee. The Commission has authority to implement the state marijuana laws, which include, but are not limited to, St. 2016, c. 334 as amended by St. 2017, c. 55, M.G.L. c. 94G, and 935 CMR 500.000.
- 6) Craft Marijuana Cooperative: A Marijuana Cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand cannabis or marijuana products to transport marijuana to Marijuana Establishments, but not to consumers.
- 7) Enclosed Area Cultivation: A Marijuana Cultivation operation located, in whole, in a building, greenhouse or other enclosed area which would be subject to security provisions of 935 CMR 500.110 (5) (a) and 935 CMR 500.120.
- 8) Hemp: The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol

concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

- 9) Hemp Cultivator: an agricultural establishment authorized by the Massachusetts Department of Agricultural Resources to cultivate hemp for commercial and industrial purposes
  
- 10) Host Community: A municipality in which a Marijuana Establishment is located or in which an applicant has proposed locating an establishment.
  
- 11) Host-Community Agreement: An agreement, pursuant to General Laws, Chapter 94G, Section 3(d), between a Cannabis Establishment and a municipality setting forth additional conditions for the operation of a Cannabis Establishment, including stipulations of responsibility between the parties and a community impact fee reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center which fee shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center.
  
- 12) Marijuana Independent Testing Laboratory: A laboratory that is licensed by the Commission and is:
  - a. Accredited to the International Organization for Standardization 17025 (ISO/IEC 17025: 2017) by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Commission;
  - b. Independent financially from any Medical Marijuana Treatment Center (RMD), Marijuana Establishment or licensee for which it conducts a test; and
  - c. Qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.
  
- 13) Licensee: A person or entity licensed by the Commission to operate a Marijuana Establishment under 935 CMR 500.000.
  
- 14) Manufacture: To compound, blend, extract, infuse or otherwise make or prepare a cannabis or marijuana product.

- 15) Marijuana Cultivator: An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.
- 16) Marijuana Establishment: A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Marijuana Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center. Marijuana establishments permitted in accordance with these regulations are considered to be a commercial and/or manufacturing use and are not considered being subject to any agricultural exemptions under zoning.
- 17) Marijuana Membership Club: An organization, club, lodge or other private grounds (non-profit and private) allowing on-site consumption of marijuana or marijuana products, but not operating as a licensed marijuana social consumption operator, and where no sales of marijuana or alcoholic beverages occur.
- 18) Marijuana Microbusiness: A collocated Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.
- 19) Marijuana Process or Processing: To harvest, dry, cure, trim and separate parts of the cannabis or marijuana plant by manual or mechanical means, except it shall not include manufacture as defined in 935 CMR 500.002.
- 20) Marijuana Product: Products that have been manufactured and contain marijuana or an extract from marijuana, including 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.
- 21) Marijuana Product Manufacturer: An entity licensed to obtain, manufacture, process and package cannabis or marijuana products and to transfer these products to other Marijuana Establishments, but not to consumers.
- 22) Marijuana Research Facility: An entity licensed to engage in research projects by the Commission.
- 23) Marijuana Retailer: An entity licensed to purchase and transport cannabis or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from

offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

- 24) Marijuana Transporter: An entity, not otherwise licensed by the Commission, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers. Marijuana Transporters may be an Existing Licensee Transporter or Third-Party Transporter.
- 25) Medical Marijuana Treatment Center, also known as a Registered Marijuana Dispensary (RMD): A not-for-profit entity registered under 105 CMR 725.100: Registration of Registered Marijuana Dispensaries, that acquires, cultivates, possesses, processes (including development of related products such as edible cannabis or marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing cannabis or marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use.
- 26) Open Area Cultivation: a marijuana cultivation operation conducted wholly in the open air, and not located in any building, greenhouse or other enclosed area which would be subject to security provisions of 935 CMR 500.110 (6) and 935 CMR 500.120.
- 27) Propagation: The reproduction of cannabis or marijuana plants by seeds, cuttings, or grafting.
- 28) Provisional Marijuana Establishment License: A certificate issued by the Commission confirming that a Marijuana Establishment has completed the application process.
- 29) RMD Applicant: A previously Registered Marijuana Dispensary with a final or provisional certificate of registration, that is in good standing with the DPH.

