

ZONING BY-LAW

OF THE

TOWN OF MANCHESTER-BY-THE-SEA

[revised through April 2007]

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INTRODUCTION

The Town of Manchester-by-the-Sea voted to amend the Zoning By-Law at the Annual Town Meeting held on May 1, 2 and 3, 1978, adopting a complete Zoning By-Law revision and new codification and organization. The Massachusetts Attorney General approved, with deletions in subsection 7.1.2 and section 7.2, this amended and recodified Zoning By-Law on August 18, 1978. The Zoning By-Law has subsequently been revised often by vote of Town Meeting.

Any editorial, typographical and transcription errors do not invalidate the Zoning By-Law. If errors are found, please report them to the Board of Selectmen's office.

GENERAL REQUIREMENTS

Chapter 40A of the Massachusetts General Laws as amended by Chapter 808 of the Acts of 1975, "The Zoning Act", sets forth certain requirements relating to zoning matters. For the convenience of those using the Zoning By-Law of the Town of Manchester-by-the-Sea, a few of these requirements are set forth below. However, nothing herein is intended to alter or vary the requirements of Chapter 40A, "The Zoning Act", provisions of which shall control in all instances.

1. A zoning change may be initiated by or submitted to the Board of Selectmen by a Selectman, the Zoning Board of Appeals, individuals owning land to be affected, ten registered voters, the Planning Board or a regional planning agency.
2. All zoning changes require approval of the Town Meeting by a two-thirds vote.
3. No proposed zoning by-law or change unfavorably voted upon shall be considered by the Town Meeting within two years unless there is a favorable Planning Board recommendation.
4. No appeal, application or petition which has been unfavorably acted upon by the Zoning Board of Appeals can be reconsidered within two years without consent of the Planning Board.
5. Rights acquired under a variance shall lapse if they are not exercised within one year.
6. Decision on an appeal or variance must be made within 100 days of the date of filing. Failure to make a decision within 100 days shall be deemed to be a grant of the appeal or variance.
7. Decision on a special permit must be made within 90 days of the public hearing thereon. Failure to make a decision within 90 days shall be deemed to be a grant of the special permit.
8. A special permit shall lapse within two years (or such shorter period as is deemed appropriate by the Zoning Board of Appeals or the special permit granting authority) if substantial use thereof has not commenced within such period except for good cause or if construction has not begun except for good cause.
9. The Zoning Board of Appeals consists of five members. By reason of Chapter 40A, all decisions must receive four votes.
10. The Board of Selectmen consists of five members. By reason of Chapter 40A, all decisions as special permit granting authority require a vote of at least four members.

INFORMATION RELATING TO LAWS AND REGULATIONS GOVERNING LAND USE

Land use in the Town of Manchester-by-the-Sea is subject to regulation under various Town By-Laws and statutes of the Commonwealth. Included among these are the Zoning By-Law of the Town of Manchester-by-the-Sea adopted pursuant to Chapter 40A of the General Laws as amended by Chapter 808 of the Acts of 1975, "The Zoning Act" of the Commonwealth of Massachusetts, and the following:

BY-LAWS OF THE TOWN OF MANCHESTER-BY-THE-SEA as amended and set forth as Board of Selectmen's Rules and Regulations. Included are the Earth Removal By-Law (Article XII), the Historic District By-Law (Article XVI), the General Wetlands By-Law (Article XVII), and By-Laws regulating swimming pools, signs and advertising devices, snow guards, road openings, and billboards (Article X).

TOWN OF MANCHESTER-BY-THE-SEA SUBDIVISION RULES AND REGULATIONS set forth the Planning Board's procedures and standards to be followed in the subdivision of land and the construction of ways pursuant to "The Subdivision Control Law," Chapter 41 of the General Laws.

STATE BUILDING CODE sets forth the regulations, administered by the Building Inspector, relative to the construction, reconstruction, alteration, repair, demolition, removal, inspection, issuance and revocation of permits or licenses, installation of equipment, classification and definition of buildings and structures and use or occupancy thereof.

STATE ENVIRONMENTAL CODE - Title 5 as amended sets forth the minimum standards for the protection of public health and the environment when circumstances require the use of individual systems for the disposal of sanitary sewage in areas where municipal sewage systems are not available.

"MINIMUM REQUIREMENTS FOR THE DISPOSAL OF SANITARY SEWAGE IN UNSEWERED AREAS" sets forth the Board of Health's local rules and regulations pertaining to the construction or installation of on-lot sewage disposal systems in areas not connected to the municipal sewers.

HISTORIC DISTRICTS sets forth the boundary description of the Historic District and the regulations administered by the Historic Districts Commission pertaining to the preservation and protection of buildings, places and districts of historic significance in such zones through the development and maintenance of appropriate settings. Maps of the District are available in Town Hall.

STATE WETLANDS PROTECTION ACT is administered by the Manchester Conservation Commission and provides for public review of proposed projects which involve construction or other alterations of land in or near wetlands or land deemed subject to periodic flooding.

ZONING BY-LAW OF THE TOWN OF MANCHESTER-BY-THE-SEA

SECTION 1.0 AUTHORITY AND PURPOSE

1.1 Authority

The Zoning By-Law of the Town of Manchester-by-the-Sea is adopted pursuant to and under the authority of Chapter 40A of the General Laws as amended by Chapter 808 of the Acts of 1975, The Zoning Act.

1.2 Purpose

The purpose of this By-Law is the promotion and protection of the public health, safety, convenience, and general welfare of the inhabitants of the Town of Manchester-by-the-Sea and of the public generally by:

- encouraging the most appropriate use of land and water within the Town;
- preventing overcrowding of land;
- preventing undue concentration of population on the one hand, and preventing excessive scattering of population on the other;
- encouraging various lot sizes and housing types for persons of various age and income levels;
- minimizing traffic hazards and congestion;
- providing for adequate light, air, and sanitation;
- reducing hazards from fire, flood, panic, and other dangers;
- assisting in the economical provision, utilization and expansion for all services provided to the public, including streets, drainage, water supply, sewage disposal, schools, parks and open spaces;
- preventing blight and pollution of the environment;
- maintaining and enhancing the natural and historical amenities of Manchester-by-the-Sea; and
- conserving the value of land and buildings.

SECTION 2.0 DEFINITIONS

As used in this By-Law, the following terms shall have the following meaning:

2.1 Accessory

A building, structure or use which is subordinate to, and the use of which is customarily incidental to, and is located on the same lot with the principal building, structure or use to which it is accessory.

2.2 The Zoning Act

Chapter 40A of the Massachusetts General Laws, as amended by Chapter 808 of the Acts of 1975, The Zoning Act, and any amendments thereafter.

2.3 Building

A structure having a roof (including an awning or similar covering) adapted to permanent or continuous occupancy for assembly, business, education, industrial, institutional, residential or storage purposes. The term "building" shall be construed where applicable as if followed by the words "or portion thereof".

2.4 Dwelling

A detached building designed or arranged to accommodate one or more dwelling units and separated by side yards from any other structure except accessory buildings. Except as expressly provided in section 4.1.9.1 (employee), not more than one dwelling shall be built or maintained on a lot.

2.5 Dwelling Unit

A building or portion thereof occupied or suitable for occupancy as a residence and arranged for the use of one or more individuals living as a single housekeeping unit, but not including a trailer, mobile home or recreational vehicle which is designed to be mounted on wheels, whether or not on a permanent foundation.

2.6 Lot

The whole area of a single parcel of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings. A lot for the purpose of this Zoning By-Law may or may not coincide with a lot of record title.

2.7 Special Permit

A specific authorized use within this Zoning By-Law that may be granted upon application to the designated special permit granting authority.

2.8 Street

Any accepted town way, a way established by or maintained under county, state or federal authority, a way established by and constructed according to a subdivision plan approved in accordance with the Subdivision Control Law, and a way determined by the Planning Board to have sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. A public or private way shall not be deemed to be a street relative to any lot that does not have rights of access to and passage over said way.[Amended 1987]

2.9 Structure

A combination of materials assembled at a fixed location to give support, shelter or utility, including but not limited to, buildings (whether principal or accessory), platforms and decks, swimming pools, tennis or similar courts, satellite dishes of three (3) feet diameter or greater, sheds, shelters, and display signs. The term "structure" shall be construed where applicable as if followed by the words "or portion thereof". The term "structure" shall not include walls or fences. [Amended 1987, 1994]

2.10 Lot Width

Lot Width shall mean the length between the side lot lines of a straight line as measured parallel to the lot's street frontage (See Line "A"). If such lot width so measured at any point beginning at and moving from the street frontage toward the rear lot line ceases to be more than the length specified in the column headed "Minimum Lot Width" in Section 5.4, the area bounded by the lot front line (inclusive of the street frontage), side lot lines and the line representing the initial occurrence of the length specified in such Minimum Lot Width column shall not be less than eighty (80) percent of the lot's required area (as specified in the column headed "Minimum Lot Area" in Section 5.4) [Amended 1997, 2007]

2.11 Lot Frontage

The frontage of a lot is the unbroken distance measured along the street line perimeter of the lot (also referred to as “street frontage”) and constitutes all or a portion of the front lot line which runs between one side line of the lot to the other side line.

For purposes of determining whether a lot has the applicable frontage specified in the column headed “Minimum Frontage” in Section 5.4, the frontage of a lot shall be the lesser of (1) its unbroken street frontage, or (2) the unbroken distance measured along a line which marks the required front setback from the front lot line as specified in the column headed “Minimum Front Setback” in Section 5.4. In the case of a lot abutting on more than one street, such lot shall be required to have such applicable minimum frontage on only one street.” [Amended 2007]

SECTION 3.0 ESTABLISHMENT OF DISTRICTS

3.1 Districts

For the purpose of this By-Law, the Town of Manchester-by-the-Sea is hereby divided into the following zoning districts:

- Single Residence District A
- Single Residence District B
- Single Residence District C
- Residence District D
- Single Residence District E [Added 2000]
- General District
- Limited Commercial District [Amended 1987]

3.2 Zoning Map

The location and boundaries of the zoning districts are shown on the following identified zoning maps as they may be hereinafter amended, and are collectively referred to as "The Zoning Map":

"Map of the Town of Manchester, Massachusetts, Showing Zoning Districts," originally drawn by Charles A. Fritz on October 2, 1954, with reference to earlier map of December 7, 1944, accepted by the Town on February 13, 1945 and later amended to March 12, 1973 (scale: 1 inch equals 800 feet); and "Town of Manchester Natural Resources Map," consisting of a set of 8 maps prepared by Autometrics Division of Raytheon Corporation, dated April 1974 and adopted as part of the Zoning By-Law in May 1976 (scale: inch equals 600 feet), a composite map (scale: 1 inch equals 1,000 feet), and an index map (scale: 1 inch equals 2,000 feet). [Amended 1987]

3.3 Zoning Map Interpretation

For the purposes of interpretation of the Zoning Map, the following shall apply:

- 3.3.1 Boundaries which appear to follow streets, railroads, wood roads or brooks shall coincide with the center line thereof.
- 3.3.2 Boundaries which appear to follow a property or lot line, the exact location of which is not indicated by means of dimensions shown in figures, shall coincide with the property or lot line.
- 3.3.3 Boundaries which appear to run parallel to the sidelines of streets shall be regarded as parallel to such lines. Dimensions shown in figures placed upon said map between such boundary lines and sidelines of public or private ways are the distances in feet of such boundary lines from such lines.
- 3.3.4 [Deleted 1987]

SECTION 4.0 USE REGULATIONS

4.1 Single Residence Districts

In a single Residence District no building or land shall be used and no building shall be erected or altered which is intended or designed to be used for any purpose except one or more of the following:

- 4.1.1 A dwelling having not more than one dwelling unit.
- 4.1.2 Non-nuisance agricultural, horticultural and floricultural uses, except those requiring a special permit pursuant to Section 4.1.10(1). [Amended 2007]
- 4.1.3 Church and related use.
- 4.1.4 Educational use, not conducted for profit.
- 4.1.5 The taking of boarders or the leasing of rooms for not more than four (4) persons by a family residing on the premises with common cooking and living facilities, providing there is no sign or display to advertise such use. (But it shall not be permissible to construct or operate overnight camps.)
- 4.1.6 Municipal parks, playgrounds and other municipal recreational uses, municipal wells, water storage and processing and sewage lift stations, and related buildings and parking facilities.
- 4.1.7 The office of a doctor, dentist or other member of a recognized profession provided there is no display or advertising except for a small professional sign not over one square foot in area.
- 4.1.8 Customary home occupations including home-cooking, dressmaking, millinery, hairdressing, and other similar occupations, by a person resident on the premises, provided there is no visible display of goods from the street and no exterior advertising, except an announcement sign of not more than two square feet in area, and provided such occupation shall not be carried on in an accessory building.
- 4.1.9 Accessory use on the same lot with and customarily incident to any of the above permitted uses, or to the uses permitted in accordance with the following section 4.1.10, and not detrimental to a residential neighborhood, including specifically the following:
 - 4.1.9.1 As part of an existing garage, stable or other existing structure approved by special permit of the Board of Appeals, family living quarters for and

to be occupied only by an employee of the owner occupant of the dwelling while such garage, stable or other existing structure, approved by the Board of Appeals, is an accessory use. Said employee must be employed on the premises. [Amended 1983]

4.1.9.2 The garaging or maintaining on any lot of not more than 1 commercial vehicle.

- 4.1.10 Any of the following uses, if authorized by special permit issued by the Zoning Board of Appeals or by the Planning Board, as specified below, and in accordance with the provisions of Section 7.5 (Special Permits) and subject to appropriate conditions, limitations and safeguards stated in writing by the Zoning Board of Appeals or the Planning Board, whichever is authorized to act on the matter (the SPGA), and made a part of the special permit: [Amended 2007]
- (a) Private Club, not conducted for profit; Planning Board is the SPGA
 - (b) Cemetery, not conducted for profit; Planning Board is the SPGA
 - (c) The garaging or maintaining of more than 4 automobiles when accessory to a dwelling; Zoning Board of Appeals is the SPGA
 - (d) Charitable or philanthropic use, hospital, sanitarium, nursing, rest or convalescent home, not conducted for profit, or other similar use; Planning Board is the SPGA
 - (e) Public utility or public communications building not including a service station or outside storage of supplies; Planning Board is the SPGA
 - (f) A permanent swimming pool or a tennis or similar court when accessory to a dwelling; Zoning Board of Appeals is the SPGA
 - (g) The offices within a single building for not more than three medical doctors, subject to the following conditions: (i) the Board of Appeals determines that there is a need in the Town for such offices within a single building, that there is no reasonably available and suitable office space for such doctors within a single building, or land for such a building, in a district other than a Residence District, and that there is adequate and safe off-street parking for doctors and their staffs and patients; (ii) there is no display or advertising except for a small professional sign for each doctor not over one square foot in area; (iii) no more than one building with offices for more than one doctor shall be permitted in the Residence Districts; and (iv) site plan approval is required as provided for in Section 6.5 (Site Plan Approval). Zoning Board is the SPGA.
 - (h) Wind energy conversion systems (windmills). Planning Board is the SPGA [Added 1982] [Amended 2000, 2007] (See 5.3)
 - (i) The raising or keeping of livestock, including poultry, horses, or cows. The Planning board is the SPGA [added 2005]

- (j) Matters (including the construction or alteration of any structure or the use thereof) all or any part of which is within tideland lying below Mean High Water (per U.S. Geodetic Survey) for which an application for a state license under Section 18 of Gen. Laws Chapter 91 is required thereunder to be submitted for comments to the Planning Board. The Planning Board is the SPGA. [added 2006]

4.2 Residence District D

- 4.2.1 The uses and accessory uses permitted in Residence District D shall be the same as those specified and defined in Section 4.1 for Single Residence Districts. In addition a dwelling having not more than two dwellings units is permitted, except as is provided in Sections 4.2.2 and 4.2.3.
- 4.2.2 Purpose:

To allow for a diversity in dwelling unit construction, and to continue an historic pattern of settlement within the downtown portion of town, this By-Law allows for the construction and/or conversion of structures into two dwelling units, provided the new or converted structures are appropriate in terms of bulk, shape and location on the lot and relationship to abutting properties.
- 4.2.3 Applicability:

Within that portion of Residence District D included within a line running one hundred (100') feet from, and parallel to, the easterly and westerly sidelines of Pine Street, the northerly and southerly sidelines of Pleasant Street, the westerly sideline of School Street, the northerly sideline of Pleasant Street Extension, the easterly sideline of Arbella Street, and the northerly sidelines of Lincoln Street, specifically defined as the area depicted in Article 21 of the 1985 Annual Town Meeting, the conversion of a single-family residence in existence on the lot as of May 6, 1991 to a two-dwelling unit structure and the construction of a two-dwelling unit are permitted, if authorized by a special permit issued by the Zoning Board of Appeals in accordance with Section 7.5 (Special Permits) and M.G.L. Chapter 40A, Section 9, provided the conditions listed below are met. As a condition of a grant of a special permit, the Zoning Board of Appeals may impose reasonable conditions on the construction or conversion of a two-dwelling structure, if in the Board's opinion, said conditions will ensure that the development is suitable and in compliance with the purpose of this By-Law. The conversion of a structure existing on the lot as of May 6, 1991, that does not involve any increase in the size, height or volume of the structure, including the construction of exterior stairways, porches, patios or decks, shall not require a special permit.

 - (a) The units within the structure shall connect with the municipal sanitary sewer;

- (b) The new or expanded structure is appropriate in terms of bulk, shape, location on the lot and relationship to abutting properties and existing structures within the immediate and general neighborhood;
- (c) Off-street parking regulations of Section 6.2 of this By-Law are met;
- (d) The converted two-unit structure may not be substantially different in character from the existing building, except in a case where changes in building facade or design would better reflect the overall character of the surrounding neighborhood;
- (e) The resulting structure will be in harmony with the surrounding neighborhood.

4.2.4 Filing Requirements:

Applicants for a special permit under this section shall file with the Zoning Board of Appeals thirteen (13) copies of written and graphic materials sufficient to describe the building appearance and position on the lot after construction, as well as location(s) for vehicular parking. At a minimum, these materials shall include exterior architectural drawings, stamped by a registered architect, depicting the appearance and location on the lot relative to front, side and rear yard setbacks, and the proximity to existing structures of the new or converted structure. The drawings shall also include before and after alterations in topography, if any, greater than two (2) vertical feet. The Zoning Board of Appeals may request additional information if it determines that such information is necessary to evaluate the impact of the proposed development on the surrounding neighborhood.

4.2.5 Decisions:

The Zoning Board of Appeals shall take action on a special permit application under this section in accordance with the procedures of M.G.L. Chapter 40A, Section 9 and Section 7.5 of the Zoning By-Law, with the exception that a public hearing shall be held within thirty (30) days after the filing of a complete application with the Town Clerk, and the Zoning Board of Appeals at a regularly scheduled Zoning Board of Appeals meeting. The Zoning Board of Appeals shall take final action on the special permit application within thirty (30) days following the close of the above-noted public hearing. In the event that a decision is not filed with the Town Clerk within seventy-five (75) days of the filing date, the application shall be deemed to be approved. [1991] [2001]

4.3 General District

In a General District no building or land shall be used and no building shall be erected or altered except for the following uses:

4.3.1 Uses and accessory uses permitted in Residence Districts.

4.3.2 Municipal and utility uses.

- 4.3.3 Retail, professional, office, service, restaurant and similar uses.
- 4.3.4 Yacht storage, construction and service and related uses.
- 4.3.5 Fish and shellfish landing, storage and handling (but not a fish processing or similar plant).
- 4.3.6 Public parking or garaging of automobiles not incidental to another permitted use if authorized by a special permit issued by the Planning Board in accordance with the provisions of Section 7.5 (Special Permits).
- 4.3.7 Greenhouse and nursery uses for horticultural or floricultural purposes.
- 4.3.8 Printing and publishing and similar uses.
- 4.3.9 Accessory use on the same lot with and customarily incident to a use permitted by this Section 4.3, including off-street parking provided in accordance with Section 6.2 (Off-Street Parking and Driveway/Curb Cut Regulations).
- 4.3.10 An existing dwelling which is altered or reconstructed so as to contain not more than 3 dwelling units. Such alteration or reconstruction shall not include an increase in floor area or volume. Except for shed dormers, individual dormers are not considered to be an increase in volume.
- 4.3.11 A new or enlarged existing dwelling containing not more than 4 dwelling units if authorized by a special permit issued by the Planning Board in accordance with the provisions of Section 7.5 (Special Permits); in addition, the following stated provisions shall also apply. After the required public hearing, the Planning Board shall find and determine that such dwelling and use, including the site, plans and designs of the dwelling and any accessory buildings, constitute a desirable development in and will not be detrimental to the neighborhood, and subject further to the following conditions:
 - 4.3.11.1 Each unit shall have independent cooking facilities.
 - 4.3.11.2 No living quarters shall be located so that the floor elevation is more than 36 inches below the finished exterior grade. [Amended 2007]
 - 4.3.11.3 The dwelling and to the extent appropriate any accessory building shall connect with a municipal sanitary sewer;

- 4.3.11.4 The density shall not exceed the rate of 15 dwelling units per acre of lot except for a dwelling constructed or enlarged on a lot of less than 12,000 square feet existing on January 25, 1974;
- 4.3.11.5 Such other conditions and restrictions as the Planning Board may prescribe in the interest of the Town in carrying out the purposes of this By-Law.

4.4 Limited Commercial District

Within the Limited Commercial District no building, structure, or land shall be used and no building or structure shall be erected or altered, except for the following uses. Site plan review approval is required from the Planning Board, as provided for in Section 6.5 Site Plan Approval (See also 5.7 Limited Commercial District):

- 4.4.1 Business and professional offices and office buildings;
- 4.4.2 Recreational club or facilities operated for profit;
- 4.4.3 Municipal use;
- 4.4.4 Any accessory use in an accessory building when completely screened from the abutting streets or lots;
- 4.4.5 By Special Permit from the Planning Board, and limited to the land area west of Pine Street, a/k/a Pipe Line Road, laboratories and establishments devoted to scientific research and development; light manufacturing, assembly and processing of materials related thereto and incidental accessory uses. Such a use will be permitted only if the following conditions, in addition to the requirements specified in Sections 6.9 and 7.5 of the Zoning Bylaw, are met:
 - (a) The applicant shall prove to the satisfaction of the Planning Board, based in part on the advice of the Conservation Commission, the Board of Health, and the Department of Public Works, that such use and facilities will not adversely affect the environment or public health. These requirements are in addition to those described in Section 5.10 of the Zoning Bylaw.
 - (b) Expenses incurred by the Planning Board in connection with the Special Permit, including the reasonable fees and expenses of any consultants retained by the Planning Board, shall be borne by the applicant for the Special Permit.
 - (c) It shall be a condition of any Special Permit granted under this section that the applicant shall file with the Planning Board on an annual basis evidence that all federal, state and town licenses, permits and standards have been obtained or met for

handling, use, storage and disposal of any regulated substances as defined in Section 4.9.4.3 of the Zoning Bylaw.

(d) In considering the Special Permit application, the Planning Board shall apply relevant design and operating guidelines noted in Section 4.9.6.5 of the Zoning Bylaw, including subsection (f) regarding alterations and expansion. [1997]

4.6 Special Housing Provisions

4.6.1 Purpose:

This By-Law permits the construction of accessory dwelling units in Single Residence Districts A, B, C, and E in order to meet the following objectives:

- (a) To facilitate the availability of suitable private housing for moderate and lower income, elderly and younger citizens of the Town while preserving the existing character of single family districts.
- (b) To make it financially possible for existing homeowners to stay in their homes.
- (c) To provide security.
- (d) To provide regulations that are enforceable and bring illegal conversions under control.
- (e) To insure that all accessory dwelling units that are created will comply with the building codes and health, safety and fire regulations.
- (f) To allow the best use of older homes by encouraging the preservation of these homes.

4.6.2 Accessory Dwelling Units in Single Residence Districts A, B, C, and E:

4.6.2.1 An owner or owners of a single family dwelling in Single Residence Districts A, B, C, and E may apply to the Board of Appeals for a Special Permit for the construction of one accessory dwelling unit in such single family dwelling.

4.6.2.2 After notice and public hearing the Board of Appeals may grant such a permit provided that:

- (a) Except in Single Residence District E, the lot size shall be two (2) times the minimum lot size as determined by the zoning regulations.

- (b) The single family dwelling shall have existed on the lot as of March 1, 1984.[Amended 1987]
- (c) Off-street parking for at least four (4) vehicles shall be provided in a manner consistent with the character of a single family dwelling.
- (d) Either the accessory dwelling unit or the main dwelling shall be occupied by the owner of the property except for temporary absences of up to one year.
- (e) The construction and occupancy of the accessory dwelling unit will not be detrimental to the neighborhood or injurious to persons or property.
- (f) The accessory dwelling unit is accessory to the principal residence. The floor area of the accessory dwelling unit will not exceed 35% of the floor area of the principal dwelling and the accessory dwelling unit combined.
- (g) No exterior changes shall be made which alter the single family character of the dwelling. Any additions made shall not increase the floor area or volume by more than 10% and shall meet all applicable setback requirements.
- (h) Adequate provisions shall be made for the disposal of sewage, waste and drainage caused by the occupancy of such dwelling unit.
- (i) There is no other accessory dwelling unit in the dwelling.

4.6.2.3 The Applicant for the special permit shall submit plans showing at a minimum the following items:

- (a) Lot size and location of parking.
- (b) Floor plan showing size and location of accessory dwelling unit with all means of egress, natural and mechanical ventilation, and location of all items required by the building code.
- (c) Elevations of building if exterior changes occur.
- (d) Additional information requested by the Board of Appeals.

4.6.2.4 The accessory dwelling unit shall not be occupied until a Building Permit and a Certificate of Occupancy are issued by the Building Inspector.
[Added 1984; Amended 1987]

4.7 Flood Control District

The Flood Control District will consist of those areas designated as A1, A2 and B1 in Figure 8 of a report prepared for the Town of Manchester-by-the-Sea by the consulting firm of

Camp, Dresser and McKee entitled "Storm Drainage Improvements for the Bennett's Brook Drainage Area" dated October, 1971. [On file with the Department of Public Works.]

- 4.7.1 The Flood Control District shall overlay other districts in this By-Law. Any land lying within the Flood Control District shall be subject to the development and use regulations of the underlying district in which such land is situated but only to the extent not inconsistent with the regulations for the Flood Control District.
- 4.7.2 The purpose of the Flood Control District is to protect the public health and safety and property against the damages of flooding conditions caused by new development in areas with inadequate capacity of existing drainage systems, brook channels, and street culverts to accept storm runoff from the areas drained.
- 4.7.3 Any use otherwise permitted in the underlying district is permitted as a matter of right within the Flood Control District except those uses expressly regulated in this Section. The following uses are hereby regulated:
 - 4.7.3.1 Dumping, filling, or placing of soil or other substance as landfill or surfacing the land with any type of impervious materials; excavation, dredging, or removing of natural resource deposits.
 - 4.7.3.2 Erection or construction of new buildings and enlargement or moving of existing structures.
- 4.7.4 The portion of any lot within the Flood Control District may be used to meet the area and yard requirements for the district or districts in which the remainder of the lot is situated.
- 4.7.5 Any use designated by Section 4.7.3 of the By-Law shall be permitted by the Board of Appeals through the issuance of a special permit, if the Board finds that the proposed use will not result in the creation or aggravation of flooding conditions which this section seeks to prevent. In exercising its jurisdiction hereunder, the Board of Appeals may impose such conditions and restrictions on such use as it determines necessary or desirable in order to satisfy the requirements of this section. Prior to any hearing on an application for a special permit pursuant to this section, the Board shall request the opinions of the Board of Health, the Planning Board, and the Conservation Commission with respect to the use for which this special permit is sought. [Added May, 1984]

4.8 Flood Plain

4.8.1 Flood Plain District:

The purposes of the Flood Plain District are to:

- (a) Ensure public safety through reducing the threats to life and personal injury;

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

4.8.2 Flood Plain District Boundaries and Base Flood Elevation and Floodway Data

4.8.2.1 The Flood Plain District is herein established as an overlay district. Any use otherwise permitted in the underlying district is permitted as a matter of right in the Flood Plain District, provided the use meets the following additional requirements and those of the Massachusetts State Building Code dealing with construction in flood plains and coastal high hazard areas as applicable. The Flood Plain District includes all special flood hazard areas designated as Zones A, A1-30, V1-30, AO, AH and B on the Manchester-by-the-Sea, Massachusetts Flood Insurance Rate Map (FIRM), dated July 2, 1992 and September 4, 1986, which indicates the 100-year regulatory flood plain. The exact boundaries of the District shall be defined by the 100-year base flood elevations shown on the FIRM and shall be further defined by the Flood Insurance study booklet (FIS) dated July 4, 1986. The FIRM and FIS booklet are both incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Director of Public Works.

4.8.2.2 Base Flood Elevation and Floodway Data

(a) Base Flood Elevation Data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, which ever is the lesser, within unnumbered A zones.

4.8.3 Notification of Watercourse Alteration

In a riverine situation, the following must be notified of any alteration or relocation of a watercourse:

- (a) Adjacent communities
- (b) NFIP State Coordinator
Massachusetts Office of Water Resources
251 Causeway Street
Suite 600-700
Boston, MA 02114-2104
- (d) NFIP Program Specialist
FEMA Region I, Rm. 462

4.8.4 Use Regulations

4.8.4.1 Within any Zone where the base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.

4.8.4.2 Located within the Flood Plain District are areas designated as coastal high hazard areas (Zones V1-30). Since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wash, all new construction shall be located landward of the reach of Spring High Tide. Spring High Tide shall be located as that elevation shown on the Army Corps of Engineers High Tide Chart (Tidal Flood Profiles New England Coastline, See ACOE, New England Division, Prepared by Hydraulics and Water Quality Section, Waltham, MA). All references to elevations should be to NGVD (National Geodetic Vertical Datum). Wave run-up as defined by the elevation of the one year flood surge (Stillwater) as noted under section 404, shall be incorporated in to those elevations within V zones.

4.8.4.3 All development in the Flood Plain District, including structural and non-structural activities, whether permitted by right or by special permit, shall be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws, and with the following:

- (a) Massachusetts State Building code 780CMR 3107.0 which addresses flood plain and coastal high hazard areas;
- (b) Wetlands Protection Regulation, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- (c) Inland Wetlands Restriction, DEP (currently 302 CMR 6.00);
- (d) Coastal Wetlands Restriction, DEP (currently 302 CMR 4.00);
- (e) Minimum requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

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

4.8.4.4 Other Use Regulations

- (a) Within Zones AH and AO on the FIRM, adequate drainage paths are required around structures on slopes to guide flood waters around and away from proposed structures.
- (b) Man-made alteration of sand dunes within Zones V1-30, VE and V, which would increase potential flood damage, is prohibited.

- (c) All development and/or uses within the Flood Plain District shall comply with all applicable local laws and regulations. [Revised 1998]

4.9. Ground and Surface Water Resource Overlay Protection Districts

4.9.1 Findings:

The Town of Manchester-by-the-Sea finds that:

- (a) The groundwater underlying the Town is a major source of its existing and future water supply, including drinking water.
- (b) The aquifer system supplying Manchester-by-the-Sea with its groundwater supply is integrally connected with numerous surface waters, lakes, and streams.
- (c) The surface water supplies of Gravelly and Round Ponds supplement the Town's groundwater resource, and are similarly considered an indispensable natural resource.
- (d) Accidental spills and discharges of toxic and hazardous materials have threatened the quality of such water supplies posing public health and safety hazards.
- (e) Unless preventive measures are adopted to control the discharge and storage of toxic and hazardous materials within the Town, further spills and discharges of such materials will predictably occur and with greater frequency and degree of hazard by reason of increasing land development, population and vehicular traffic within Manchester-by-the-Sea.

4.9.2 Purpose:

The purpose of this section is to protect the public health, safety, and welfare through the preservation of the Town's water resources to ensure a future supply of safe and healthful drinking water for the residents and employees of the Town of Manchester-by-the-Sea and the general public. The designation of the Ground and Surface Water Resource Overlay Protection Districts and careful regulation of development activities within these districts can reduce the potential for ground and surface water contamination.

4.9.3 Ground and Surface Water Resource Overlay Protection District Maps:

The maps delineating the Ground and Surface Water Resource Overlay Protection District, dated April, 1990, prepared by Horsley Witten Hegemann, Inc., Scale: 1 inch = 3,000 feet," and the maps entitled "Water Resource Protection District, Town of Manchester, Scale: 1 inch = 800 feet," dated 1987, prepared by Whitman and Howard, are incorporated herein and made a part of this By-Law and collectively shall be referred to as the "Ground and Surface Water Resource Overlay Protection District Maps." These Maps shall be on file and maintained by the Town Clerk's

office. Any amendments, additions or deletions to said Maps shall be made only as provided for in M.G.L. c. 40A, §5.

4.9.4 Regulations:

Ground and Surface Water Resource Overlay Protection Districts, as shown on the maps described in §4.9.3, shall be considered to be superimposed over any other district established in this By-Law. Land in a Ground and Surface Water Resource Overlay Protection District may be used for any purpose otherwise permitted in the underlying district, subject to the additional restrictions presented herein. This By-Law shall not apply to land or activities located outside of the corporate boundaries of Manchester-by-the-Sea.

4.9.4.1 Determination of Location within Ground and Surface Water

Resource Overlay Protection Districts: In determining the location of properties and facilities within the Ground and Surface Water Resource Overlay Protection District, the following rules shall apply:

- (a) Properties located wholly within one zone reflected on the Ground and Surface Water Resource Overlay Protection District Maps shall be governed by the restrictions applicable to that zone.
- (b) Properties located such that the site lies within more than one zone as reflected on the Ground and Surface Water Resource Overlay Protection District Maps shall be governed by the restrictions applicable to the zone in which the greater part of the property is located.
- (c) Where a facility, building or accessory thereto including but not limited to sewage disposal systems is overlapped by different zones, the stricter zone shall apply.
- (d) Special permits, in accordance with the provisions of this By-Law, Section 7.5 of the Manchester-by-the-Sea Zoning By-Law and M.G.L. c. 40A, §9, may be granted by the Planning Board to exempt a location from the requirements of this By-Law, provided that the applicant demonstrates that the Ground and Surface Water Resource Overlay Protection District Maps incorrectly identify the location as being within the Ground and Surface Water Resource Overlay Protection District. The burden of proof shall rest upon the applicant for a special permit to demonstrate that the location is not within a delineated district. The applicant shall be required to present detailed hydrogeologic and hydrologic information to the Planning Board indicating that the location is, in fact, not within a Ground and Surface Water Resource Overlay Protection District. The applicant shall provide funds to the Planning Board to pay for the technical review by the Planning Board's choice of consultant(s) of said

hydrogeologic and hydrologic information and the Planning Board shall base its decision, in part, on the report by said consultant(s).

4.9.4.2 Relationship to Other Laws: This By-Law is supplementary to other laws and By-Laws within Manchester-by-the-Sea. Where this By-Law or any portion thereof imposes a greater restriction than is imposed by other regulations, the provisions of this By-Law shall control. Where this By-Law references statutes or regulations promulgated by the Commonwealth or its agencies, the statute or regulation shall be that in effect as of January 1, 2002.

4.9.4.3 Definitions:

"Applicant" means any person filing an application.

"Department" means the Massachusetts Department of Environmental Protection (DEP).

"Person" means any agency or political subdivision of the federal government or the Commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee, or agent of such person, and any group of persons.

"Zone I" means the 400-foot protective radius required by the Department around a public water supply well or wellfield.

"Zone II" means 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), as defined in 310 CMR 22.00. It is bounded by the groundwater 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 upgradient to its point of intersection with prevailing hydrogeologic boundaries (a ground water flow divide, a contact with till or bedrock, or a recharge boundary).

"Zone III" means that land area beyond the area of Zone II from which surface water and ground water drain into Zone II, as defined in 310 CMR 22.00. The surface drainage area as determined by topography is commonly coincident with the ground water drainage area and will be used to delineate Zone III. In some locations, where surface and ground water drainage are not

coincident, Zone III shall consist of both the surface drainage and the ground water drainage areas.

“Zone A” means

- (a) the land area between the surface water source and the upper boundary of the bank;
- (b) the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a); and
- (c) the land area within a 200-foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.

“Zone B” means the land area within one half mile of the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), or edge of watershed, whichever is less. However Zone B shall always include the land area within a 400-foot lateral distance from the upper boundary of the bank of the Class A surface water source.

“Zone C” means the land area not designated as Zone A or B that is either within the watershed of a Class A surface water source as defined by 314 CMR 4.05(3)(a), or contributes water runoff to Gravelly and Round Ponds.

"Regulated Substances" means those substances found in Exhibit A, attached hereto and incorporated herein.

"Spill" means the unpermitted release or escape of a Regulated Substance, irrespective of the quantity thresholds directly or indirectly to soils, surface waters, or ground waters.

4.9.5 Restrictions within Ground and Surface Water Resource Overlay Protection Districts

4.9.5.1. Prohibited uses in Zone I, Zone II, and Zone III, and Zone A, Zone B, and Zone C:

- (a) All underground storage tanks.
- (b) Automobile graveyards and junkyards, as defined in M.G.L. c.140B, §1.
- (c) Stockpiling and disposal of snow or ice removed from highways and streets located outside Zone II/Zone A that contains sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.

- (d) 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.
- (e) Storage of commercial fertilizers, as defined in M.G.L. c. 128, §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
- (f) Storage of animal manures, unless such storage is covered or contained in accordance with the specifications of the Natural Resource Conservation Service.
- (g) Residential approval not required (ANR) land divisions and/or subdivisions pursuant to M.G.L. c.41, §§81L, 81P, 81S, and 81U, at a density greater than one dwelling unit per 30,000 square feet unless connected to the municipal sewage treatment facility.
- (h) Landfills and open dumps, as defined in 310 CMR 19.006.
- (i) Landfills receiving only wastewater residuals and/or septage approved by the Department pursuant to M.G.L. c.21, §26 –53; M.G.L. c.111, §17; M.G.L. c.83, §6-7, and any regulations promulgated thereunder.
- (j) Petroleum, fuel oil and heating oil bulk stations and terminals, including, but not limited to, those listed as of January 1, 2002 under Standard Industrial Classification (SIC) Codes 5171 and 5983. SIC Codes are established by the U.S. Office of Management and Budget and may be determined by referring to the publication, “Standard Industrial Classification Manual”, and any subsequent amendments thereto.
- (k) Treatment or disposal works subject to 314 CMR 5.00 for wastewater other than sanitary sewage. This prohibition includes, but is not limited to, treatment or disposal works related to activities under the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6) (Title 5), except the following:
 - (1) the replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s); and
 - (2) treatment works approved by the Department designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.05 (13); and
 - (3) publicly owned treatment works, or POTWs.
- (l) Facilities that generate, treat, store or dispose of hazardous waste that are subject to M.G.L. c. 21C and 310 CMR 30.000, except for the following:
 - (1) very small quantity generators, as defined by 310 CMR 30.00;

- (2) household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;
- (3) waste oil retention facilities required by M.G.L. c. 21, §52A; and
- (4) treatment works approved by the Department designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters.
- (m) 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.
- (n) Storage of liquid hazardous materials, as defined in M.G.L. c. 21E, and/or liquid petroleum products unless such storage is:
 - (1) above ground level; and
 - (2) on an impervious surface; and
 - (3) either:
 - (i) in container(s) or above-ground tank(s) within a building, or
 - (ii) outdoors in covered container(s) or above-ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater; however, these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements.
- (o) The removal of soil, loam, sand, gravel or any other mineral substances within four (4) feet of the historical high groundwater 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 45 days of removal on site to achieve a final grading greater than four (4) feet above the historical high water mark, and except for excavations for the construction of building foundations or the installation of utility works.
- (p) Land uses that result in the rendering impervious of more than 15% or 2,500 square feet of any lot, whichever is greater, unless a system for artificial recharge of precipitation is provided, which is satisfactory to the Planning Board, that will not result in the degradation of groundwater quality.
- (q) Commercial outdoor washing of vehicles.

- (r) Commercial car washes
- (s) Motor vehicle repair operations.
- (t) Solid waste combustion facilities or handling facilities as defined at 310 CMR 16.00.
- (u) Any floor drainage systems in existing facilities, in industrial or commercial process areas or hazardous material and/or hazardous waste storage areas, which discharge to the ground without a Department permit or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the state plumbing code, 248 CMR 2.00), connect the drain to a municipal sewer system (with all appropriate permits and pre-treatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies.

4.9.5.2. Special Permit uses in Zones II and III, and A, B, and C

- (a) The use, handling, production, and storage of Regulated Substances.
- (b) Within Zone II and Zone III only, residential approval not required (ANR) land divisions, subdivisions, pursuant to M.G.L. c. 41, §§81L, 81P, 81S, and 81U with on-site disposal of effluent, at a density greater than one dwelling unit per 30,000 square feet provided that the nitrate-nitrogen concentrations described in Section 4.9.6.3(d), below, are not exceeded.
- (c) Any uses with on-site disposal of sewage effluent exceeding 2,000 gallons per day for the entire project provided that the nitrate-nitrogen concentrations described in Section 4.9.6.3(d) are not exceeded.
- (c) Land uses that result in the rendering impervious of more than 15% of any lot, unless a system for artificial recharge of precipitation is provided, which is satisfactory to the Planning Board, that will not result in the degradation of groundwater quality.

4.9.5.3. Additional Prohibited Uses: Zone A, Zone B, and Zone C:

- (a) Residential approval not required (ANR) divisions, subdivisions pursuant to M.G.L. c. 41, §§81L, 81P, 81S, and 81U, or residential development on lots less than 80,000 square feet of land area containing at least 200 feet of lot width and 150 feet of lot frontage.
- (b) No person shall wade or bathe in any source of drinking water supply, and no person shall, unless permitted by written permit by the Manchester-by-the-Sea Department of Public Works or like body having jurisdiction over such source of supply, fish in; enter or go in any boat, seaplane, or other contrivance; enter upon the ice for any purpose, including the cutting or taking of ice; or cause any animal to go in or upon such source of water supply or tributary thereto.