**13.6 Schedule of Uses:** For the purposes of this section, only those uses indicated in the schedule below shall be allowed in the Adult Use Marijuana Overlay District. The provisions of Section 3.1 shall apply hereto.

a. Use Abbreviations: SP = Special Permit, Y = Yes, N = No

- 1) Craft Marijuana Cooperative SP
- 2) Marijuana Cultivator SP
- 3) Marijuana Product Manufacturer SP



|   |    |
|---|----|
| 4) Marijuana Retailer                       | SP |
| 5) Marijuana Independent Testing Laboratory | SP |
| 6) Marijuana Microbusiness                  | SP |
| 7) Marijuana Research Facility              | SP |
| 8) Marijuana Transporter                    | SP |
| 9) Marijuana Membership Club                | N  |

**13.7 Additional Requirements/Conditions:** In addition to the standard requirements and conditions established in this bylaw, the following shall also apply to all Marijuana Establishments:

1. Special Permit Granting Authority: for the purposes of this section, the Special Permit Granting Authority shall be the Zoning Board of Appeals for the Town of West Brookfield
  
2. State Law: Marijuana establishment operations shall conform at all times to General Laws, Chapter 94G, and the regulations promulgated by the Commission thereunder as 935 CMR 500.00.
  
3. Place:
  - a. No Marijuana Establishment shall be located on a parcel which is within five hundred (500) feet (to be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment is or will be located) of a parcel, occupied at the time the Applicant's license application was received by the Cannabis Control Commission, by any of the following:
    - i. A public or private school providing education in preschool, kindergarten or any of grades 1-12
    - ii. A public or private library
    - iii. Duly licensed daycare centers
    - iv. Churches, synagogues or other places of worship
    - v. Public or private playgrounds
  
  - b. Except for the transportation of product or materials, 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 an enclosed, fixed location and shall not be permitted to be located in a trailer,

storage freight container, motor vehicle or other similar type potentially movable platform or enclosure.

- c. No Marijuana Establishment shall be located inside a building containing residential units, including transient housing such as motels and dormitories.
  - d. No Marijuana Establishment shall be permitted as a Home Occupation as defined by Section 1.4 § 15 of this zoning bylaw
  - e. No Marijuana Establishment is permitted to utilize or provide a drive-through service.
  - f. Open area cultivation, as defined by this section, shall be allowed in all districts where marijuana cultivation establishments are allowed, provided that;
    - i. The open area marijuana cultivation complies with all screening, security and other provisions of 935 CMR 500.000 and of this bylaw;
    - ii. The total cultivation canopy does not exceed the allowable canopy under a Tier 7 license as defined in 935 CMR 500.005, 1(d);
    - iii. No open area cultivation shall take place within a distance less than or equal to one and one-half (1.5) linear miles from an established open area Hemp Cultivator, unless the Applicant is able to demonstrate sufficient provisions for the prevention of cross-pollination and contamination, acceptable to the Special Permit Granting Authority.
  - g. Enclosed area cultivation, manufacturing, processing, retail, and standards and testing establishments are encouraged to utilize existing vacant buildings where possible.
4. Time and Manner:
- a. Limitations: Any type of Marijuana Establishment may only be involved in the uses permitted by its definition and may not include other businesses or services.

- b. On-premises Consumption: No marijuana shall be smoked, eaten or otherwise consumed or ingested within the premises.
  
- c. Hours of Operation: The hours of operation shall be set by the Special Permit Granting Authority, but in no event shall a Marijuana Establishment be open to the public, and no sale or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours\_ of 10:00 p.m. and 10:00 a.m.
  
- d. Final License: No Marijuana Establishment may commence operation or apply for a building permit prior to its receipt of all required permits and approvals including, but not limited, to its Final License from the Cannabis Control Commission.
  
- e. Retail Permits: The number of Retail Marijuana Establishments in concurrent operation permitted to be located within the Town of West Brookfield shall not exceed two (2) or twenty-percent (20%) of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be consumed on the premises where sold under Chapter 138 of the General Laws, whichever is the larger number.
  
- f. Visual Impact: Marijuana plants, products, and paraphernalia shall not be visible from the outside of the building in which the Marijuana Establishment is located and shall comply with the requirements of 935 CMR 500. No outside storage of marijuana, related supplies, or promotional material is permitted. Any artificial screening device erected to eliminate the view from a public way shall also be subject to a vegetative screen and the Special Permit Granting Authority shall consider the surrounding landscape and views to determine if an artificial screen would be out of character with the neighborhood.
  