- (c) No stabling, hitching, standing, feeding or grazing of livestock or other domestic animals shall be located, constructed, or maintained within 100 feet of the bank of a surface water source or tributary thereto. Owners and operators of agricultural operations should consult the Massachusetts Department of Food and Agriculture's "On Farm Strategies to Protect Water Quality – An Assessment & Planning Tool for Best Management Practices" (December 1996, and any subsequent amendments thereto) for information about technical and financial assistance programs related to erosion and sediment control and nutrient, pest, pesticide, manure, waste, grazing, and irrigation management.
- (d) No burials shall be made in any cemetery or other place within 100 feet of the high water mark of a source of public water supply or tributary thereto except by permission in writing by the Manchester-by-the-Sea Department of Public Works or like body having jurisdiction over such source of supply. Lands not under the control of cemetery authorities and used for cemetery purposes shall not be taken or used for cemetery purposes if natural drainage from said lands flows into said source of water or tributary thereto, until a plan and sufficient description of the lands is presented to the Department and until such taking or use is expressly approved in writing by the Department.

4.9.6 Special Permits: This section provides the requirements and procedures for the issuance of Special Permits by the Planning Board as required by this By-Law.

4.9.6.1 Special Permits: The Special Permit Granting Authority (SPGA) under Section 4.9 of this By-Law shall be the Planning Board. Special permits shall be granted only in conformance with this By-Law, Section 7.5 of the Manchester-by-the-Sea Zoning By-Law, and M.G.L. c. 40A, §9.

4.9.6.2 Review by Other Town Agencies: Upon receipt of the special permit application, the SPGA shall transmit one copy to the Director of Public Works, the Town Administrator, the Building Inspector, the Board of Health, the Conservation Commission, and any other relevant Town board/agency or department for their written recommendations. Failure to respond in writing within 30 days shall indicate approval or no desire to comment by said agency. The applicant shall furnish the necessary number of copies of the application.

4.9.6.3 Special Permit Criteria and Decision: Special Permits may be approved by the SPGA provided that the SPGA determines, in

consultation with other Town agencies as specified in Section 4.9.6.2, that the intent of this By-Law as well as its specific criteria are met. In making such determination, the SPGA shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to water quality which would result if the control measures failed. It shall then issue a written decision which describes its findings with respect to the following:

- (a) meets the intent of this By-Law as well as its specific criteria;
- (b) will not, during construction or thereafter, have an adverse impact on Zone I, Zone II, Zone III, or Zone A, Zone B, or Zone C;
- (c) will not cause the average quality of groundwater recharged on the property to violate Class 1 drinking water standards promulgated by the Department; and
- (d) will not cause the average concentration of nitrate-nitrogen in groundwater recharged on the property to exceed five (5) milligrams per liter.

4.9.6.4 Submittals: In applying for a special permit required by this By-Law, the information listed below shall be submitted to the SPGA, as the SPGA deems applicable:

- (a) A list of all Regulated Substances which are to be stored, handled, used or produced in the activity being proposed.
- (b) A detailed description of the activities that involve the storage, handling, use, or production of the Regulated Substances indicating the unit quantities in which the substances are contained or manipulated.
- (c) Evidence of approval by the DEP of any industrial waste treatment or disposal system or any wastewater treatment systems over 10,000 gallons per day capacity.
- (d) A site plan illustrating the location of all operations involving Regulated Substances.
- (e) A hydrogeologic assessment of the site which shall address, at a minimum, soil characteristics and ground water levels and direction of ground water flow relative to operating and future planned public water supplies.

4.9.6.5 Design and Operating Guidelines: As a condition(s) of granting a special permit, the SPGA may require adherence to any, or all of the following design and operation guidelines, where in its opinion, such adherence would further the purpose and intent of this By-Law.

- (a) Containment of Regulated Substances: Leak-proof trays under containers, floor curbing, or other contaminant systems to provide secondary liquid containment shall be installed. The containment shall

be of adequate size to handle all spills, leaks, overflows, and precipitation until appropriate action can be taken. The specific design and selection of materials shall be sufficient to preclude any Regulated Substance loss to the external environment. Containment systems shall be sheltered so that the intrusion of precipitation is effectively prevented. The owner/operator may choose to provide adequate and appropriate liquid collection methods rather than sheltering only after approval of the design by the SPGA. These requirements shall apply to all areas of use, production, and handling, to all storage areas, to loading and off-loading areas, and to aboveground and underground storage areas.

- (b) **Emergency Plan:** An emergency plan shall be prepared and filed with the Special Permit application indicating the procedures which will be followed in the event of spillage of a Regulated Substance so as to control and collect all such spilled material in such a manner as to prevent it from reaching any storm or sanitary drains or the ground water.
- (c) **Inspection:** A responsible person designated by the permittee who stores, handles, uses or produces the Regulated Substances shall check on every day of operation, for breakage or leakage of any container holding the Regulated Substances. Electronic sensing devices may be employed as part of the inspection process, if approved by the SPGA, and provided the sensing system is checked daily for malfunctions. The manner of daily inspection shall not necessarily require physical inspection of each container provided the location of the containers can be inspected to a degree that reasonably assures the SPGA that breakage or leakage can be detected by the inspection. Monitoring records shall be kept daily and made available to the SPGA on a quarterly basis.
- (d) **Reporting of Spills:** Any spill of a Regulated Substance in excess of the non-aggregate quantity thresholds shall be reported by telephone to the Manchester-by-the-Sea Fire Department and the Department of Public Works within one (1) hour of discovery of the spill. Clean-up shall commence immediately upon discovery of the spill. A full written report including the steps taken to contain and clean up the spill shall be submitted to the Fire Department, Director of Public Works, and the Town Administrator within fifteen (15) days of discovery of the spill.
- (e) **Monitoring of Regulated Substances in Groundwater Monitoring Wells:** If required by the SPGA, groundwater monitoring well(s) shall be provided at the expense of the permittee in a manner, number and location approved by the SPGA. Except for existing wells found by

the SPGA to be adequate for this provision, the required well or wells shall be installed by a water well contractor. Samples shall be analyzed and analytical reports prepared by a Commonwealth of Massachusetts certified laboratory of the quantity present in each monitoring well of the Regulated Substances.

- (f) Alterations and Expansion: The SPGA shall be notified in writing prior to the expansion, alteration or modification of an activity holding a Special Permit under this By-Law. Such expansion, alteration, or modification may result from increased square footage of production or storage capacity, or increased quantities of Regulated Substances, or changes in types of Regulated Substances beyond those square footages, quantities, and types upon which the permit was issued. Excluded from notification prior to alteration or modification are changes in types of Regulated Substances used in a laboratory or laboratories designated as such in the currently valid permit which do not exceed the non-aggregate limits and which are within the Generic Substances listed in said permit based upon the Generic List attached hereto and incorporated herein as Exhibit A. The introduction of any new Regulated Substance shall not prevent the revocation of any existing Special Permit if, in the opinion of the SPGA, such introduction substantially or materially modifies, alters or affects the conditions upon which existing Special Permit was granted or the ability to remain qualified as a General Exemption, if applicable, or to continue to satisfy any conditions that have been imposed as part of a Special Permit, if applicable.

4.9.7 General Exemptions:

4.9.7.1 Exemptions for Continuous Transit: The transportation of any regulated substance through Zones I, II, III, or A, B or C shall be exempt from the provisions of this By-Law provided the transporting motor vehicle is in continuous transit.

4.9.7.2 Exemptions for Vehicular and Lawn Maintenance Fuel and Lubricant Use: The use in a vehicle or lawn maintenance equipment of any regulated substance solely as fuel in that vehicle or equipment fuel tank or as lubricant in that vehicle or equipment shall be exempt from the provisions of this By-Law.

4.9.7.3 Exemptions for Application of Pesticides, Herbicides, Fertilizers, Fungicides and Rodenticides: The application of those Regulated Substances used as pesticides, herbicides, fertilizers, fungicides, and

rodenticides in recreation, agriculture, pest control and aquatic weed control activities shall be exempt from the provisions of this By-Law provided that:

- (a) In all zones, the application is in strict conformity with the use requirement as set forth by the U.S. Environmental Protection Agency, and as indicated on the containers in which the substances are sold.
- (b) In all zones, the application of any of the pesticides, herbicides, fertilizers, fungicides, and rodenticides shall be noted in the records of the certified operator. Records shall be kept of the date and amount of these substances applied at each location and said records shall be available for inspection at reasonable times by the Building Inspector and Director of Public Works.
- (c) In all zones, the application of pesticides, herbicides, fertilizers, fungicides, and rodenticides for non-residential or non-agricultural purposes shall require a special permit.

4.9.7.4 Exemption for Retail/Wholesale Sales Activities: Except in Zone I, retail/wholesale sales establishments that store or handle Regulated Substances for resale in their original unopened containers shall be exempt from the provisions of this By-Law, provided however, that retail/wholesale sales establishments that store or handle quantities of Regulated Substances exceeding thirty (30) gallons liquid or twenty-five (25) pounds solid shall be prohibited without receipt of a special permit from the SPGA.

4.9.7.5 Exemptions for Office and Commercial Uses: Except in Zone I, office and commercial use of Regulated Substances below the aggregate sum not exceeding thirty (30) gallons where said substance is a liquid or twenty-five (25) pounds where said substance is a solid shall be exempt from the provisions of this By-Law, provided, however, that office and commercial uses that store or handle quantities of Regulated Substances exceeding thirty (30) gallons liquid or twenty-five (25) pounds solid shall be prohibited without receipt of a special permit from the SPGA.

4.9.7.6 Exemption for Construction Activities: The activities of constructing, repairing or maintaining any facility or improvement on lands within Zones I, II, III, or A, B, or C, shall be exempt from the provisions of this By-Law provided that all contractors, subcontractors, laborers, and their employees, when using, handling, storing or producing Regulated Substances in Zones I, II, III, or Zones A, B, or C, use those applicable Best Management Practices set forth in Exhibit B, attached

hereto and incorporated herein.

4.9.7.7 Exemption for Household Use: In addition to the exemptions provided for in Section 4.9.7.3 of this By-Law, the household use of Regulated Substances below the aggregate sum not exceeding thirty (30) gallons where said substance is a liquid or twenty-five (25) pounds where said substance is a solid shall be exempt from the provisions of this By-Law, provided, however, that household uses that store or handle quantities of Regulated Substances exceeding thirty (30) gallons liquid or twenty-five (25) pounds solid shall be prohibited without receipt of a special permit from the SPGA.

4.9.7.8 Exemption for Municipal Use: In addition to the exemptions provided for in Section 4.9.7.3 of this By-Law, the municipal use of Regulated Substances in quantities exceeding thirty (30) gallons where said substance is a liquid or twenty-five (25) pounds where said substance is a solid shall be prohibited without receipt of a special permit from the SPGA.

4.9.7.9 Exemption for Underground Storage of Oils(s): The underground storage of oil(s) used for heating fuel shall be exempt from the provisions of Section 4.9 of this By-Law provided, however, that the container used for said storage shall be located within an enclosed structure sufficient to preclude leakage of oil to the external environment and to afford routine access for visual inspection (e.g., cement-floored basement), and sheltered to prevent the intrusion of precipitation.

4.9.8 Severability: The provisions of this By-Law are severable from each other and the invalidity of any provisions or section shall not invalidate any other provision or section thereof.

EXHIBIT A: GENERIC SUBSTANCES LIST

Acid and basic cleaning solutions, Antifreeze and Coolants, Arsenic and arsenic compounds, Bleaches and peroxides, Brake and transmission fluids, Brine solution, Casting & Foundry chemicals, Caulking agents and sealants, Cleaning solvents, Corrosion and rust prevention solutions, Cutting fluids, Degreasing solvents, Disinfectants, Electroplating solutions, Explosives, Fertilizers, Fire extinguishing chemicals, Food processing wastes, Formaldehyde, Fuels and additives, Gasolines, Glues, adhesives and resins, Greases, Hydraulic fluid, Indicators, Industrial and commercial janitorial supplies, Industrial sludges and stillbottoms, Inks, printing and photocopying chemicals, Laboratory chemicals, Liquid storage batteries, Medical, pharmaceutical, dental, veterinary and hospital solutions, Mercury and mercury compounds, Metals finishing

solutions, Oils, Paints, primers, thinners, dyes, stains, wood preservatives, varnishing, and cleaning compounds, Painting solvents, PCB's, Pesticides and herbicides, Plastic resins, plasticizers and catalysts, Photo development chemicals, Poisons, Polishes, Pool chemicals in concentrated form, Processed dust, and particulates, Radioactive sources, Reagents and standards, Refrigerants, Roofing chemicals and sealers, Sanitizers, disinfectants, bactericides and algacides, Soaps, detergents and surfactants, Solders and fluxes, Stripping compounds, Tanning industry chemicals, Transformer and capacitor oils/fluids, Water and wastewater treatment chemicals.

EXHIBIT B: "BEST MANAGEMENT PRACTICES" FOR THE CONSTRUCTION INDUSTRY

1. The general contractor, or if none, the property owner, shall be responsible for assuring that each contractor or subcontractor evaluates each site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For instance, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.
2. If any Regulated Substances are stored on the construction site during the construction process, they shall be stored in a location and manner that will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more, containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, ground waters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.
3. Each contractor shall familiarize him/herself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance. Any tools or equipment necessary to accomplish same shall be available in case of a release.
4. Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site by the responsible contractor, and shall be disposed of in a proper manner as prescribed by law.

[Added 1990] [Revised 2002]

Section 4.10 Personal Wireless Telecommunication Service Facilities

4.10.1 Definitions

(1) The term "Personal Wireless Telecommunication Service" means commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services;

(2) The term "Personal Wireless Telecommunication Service Facilities" means facilities for the provision of personal wireless telecommunication services.

4.10.2 Purpose and Intent

The increasing use of business and personal devices relying on Personal Wireless Telecommunication Service Facilities, often referred to as Wireless Telecommunications Service Facilities, has generated a significant number of applications for the placement, construction and modification of such facilities throughout the Commonwealth and the Cape Ann region. Therefore, and in reliance on the Town's authority under M.G.L. c.40A, and under the Massachusetts State Constitution and in keeping with its responsibilities to protect public health, public welfare and public safety, the Town hereby adopts this Bylaw.

4.10.3 Special Permit

All Personal Wireless Telecommunication Service Facilities shall require a Special Permit from the Planning Board.

This Bylaw creates an allowed use by Special Permit of the Planning Board for Personal Wireless Telecommunication Service Facilities. The Planning Board shall determine the minimum lot dimensions and set backs appropriate to the use proposed.

No special permit shall be granted by the Planning Board, unless, in its judgment, following input from other municipal boards, departments, agencies and their staff, the Board determines that reasonable measures shall be or already have been taken to comply with the requirements of Section 7.5 and to:

- (1) mitigate against potential negative impacts on visual quality upon neighboring properties by incorporating reasonable design, siting and screening methods; and
- (2) protect against potential damage to neighboring properties from tower/structure failure or collapse and falling ice.
- (3) obtain a financial surety to cover the costs of (a) the remediation of damage to the landscape which occurs during the clearing of the site, and (b) the removal of the facilities and the remediation of the landscape, should the facility cease to operate, as provided in section 4.10.5 below; and
- (4) provide for testing and monitoring of radio frequency emissions, as follows:
 - (a) Pre-testing. After a special permit is granted and before the applicant's Personal Wireless Telecommunication Service Facility begins transmission, the applicant shall pay for an independent consultant, hired by the Town, to test and monitor the

ambient or background levels of radio frequency emissions around the proposed facilities site, using established protocols.

(b) Post-testing. After transmission begins, the owner(s) of any Personal Wireless Telecommunication Service Facilities located on any site shall pay for an independent consultant, hired by the Town, to test and monitor the radio frequency emissions from the site, using established protocols. Such testing and monitoring shall take place annually.

(c) Excessive emissions. Should the testing and monitoring of a facility site reveal that the site exceeds any applicable federal, state or local regulations, the owner(s) of all Facilities at that site shall be so notified. Any Personal Wireless Telecommunication Service Facility which does not comply with all applicable federal, state, and local regulations shall be removed upon failure to bring the facility into compliance within thirty (30) days from receipt of written notice.

4.10.4 Limited Commercial District

Within the Limited Commercial District, Personal Wireless Telecommunication Service Facilities under 200 feet in height and less than 10 feet in diameter above 35 feet above the ground shall be exempt from Section 5.5 of the Manchester-by-the-Sea Zoning Bylaws.

4.10.5 Cessation of Use

At the Planning Board's discretion within six (6) months of the cessation of use of any facility for use as a Personal Wireless Telecommunication Service Facility, the facility, all support buildings and/or structures, all foundations and pads and any other items installed under this Special Permit shall be removed by the owner/operator and the site shall be restored to a condition equal to or surpassing that which existed prior to construction.

4.10.6 Validity

The invalidity of one or more sections, subsections, sentences, clauses, or provisions of this Bylaw shall not invalidate or impair the Bylaw as a whole or any part thereof. [Adopted 1997; amended 1998]

4.11 Helicopter landing, storage or parking facilities

In accordance with the Town's authority to regulate land and waterway uses and structures, the Town of Manchester-by-the-Sea hereby determines that it is in the public interest to regulate the on-the-ground placement and storage of helicopters.

Applicants shall be required to obtain a special permit from the Planning Board to use any lot or seaway for helicopter landing, storage or parking within the Town of Manchester-by-the-Sea. However, nothing herein shall prevent a temporary helicopter landing area for

emergency purposes, such as air ambulance, search and rescue, fire fighting and similar public safety operations. [Adopted 2003]

SECTION 5.0 DIMENSIONAL REGULATIONS

5.1 Adequate Frontage

In issuing building permits for construction on lot(s) with frontage considered by the Building Inspector to provide impractical vehicular access, or otherwise satisfying only technical and not practical frontage compliance, the Building Inspector shall be empowered to ensure that said lot(s) have access to that portion of the lot(s) to be constructed upon by means of easement or so-called "common driveways" which are, in his opinion and in the opinion of the Planning Board, of adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and buildings erected or to be erected thereon and which meet the design standards contained in Section 6.2.8 of these By-laws. No more than two lots shall be served by a common driveway without a special permit from the Planning Board. [Amended 1987, 2001, 2007]

5.2 Area

For purposes of this Section 5.0 the area of a lot shall not include:

- (a) The area within the limitation of the street.
- (b) Tideland lying below Mean High Water (per U.S. Geodetic Survey), except that such tideland shall be included for determining minimum setbacks (see Sections 5.4 and 5.6). [Added 2006]

5.3 Setback

In the case of a lot abutting on more than one street, the minimum front setback shall be applicable to each street. The minimum setback requirements shall not apply to the projections of steps, eaves, chimneys and cornices, window sills or belt courses. The minimum setback for a wind energy conservation system from property lines or easements must be at least one (1) times the height of the energy conservation system. [Added 1982] (See 6.2.5)

5.4 Minimum Area and Dimensional Requirements

Except as provided in Section 5.6 (Accessory Structure) and 5.7 (Limited Commercial District), no building shall be erected on or moved to a lot having less than the minimum applicable frontage and area shown on the table below, and no building shall be located on a lot closer to the front, rear and side lines of the lot than the minimum setback distances shown on the table below. No lot shall be changed as to size or shape so as to result in the violation of the requirements set forth in the table below.

| DISTRICT | MINIMUM LOT AREA (SQ. FT.) | MINIMUM FRONTAGE | MINIMUM LOT WIDTH | MINIMUM FRONT SETBACK | MINIMUM SIDE SETBACK | MINIMUM REAR SETBACK |
|------------------------|----------------------------|------------------|-------------------|-----------------------|----------------------|----------------------|
| Single Res. District A | 22,500 | 150 ft. | 125 ft. | 30 ft. | 20 ft. | 40 ft |

| | | | | | | |
|-----------------------------------|--------|---------|---------|--------|--------|--------|
| Single Res. District B | 15,000 | 75 ft. | 60 ft. | 20 ft. | 15 ft. | 20 ft. |
| Single Res. District C | 45,000 | 150 ft. | 125 ft. | 30 ft. | 20 ft. | 40 ft. |
| Res. District D | 6,000 | 60 ft. | 50 ft. | 10ft. | 10 ft. | 10 ft. |
| Single Res. District E | 90,000 | 150 ft. | 125 ft. | 30 ft. | 20 ft. | 40 ft. |
| General District | 6,000 | 60 ft. | 50 ft. | 5 ft. | 10 ft. | 10 ft. |

In the case of a lot abutting on more than one street, the minimum front setback shall be applicable to each street. (See Section 5.3)

LOT COVERAGE REQUIREMENTS

| DISTRICT COVERAGE | BY STRUCTURES | MAXIMUM % LOT BY STRUCTURES AND IMPERVIOUS SURFACES |
|--|---------------|---|
| Single Residence District A | 15% | 30% |
| Single Residence District B | 20% | 35% |
| Single Residence District C | 15% | 25% |
| Residence District D | 40% | 50% |
| Single Residence District E | 15% | 25% |
| General District | 40% | 70%* |

*Except as noted within Section 4.3 of the Zoning By-Law.