- g. Ventilation and odor: all Marijuana Establishments shall be ventilated in such a manner that no:
  - i. Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere, and

- ii. No odor or aroma from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Marijuana Establishment or at any adjoining use or property.
- h. Signage: All signage shall comply with all other applicable signage regulations in the Zoning Bylaw and 935 CMR 500.
- i. Nuisance: Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets, and areas surrounding the premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of marijuana, , illegal drug activity under state or local law, harassment of passerby, littering, loitering, illegal parking, loud noises, vehicle idling in violation of State or local traffic laws and regulations, queuing of patrons (vehicular or pedestrian) or obstructing public or private way (driveways, exit doors, fire lanes, sidewalks and streets).

5. Reporting Requirements:

- a. Prior to the commencement of the operation or services, any Marijuana Establishment approved under this section shall provide to the Police Department, Fire Department, Building Commissioner/Inspector and the Special Permit Granting Authority a detailed security plan, which shall include: the names, phone numbers and email addresses of all management staff and holders of keys to the establishment and, a minimum of two (2) operators or managers of the facility identified as contact persons to whom one can provide notice if there are operating problems associated with the establishment. The owner or manager of a Marijuana Establishment is required to respond by phone or email within twenty-four hours of contact by a Town official concerning their Marijuana Establishment at the phone number or email address provided to the Town as the contact for the business.

It shall be a condition of the Special Permit that the Marijuana Establishment provide current and accurate contact information within five business days of any change in the security plan, management staff and/or contact information.

- b. The local Building Inspector, Board of Health, Police Department, Fire Department and Special Permit Granting Authority shall be notified in writing by the Marijuana Establishment facility owner/operator/ manager:
    - i. A minimum of 30 days prior to any change in ownership or management of that establishment.
    - ii. A minimum of 12 hours following a violation or potential violation of any law or any criminal or potential criminal activities or attempts of violation of any law at the establishment.
  
  - c. Permitted Marijuana Establishments shall file an annual written report to, and appear before, the Special Permit Granting Authority no later than January 31<sup>st</sup> of each calendar year, providing a copy of all current applicable state licenses for the facility and/or its owners and demonstrate continued compliance with the conditions of the Special Permit.
6. Issuance/Transfer/Discontinuance of Use:
- a. Special Permits/Site Plan Approvals shall be issued to the Marijuana Establishment owner only.
  
  - b. Special Permits/Site Plan Approvals shall be issued for a specific type of Marijuana Establishment on a specific site/parcel only.
  
  - c. Special Permits/Site Plan Approvals shall be non-transferable to either another Marijuana Establishment owner or another site/parcel.
  
  - d. Special Permits/Site Plan Approvals shall have a term limited to the duration of the Applicant's ownership/control of the premises as a Marijuana Establishment, and shall lapse/expire if:
    - i. The Marijuana Establishment ceases operation (not providing the operation or services for which it is permitted) for 365 days, and/or
    - ii. The Marijuana Establishment's registration/license by the Cannabis Control Commission expires or is terminated.
    - iii. In the event a permitted Marijuana Establishment alters or expands its permitted activities in such a manner as to require additional licenses modifications to existing licenses from the Commission, that Marijuana Establishment shall be required to obtain a new special permit from the Special Permit Granting Authority in accordance with all of the provisions of this section.

- e. The Marijuana Establishment shall notify the Zoning Enforcement Officer and Special Permit Granting Authority in writing within 48 hours of such lapse, cessation, discontinuance or expiration or revocation.
- f. A marijuana cultivator or manufacturer shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state registration/license or ceasing its operation.
  - i. Prior to the issuance of a Building or Occupancy Permit for a Marijuana Establishment, the Applicant shall be required to furnish evidence that a decommissioning bond or other form of financial security pursuant to the requirements of 935 CMR 500.101 §1(a)5 has been posted with the Commission in an amount which shall be sufficient to cover the costs of removing all materials, plants, equipment and other paraphernalia in the event the Applicant fails to do so. Should the applicant not furnish sufficient evidence, or such financial security is deemed insufficient to cover potential costs to the Town for the removal of said material by either the Special Permit Granting Authority or Town Treasurer, the Applicant shall post with the Town Treasurer an addition bond or other form of financial security acceptable to said Treasurer in an amount set by the Special Permit Granting Authority, which shall cover any and all potential costs to the Town for the removal of said material. The Building Inspector shall give the Applicant 30 days' written notice in advance of taking such action. Should the Applicant remove all materials, plants, equipment and other paraphernalia to the satisfaction of the Building Inspector prior to the expiration of the 30 days written notice, any bond posted with and under the control of the Town Treasurer shall be returned to the Applicant.
  - ii. The Special Permit Granting Authority may hire, at the applicant's expense, professional, third-party consultant(s) of their choosing to assist them in evaluating the special permit application, terms of the host-community agreement, estimating any bond amounts as required by §13.7(6)(f)(i) of this section, or any other requirements contained therein.

**13.8 Application Requirements:** A Marijuana Establishment shall only be allowed by special permit from the Special Permit Granting Authority in accordance with MGL c.40A § 9 and Section 6.44 (Special Permits) of this bylaw subject to the following statements, regulations requirements, conditions, and limitations:

- a. No special permit for any Marijuana Establishment shall be issued without site plan approval by the Special Permit Granting Authority. In addition to the standards set forth

within, the site plan must meet all dimensional, parking, and other requirements set forth by this section.

- b. The name and address of each owner and operator of the Marijuana Establishment facility/operation.
- c. A copy of a fully executed Host Community Agreement.
- d. Proof of Liability Insurance Coverage or Maintenance of Escrow as required in 935 CMR 500.
- e. Evidence that the Applicant has site control and right to use the site for a Marijuana Establishment facility in the form of a deed or valid purchase and sales agreement or, in the case of a lease a notarized statement from the property owner and a copy of the lease agreement and Notice of Lease pursuant to M.G.L. c. 183, sec. 4, if the term of such lease, including opt is seven years or more.
- f. A notarized statement signed by the Marijuana Establishment organization's Chief Executive Officer and legal counsel representing the Marijuana Establishment disclosing all of its designated representatives, including officers, directors, shareholders, partners, members, managers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of all such responsible individual persons.
- g. In addition to what is normally required in a Site Plan, details showing all exterior proposed security measures for the Marijuana Establishment including lighting, fencing, gates and alarms, etc. ensuring the safety of employees and patrons and to protect the premises from theft or other criminal activity.
- h. A detailed floor plan identifying the areas available and functional uses (including square footage).
- i. Detailed renderings of all signage being proposed for the facility.
- j. A pedestrian/vehicular traffic impact study to establish the Marijuana Establishment's impacts at peak demand times, including a line queue plan to ensure that the movement of pedestrian and/or vehicular traffic along access areas including, but not limited to the public right of ways, will not be unreasonably obstructed.
- k. An odor control plan detailing the specific odor-emitting activities or processes to be conducted on-site, the source of those odors, the locations from which they are emitted from the facility, the frequency of such odor-emitting activities, the duration of such odor-emitting activities, and the

administrative of odor control including maintenance of such controls.

- l. A Management Plan including a description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to Marijuana Establishment or off-site direct delivery.
- m. Individual written plans which, at a minimum comply with the requirements of 935 CMR 500, relative to the Marijuana Establishment and include, but are not limited to:
  - i. Operating procedures
  - ii. Marketing and advertising
  - iii. Waste disposal
  - iv. Transportation and delivery of marijuana or marijuana products
  - v. Energy efficiency and conservation
  - vi. Security and Alarms
- n. Decommissioning plan for the Marijuana Establishment:
  - i. Such decommission plans shall include a cost estimate provided by a qualified, third-party expert and shall detail dismantling, disposal of equipment and all other reasonably anticipated costs associated the decommissioning of the Marijuana Establishment
  - ii. The Special Permit Granting Authority reserves the right to request a comparison estimate provided by an independent, qualified professional estimator of the board's choosing, the cost of which shall be borne by the applicant
- o. Copies of any and all other materials required by the Commission as part of the normal application process for a Marijuana Establishment License pursuant to 935 CMR 500.

**13.9 Findings:** In addition to the standard Findings for a Special Permit or Site Plan Approval the Special Permit Granting Authority must also find whether all the following provisions are satisfied:

- i. That the Marijuana Establishment is consistent with, and does not derogate from, the purposes and intent of this Section and the Zoning Bylaw.
- ii. That the Marijuana Establishment facility is designed to minimize any adverse impacts on abutters and other parties in interest;
- iii. That the Marijuana Establishment facility demonstrates that it meets or exceeds all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and is in compliance with all applicable state laws and regulations; and



- iv. That the applicant has satisfied all of the conditions and requirements of this Section and other applicable Sections of this Bylaw;
- v. That the Marijuana Establishment facility provides adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation is adequately secured on-site or via delivery.
- vi. That the Marijuana Establishment facility adequately addresses issues of traffic demand, circulation flow, parking and queuing, particularly at peak periods at the facility, and its impact on neighboring uses.