5.5 Height Regulations

No structure shall be erected or altered so that it exceeds 2-1/2 stories or so that the vertical distance measured from the highest point of the roof to the mean pre-construction grade exceeds thirty-five (35) feet, whichever is the lesser. Chimneys, spires or towers not used for human occupancy may extend ten (10) feet above these height limits. Mean pre-

construction grade is defined as a reference plane representing the average elevation of pre-construction ground adjoining the building at all exterior walls. A half story is defined as a story with a sloping roof, the area of which story at a height of four (4) feet above the floor does not exceed two-thirds of the floor area of the story immediately below it.” (Amended 2001)

5.6 Accessory Structure

Notwithstanding the foregoing provisions of this Section 5.0, no accessory structure shall be erected or altered so that it exceeds one and one-half (1 1/2) story as defined in Section 5.5 above or twenty-five (25) feet, whichever is lesser. Accessory structures shall be set back from any street on which the lot has frontage at least the applicable minimum front setback for such lot plus ten (10) feet. [Amended 1982, 1986, 1987, 1989, 2007]

| DISTRICT | ACCESSORY STRUCTURES MINIMUM DISTANCE FROM SIDE AND REAR LOT LINES | FRONT |
|--|---|--------------|
| Single Residence District A | 10 ft. | * |
| Single Residence District B | 5 ft. | * |
| Single Residence District C | 15 ft. | * |
| Residence District D | 5 ft. | * |
| Single Residence District E | 15 ft. | * |
| General District | 5 ft. | * |

*Accessory structures shall be set back from the street(s) on which the lot has frontage at least the applicable minimum from setback for such lot plus ten (10) feet.

5.7 Limited Commercial District

Notwithstanding the foregoing provisions of this Section 5.0, the following requirements shall be met in the Limited Commercial District (See also Section 4.4 Limited Commercial District):

- 5.7.1 Each business, defined as a single use under one ownership, shall be located on a lot of not less than five (5) acres and a minimum width at all points of not less than five hundred (500) feet.
- 5.7.2 The structures on the lot shall cover not more than twenty percent (20%) of the area of the lot, and at least twenty-five percent (25%) of the area of the lot shall be of natural or landscaped area. Not more than twenty-five percent (25%) of the area shall be used for parking.
- 5.7.3 All structures shall be set back from any street at least one hundred and fifty (150) feet, and from any other lot line at least one hundred (100) feet.

5.8 Special Exception

Any increase in area, frontage, width, yard, or depth requirements of this By-Law shall not apply to a lot for a dwelling having not more than two (2) dwelling units which, at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with any adjoining land, conformed to existing requirements and had less than the proposed requirements but at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.

5.10 Performance Requirements within Limited Commercial District

Recognizing that the portion of Manchester-by-the-Sea zoned Limited Commercial may contribute significant recharge to the town's municipal drinking water supply, and recognizing further that inappropriate development, or development with inappropriate safeguards may threaten said water supply, no special permit for any use within the Limited Commercial District shall be granted without adherence to the following guidelines:

- 5.10.1 Design and Operations Guidelines: The following design and operation guidelines shall be observed within the Limited Commercial District.
 - 5.10.1.1 Safeguards: Provisions shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures such as: prohibition of underground fuel storage tanks; spill control provisions in the vicinity of chemical or fuel delivery points; secured storage areas for toxic or hazardous materials; and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for such structure to prevent discharge of contaminated condensate into the ground water.

5.10.1.2 Disposal: For any toxic or hazardous wastes to be produced in quantities greater than those associated with normal household use, the applicant must demonstrate the availability and feasibility of disposal methods which are in conformance with Chapter 21C, MGL.

5.10.1.3 Drainage: All runoff from impervious surfaces shall be recharged on the site, diverted towards areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are not feasible, and shall be preceded by oil, grease, and sediment traps to facilitate removal of all contaminants.

5.10.2 Definition:

5.10.2.1 Toxic or Hazardous Materials:

Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this town. Toxic or hazardous materials include, without limitation, organic chemicals, petroleum products, heavy metals, radio-active or infectious wastes, acids and alkalies, and include products such as pesticides, herbicides, solvents and thinners. Wastes generated by the following activities, without limitation, are presumed to be toxic or hazardous unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Board of Health and the Board of Selectmen:

- * Airplane, boat and motor vehicle service and repair
- * Chemical and bacteriological laboratory operation
- * Cabinet making
- * Dry cleaning
- * Electronic circuit assembly
- * Metal plating, finishing and polishing
- * Motor and machinery service and assembly
- * Painting, wood preserving and furniture stripping
- * Pesticide and herbicide application
- * Photographic processing
- * Printing [Added 1987]

SECTION 6.0 SPECIAL PROVISIONS

6.1 Nonconforming Uses

6.1.1 Existing Use:

Any structure or use lawfully existing at the time of the adoption of this By-Law or any amendment hereto and any use or structure lawfully begun in respect of which a building or special permit has been issued before the first publication of notice of public hearing on this By-Law or any amendment hereto may be continued or completed although such structure or use does not conform to the provisions hereof, provided that, in the case of the issuance of a building or special permit, construction or operation hereunder shall conform to the provisions of this By-Law or any amendment hereto unless the construction or use has commenced within a period of six months after the issuance of the permit and that in cases involving construction such construction is continued through to completion as continuously and expeditiously as is reasonable.

6.1.2 Changes, Extensions and Alterations:

A nonconforming structure or use may be changed, extended or altered, provided that in each case the Board of Appeals grants a special permit therefor after finding that such change, extension or alteration is not substantially more detrimental or injurious to the neighborhood than the existing nonconforming structure or use. The above requirement does not apply to such an extension, alteration, re-construction or structural change to a single family or two family residential structure that does not increase the nonconforming nature of that structure. [Added 1984]

6.1.3 Restoration:

Restoration of a nonconforming structure which has been damaged by fire, flood or other casualty or by vandalism may be made without conformance to the provisions of this By-Law or amendment hereto, provided that such restoration shall have commenced within six months of the date the damage was sustained and that such restoration continue through to completion as continuously and expeditiously as is reasonable, and provided that the structure as restored shall not exceed 100% of the floor area of the structure immediately prior to the damage unless the Board of Appeals grants a special permit therefor in accordance with Section 7.5 (Special Permits) after finding that such restoration is not substantially more detrimental or injurious to the neighborhood than the structure immediately prior to such damage.

6.1.4 Abandonment:

Any structure or lot, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district and the nonconforming use may not be thereafter resumed. A nonconforming use or structure not used for a period of 2 years shall be deemed abandoned and shall not

again be revived or such structure used except in conformity with all applicable provisions of this By-Law or any amendment hereto.

6.2 Off-Street Parking and Driveway/Curb Cut Regulations

The following shall apply to all premises in all districts:

6.2.1 Performance Requirement:

Off-street parking must be provided to service the net increase in parking demand created by new construction, additions or change of use.

6.2.2 Number of Spaces:

The standards below must be met without counting any existing parking necessary for existing activities to meet these requirements. Off-street parking spaces shall be designed with minimum dimensions of 9 feet by 20 feet.

| Use - Unit of Measure | Number of Off-Street Parking Spaces |
|---|--|
| Residential: | |
| One dwelling unit | 2 |
| Two dwelling units | 3 |
| Three dwelling units | 5 |
| Four dwelling units | 6 |
| Retail or service (other than automotive service station): | |
| 150 sq. ft. of gross sales or service floor area | 1 |
| Automotive service station: | |
| 100 sq. ft. of area in service bays | 1 |
| Professional or other office: | |
| 300 sq. ft of gross floor area | 1 |
| Club or other recreational activities: | |
| Each three persons reasonably expected to be using the facility during a period of full utilization | 1 |
| Restaurant or bar: | |
| Four seats of rated capacity | 1 |
| Printing, yacht yard or similar facility: | |
| Each 3 employees on duty during normal work period | 1 |
| Each company car or truck | 1 |
| All other uses: Parking spaces adequate to accommodate all normal demand as determined by the Building Inspector, with the advice of the Planning Board. [amended 2006] | |

6.2.3 Location:

Required parking shall be either on the same premises as the activity it serves, or located within 300 feet of the building entrance on a separate parcel, not separated by a street having right-of-way width of 60 feet or more, and in a zoning district allowing the activity it serves.

6.2.4 Backing:

Parking areas shall be designed and located so that their use does not involve vehicles backing onto a public way or way utilized for public access.

6.2.5 Setbacks:

No part of any private parking area shall be located within a required front yard as noted in Section 5.4, Minimum Front Setback, except that no part of any private parking area shall be located within fifty (50') feet of any street within the Limited Commercial District and, within the Limited Commercial District only, no part of any private parking area shall be located within two hundred (200') feet of the state layout of Route 128, nor shall any private parking area be located within (5') feet of any property line except that where a lot has frontage on more than one street, thus establishing more than one front yard, the Planning Board may, as part of the Site Plan Review process, designate one front yard as the primary front yard and then reduce the front yard setback requirements for parking on non-primary front yards. Any such reduction shall be limited to only those situations where the applicant needs the reduction to meet the parking requirements for the proposed use and never less than five (5') feet from any property line.

6.2.6 Parking Lot Plantings:

Parking lots containing (5) or more parking spaces shall have at least one (1) tree per five (5) parking spaces, such trees to be located either within the lot or within (5') feet of it. Such trees shall be at least two (2") inches trunk diameter, with not less than forty (40) square feet of unpaved soil or other permeable surface area per tree. At least five (5%) percent of the interior of any parking lot having twenty (20) or more spaces shall be maintained with landscaping, including trees, in plots of at least four (4') feet in width. Trees in soil plots shall be so located as to provide visual relief and sun and wind interruption within the parking area and to assure safe patterns of internal circulation. [Added 1988]

6.2.7 Driveways/Curb Cuts: No person shall construct a driveway or entrance from the traveled portion or from the curb of any street or way open to public use in the Town of Manchester-by-the-Sea for the purpose of passing to or from abutting property nor cut any curbing for any purpose without applying for and receiving a permit from the Planning Board, under such conditions and restrictions as the Board shall determine to be necessary to protect public safety, to prevent erosion and sedimentation, to assure proper drainage and for related purposes. The applicant shall: (a), at least seven days prior to filing the application, mail a notice (in the form specified by the Planning Board) to all property owners within one hundred feet of the locus for which a driveway/curb cut is sought as such property is identified in the most recent information available at the Assessor's Office, (b) certify in such application that

such notice has been mailed, (c) attach to such application a list of the names and addresses of those notified, and file the application (with the filing fee, as established by the Planning Board) with the Planning Board by submission to the Town Clerk. [Amended 2007]

This subsection shall not apply to the construction of any street in a subdivision, which is approved by the Planning Board pursuant to the Subdivision Control Law. Failure by the Planning Board to act within thirty (30) days after receipt of an application shall be deemed to be approval.

6.2.8 Common Driveways

Frontage along the length of any way in existence when the Subdivision Control Law became effective in Manchester-by-the-Sea shall in no way be used as frontage as specified in the Zoning By-Law unless the way meets the following minimum standards. Furthermore, no common driveway shall be accepted as a public road; nor shall the Town under any circumstances be held liable for construction, reconstruction, maintenance, or snow removal on any common driveway, unless by contract duly entered into by the Town and all landowners served by the common driveway.

Common driveways shall be built in accordance with the following standards:

1. Minimum driveway width: 16' (18' if over 100' in length) residential use; 24' all other uses. [Amended 2007]
2. Maximum driveway grade of 10%.
3. Maximum driveway length of 500'.
4. The common driveway, at its intersection with the street, must provide a leveling off area with a slope no greater than 1% for the first 20' and a slope no greater than 5% for the next 30'.

These standards may be waived when, in the opinion of the Planning Board, such action is in the public interest and not inconsistent with the purpose and intent of the Zoning By-Law and these design standards." [Amended 2001]

6.3 Junk Cars

No person in charge or control of any real estate within the Town, whether as owner, tenant, occupant, lessee or otherwise, shall allow any partially dismantled, nonoperating, wrecked or junked motor vehicles to remain on such property longer than 60 days without a valid windshield sticker, so-called, issued and displayed in accordance with the requirements of Chapter 90, Section 7A of the General Laws as amended, and the rules and regulations of the Registrar of Motor Vehicles, unless a permit therefor has been obtained from the Zoning Board of Appeals. The Board shall not issue a permit unless it finds that such vehicle on said premises will not constitute a hazard to the safety or welfare of the inhabitants of the Town nor will otherwise nullify or substantially derogate from the intent or purpose of this By-Law. No such permit shall be required for a vehicle in an enclosed building nor for a vehicle

on the property of a lawful business or farming enterprise necessary to such operation, or for motor vehicles at the place of business of a holder of a class license under Sections 58 and 59 of Chapter 140 of the General Laws.

6.4 Signs

Advertising and other signs shall be permitted only as expressly provided in Sections 4.1.7, 4.1.8 and this Section 6.4. Signs shall also be subject to the applicable provisions of the General By-Laws of the Town of Manchester-by-the-Sea.

6.4.1 No flashing or animated signs shall be permitted in any district. No illuminated sign of any kind shall be permitted in a Residence District.

6.4.2 A real estate sign not over 6 square feet in area advertising for sale or rent the property on which it is placed is permitted in any district.

6.4.3 In the General District and Limited Commercial District, the following signs are permitted:

6.4.3.1 One firm name sign for each firm or enterprise located in a building, no larger than 5 feet by 20 feet, attached to or flush to the building;

6.4.3.2 One nonilluminated announcement sign no larger than 3 feet by 3 feet, at the entrance or gates of a building.

6.4.3.3 One nonilluminated sign for each firm or enterprise located in a building, no larger than 2 feet by 6 feet, located at least 50 feet from any street.

6.4.4 In the General District, in addition to the signs permitted by Section 6.4.3 one or more signs for advertising a business conducted on the premises is permitted, not projecting above the building on the premises and no larger than one square foot for each linear foot of frontage up to a maximum of 100 square feet.

6.5 Site Plan Approval

6.5.1 Purpose:

The purpose of Site Plan Review is to ensure that the design and layout of certain developments permitted as a matter of right or by special permit will constitute suitable development and will not result in a detriment to the neighborhood or the environment. In considering a site plan the Planning Board shall assure:

(a) Protection of adjacent areas against detrimental or offensive uses on the site by provisions of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, and allowance of sun, light, and air;

- (b) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
- (c) Adequacy of facilities of handling and disposal of refuse and other production by-products;
- (d) Protection of environmental features on the site and in adjacent areas;
- (e) Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood;
- (f) Coordination with and improvement of systems of vehicular and pedestrian access, drainage, water supply, sewage disposal, lighting, landscaping, wetlands, water courses, buildings and other features that support the neighborhood;
- (g) Compliance with all applicable sections of the Zoning By-Laws.

6.5.2 Applicability:

Any new development, expansion, or change in use other than a single-family or two-family residence which would under the parking schedule "Off-Street Parking and Driveway/Curb Cut Regulations" of Section 6.2, require at least five (5) but less than ten (10) parking spaces, regardless of the number of parking spaces existing on the premises and irrespective of whatever the number of parking spaces created shall be reduced by action of the Board of Appeals or otherwise, shall be subject to Site Plan Review by the Planning Board (See Section 6.9 - Site Plan Review Special Permit).

6.5.3 Procedure:

Applications for building permits for construction subject to Site Plan Review shall be accompanied by a Site Plan Review application form and seven (7) prints of the plans of the proposal. The Building Inspector shall forward one copy to the Planning Board for their review and shall not approve any application subject to this section without receipt of written plan approval from the Planning Board, unless thirty (30) days elapse from the date of transmittal of plans to the Planning Board without receipt of such review from the Planning Board.

6.5.4 Application Requirements:

Plans subject to Site Plan Review shall be prepared by a Registered Architect, Landscape Architect, or Professional Engineer. The site plan shall be prepared at a scale no greater than 1"=40', and shall show all existing and proposed buildings, existing and proposed contour elevations, structures, parking spaces, driveway openings, driveways, service areas, facilities for sewage, refuse and other waste disposal and for surface water drainage, wetlands, surface water, areas subject to the 100-flood, and landscape features such as fences, walls, trees and planting areas,

walks and lighting, both existing and proposed. The site plan shall also show the relation of locus map at a scale not greater than 1"=2,000'. The site plan shall also show all contiguous land owned by the applicant or by the owner of the property. The applicant shall submit material as may be required regarding measures proposed to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level, and flooding. The applicant shall submit such material as may be required regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectional features from neighbors. The applicant shall submit such material as may be required regarding the projected traffic-flow patterns into and upon the site for both vehicles and pedestrians and an estimation of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.

6.5.5 Costs Incurred:

Expenses incurred by the Planning Board in connection with site plan review, including the reasonable fees and expenses of any consultants retained by the Planning Board, shall be borne by the applicants for site plan approval.

6.5.6 Decision.

Plans shall be approved provided that the Planning Board determines that, subject to any conditions that may be imposed, the requirements of Section 6.2 will be satisfied, and that no other conflicts between the proposal and the Zoning By-Laws have been observed. [Amended 1987]

6.6 Reflecting Antennas

A Special Permit is required from the Zoning Board of Appeals to approve the erection of a reflecting antenna, with a total surface area of 100 square feet or more, for the reception of commercial radio or television. [Added 1984]

6.7 Special Provision for Open Space Planning

6.7.1 Purpose:

For the purpose of encouraging the preservation of open space and promoting the more efficient use of land in harmony with its natural features and the economical and efficient street, utility, and public facility layout, installation, construction and maintenance, efficient allocation, distribution, and maintenance of common open space and overall compatibility with the character of surrounding areas in Single Residence District A,C or E. The Planning Board may, subject to this Section 6.7, and after notice and hearing in accordance with the law, grant a Special Permit authorizing exceptions from a lot area and lot frontage requirements specified in Section 5.4. in Single Residence A, C, or E Districts.

6.7.2 Condition to Special Permit:

No Special Permit shall be granted under the foregoing Section 6.7.1 unless the following conditions are met

6.7.2.1 The minimum size of a parcel to be considered for development shall be ten (10) acres in the Single Residence District A and twenty (20) acres in the Single Residence District C and Single Residence District E.

6.7.2.2 Prior to or included with an application for a Special Permit the applicant shall submit to the Planning Board such plans, studies and data sufficient to enable the Planning Board to make a determination as to the number of lots which could be created on said parcel without a Special Permit.

6.7.2.3 The number of building lots on any plan for which a Special Permit is granted under this Section 6.7 shall not exceed the number of lots which could be created on said parcel without such permit.

6.7.2.4 There shall be excluded from the calculation of the number of lots in Section 6.7.4 all areas of the parcel which the Planning Board finds are not buildable because of the conditions such as steep slope, presence of wetlands, poor drainage or water supply problems or a combination of the foregoing. The Planning Board may rely upon findings and recommendations of the Board of Health and the Conservation Commission.

6.7.2.5 Every lot laid out under this Section shall conform to the following:
In Single Residence District A, 16,500 sq. ft. minimum area, 75 ft. minimum frontage.
In Single Residence District C and Single Residence District E, 22,500 sq. ft. minimum area, 75 ft. minimum frontage.

6.7.2.6 Every lot shall be connected to municipal sewer and water, unless the Planning Board, after consultation with the Board of Health, determines that other suitable provisions for sewer and water have been made.

6.7.2.7 Limitation of Subdivision:
No lot shown on a plan, for which a permit is granted under this section, may be further subdivided and a notation to this effect shall be shown on the plan.

- 6.7.2.8 Each building lot shall contain a house site which is in the harmony with the general intent of the Zoning By-Law.
- 6.7.2.9 No plan shall be approved unless the Planning Board, following its public hearing and consultation with the Fire Chief, Department of Public Works and Selectmen, determines that access to public or private ways affected by the development will be adequate in light of the anticipated traffic.
- 6.7.2.10 All studies, plans, design criteria with regard to all engineering aspects of a plan submitted under the Section shall conform to the Subdivision Rules and Regulations of the Town of Manchester-by-the-Sea.
- 6.7.2.11 All procedural matters with regard to notice and hearing shall conform to Section 7.5 of the Zoning By-Laws of the Town of Manchester-by-the-Sea.

6.7.3 Open Land:

- 6.7.3.1 All land shown on a plan for which a Special Permit is granted that is not included in building lots shall be open land. Provisions shall be made by agreement, duly executed in form, suitable for recording that such open land shall be:
- (a) Owned and maintained either by a trust or association, or in common by the owners of the lots.
 - (b) Subject to restrictions which shall be contained in a covenant duly recorded with and referred to on the approved plan, unlimited by time that such open land shall be used only for conservation in its natural state, walking, or other passive recreational activities in harmony with the intent of this By-Law.
 - (c) Adequately distributed throughout the parcel and accessible to all residential lots without crossing through private property.
 - (d) Designed to preserve natural features such as topography, vegetation, views, vistas, access to water courses and water bodies, and incorporate them into the total development scheme.
- 6.7.3.2 The manner of ownership of such land shall be determined by the applicant after consultation with the Planning Board.

6.7.3.3 At least 30% of the gross area of a parcel for consideration under this By-Law must be dedicated to open land as referred to in Subsection 6.7.4.1 and be of such type and in such a configuration as to meet the intent of the By-Law.

6.7.4 Determination of Buildable Lots:

6.7.4.1 The number of lots which can be developed shall be determined using the following formula: total acreage of tract, minus areas considered to be unbuildable, multiplied by .7, divided by the zoning district lot area requirements in which the parcel is located, as provided in Section 5.4 of the Zoning By-Law.