**13.10 Severability:** If any provision of this section is found to be invalid by a court of competent jurisdiction, the remainder of this section shall not be affected but shall remain in full force. The invalidity of any provision of this section shall not affect the validity of the remainder of this zoning bylaw.

Feb. 6, 2007), APPRV. BY ATTORNEY GENERAL OCT.23, 1973, POSTED OCT.29, 1973.  
Amended Sections Meeting Date- Article

|  |                         |
|--|-------------------------|
| Sec. 1-1.3                                     | ATM 5/12/87 - Art. #28  |
| 1.4 Definitions #13, #16                       | ATM 5/11/82 - Art. #10  |
| 1.4 Definitions #15,                           | ATM 5/14/91 - Art. #16  |
| 1.5  | ATM 5/12/87 - Art. #28  |
| 1.52 c   | ATM 5/12/92 - Art. #33  |
| Sec. 2   |                         |
| Section 3                                      | ATM 5/8/2007 - Art. #22 |
| 3.1 Basic Requirements                         | ATM 5/13/80 - Art. #20  |
|  | ATM 5/13/86 - Art. #26  |
|  | ATM 5/10/88 - Art. #50  |
| 3.2 Schedule of Use Reg.                       |                         |
| 3.21 #1, #2                                    | ATM 5/12/87 - Art. #29  |
| 3.21 #4  | ATM 5/11/82 - Art. #11  |
| 3.22 #1, #2, #4, #9                            | ATM 5/11/82 - Art. #11  |
| 3.22 #3 deleted                                | ATM 5/09/95 - Art. #15  |
| 3.22 #7  | STM 11/24/86 - Art. #26 |
| 3.23 #6, #12, #13, #15                         | ATM 5/11/82 - Art. #11  |
| 3.23 #6  | ATM 5/10/83 - Art. #15  |
| 3.24 #2, #3, #4                                | ATM 5/11/82 - Art. #11  |
| 3.26 #3  | ATM 5/12/87 - Art. #29  |
| 3.26 #8  | ATM 5/10/88 - Art. #14  |
| 3.27   | STM 11/25/80 - Art. #10 |
| Sec. 4   |                         |
| 4.33 Location of Accessory Building            | ATM 5/10/88 - Art. #47  |
| 4.34 Multi-Family                              | ATM 5/12/87 - Art. #27  |
| 4.35 Height                                    | ATM 5/10/88 - Art. #15  |
| 4.4 Setback from Water Course<br>or Water Body | ATM 5/11/82 - Art. #12  |

|   |  |
|---|--|
| Section 4.5   | ATM 5/8/2007-Art. #23                            |
| Sec. 5  |  |
| 5.1 Site Plan Review  |  |
| 5.11 #2, #5, #6   | ATM 5/10/83 - Art. #13                           |
| 5.11 General  | ATM 5/10/88 - Art. #48                           |
| 5.11 General  | ATM 5/10/88 - Art. #49                           |
| 5.2 Accessory Buildings   | ATM 5/10/94 - Art. #30                           |
| 5.3 Signs   | ATM 5/11/82 - Art. #13                           |
| B.3   | ATM 5/10/83 - Art. #14                           |
| Sec. 6  |  |
| Sec. 7 Flood Plain District   | ATM 5/11/82 - Art. #15<br>ATM 5/09/95 - Art. #14 |
| Sec. 8 Town Common Overlay District                                   | ATM 5/12/87 - Art. #30                           |
| Sec. 9 Ground Water Protection District                               | ATM 5/11/93 - Art. #9                            |
| Section 10.   | ATM 5/9/2000 - Art. #28                          |
| Various Revisions required by Chapter<br>808 of the Mass General Laws | ATM 5/8/79 - Art. #26                            |
| Section 11. WIND ENERGY SYSTEMS                                       | ATM 5/12/2009                                    |
| BACK LOT BYLAW  | ATM 5/10/2011                                    |

\*CHECK WITH TOWN CLERK FOR ACTUAL CHANGES MADE IN SPECIFIED ARTICLES