6.7.5 Land in Two or More Districts:

6.7.5.1 If the land shown on the plan includes land located in two or more districts, it shall be considered lying within the districts having the largest area and frontage requirements.

6.7.6 Further Restrictions:

6.7.6.1 The Planning Board may impose further restrictions upon a parcel, or parts thereof, as a condition to granting the Special Permit.

6.7.7 Recording of Restrictive Agreement:

6.7.7.1 No building or structure shall be erected pursuant to any Special Permit to this Section 6.7 until and unless the restrictive agreement provided for in Section 6.7.3.1 shall have been duly recorded in the Registry of Deeds.

6.7.8 Relation to Subdivision Control Act:

A Special Permit issued hereunder by the Planning Board shall not be a substitute for compliance with the Planning Board's Rules and Regulations or the Subdivision Control Act. The Planning Board, by granting a Special Permit, is not obligated to approve any definitive plan nor reduce any time periods for the Board's consideration under the Subdivision Control Act. [Added 1984]

6.8 Planned Residential Development (PRD) District C and E Only

6.8.1 Purpose:

Planned residential developments allowed by special permit from the Planning Board, an alternative pattern of land development to the pattern permitted in Residential District C and Residential District E . It is intended to encourage the conservation of open space, promote less land excavation - especially in rocky, hilly terrain, preserve existing wetlands, recharge areas, rivers, streams, marshes, historic sites, unique geological and botanical areas or features, trails, paths and open space

links, while at the same time providing for a greater mixture of housing types in the Town than are permitted in residential districts and cluster developments. In a PRD, dwelling units should be constructed in clusters which are harmonious with the neighborhood development and will not detract from the ecological and visual qualities of the environment. The overall site design and amenities should enhance the quality of living for the residents of the development, the immediate neighborhood, and the Town generally. Attention, however, shall be given by the Planning Board as to whether the proposed site design, development layout, number, type and design of housing constitute a suitable development of the neighborhood within which it is to be located.

6.8.2 Standards:

No special permit shall be granted under the foregoing Section 6.8.1 unless the following conditions are met:

6.8.2.1 Minimum tract size:

Planned residential developments shall be permitted upon a single tract, in one ownership with definite boundaries ascertainable from a recorded deed or recorded plan, which has an area of not less than 50 acres. Existing public or private ways need not constitute boundaries of the tract, but the area within any such ways shall not be counted in determining the tract size.

6.8.2.2 Environmental Impact Study (EIS):

Not less than 120 days prior to submission of the Definitive Site Plan, the permit applicant shall file with the Planning Board a NOTICE which shall consist of a Preliminary EIS and Preliminary Site Plans giving the Board notice of the applicant's intent to request a Special Permit under this Section. The Preliminary EIS shall identify the site and describe in general terms the plan for development including, in particular but not in limitation, the number and type of dwelling units and population density. The Preliminary Plan shall show potential utilization of the development site as a single family development and a second Preliminary Plan shall show the proposed clustering of units. Not more than 45 days after filing the NOTICE, the Planning Board shall receive and consider written comments from the Conservation Commission and the Board of Health regarding the NOTICE and shall issue a Determination of Scope of the final EIS. These written comments shall include at a minimum,

- (a) an evaluation of the proposed methods for waste disposal, surface and sub-surface drainage, with particular reference to the protection which such methods afford to any river, stream,

- lake, pond, marsh, or other wetlands which may be affected by the proposed PRD;
- (b) an evaluation of the impact on public lands and recreational areas;
 - (c) an evaluation of the impact on public sewers. The Determination of Scope shall identify potential impacts on the human and natural environment to be addressed in the Final EIS; shall designate, subject to agreement with the developer, the author of the Final EIS, and shall include the author's binding estimate for the cost preparing the Final EIS. In particular, but not in limitation, the Final EIS should consider the impact of the proposed development on wetlands, water recharge areas, streams and ponds, public lands and recreation areas, the impact on historic and architecturally significant properties, the impact on traffic and public safety, and the impact on public services.

The Final EIS shall be submitted by the applicant to the Planning Board within 45 days following the issuance of the Determination of Scope, and the full cost of preparing the Preliminary and Final EIS shall be borne by the applicant.

The Planning Board shall be empowered to require, during both the Preliminary and Definitive stages, supplements and amendments to the EIS at the cost of the applicant if, after review, the Planning Board determines the relevant issues have not been adequately considered.

6.8.2.3 Permissible Density:

The number of dwelling units for which a special permit can be granted in this Section shall not be more than the maximum number of dwelling units which could be constructed on the tract without such permit. Developer must demonstrate the maximum number of single family dwelling units that could be developed on the site by submitting a Preliminary Site Plan in accordance with the requirements of the Town of Manchester-by-the-Sea Subdivision Rules and Regulations. There shall be excluded from the calculations of the number of such units all areas of the tract which the Planning Board determines are not buildable because of conditions such as steep slope, presence of wetlands, poor drainage, or inadequacy of water supply.

- 6.8.2.4 Permitted Uses:
There shall be permitted in a PRD:
(a) Single family detached and attached, and multifamily structures of all types, provided however, that the average number of bedrooms per dwelling unit does not exceed two.
- 6.8.2.5 Lot Area, Frontage and Yard Requirements:
There shall be no minimum lot area, frontage or yard requirements within a PRD. However, no dwelling shall be erected within 500 feet of an existing public way, within 50 feet of a lot line, or within 30 feet of any way within the development.
- 6.8.2.6 Water and Sewerage:
Every dwelling unit shall be connected to municipal sewer and water unless the Planning Board, after consultation with the Board of Health, determines that other suitable provisions for sewer and water have been made.
- 6.8.2.7 Density Increases Subsequent to Final Approval:
Following final approval of the PRD no additional dwelling units shall be permitted within the tract whether by subdivision or additions to existing multifamily structures. The Planning Board shall require as a condition of approval that a restrictive covenant, enforceable by the Town, is executed by the developer and duly recorded.
- 6.8.2.8 Height:
All structures in the Planned Residential Development (PRD) shall comply with the Height Regulations of Section 5.5 of this By-Law.
- 6.8.2.9 Area of Residential Development:
The area developed for a residential use, including buildings, parking and other areas paved for vehicular use shall not exceed 30 percent of the total area of the PRD tract.
- 6.8.2.10 Traffic:
No PRD shall be approved unless the Planning Board following a public hearing and consultation with the Police Chief, Fire Chief, Board of Public Works and Selectmen, determines that the public and/or private ways providing access to the tract are adequate:
(a) in light of the preexisting traffic on such way, and

- (b) the additional traffic which will be generated by the PRD. At its discretion, the Planning Board may require that ways to be constructed within the PRD shall comply with the design requirements of the rules and regulations adopted by the Planning Board pursuant to the Subdivision Control Law.

6.8.2.11 Buffer Zone:

The Planning Board shall require that there shall be provided in a PRD an area of open land between the parcel of land proposed for construction of dwelling units and any adjacent property. This buffer shall be planted or preserved in a natural state and augmented where necessary to provide visual separation from abutting property. The distance from a lot line of existing zones shall be no less than 500' from any cluster and 50' from any single family home. The buffer area shall not be used for roads, parking, structures, except as where necessary to gain access to the site. The Planning Board, at its discretion, can require additional buffers near specific areas of the PRD, to preserve privacy, promote safety, and maintain the overall aesthetic value of the development. The Planning Board shall require as a condition of approval that the buffer areas are protected against development by a suitable covenant, enforceable by the Town, which shall be recorded.

6.8.2.12 Common Open Space:

- (a) All land within the PRD tract which is not covered by buildings, driveways, parking areas or service areas, or which is not set aside as private yards, patios or gardens for the residents, or is not part of a single family residence within the development, shall be common open space. The area of common open space shall equal at least 70 percent of the total area of the PRD tract. (Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by all residents of the PRD, 70 percent of the common open space shall be devoted exclusively to conservation use and shall be encumbered with a restriction to that effect as herewith described.) Such conservation open space, regardless of the form of ownership, shall be treated as part of the PRD for purposes of computing permissible density as provided for in Section 6.8.2.3 of this By-Law.

- (b) Provision shall be made so that the common open space is owned in common by and readily accessible to the owners of all units in the PRD, or by a corporation, nonprofit organization or trust whose members are all the owners or occupants of units, or by the Town, or otherwise as the Planning Board may approve. In all cases, a perpetual restriction of the type described in G.L.c. 184 s31 (including future amendments thereto and corresponding provisions of the future law) running to or enforceable by the Town shall be recorded in respect to such land. Such restrictions shall provide that the conservation open space shall be retained in perpetuity for conservation purposes. Such restrictions shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the conservation open space as the Planning Board may deem appropriate.
- (c) In order to ensure that the corporation, nonprofit organization or trust shall properly maintain the common open space an instrument shall be recorded at the Registry of Deeds which shall at a minimum provide:
- (1) A legal description of the common open space.
 - (2) A statement of the purposes for which the common space is intended to be used and the restrictions on its use and alienation.
 - (3) The type and name of the corporation, nonprofit organization or trust which will own, manage and maintain the common open space.
 - (4) The ownership or beneficial interest in the corporation, nonprofit organization or trust of each owner of a dwelling in the PRD and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may to be conveyed or encumbered separately therefrom.
 - (5) Provision of the number, term of office, and manner of election to office, removal from office of directors and/or the corporation or nonprofit organization or trustees of the trust.
 - (6) Procedures for the conduct of the affairs and business of the corporation, nonprofit organization or trust including provision for the calling and holding of meetings of members and directors and/or officers of the corporation or nonprofit organization or beneficiaries and trustees of the trust and provisions for quorum and voting requirements for action to be taken. Each owner of a dwelling shall have voting rights

proportional to his ownership or beneficial interest in the corporation, nonprofit organization or trust.

(7) Provision for the management, maintenance, operation, improvement and repair of the common space and facilities thereon, including provision for obtaining and maintaining adequate insurance and levying and collection from dwelling owners, common charges to pay for expenses associated with the common open space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling unit owners in proportion to their ownership or beneficial interest in the corporation, nonprofit organization or trust, and that each dwelling owner's share of the common share shall be a lien against his real estate in the PRD, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record.

(8) The Planning Board shall require the developer of the PRD to submit the Master Deed of the PRD to the Board for review.

6.8.3 Procedure for Approval:

Any person who desires a special permit to construct a PRD shall submit an application in writing in such form as the Planning Board and Conservation Commission separately may require which shall include the following:

6.8.3.1 A development statement which shall consist of a petition, a list of the parties in interest with respect to the PRD tract, a list of the development team and a written statement setting forth the development concept including in tabular form the number of units, type, size (number of bedrooms, floor plan), ground coverage and summaries showing the areas of residential development and common open space as percentages of the total area of the PRD tract and a development schedule for all site improvements.

6.8.3.2 Copies of the proposed instruments to be recorded with the plans including the common open space perpetual restriction, the deed and membership corporation, nonprofit organization or trust.

6.8.3.3 Development plans bearing the seal of a Massachusetts registered architect, registered civil engineer or similar professional as appropriate and consisting of:

- (a) Site plans and specifications showing all site improvements and meeting, to the extent applicable, the requirements set

forth for a definitive plan in the Subdivision Rules and Regulations of the Planning Board.

- (b) Site perspectives, sections, elevations, as required under the subdivision control rules and regulations.
- (c) Detailed plans for disposal of sanitary sewerage and surface drainage.
- (d) Detailed plans for landscaping.
- (e) An Environmental Impact Study.
- (f) Such additional information as the Board may determine necessary.

6.8.3.4 The Conservation Commission and the Board of Health shall submit, in writing, prior to the hearing, their recommendations to the Planning Board. The reports shall include at minimum,

- (a) an evaluation of the proposed methods of waste disposal, surface and sub-surface drainage, with particular reference to the protection which such methods afford to any river, stream, lake, pond, marsh, or other wetlands which may be affected by the proposed PRD;
- (b) an evaluation of the impact on public lands and recreational areas;
- (c) an evaluation on the impact on public sewers.

6.8.4 Relation to the Subdivision Control Act:

A Special Permit issued hereunder by the Planning Board shall not be a substitute of compliance with the Planning Board's Rules and Regulations or the Subdivision Control Act. The Planning Board, by granting a special permit, is not obligated to approve any definitive plan or reduce the time periods for the Board's consideration under the Subdivision Control Act.

6.9 Site Plan Review Special Permit

6.9.1 Purpose:

Each use for which a site plan submission is required is a potentially significant addition to a developing or developed area of the town, and to a residential, commercial or industrial neighborhood. The purpose of site plan review special permit is to ensure the design and layout of certain developments permitted as a matter of right or by special permit will constitute suitable development and will not result in a detriment to the neighborhood or the environment. It is intended that the site plan for each use be prepared with due consideration for:

- (a) Protection of adjacent areas against detrimental or offensive uses on the site by provisions of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, and the allowance of sun, light, and air;

- (b) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
- (c) Adequacy of facilities of handling and disposal of refuse and other production by-products;
- (d) Protection of environmental features on the site and in adjacent area;
- (e) Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood;
- (f) Coordination with and improvement of systems of vehicular and pedestrian access, drainage, water supply, sewage disposal, lighting, landscaping, wetlands, water courses, buildings and other features that support the neighborhood.
- (g) Compliance with all applicable sections of the Zoning By-Laws.

6.9.2 Applicability:

Any new development, expansion, or change of use other than a single-family or two-family residence which would, under the parking schedule "Off-Street Parking Regulations" of Section 6.2, require ten (10) or more parking spaces, regardless of the number of parking spaces existing on the premises, shall be permitted only upon the issuance of a special permit from the Planning Board for Site Plan Review. A special permit shall be granted only if the permit-granting authority finds that it is consistent with the purposes outlined in Section 6.9.1 of this By-Law.

6.9.3 Procedure:

The Special Permit Granting Authority (SPGA) under section 6.9 of this By-law shall be the Planning Board. Special Permits under this section 6.9 shall be granted only in conformance with this Section 6.9 and Section 7.5 of the Manchester Zoning By-law and the requirements of MGL Chapter 40A, Section 9. Applications shall be accompanied by at least seven (7) prints of the plans of the proposal. [amended 2005]

6.9.4 [Section 6.9.4 is intentionally omitted] [2005]

6.9.5 Application Requirements:

Plans subject to Site Plan Review shall be prepared by a Registered Architect, Landscape Architect, or Professional Engineer. The site plan shall be prepared at a scale no greater than 1"=40', and shall show all existing and proposed buildings, existing and proposed contour elevations, structures, parking spaces, driveway openings, driveways, service areas, facilities for sewage, refuse and other waste disposal and for surface water drainage, wetlands, surface water, areas subject to the 100-flood, and landscape features such as fences, walls trees and planting areas, walks and lighting, both existing and proposed. The site plan shall also show the relation of locus map at a scale not greater than 1'=2.000'. The site plan shall also

show all contiguous land owned by the applicant or by the owner of the property. The applicant shall submit such material as may be required regarding measures proposed to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level, and flooding. The applicant shall submit such material as may be required regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectional features from neighbors. The applicant shall submit such material as may be required regarding the projected traffic-flow patterns into and upon the site for both vehicles and pedestrians and an estimation of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.

6.9.6 Expenses Incurred:

Expenses incurred by the Planning Board in connection with site plan review, including the reasonable fees and expenses of any consultants retained by the Planning Board, shall be borne by the applicants for site plan approval.

6.9.7 Performance Guarantee:

As a condition of the granting of special permits for any uses requiring a special permit under this section, the Planning Board shall require that construction and site alteration permitted and specified by said special permit be secured by one, or in part by one and in part by the other, of the following methods, which method may be selected and from time to time varied by the applicant upon receiving written approval from the Planning Board:

6.9.7.1 By a proper bond or deposit of money or negotiable securities sufficient in the opinion of the Planning Board to secure performance of the construction of buildings, parking areas and appurtenances thereto required for completion of the project as noted in the special permit and shown on any accompanying plans. The Planning Board shall require that said construction shall be completed within a specific period of time; or

6.9.7.2 By a covenant executed and duly recorded by the owner of record, running with the land, whereby said construction will be completed before such buildings or appurtenances thereto may be eligible for an occupancy permit as required by Section 7.3 of the Manchester-by-the-Sea Zoning By-Laws.

6.9.8 Release of Guarantee:

Performance bonds, deposits or covenants may be released in whole or from time to time, in part, when the work has been satisfactorily completed in the opinion of the

Planning Board. The Planning Board shall then release the interest of the town in such bond and return the bond or the deposit to the person who furnished the same or release the covenant by appropriate instrument duly acknowledged which shall be recorded at the Essex County Registry of Deeds. Request for all releases shall be by certified, return receipt letter to the Planning Board and the Town Clerk and shall outline that portion of the work to be released and shall be accompanied by an engineer's or surveyor's certification that the work has been done in accordance with the requirements of the granted special permit. If the Planning Board determines that said construction or site alteration has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the Town Clerk, the details wherein said construction or site alteration fails to comply with the special permit and upon failure to do so within forty-five (45) days after the receipt by said Town Clerk of said request by the applicant, all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned, and such other covenant shall become void. In the event that said forty-five day period expires without such specification, or without the release and return of the bond or return of the deposit or release of the covenant as aforesaid, the said Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

6.9.9 Other Regulations:

This Section 6.9 is supplementary to the other existing Zoning By-Laws affecting the access, circulation, design and landscaping of parking areas. Where the application of Section 6.9 imposes a greater restriction than is imposed by other Zoning By-Laws, the application of Section 6.9 shall control.

6.9.10 Decision:

Plans shall be approved provided that the Planning Board determines that subject to any conditions that may be imposed the requirements of Section 6.2 will be satisfied, and that no other conflicts between the proposal and the Zoning By-Laws have been observed. [Added 1987]

6.10 Water Resource Protection District [Added 1989] [2002-Replaced by new §4.9]

6.11 Development Scheduling; Sewer Connection Limitation

6.11.1 Purpose:

The purpose of Section 6.11, Development Scheduling, is to ensure that a harmonious pattern and rate of development occurs in Manchester-by-the-Sea which protects the welfare of current and future Manchester-by-the-Sea residents. The consequences of the historical pattern and rate of development in Manchester-by-the-Sea have been described in various documents and discussed by Town boards, departments and committees. Of particular concern is the Town's increasing inability to provide public water and sewer service to those residents seeking access

to these facilities. The Water and Sewer Department has provided evidence that the municipal sewer system can accommodate no more than 200 additional dwelling units and the public water supply is at or near capacity. The rate of residential and commercial development in Manchester-by-the-Sea is determined by and should not exceed the ability of the town to provide adequate public services to safeguard the health, welfare and safety of current and future residents.

6.11.2 Applicability:

Section 6.11 applies to the issuance of building permits for all new residential and non-residential construction, including those considered as single and common lots for single and two-family residential use as outlined in MGL, Chapter 40A, Section 6.

6.11.3 Activation:

This development scheduling By-Law, once activated by Town Meeting, is designed to establish lead time for the provision of adequate services to current and future Manchester-by-the-Sea residents expected under the current Zoning By-Law, the expected build-out population, and the capital improvement program currently being prepared by the Town. This By-Law establishes a development rate adequate to ensure that the town, with prudent reliance on local and other financial sources and in compliance with the revenue generating guidelines of Proposition 2 1/2, can and will provide infrastructure and operate in a manner which provides current and future Manchester-by-the-Sea residents with an adequate and responsible level of town services, as defined by relevant, commonly-accepted professional standards.

6.11.4 Rate of Development:

The Building Inspector shall issue building permits for construction of new residential and non-residential structures only if permit issuance will not result in authorizing connection, within the period commencing from the effective date of this By-Law, of a total of more than 200 dwelling units to the municipal sewage treatment facility. This By-Law shall remain in effect until repealed by a future Town Meeting.

6.11.5 Issuance of Building Permits:

6.11.5.1 The Building Inspector shall issue building permits for construction of residential and non-residential structures only if permit issuance complies with the requirements of Section 6.11.4. However, no building permit(s) shall be issued to any applicant authorizing more than five (5) connections to the municipal sewage treatment facility (regardless of number of dwelling units served by said connection) within any twelve (12) month period by that applicant. For the purpose of this section, applicant is defined as individuals,

partnership, corporation, trust or other legal entity in which the applicant of record holds a legal or beneficial ownership greater than one (1%) percent.

6.11.6 Relation to Real Estate Assessment:

Any land owner who has been denied a building permit because of these provisions may appeal to the Board of Assessors in conformity with MGL, Chapter 59, Section 59 for determination as to the extent to which the restrictions on development use of such land shall affect the assessed valuation placed on such land for purposes of real estate taxation, and for abatement as determined to be appropriate. [Added 1989]

6.12 Division of Land and Development of Multiple Dwellings [added 2005]

6.12.1 Purpose

The purpose of this Bylaw is to ensure that land divisions, subdivisions, and developments of multiple dwellings on single lots are afforded the depth and breadth of review allowed by G.L. c. 40A, sec. 9 to adequately protect public health, safety and welfare of the current and future residents of the Town.

6.12.2 Applicability

The following shall require a special permit from the Planning Board under the provisions of section 6.13:

1. The division and or subdivision of land held in single ownership as of the effective date of this Bylaw or any time thereafter into six (6) or more lots; or
2. The division and/or subdivision of a tract of land greater than ten (10) acres held in single ownership as of the effective date of this Bylaw or anytime thereafter into five (5) or more lots; or
3. The construction of six (6) or more dwelling units on land that does not require land division and/or subdivision, whether on one or more contiguous parcels held in single ownership as of the effective date of this Bylaw or anytime thereafter. In cases where the proposed division of land is for six (6) or more lots and said division is proposed as a division of land not requiring Planning Board approval (G.L. c.41, sec. 81-P) the Planning Board's special permit powers shall be limited to enforcing the provisions of Section 6.14 of the Zoning Bylaw. The provisions of Section 6.12 shall not apply to the construction of six (6) or more dwelling units on individual lots, if said six (6) or more lots were in existence as of the effective date of this Bylaw.

6.13 Residential Conservation Cluster [Added 2005]

6.13.1 Purpose and Intent

1. Allow for greater flexibility and creativity in the design of residential developments.
2. Encourage the permanent preservation of open space, agricultural and forestry land, other natural resources including water bodies and wetlands, and historical and archeological resources.
3. Maintain the Town's traditional character and land use pattern in which small villages contrast with open land.
4. Protect scenic vistas from the Town's roadways and other places.
5. Encourage screening of new residential development from the Town's roads, open spaces and scenic areas.
6. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
7. Protect existing and potential municipal water supplies.
8. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision.
9. Minimize the total amount of disturbance on the site.
10. Preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
11. Encourage the provision of diverse housing opportunities and the integration of a variety of housing types.
12. Further the goals and policies of the Manchester-by-the-Sea Comprehensive Plan, as revised.

6.13.2 Definitions

In this Bylaw, the following words have the meanings indicated:

Residential Conservation Cluster (RCC) Development: A residential development in which the buildings are clustered together with reduced lot sizes and frontage. The land not included in the building lots is permanently preserved as open space. RCC Development is generally the preferred form of residential development and/or redevelopment in the Town for residential developments of five (5) or more acres and/or six (6) or more lots.

6.13.3 Applicability

A proposed subdivision of land into six (6) or more lots shall be filed in accordance with the provisions of Section 6.13.4, below. The Planning Board shall determine whether the proposed location is suitable for an RCC Development under the terms and provisions of this section. If the Planning Board determines that the proposed location is suitable for an RCC Development, any further subdivision of the land into six or more lots shall be accomplished only through the provisions of this Bylaw. If the Planning Board determines, after discussion and analysis provoked by Section 6.13.4, that the location is best suited for subdivision under a conventional subdivision design, the Planning Board shall so inform the applicant and the applicant may then proceed to design a subdivision plan under the provisions of the Subdivision Control Law and the Manchester-by-the-Sea Rules and Regulations Governing the Subdivision of Land (Subdivision Rules and Regulations) and the provisions of this section shall not apply. In cases where the Planning Board determines that the site is not suitable for an RCC Development, and where the proposed subdivision of land is for six (6) or more lots, the Planning Board's special permit powers shall be limited to enforcing the provisions of Section 6.14 of the Zoning Bylaw. In either case, however, a special permit from the Planning Board shall be required.

Notwithstanding the provisions above, the Planning Board may grant a special permit for an RCC Development for any parcel or contiguous parcels of at least five (5) acres in any district permitting single-family dwellings subject to the regulations and conditions herein. Determination of whether the proposed location is not suitable for an RCC Development shall be based upon the opinion and judgment of the Planning Board, after consultation with its advisors and staff and may include the following criteria:

1. The degree to which the topography of the locus will not be preserved by a RCC Development;
2. The degree to which stormwater runoff and erosion will not be minimized by a RCC Development;
3. The degree to which the RCC Development will result in inappropriate site planning, subdivision design and/or damage to the site's natural features;
4. The degree to which the RCC Development will not preserve or protect abutting properties and associated views and vistas;
5. The degree to which public safety will be threatened by a RCC Development;
6. The degree to which other site-specific attributes or site-specific concerns are not appropriately addressed by a RCC Development.

6.13.4 Procedural Requirements

1. Pre-Application Meeting: A pre-application meeting between the Planning Board and the applicant is strongly encouraged.
2. Preliminary (Conventional) Plan/RCC Sketch Plan: Applicants proposing the

subdivision of land into six (6) or more lots shall submit a Sketch Plan for an RCC Development along with a Preliminary (Conventional) Subdivision Plan for review by the Planning Board. One of the purposes of this review is to determine the number of lots possible in the RCC Development. For this reason, it is strongly recommended that a copy of the existing conditions plan required in Section 6.13.4.3 below be submitted at this stage. The Planning Board shall approve, approve with conditions, or disapprove the preliminary plan/RCC Sketch Plan within forty-five (45) days of receipt of a completed application. Upon receipt of the Planning Board's written decision regarding said plan, the applicant may submit a Definitive Subdivision/ RCC Development plan in accordance with the Planning Board's written decision. If the above-noted forty-five (45) day time period has lapsed without a written decision being issued by the Planning Board, the applicant may submit a definitive subdivision/ RCC Development plan in accordance with Section 6.14.3 of this Bylaw.

3. Definitive Subdivision/ RCC Development Plan: The Definitive Subdivision/ RCC Development Plan shall show: location and boundaries of the site, proposed land and building uses, lot lines, location of open space, proposed grading, location and width of streets and ways, parking, landscaping, existing vegetation to be retained, water supply or approximate location of wells, drainage, proposed easements and methods of sewage disposal. A team including a Registered Civil Engineer, Registered Land Surveyor, and a Registered Landscape Architect shall prepare the plan. An accompanying Existing Conditions Plan shall depict existing topography, wetlands, waterbodies and the 100-year floodplain, all existing rights of way, easements, existing structures, the location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, and cart paths. Submission of photographs depicting existing conditions, views and vistas from various locations on the property and from public and private ways shall accompany the plan submission. The Site Analysis shall also show locations of soil test pits and percolation tests, with supporting documentation on test results. Applicants shall also include a statement indicating the proposed use and ownership of the open space as permitted by this Bylaw. Applicants should refer to the Subdivision Rules and Regulations for provisions regarding preparation and submittal of plans.

4. Density/Number of Dwelling Units: The total number of dwelling units in a Residential Conservation Cluster shall be determined by the following formula:
(a)
$$[\text{Total area of land subject to the application}] - [\text{Area of wetlands and waterbodies}] = \text{Applicable Land Area} [[\text{Applicable Land Area}] \times [.75]] \text{ Divided by Minimum Lot Area Established for the Zoning District} = \text{Total number of dwelling units.}$$
 The number of dwelling units permitted in a Residential Conservation Cluster shall not exceed that which would be permitted under a conventional subdivision that

complies with the Zoning Bylaw and the Subdivision Rules and Regulations of the Planning Board and any other applicable laws and regulations.

5. Review and Decision: Upon receipt of the application and the required plans, the Planning Board shall transmit one copy each to the Board of Health, Historical Commission and Conservation Commission. Within 45 days of their receipt of the application/plans, these agencies shall submit any recommendations to the Planning Board. The Planning Board shall act on applications according to the procedure specified in G. L. c. 40A, sec. 9. Notice shall be provided of hearings in accordance with Chapter 40A, sec. 11 and Chapter 41, sec. 81T. Public hearings for the subdivision application and the special permit application shall be conducted concurrently.

6. Criteria for Special Permit Decision:

(a) Findings: The Planning Board may approve the development upon finding that it complies with the purposes and standards of the RCC Development Bylaw and is superior in design to a conventional subdivision with regard to protection of natural features and scenic resources of the site. The Planning Board shall consider the following criteria in making its decision:

1. Upland open space as required by this Bylaw has been provided and generally conforms to the Design Requirements in Section 6.13.8 of this Bylaw.
 2. Approximate building sites have been identified and are not located closer than 100 feet to wetlands and waterbodies.
 3. Proposed streets have been aligned to provide vehicular access to each dwelling unit in a reasonable and economical manner. Lots and streets have been located to avoid or minimize adverse impacts on open space areas and to provide lots with views of and access to the open space.
 4. All lots meet the applicable dimensional requirements of Section 6.13.5 of the RCC Development Bylaw and all other relevant provisions of the Zoning Bylaw.
 5. The provisions of Section 6.14 of the Zoning Bylaw will be met.
- The Planning Board's findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval or denial of the application for special permit.

(b) Conditions: The Planning Board shall impose conditions in its decision as necessary to ensure compliance with the purposes of this Bylaw. Approval of an RCC Development shall be conditioned upon Definitive Subdivision approval and shall be conditioned to provide that no further division of land that increases

the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require approval of the Planning Board and shall be in compliance with the requirements of the RCC Development Bylaw and the Subdivision Rules and Regulations.

(c) Time Limit: A special permit is granted for a period of two years from the date of its approval and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown. In its sole discretion, the Planning Board may grant extensions to allow construction of subdivisions within the vested rights limits set forth in G.L. c. 40A, sec. 6 except where such extension would derogate from the intent and purpose of this Bylaw.

(d) Relationship to Subdivision Control Law: Nothing contained herein shall exempt a proposed subdivision from compliance with other applicable provisions of these Bylaws or the Subdivision Rules and Regulations of the Planning Board, nor shall it affect the right of the Board of Health and of the Planning Board to approve, condition or disapprove a subdivision plan in accordance with the provision of such Rules and Regulations and of the Subdivision Control Law.

6.13.5 Standards and Dimensional Requirements

Where the requirements of this section differ from or conflict with the requirements found elsewhere in this Bylaw, the requirements of this section shall prevail.

1. Minimum Lot Size: The minimum lot size shall be one-half the square footage otherwise required by the Zoning District in which the project is located.

2. Minimum Frontage: The minimum frontage may be reduced from frontage otherwise required in the Zoning District, provided however that no lot shall have less than 50 feet of frontage and provided further that such frontage reduction shall apply only to lots fronting on proposed internal roadways.

3. Setbacks: Provided that no objection to the contrary is raised by the Fire Department, the Planning Board may reduce by up to one-half the setbacks otherwise required by the Zoning Bylaw if the Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with this Bylaw. Notwithstanding this provision or the requirements of the Zoning Bylaw, every dwelling fronting on the proposed roadways shall be set back a minimum of 15 feet from the roadway right-of-way, and a minimum of 50 feet from the outer perimeter of the land subject to the application. This 50-foot setback shall be maintained in a naturally vegetated state

to screen and buffer the development and may be included within the open space. This setback may be eliminated where the proposed development abuts existing permanent open space. Wherever feasible, construction of the dwelling at the front setback line is encouraged.

4. Required Open Space: All land area not utilized for lots, roads, and drainage shall be set aside as open space. A minimum of 60% of the upland area of the parcel (“applicable land area”) shall be provided as open space. As an exception, where the open space is proposed to be deeded to the Town or a qualified land trust pursuant to 6.13.7 of this Bylaw, and in fact, such a transfer occurs, a minimum of 50% of the upland area of the parcel shall be provided as open space. Applicants are encouraged to include wetlands and waterbodies within the open space; however, they do not count toward the open space requirement. Roadway rights-of way shall not count toward the area to be provided as open space.

6.13.6 Permissible Uses Of Open Space

1. Purposes: Open space shall be used solely for recreation, conservation, or agriculture purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. At least half of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are proposed, the plans shall specify what uses will occur in what areas. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.

2. Leaching Facilities: Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or waterbodies, and enhances the site plan. The Planning Board shall require adequate legal safeguards and covenants that such facilities shall be adequately maintained by the lot owners within the development. No portion of the open space containing components of a sewage disposal system(s) shall count toward the open space requirements of Section 6.13.5.4, nor shall any portion of said open space areas be accepted by the Town or conveyed to a nonprofit organization other than a corporation or trust described in Section 6.13.7(c).

6.13.7 Ownership Of Open Space

1. Ownership Options: At the developer’s option and subject to approval by the Planning Board, all areas to be protected as open space shall be:

- (a) Conveyed to the Town to be placed under the care, custody and control of the Conservation Commission, and be accepted by it for a park or open space use. Land conveyed to the Town shall be open for public use;
- (b) Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified below. Such organization shall be acceptable to the Town as a bona fide conservation organization; or
- (c) Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e. "homeowners' association") and placed under conservation restriction. If such a corporation or trust is utilized, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners' association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowners' association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision.

2. Permanent Restriction: In any case when open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction, in accordance with G. L. c. 184 sec. 31, approved by the Planning Board and Board of Selectman, and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways except as permitted by this Bylaw and approved by the Planning Board. Restrictions shall provide for periodic inspection of the open space by the Town. Such restriction shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the definitive subdivision plan. A management plan may be required by the Planning Board that describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.

3. Encumbrances: All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.

4. 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 expenses.

6.13.8 Design Process

Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this design process was considered in determining the layout of proposed streets, house lots, and contiguous open space.

1. Understanding the Site. The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.
2. Evaluating Site Context. The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.
3. Designating the Contiguous Open Space. The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.
4. Location of Development Areas. The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, to reflect an integrated community, with emphasis on consistency with Manchester-by-the-Sea's historical development patterns.
5. Lot Lines. The final step is to draw the lot lines.

6.13.9 Design Requirements

The location of open space provided through this Bylaw shall be consistent with the policies contained in the Manchester-by-the-Sea Comprehensive Plan and the Open Space and Recreation Plan, as amended. The following design requirements shall apply to open space and lots provided through this Bylaw:

1. Open space shall be planned as large, contiguous areas whenever possible. Long

thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.

2. Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.

3. Open space may be in more than one parcel provided that the size, shape and locations of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails.

4. Where the proposed development abuts or includes a body of water or a wetland, these areas and the 100-foot buffer to such areas shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.

5. The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.

6. Open space shall be provided with adequate access, by a strip of land at least 20 feet wide, suitable for a footpath, from one or more streets in the development.

7. Development along existing scenic roads and creation of new driveway openings on existing regional roadways shall be minimized.

8. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections should be provided where appropriate.

9. Residential structures shall be oriented toward the street serving the premises.

6.13.10 Types of Buildings

An RCC Development may consist of a combination of single-family and two-family and residential structures. The architecture of all buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding, an articulated footprint and varied facades.

6.13.11 Affordable Component

As a condition of the grant of any special permit for a RCC Development containing six (6) or more lots or dwelling units, the Planning Board shall ensure compliance with the provisions of Section 6.14 (“Inclusionary Housing”) of the Zoning Bylaw.

6.13.12 Special Permit Requirements

In reviewing an application under this Bylaw, the Planning Board shall rely, to the extent warranted, on the provisions of Section 7.5 of the Zoning Bylaw.

6.14 Inclusionary Housing [added 2005]

6.14.1 Purpose and Intent

The purpose of this Bylaw is to outline and implement a coherent set of policies and objectives for the development of affordable housing in compliance with the Manchester-by-the-Sea's Comprehensive Plan, G.L. c. 40B sec. 20-23 and ongoing programs within the Town to promote a reasonable percentage of housing that is affordable to moderate income buyers. It is intended that the affordable housing units that result from this Bylaw be considered as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Department of Community Affairs, Division of Housing and Community Development and that said units count toward the Town's requirements under G. L. c. 40B sec. 20-23.

6.14.2 Definitions

1. **Affordable Housing Unit.** A dwelling unit that qualifies as a local initiative unit under the Commonwealth's Local Initiative Program and meets the requirements of a subsidized housing unit for purposes of listing in the subsidized housing inventory under G. L. c. 40B Sec. 20-23.
2. **Qualified affordable housing unit purchaser.** An individual or family with household incomes that do not exceed 80% of the median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development (HUD) and/or the Massachusetts Department of Housing and Community Development (DHCD).

6.14.3 Applicability

1. **Division of Land.** This Bylaw shall apply to the division of land into six (6) or more lots, and shall require a special permit from the Planning Board under Section 6.13 of the Zoning Bylaw. A special permit shall be required for land divisions under G. L. c. 40A sec. 9 as well as for "conventional" or "grid" divisions allowed by G. L. c. 41 sec. 81-L and sec. 81-U, including those divisions of land that do not require subdivision approval.

6.14.4 Mandatory Provision of Affordable Units

The Planning Board shall, as a condition of approval of any development referred to in

Section 6.13, require that the applicant for special permit approval complies with the obligation to provide affordable housing pursuant to this Bylaw and more fully described in Section 6.14.5.

6.14.5 Provision of Affordable Units

The Planning Board shall deny any application for a special permit for development under Sections 6.13 and this section if the applicant for special permit approval does not agree that:

1) At least ten (10) percent of the lots in a division of land or units in a multiple unit development subject to this Bylaw shall be established as affordable housing units in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing six (6) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two affordable units and so on.

(a) Constructed or rehabilitated on the locus subject to the special permit;

(b) Constructed or rehabilitated on a locus different than the one subject to the special permit (see Section 6.14.8);

(c) An applicant may offer, and the Planning Board with the approval of the Board of Selectmen, may accept donations of land in fee simple, on or off-site, that the Planning Board determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The Planning Board may require, prior to accepting land as satisfaction of the requirements of this Bylaw, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value;

(d) For non-rental affordable housing units, a cash payment to the Affordable Housing Trust Fund may be made subject to Section 6.14.11 of this Bylaw. The applicant may offer, and the Planning Board may accept, any combination of the Section 6.14.5.1(a)-(d) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this Bylaw.

6.14.6 Provisions Applicable to Affordable Housing Units On- and Off-Site

1. Siting of affordable units – All affordable units constructed or rehabilitated under this Bylaw shall be situated within the development so as not to be in less desirable

locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

2. Minimum design and construction standards for affordable units – Affordable housing units within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units.

3. Timing of construction or provision of affordable units or lots – Where feasible, affordable housing units shall be provided coincident to the development of market rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

| MARKET-RATE UNIT % | AFFORDABLE HOUSING UNIT% |
|--------------------|--------------------------|
| Up to 30% | None required |
| 30% plus 1 unit | At least 10% |
| Up to 50% | At least 30% |
| Up to 75% | At least 50% |
| 75% plus 1 unit | At least 70% |
| Up to 90% | 100% |

Fractions of units shall not be counted.

6.14.7 Marketing Plan for Affordable Units

Applicants under this Bylaw shall submit a marketing plan or other method approved by the Planning Board, to the Planning Board for approval, which describes how the affordable units will be marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers. The marketing plan must describe how the applicant will accommodate local preference requirements, if any, established by the Board of Selectmen, in a manner that complies with the nondiscrimination in tenant or buyer selection guidelines of the Local Initiative Program.

6.14.8 Provision of Affordable Housing Units Off-Site

As an alternative to the requirements of Section 6.14.5.1(a), an applicant subject to the Bylaw may develop, construct or otherwise provide affordable units equivalent to those

required by Section 6.14.5 off-site. All requirements of this Bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the Planning Board as an integral element of the special permit review and approval process.

6.14.9 Maximum Incomes and Selling Prices: Initial Sale

1. The developer of the housing units or his/her agent shall verify prior to transferring title or executing a lease that each prospective purchaser or renter of an affordable housing unit created under this Bylaw is a household of low or moderate income, as defined by the Commonwealth's Local Initiative Program (LIP). Toward this end:
 - a) The developer shall engage a qualified certifying agent acceptable to the Planning Board to receive purchase or rental applications, obtain and review documentation concerning sources and amounts of household income, and certify to the Town that all purchasers or renters approved for an affordable unit meet LIP income eligibility requirements.
 - b) The developer is responsible for making arrangements acceptable to the Planning Board to provide annual certifications to the Town as may be required to place and maintain the affordable units on the Commonwealth's Chapter 40B Subsidized Housing Inventory.
2. The maximum allowable purchase price or maximum allowable rent for affordable units created under this Bylaw shall comply with the regulations and guidelines of the Local Initiative Program (LIP).

6.14.10 Preservation of Affordability; Restrictions on Resale

Each affordable unit created in accordance with this Bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability to qualified purchasers in the future. The resale controls shall be established through a deed rider or an affordable housing restriction as defined by G.L. c.184, Section 31, recorded at the Essex County Registry of Deeds or the Land Court, and shall be in force for as long a period as is lawful. The affordable housing use restriction shall meet the requirements of the Local Initiative Program.

1. Resale price – Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property. For example, if a unit appraised for \$300,000 is sold for \$225,000 because of this Bylaw, it has sold for 75% of its appraised value. If, several years later, the appraised value of the unit at the time of proposed resale is \$325,000, the unit may be sold for no more than \$243,750, or 75% of the appraised value of

\$325,000. Notwithstanding the foregoing, the resale price of an affordable unit shall in no event exceed that amount which will require a household earning 80% of the most recent area median income number, as published by the U.S. Department of Housing and Urban Development and adjusted for the household size that corresponds with the number of bedrooms in the affordable unit, to spend a maximum of 30% of the household's annual income on housing costs. Housing costs shall include principal, interest, property tax, insurance payments and association or condominium fees.

2. Right of first refusal to purchase – The purchaser of an affordable housing unit developed as a result of this Bylaw shall agree to execute a deed rider prepared by the Town, granting, among other things, the Town's right of first refusal for a period not less than the maximum period allowable under guidelines set by the Department of Housing and Community Development for Local Initiative Units as defined by the Local Initiative Program, to purchase the property or assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.

3. The Planning Board shall require, as a condition for special permit approval under this Bylaw that the deeds to the affordable housing units contain a restriction against renting or leasing said unit during the period for which the housing unit contains a restriction on affordability.

4. The Planning Board shall require, as a condition for special permit approval under this Bylaw, that the applicant comply with the mandatory set asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section 6.14.10. The Building Commissioner shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded at the Essex County Registry of Deeds or the Land Court.

6.14.11 Fees in Lieu of Affordable Housing Units

As an alternative to Section 6.14.5 (a) through (c), an applicant may contribute a cash payment to the Affordable Housing Trust Fund, to be used for the development of affordable housing by the Town or its designees, in lieu of constructing and offering affordable units within the locus of the proposed development or off-site.

1. Calculation of fees-in-lieu of units. The applicant for development subject to this Bylaw may pay a fee in lieu of the construction of affordable units. For each affordable unit not constructed or provided through one or a combination of the methods specified in 6.14.5 (a) through (c), the fee shall be an amount equal to the difference between the median sale price for new single-family homes built in Manchester-by-the-Sea during the preceding three fiscal years, as determined and reported by the Board of Assessors, and the purchase price of a home that is affordable to a qualified purchaser.

a) For developments of multi-family condominiums, the Planning Board may substitute the median sale price for new condominiums built in Manchester-by-the-Sea during the preceding three fiscal years for the median sale price of new single-family homes.

b) The methodology used to determine an affordable purchase price shall comply with Local Initiative Program guidelines in effect at the time of application for a special permit.

c) The assumptions used to determine an affordable purchase price, including but not limited to minimum down payment, mortgage interest rate, term, closing and other costs shall be consistent with first-time homebuyer mortgage products available from commercial lending institutions located in or serving Manchester-by-the-Sea at the time of application for a special permit, all in accordance with the Inclusionary Housing Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk.

d) Upon adoption of this bylaw by town meeting, the Planning Board shall prepare and adopt an Inclusionary Housing Submission Requirements and Procedures Manual after holding a public hearing on the same.

2. Schedule of fees in lieu of payments. Fees in lieu of payments shall be paid according to the schedule set forth in Section 6.14.6 (3), above.

6.15 STORMWATER MANAGEMENT SPECIAL PERMIT [Added 2007]

6.15.1 PURPOSE AND INTENT

A. Regulation of discharges to the municipal separate storm sewer system (MS4) is necessary for the protection of the Town of Manchester-by-the-Sea's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. Increased and contaminated stormwater runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow and contamination of drinking water supplies, erosion of stream channels, alteration or destruction of aquatic and wildlife habitat, and flooding.

B. This By-Law establishes stormwater management standards for the final conditions that result from development and redevelopment projects, as well as construction activities, to minimize adverse impacts offsite and downstream which would be borne by abutters to development projects and the general public.

C. The goals and objectives of this By-law are:

1. To require practices to control the flow of stormwater from new and redeveloped sites into the Town storm drainage system in order to prevent flooding and erosion;
2. To protect groundwater and surface water from degradation;
3. To promote groundwater recharge;
4. To prevent pollutants from entering the Town's municipal separate storm sewer system (MS4) and to minimize discharge of pollutants from the MS4;
5. To ensure adequate long-term operation and maintenance of structural stormwater best management practices so that they work as designed;
6. To comply with state and federal statutes and regulations relating to stormwater discharges; and
7. To establish the Town's legal authority to ensure compliance with the provisions of this By-law through inspection, monitoring, and enforcement.

6.15.2 DEFINITIONS

ALTERATION OF DRAINAGE CHARACTERISTICS: Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

CLEARING: Any activity that removes the vegetative surface cover.

DEVELOPMENT: The modification of land to accommodate a new use or expansion of use, usually involving construction.

DISTURBANCE OF LAND: Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth materials.

GRADING: Changing the level or shape of the ground surface.

GRUBBING: The act of clearing land surface by digging up roots and stumps.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes (without limitation) roads, paved parking lots, sidewalks, and rooftops.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21 §. 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Manchester-by-the-Sea.

OPERATION AND MAINTENANCE PLAN: A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.

OUTFALL: The point at which stormwater flows out from a point source that is a discernible, confined and discrete conveyance into waters of the Commonwealth.

OUTSTANDING RESOURCE WATERS (ORWs): Waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

OWNER: A person with a legal or equitable interest in property.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POINT SOURCE: Any discernible, confined, and discrete stormwater conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

REDEVELOPMENT: Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

RUNOFF: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

STORMWATER MANAGEMENT PLAN: A plan required as part of the application for a Stormwater Management Permit. See Section 6.15.7.

STORMWATER: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

TSS: Total Suspended Solids.

6.15.3 AUTHORITY

This By-Law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

6.15.4 APPLICABILITY

A. No person may undertake a construction activity, including clearing, grading and excavation that results in a land disturbance that will disturb equal to or greater than one acre of land or will disturb less than one acre of land but is part of a larger common plan of development that will ultimately disturb equal to or greater than one acre of land draining to the Town's municipal separate storm sewer system without a special permit from the Planning Board.

B. Activities or land uses that otherwise require a special permit from the Planning Board shall not be required to obtain an independent special permit under to this Section 6.15 provided that the applicable terms, conditions and requirements of this Section 6.15 are imposed within the special permit issued by the Planning Board.

C. Exemptions:

1. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;

2. Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling;

3. The construction of fencing that will not substantially alter existing terrain or drainage patterns;
4. Construction and installation of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter terrain or drainage patterns;
5. As authorized in the Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the activities identified in Section 6.15.4 that are wholly subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission are exempt from compliance with this Section 6.15.

6.15.5 ADMINISTRATION

A. The Planning Board shall administer, implement and enforce this By-Law pursuant to G.L. c.40A s.9 and Section 7.5 of the Zoning By-Law.

6.15.6 PERMITS AND PROCEDURE

A. Filing Application. The site owner or his agent shall file a completed application package for a Stormwater Management Special Permit (SMSP) as follows: one copy (with the filing fee) with the Town Clerk and ten (10) additional copies with the Planning Board (by delivery with the above copy to the Town Clerk). Permit issuance is required prior to any site altering activity. While the applicant can be a representative, the permittee must be the owner of the site. Each copy of the SMSP Application package shall include:

1. a completed Application Form with original signatures of all owners;
2. a list of abutters, certified by the Assessors Office;
3. the Stormwater Management Plan and project description as specified in Section 6.15.7 of this By-law;
4. the Operation and Maintenance Plan as required by Section 6.15.8 of this By-Law;

B. Entry. Filing an application for a special permit grants the Planning Board, or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with the resulting special permit.

C. Other Boards. The applicant for a Stormwater Management Special Permit shall deliver a copy of the application package, within three (3) business days of filing the application with the Planning Board, to each of the Board of Health, Conservation Commission and Department of Public Works, and shall file a certificate of such delivery with the Planning Board.

D. Fee Structure. The Planning Board is authorized to establish an application form and filing fees, and to retain, at the applicant's expense, Registered Professional Engineers or other professional consultants to review and advise the Board on any or all aspects of these plans.

E. Public Hearing. The Planning Board shall hold a public hearing in accordance with G.L. c.40A ss. 9 and 11.

F. Actions. The Planning Board's action, rendered in writing, shall consist of either:

1. Approval of the Stormwater Management Special Permit Application based upon determination that the proposed plan meets the Standards in Section 6.15.7 and Section 7.5 of this By-law and will adequately protect the water resources of the Town and is in compliance with the requirements set forth in this Section 6.15;

2. Approval of the Stormwater Management Special Permit Application subject to any conditions, modifications or restrictions required by the Planning Board which will ensure that the project meets the Standards in Section 6.15.7 and Section 7.5 of this By-law and adequately protects water resources, set forth in this Section 6.15;

3. Disapproval of the Stormwater Management Special Permit Application based upon a determination that the proposed plan, as submitted, does not meet the Standards in Section 6.15.7, Section 7.5 of this By-Law or adequately protect water resources, as required herein.

G. Project Completion. At completion of the project the permittee shall submit as-built record drawings of all structural stormwater controls and best management treatment practices required for the site. The as-built drawing shall show deviations from the approved plans, if any, and be certified by a Registered Professional Engineer.

6.15.7 STORMWATER MANAGEMENT PLAN

A. The Stormwater Management Plan shall contain sufficient information for the Planning Board to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse impacts from stormwater. The Plan shall be designed to meet the Massachusetts Stormwater Management Standards as set forth in Part B of this section and DEP Stormwater Management Handbook Volumes I and II. The Stormwater Management Plan shall fully describe the project in drawings, and narrative.

B. The Plan shall include:

1. A locus map,

2. The existing zoning, and land use at the site,

3. The proposed land use,
4. The location(s) of existing and proposed easements,
5. The location of existing and proposed utilities,
6. The site's existing and proposed topography with contours at 2 foot intervals,
7. The existing site hydrology,
8. A description and delineation of existing stormwater conveyances, impoundments, and wetlands on or adjacent to the site or into which stormwater flows,
9. A delineation of 100-year flood plains, if applicable,
10. Estimated seasonal high groundwater elevation (November to April) in areas to be used for stormwater retention, detention, or infiltration,
11. The existing and proposed vegetation and ground surfaces with runoff coefficient for each,
12. A drainage area map showing pre-construction and post-construction watershed boundaries, drainage area and stormwater flow paths,
13. A description and drawings of all components of the proposed drainage system including:
 - a. locations, cross sections, and profiles of all brooks, streams, drainage swales and their method of stabilization,
 - b. all measures for the detention, retention or infiltration of water,
 - c. all measures for the protection of water quality,
 - d. the structural details for all components of the proposed drainage systems and stormwater management facilities,
 - e. notes on drawings specifying materials to be used, construction specifications and
 - f. expected hydrology with supporting calculations.
14. Proposed improvements including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable,
15. Timing, schedules, and sequence of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization,
16. A maintenance schedule for the period of construction, and

17. Any other information requested by the Planning Board.

C. Standards

Projects shall meet the Standards of the Massachusetts Stormwater Management Policy, which are as follows:

1. No new stormwater conveyances (e.g. outfalls) may discharge untreated stormwater directly to or cause erosion in wetlands or water of the Commonwealth.
2. Stormwater management systems must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.
3. Loss of annual recharge to groundwater should be minimized through the use of infiltration measures to the maximum extent practicable. The annual recharge from the post-development site should approximate the annual recharge rate from the pre-development or existing site conditions, based on soil types.
4. For new development, stormwater management systems must be designed to remove 80% of the average annual load (post development conditions) of Total Suspended Solids (TSS). It is presumed that this standard is met when:
 - a. suitable nonstructural practices for source control and pollution prevention are implemented;
 - b. stormwater management best management practices (BMPs) are sized to capture the prescribed runoff volume; and
 - c. stormwater management BMPs are maintained as designed.
5. Stormwater discharges from areas with higher potential pollutant loads require the use of specific stormwater management BMPs (see Stormwater Management Volume I: Stormwater Policy Handbook). The use of infiltration practices without pretreatment is prohibited.
6. Stormwater discharges to critical areas must utilize certain stormwater management BMPs approved for critical areas (see Stormwater Management Volume I: Stormwater Policy Handbook). Critical areas are Outstanding Resource Waters (ORWs), swimming beaches, cold water fisheries and recharge areas for public water supplies.
7. Redevelopment of previously developed sites must meet the Stormwater Management Standards to the maximum extent practicable. However, if it is not practicable to meet all the Standards, new (retrofitted or expanded) stormwater management systems must be designed to improve existing conditions.

8. Erosion and sediment controls must be implemented to prevent impacts during disturbance and construction activities.

9. All stormwater management systems must have an Operation and Maintenance Plan to ensure that systems function as designed.

10. Appropriate stormwater management controls shall be in place and operative throughout the construction phase of the project.

When one or more of the Standards cannot be met, an applicant may demonstrate that an equivalent level of environmental protection will be provided.

D. Reporting Requirements

The applicant shall prepare and submit semi-annual reports to the Planning Board for the first two (2) years after issuance of the Certificate of Completion, and annual reports thereafter demonstrating compliance with the terms and conditions of the special permit received from the Planning Board.

6.15.8 OPERATION AND MAINTENANCE PLANS

A. An Operation and Maintenance Plan (O&M Plan) is required at the time of application for all projects. The O&M Plan shall be designed to ensure that compliance with the Permit, this By-Law and the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 are met in all seasons and throughout the life of the system. The Planning Board shall make the final decision of what maintenance option is appropriate in a given situation. The Planning Board will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of stormwater management structures, and potential need for ongoing maintenance activities when making this decision. The O&M Plan shall remain on file with the Planning Board and shall be an ongoing requirement. The O&M Plan shall include:

1. The name(s) of the owner(s) for all components of the system.
2. Maintenance agreements that specify:
 - a. The names and addresses of the person(s) responsible for operation and maintenance;
 - b. The person(s) responsible for financing maintenance and emergency repairs;
 - c. A Maintenance Schedule for all drainage structures, including swales and ponds;
 - d. A list of easements with the purpose and location of each; and
 - e. The signature(s) of the owner(s).
3. Stormwater Management Easement(s):

- a. Stormwater management easements shall be provided by the property owner(s) as necessary for:
 - (i). access for facility inspections and maintenance,
 - (ii) preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event, and
 - (iii) direct maintenance access by heavy equipment to structures requiring regular cleanout.
- b. The purpose of each easement shall be specified in the maintenance agreement signed by the property owner(s).
- c. Stormwater management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the Planning Board.
- d. Easements shall be recorded with the Essex County South Registry of Deeds prior to issuance of a Certificate of Completion by the Planning Board.

4. Changes to Operation and Maintenance Plans

- a. The owner(s) of the stormwater management system must notify the Planning Board of changes in ownership or assignment of financial responsibility.
- b. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this by-law by mutual agreement of the Planning Board and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility.

6.15.9 SURETY

The Planning Board may require the permittee to post before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The bond shall be in an amount deemed sufficient by the Planning Board to ensure that the work will be completed in accordance with the permit. If the project is phased, the Planning Board may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the Board has received the final inspection report as required below and issued a Certificate of Completion. Where the applicant is simultaneously seeking approval from the Planning Board pursuant to the Subdivision Control Law, the performance bond provisions of G.L. c.41 s.81-U shall supersede the requirements of Section 6.15.9 provided that in the opinion of the Planning Board the performance bond so executed includes sufficient protections to the Town for work to be completed pursuant to this Section 6.15.

6.15.10 INSPECTIONS

The Planning Board shall cause the project site to be inspected by its representative at the following stages:

1. Initial Site Inspection: prior to approval of any plan.
2. Erosion Control Inspection: to ensure erosion control practices are in accord with the filed plan.

3. Bury Inspection: prior to backfilling of any underground drainage or stormwater conveyance structures.

4. Final Inspection: After the stormwater management system has been constructed and before the surety has been released, the applicant must submit a record plan detailing the actual stormwater management system as installed. The Planning Board shall cause the system to be inspected by its representative to confirm its "as-built" features. This inspection shall also evaluate the effectiveness of the system in an actual storm. If the inspection finds the system to be adequate, the Planning Board shall issue a Certificate of Completion.

If the system is found to be inadequate by virtue of physical evidence or operational failure, even though it was built as called for in the Stormwater Management Plan, it shall be corrected by the permittee before the performance guarantee is released. If the permittee fails to act the Town may use the surety bond to complete the work.

6.15.11 CERTIFICATE OF COMPLETION

The Planning Board will issue a letter certifying completion upon receipt and approval of the final inspection reports and/or upon otherwise determining that all work of the special permit has been satisfactorily completed in conformance with the special permit and this Section 6.15.

6.15.12 SEVERABILITY

If any provision, paragraph, sentence, or clause of this By-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

6.16 Topographical Changes and Land Clearing Special Permit [Residential Districts] [Added 2007]

6.16.1 Purpose:

It is intended to encourage the conservation of open space, and the general topographical layout of the land, promote less land clearing, grading and excavation - especially in rocky, hilly terrain, preserve existing wetlands, recharge areas, rivers, streams, marshes, historic sites, unique geological and botanical areas or features, trails, paths and open-space links, specimen trees, wildlife habitat and contiguous forested areas, and preserve natural vegetative buffer zones abutting neighboring parcels. The object is to enhance the quality of life for the residents of the lot, the immediate neighborhood, and the Town generally, and to discourage unnecessary or excessive removal of rock. It is intended that the site plan will be prepared with due consideration for the foregoing and for protection of adjacent areas against detrimental or offensive uses on the site by

provisions for adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, and the allowance of sun, light and air.

6.16.2 Applicability:

6.16.2(a) Definitions (for purposes of this Section 6.16):

Each lot within the Single Residence Districts A, B, C, and E, and Residence District D, consists of two parts. One part [the “Setback Area”] is that portion of the lot from its exterior boundaries to the lines delimiting its minimum front, side and rear building setbacks as prescribed by Section 5.4. The other part [the “Interior Area”] is the rest of the lot. That portion of the Setback Area of a lot between the lines delimiting its minimum side building setbacks from its front exterior boundaries to the line delimiting its minimum front building setback, all as so prescribed, is the “Central Front Setback Area”; and the remaining portion of the Setback Area is the “Side/Rear Setback Area”.

“Green Activities” means planting, trimming, harvesting, additions, subtractions or other changes of, in or to the trees, shrubs, grass, plants, vegetation or other non-nuisance agricultural, horticultural, floricultural or silvicultural products. Without limitation of the generality of the foregoing, “Green Activities” include the annual addition of up to twelve (12) inches of soil or other material to any area.

“Ledge” means a boulder or rock formation, whether or not cracked or broken into contiguous pieces, (1) which has a volume of three (3) or more cubic yards, or (2) the removal of all or any part of which, in the opinion of the Building Inspector or as proposed by the lot owner, normally would involve either blasting or hoe-ramming. Such Ledge is an exposed ledge if its uncovered surface area is fifty (50) or more square feet.

“Authorized Structures/Drives Activities” means construction, maintenance or other changes (A) within the layout of any street, or sidelines of any easement for any common driveway on which the lot has frontage, or (B) under the Subdivision Rules and Regulations or this Zoning By-Law within the footprint of buildings and other structures, and sidelines of driveways and turnarounds, authorized (with specific reference to any ledge removal permitted) by either the Planning Board or the Zoning Board of Appeals or (C) within the footprint of a residential building, provided that any excavation does not exceed a depth of fifteen (15) feet from the pre-construction grade and is authorized by a building permit issued by the Building Inspector.

“Septic Activities” means construction, maintenance or other changes in a septic system authorized (with specific reference to any ledge removal permitted) after a public hearing by the Board of Health.

“Utilities Activities” means construction, maintenance or other changes in water, gas, sewer, electric, telephone, cable and other utilities installed underground within one or more trenches each

not exceeding 4 feet in width (the number and location of such trenches to be as determined by the Planning Board under the Subdivision Rules and Regulations, otherwise by the Building Inspector) extending (a) from the front exterior boundary of the lot through the Center Front Setback Area to structures within the Interior Area, and/or (b) between structures within the lot.

6.16.2(b) General.

As described in this Section 6.16.2, and except for certain de minimus or excluded activities, a special permit is required from the Planning Board for certain ledge removal and/or other topographical changes or disturbances within the Setback Area or (different criteria) the Interior Area of a lot in the residential zoning districts [Single Residence Districts A, B, C, and E, and Residence District D].

6.16.2(c) Exclusions:

No such special permit under this Section 6.12 is required for any or all of the following (collectively, the “Excluded Activities”):

- (i) Authorized Structures/Drives Activities; and/or
- (ii) Septic Activities; and/or
- (iii) Utilities Activities; and/or
- (iv) Green Activities.

6.16.2(d) Setback Area Special Permits:

Topographical changes (other than Excluded Activities) within the Setback Area for any lot in Single Residence Districts A, B, C, and E, and in Residence District D, may not be made without a special permit from the Planning Board if such changes:

- (1) Involve within the Setback Area removal of either any portion of any pre-construction exposed ledges or more than 5 feet vertically or horizontally of other ledges; and/or
- (2) Result in a change in elevation (from the pre-construction elevation) of more than 5 feet at any point (otherwise than within the footprint of any structure) within the Setback Area; and/or
- (3) Result in the excavation, deposit or removal of more than 20 cubic yards of earth, clay, sand, gravel and rock within the Setback Area, whether or not any such material so excavated, deposited or removed is relocated elsewhere either within the Setback Area or the lot; and/or
- (4) Disturb more than 10% of the Setback Area.

6.16.2(e) Interior Area Special Permits:

Topographical changes (other than Excluded Activities) within the Interior Area for any lot in Single Residence Districts A, B, C, and E, and in Residence District D, may not be made without a special permit from the Planning Board (in addition to any Earth Removal Permit which may be required under Article XII of the Town’s General By-Law) if such changes:

- (1) Involve within the Interior Area removal of any portion of any pre-construction exposed ledges; and/or
- (2) Result in a change in elevation (from the pre-construction elevation) of more than 10 feet at any point (otherwise than within the footprint of any structure) within the Interior Area; and/or
- (3) Result in the excavation, deposit or removal of more than 100 cubic yards of earth, clay, sand, gravel and rock within the Interior Area, whether or not any such material so excavated, deposited or removed is relocated elsewhere either within the Interior Area or the lot; and/or
- (4) Disturb more than 30% of the Interior Area.

6.16.3 Procedure Special Permits under this Section 6.16 shall be granted only if the Planning Board finds that it is consistent with the purpose and intent outlined in Section 6.16.1 of this By-Law and in conformance with this Section 6.16 generally and Section 7.5 of the Manchester-by-the-Sea Zoning By-Law and the requirements of MGL Chapter 40A, Section 9. Each application shall be in the form and number of copies prescribed by the Planning Board, and shall be filed [each with a site plan as proposed for the lot] with the Planning Board by submission to the Town Clerk, together with such filing fee as the Planning Board shall determine. Applicants are encouraged to discuss their proposals informally with the Planning Board prior to filing.

6.16.4 Application Requirements:

Plans subject to Special Permit approval under this Section 6.16 shall be prepared by a Registered Architect, Landscape Architect, or Professional Engineer. The lot identification shall include its Assessors Map and Lot numbers. The site plan for the lot shall be prepared at a scale no greater than 1"=40', and shall show (except as otherwise prescribed or waived by the Planning Board) all existing and proposed contour elevations (at two (2) foot contour line intervals), structures, parking spaces, driveway openings, service areas, facilities for sewage, refuse and other waste disposal and for surface water drainage, wetlands, vernal pools, streams, ponds and other surface water, areas subject to the 100-year flood, and landscape features such as exposed ledges, fences, walls, trees (having a diameter, 4 1/2 feet from the ground, exceeding 6 inches), planting areas, walks and lighting, both existing and proposed. The site plan also shall show the relation of locus map at a scale not greater than 1"=2,000'. The site plan also shall show all contiguous land owned by the applicant or by the owner of the property, and shall identify all abutters, by name and Assessors Map and Lot numbers. The applicant shall submit such material as may be required by the Planning Board regarding measures proposed to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level, and flooding, and regarding design features intended to integrate the proposal into the existing landscape, to preserve the same, to enhance aesthetic, and to screen objectionable features from neighbors.

6.16.5 Expenses Incurred:

Expenses incurred by the Planning Board in connection with an application under this Section 6.16, including the reasonable fees and expenses of any consultants retained by the Planning Board, shall be paid by the applicant for such Special Permit.

SECTION 7.0 ADMINISTRATION

7.1 Permits/Enforcement

The office of the Building Inspector is responsible for the enforcement of this By-Law and the issuance of building permits. He shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of this Zoning By-Law and no permit shall be granted for a new use of a building, structure or land which use would be in violation of this By-Law. Where a permit or variance may be granted with conditions, such conditions shall be imposed and made part of the record.

7.2 Enforcement Request

If the Building Inspector is requested in writing to enforce these By-Laws against any person allegedly in violation of same, and the Building Inspector declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefor within fourteen (14) days of receipt of such request.

7.2.1 Penalties:

Any person violating any provision of this By-Law, upon conviction, shall be fined \$300 for each offense, and each day that such violation continues shall constitute a separate offense. [Added 1987; Amended 1989]

7.3 Certificate of Occupancy

No use or occupation of land for any purpose for which a certificate of occupancy is required shall be made, in whole or in part, until such a certificate has been issued by the Inspector of Buildings stating that the use of land and structure, if any, complies with this By-Law and other applicable codes in effect at the time of issuance.

7.4 Board of Appeals

7.4.1 Appointment; Organization:

The Board of Appeals, also known as the Zoning Board of Appeals, shall consist of five regular members and two associate members appointed by the Board of Selectmen for five year terms. The regular members shall be appointed such that the term of one member shall expire each year. Vacancies shall be filled in the same manner as appointments. The Board of Appeals shall elect one of its members as chairman and one of its members as clerk, each to serve for a one year term. The two associate members shall be appointed such that their terms do not expire the same year.

7.4.2 Removal:

A member may be removed only for cause by the Board of Selectmen and only after a written statement of the facts on which removal for cause is based has been presented to such member and a public hearing has been held at which the member has been afforded the opportunity to be heard.

7.4.3 Jurisdiction:

The Board of Appeals of the Town of Manchester-by-the-Sea is hereby designated as the Zoning Board of Appeals and as the permit granting authority mandated by The Zoning Act. In addition to the other powers and responsibility granted by other applicable provisions of the General Laws or by this By-Law, the Board of Appeals shall hear and decide appeals in accordance with Section 7.4.5 of this By-Law, petitions for variances in accordance with Section 10 of The Zoning Act and Section 7.4.6 of this By-Law, and applications for special permits with respect to matters as to which it is designated in this By-Law as the special permit granting authority.

7.4.4 Procedure:

The Board of Appeals shall be governed by the procedural requirements of The Zoning Act and other applicable provisions of the General Laws. The Board of Appeals shall adopt rules, not inconsistent with the provisions of this By-Law and The Zoning Act or other applicable provisions of the General Laws, for the conduct of its business and shall file a copy of such rules with the Town Clerk. Decision on an appeal (Section 7.4.5) or variance (Section 7.4.6) must be made within 100 days of the date of filing. Failure to make a decision within 100 days shall be deemed to be a grant of the appeal or variance. [amended 2005]

7.4.5 Appeals:

An appeal may be taken to the Board of Appeals by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any officer or board of the Town of Manchester-by-the-Sea under The Zoning Act or this By-Law, by any regional planning agency in whose area the Town of Manchester-by-the-Sea is situated, or by any person including an officer or board of the Town of Manchester-by-the-Sea or of an abutting city or town aggrieved by an order or decision of any officer or board of the Town of Manchester-by-the-Sea in violation of any provisions of The Zoning Act or of this By-Law.

7.4.6 Variance:

The Board of Appeals may grant upon appeal or upon petition with respect to particular land or structures a variance from specific requirements of this By-Law only where, after notice and a public hearing, as required by The Zoning Act, the Board of Appeals specifically finds that, owing to circumstances relating to the soil conditions, shape or topography of land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located,

a literal enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise, and 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 By-Law. The Board of Appeals may not grant a variance authorizing a use or activity not otherwise permitted in the district in which land or structure is located, except that this limitation shall not apply to land or structures located in the Limited Commercial District or General District. The Board of Appeals may impose such conditions, safeguards and limitations, both of time and of use, as it deems appropriate upon the grant of any variance, but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner. Any rights authorized by a variance which are not exercised within one year from the date of grant of such variance shall lapse and may be reestablished only after notice and a new hearing pursuant to this Section.

7.4.6.1 Use Variances - Requirements:

No variance authorizing a use or activity not otherwise permitted in the Limited Commercial District shall occur without a written finding by the Board of Appeals that, in addition to the requirements set forth in Section 7.4.6, the specific considerations (1-7) outlined in Section 7.5.2 of the Manchester-by-the-Sea Zoning By-Law have been addressed. [Added 1987]

7.5 Special Permits

7.5.1 Certain uses are designated in this By-Law as requiring a special permit. A special permit shall not reverse, vary or alter any applicable provision of this By-Law. The Board of Selectmen, Planning Board and the Board of Appeals are hereby designated as the special permit granting authorities mandated by Zoning Act. The board authorized in this By-Law to grant a special permit for a specified use is herein designated as the special permit granting authority for that use. [Amended 1987]

7.5.2 No special permit shall be granted unless the applicable special permit granting authority finds the proposed uses in harmony with the purpose and intent of this By-Law and will not be detrimental or injurious to the neighborhood in which it is to take place and that all requirements or conditions for the grant of the special permit have been satisfied. No special permit shall be granted unless the special permit granting authority determines that the proposed use will not be detrimental to the surrounding neighborhood in light of each of the following factors:

- (a) Adequacy of the site in terms of size for the proposed use;
- (b) Suitability of the site for the proposed use;
- (c) Impact on traffic flow and safety;
- (d) Impact on neighborhood visual character, including views and vistas;
- (e) Adequacy of method of sewage disposal, source of water and drainage;

- (f) Adequacy of utilities and other public services;
 - (g) Impact on public or private water supplies, wildlife habitats and other natural resource issues deemed appropriate by the special permit granting authority.
- The special permit granting authority shall also make such further findings as may otherwise be required by this By-Law, and may attach such conditions or safeguards or limitations on the grant of the special permit as it finds to be appropriate and reasonable to protect the surrounding neighborhood, including but not limited to
- (aa) Setback requirements greater than the minimum required by this By-Law;
 - (bb) Requirements as to installation of screening, fencing or other means of protecting adjacent property;
 - (cc) Modification of the exterior features or appearance of any structure;
 - (dd) Limitation as to size, number of occupants, or method and time of operation of any proposed use;
 - (ee) Regulation of number, design and location of access drives and other traffic features;
 - (ff) Requirement of off-street parking and other special features;
 - (gg) Installation of mechanical or other devices to limit noise, light, odor or other objectional aspects of use; and
 - (hh) Requirement for surety bonds or other security for the performance of any conditions attached to the special permit. [Amended 1987]

7.5.3 An applicant for a special permit shall file an application with the applicable special permit granting authority, together with such other plans, specifications and documents as may be required by rules adopted by the special permit granting authority pursuant to Section 7.5.6, and shall file a copy thereof with the Town Clerk and with any other officers, boards or commissions required by this By-Law. Within 65 days of such filing with the Town Clerk or the special permit granting authority, whichever shall first occur, the special permit granting authority shall hold a public hearing.

7.5.4 Failure of the special permit granting authority to act within 90 days following the public hearing shall be deemed to be the grant of the special permit applied for and the applicant shall be entitled to whatever documents are necessary to evidence such permit.

7.5.5 Any special permit granted under this By-Law shall lapse within a period of time, to be specified by the permit granting authority, not to exceed two years from the date of issue, unless, in the case of special permit for a building or structure, construction has commenced, or in the case of any other use of or activity upon land such use or activity has commenced.

7.5.6 The special permit granting authority shall be governed by the procedural requirements of The Zoning Act and other applicable provisions of the General Laws. Each special permit granting authority shall adopt rules, not inconsistent with the provisions of this By-Law and The Zoning Act or other applicable provisions of the General Laws, for the conduct of its business and shall file a copy of such rules with the Town Clerk.

7.6 Other By-Laws, Rules or Regulations

The provisions of this By-Law shall be construed as being additional to and not as annulling, limiting or lessening to any extent whatsoever the requirements of any other By-Law, rule or regulation, provided that, unless specifically exempted, where this By-Law is more stringent it shall control.

7.7 Validity

The invalidity of one or more sections, subsections, sentences, clauses or provisions of this By-Law shall not invalidate or impair the By-Law as a whole or any other part hereof.

7.8 Referral

In addition to those applications for a special permit which require Site Plan Review Special Permit under Section 6.9, the Board of Appeals, Board of Selectmen and Planning Board shall refer a special permit application to the Board of Health, Conservation Commission, and the Department of Public Works for written comments and recommendations before taking final action on said Special Permit application. The Special Permit Granting Authority may refer a Special Permit application to any other town agency/board/department for comments and recommendations if it so desires before taking final action on said Special Permit application. A public hearing on said referral shall not be required. Any such Board or Agency to which applications are referred for comment shall make its recommendations and send copies thereof to the Special Permit Granting Authority and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The Special Permit Granting Authority shall not act upon said special permit until either comments from referred board or agencies have been received, or said thirty-five (35) days have elapsed, whichever is sooner. Applications referred to more than one board or agency may be reviewed jointly by said boards or agencies. [Added 1988]

7.9 Planning Board Fees and Expenses [added 2007]

7.9.1 Scope:

Section 7.9 applies to each application or request [“Application”] filed with or otherwise submitted to the Planning Board for determination, approval, consent, grant, permit, special permit or other decision by the Planning Board [“Permit”].

7.9.2 Filing Fees:

The Planning Board shall determine the filing fee for Applications for which a fee is not otherwise provided or specified, which filing fee in its discretion the Board may waive or reduce in any particular matter when appropriate.

7.9.3 Expenses:

In connection with any such Application to the Planning Board, all expenses for advertising, recording and filing of documents, and for the reasonable fees (and expenses) for the employment of outside consultants as the Planning Board shall select, if and when it shall determine to do so, shall be borne by the applicant. The applicant shall be advised of the selection of an outside consultant, and of the sum to be deposited with the Town in a special account for the reasonable fees for the employment of the same. Such special account shall be established and dealt with consistent with MGL c.44 Section 53G.

The applicant may make an administrative appeal from the Planning Board's selection of any such outside consultant, such appeal to be made to the Town's Board of Selectmen and limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required statutory qualifications (which, as specified in MGL c.44 Section 53G are either an educational degree in or related to the field at issue or 3 or more years of practice in the field at issue or a related field). To the extent permitted by law and consistent with MGL c.44 Section 53G, any required time limits for action on an Application by the Planning Board shall be extended by the duration of such administrative appeal, and if no decision is made by the Town's Board of Selectmen within one month following the filing of such administrative appeal, the selection made by the Planning Board shall stand.

APPENDIX
History of the Manchester-by-the-Sea Zoning By-Law

Original By-Law and Map

February 13, 1945 (Town Meeting Action)
March 5, 1945 (Attorney General Approval)

Zoning Map

February 11, 1946 (Town Meeting Action)
May 1, 1946 (Attorney General Approval)

Brief Summary:

Articles 17 and 18; change area bounded by Gloucester, Summer Street, "Univ. Land" from General District to Single Residence.

Zoning Map

March 10-12, 1952 (Town Meeting Action)
December 23, 1952 (Attorney General Approval)

Brief Summary:

Changed property bounded by Summer, Raymond and Brook, from Single Residence to General District.

Zoning Map

March 8, 1954 (Town Meeting Action)
January 17, 1955 (Attorney General Approval)

Brief Summary:

Established as Single Residence area bounded by Route 128, Bennett Street, Pine Street and Pipeline Road.

Zoning Map

March 12, 1956 (Town Meeting Action)
June 8, 1956 (Attorney General Approval)

Brief Summary:

Established as Single Residence area bounded by Sea Street, Summer, Lincoln, Arbella, Rosedale Cemetery, Pleasant Street, School, Saw Mill Brook, Pope, Cat Brook, Mill Street, Essex Line, Gloucester Line.

Zoning Map

March 12, 1956 (Town Meeting Action)
June 8, 1956 (Attorney General Approval)

Brief Summary:

Article 23; added A and B to Single Family District and amplified the meaning of zoning. Changed area regulations of lots.

Zoning By-Law & Map

March 10, 1958 (Town Meeting Action)
April 10, 1958 (Attorney General Approval)

Brief Summary:

Article 24; meaning of word dwelling changed to omit use as overnight camp or mobile home.
Article 25; Limited Commercial District added bounded by 128, School Street, Essex Line.

Zoning By-Law

March 13, 1961 (Town Meeting Action)
April 12, 1961 (Attorney General Approval)

Brief Summary:

Article 8; change in definitions of words street, erected, dwelling, floor area, rooms to persons, added enforcement section and changed procedure for amendments.

Zoning By-Law & Map

March 11, 1963 (Town Meeting Action)
June 21, 1963 (Attorney General Approval)

Brief Summary:

Articles 16-21; added District C, amended classes of Single Residence District and area requirements of each part of Commercial District to Single Residence, extended nonconforming uses in Commercial District.

Zoning By-Law

March 8-9, 1965 (Town Meeting Action)
October 29, 1965 (Attorney General Approval)

Brief Summary:

Articles 24 and 25; area regulations changes and regulations for apartment dwellings.

Zoning By-Law

March 14, 1966 (Town Meeting Action)

May 4, 1966 (Attorney General Approval)

Brief Summary:

Articles 16 and 17; junk car regulations.

Zoning By-Law

March 14, 1966 (Town Meeting Action)

May 16, 1966 (Attorney General Approval)

Brief Summary:

Articles 23-25; regulations of Single Residence Districts, municipal uses.

Zoning By-Law & Map

August 29, 1966 (Town Meeting Action)

October 19, 1966 (Attorney General Approval)

Brief Summary:

More than two-family housing prohibited in General District.

Zoning By-Law

March 13-14 1967 (Town Meeting Action)

June 21, 1967 (Attorney General Approval)

Brief Summary:

Articles 16, 27, 28, 30, 31; junk cars, added Section 111, building permits - duration, flashing signs, home industry, advertising, accessory building. Area in District D changed.

Zoning By-Law

May 27, 1968 (Town Meeting Action)

September 10, 1968 (Attorney General Approval)

Brief Summary:

Articles 7 & 8; accessory buildings, General District minimum lot size.

Zoning By-Law & Map

March 12-13, 1973 (Town Meeting Action)

June 6, 1973 (Attorney General Approval)

Brief Summary:

Article 45; off-street parking. Article 46; General District, uses. Article 47-58; "Purpose" added, District C extended to railroad property, islands, etc., pools and tennis courts zoned.

Zoning By-Law

March 11, 1974 (Town Meeting Action)
May 24, 1974 (Attorney General Approval)

Brief Summary:

Articles 18 and 19; billboards and 3-4 dwelling unit density controlled.

Zoning By-Law

May 3, 1976 (Town Meeting Action)

Brief Summary:

Wetlands District added.

Zoning By-Law

May 1, 1978 (Town Meeting Action)
August 18, 1978 (Attorney General Approval)

Brief Summary:

Articles 11 and 12; adopt mandatory provisions of Massachusetts Chapter 808, recodify and reorganize; minimum dimensions on old lots; increase Board of Appeals to five members and two associates; extended by two years grandfather provisions of lots having somewhat less than dimensions required; deleting "residing on premises for doctor, dentist or other professional;" added "existing" to garage or stable and added "other existing structure" as a permit use for employee dwelling; increased accessory use of autos in residence district from 3 to 4; clarified alteration and reconstruction in General District; required site plan approval and special permit in Limited Commercial District; off-street parking not allowed on public property; prohibited use variances except in Limited Commercial District and General District; 3-4 dwelling units density controlled; and other changes.

Zoning By-Law

May 7, 1979 (Town Meeting Action)
August 6, 1979 (Attorney General Approval)

Brief Summary:

Articles 18 and 19; restrictions for Manchester-by-the-Sea based medical offices. Articles 21 and 22; clarification of Building Inspector's duties.

Zoning By-Law

May 5, 1980 (Town Meeting Action)
September 18, 1980 (Attorney General Approval)

Brief Summary:

Article 43; permit use only for an employee of owner dwelling in an existing structure.

Zoning By-Law

May 3, 1982 (Town Meeting Action)

August 10, 1982 (Attorney General Approval)

Brief Summary:

Article 14; height regulations/accessory structures. Article 15; delete section 5.7.3. Article 16; regulations for wind energy conversion systems.

Zoning By-Law

May 2, 1983 (Town Meeting Action)

August 10, 1983 (Attorney General Approval)

Brief Summary:

Article 52; permit use only for an employee of owner dwelling in an existing structure.

Zoning By-Law

May 7, 1984 (Town Meeting Action)

October 5, 1984 (Attorney General Approval)

Brief Summary:

Article 31; provision allowing an alteration of a non-conforming structure that does not make the structure more non-conforming without a special permit. Article 32; permits construction of accessory dwelling units in single residence districts. Article 34; special provisions for Open Space Planning. Article 35; regulates reflecting antennas by special permit.

Zoning By-Law

May 7 and 8, 1984 (Town Meeting Action)

November 15, 1984 (Attorney General Approval)

Brief Summary:

Article 40; imposes a temporary moratorium on any further new development within the watershed areas southwest of Route 128. Article 41; specification for Flood Control District.

Zoning By-Law

May 6, 1985 (Town Meeting Action)

July 25, 1985 (Attorney General Approval)

Brief Summary:

Article 21, amend zoning map enlarging District D. Article 23; consultant fees shall be borne by applicant. Article 56; re-zone 7 School Street.

Zoning By-Law

February 3, 1986 (Special Town Meeting Action)
March 6, 1986 (Attorney General Approval)

Brief Summary:

Article 10; regulations for Limited Commercial District.

Zoning By-Law

May 5, 12, and 19, 1986 (Town Meeting Action)
September 30, 1986 (Attorney General Approval)

Brief Summary:

Article 25; permits planned residential development in District C. Article 26; eliminate certain uses in Limited Commercial District. Article 27; specifications for accessory structures. Article 52; specify permitted uses for Limited Commercial District.

Zoning By-Law

May 4, 1987 (Town Meeting Action)
September 10, 1987 (Attorney General Approval)

Brief Summary:

Article 32; revised definition of "Lot Width". Article 33; revised definition of "Street". Article 34; revised definition of "Structure". Article 35; zoning map interpretation. Article 38; special housing provisions. Article 39; stipulations for common driveways. Article 40; lot coverage requirements. Article 41; provisions for accessory structures. Article 43; performance requirements within Limited Commercial District. Article 45; applicability of and procedure for Site Plan Approval. Article 46; qualifications for Site Plan Special Permit. Article 47; enforcement of Administration By-Law. Article 48; use variance requirements. Article 49; include Planning Board as a special permit granting authority. Article 52; revisions in the wording of the General Wetlands By-Law.

Zoning By-Law

May 2, 1988 (Town Meeting Action)
July 13, 1988 (Attorney General Approval)

Brief Summary:

Article 34; off-street parking regulations. Article 35; referrals from other boards to special permit granting authorities.

Zoning By-Law

May 8, 1989 (Town Meeting Action)
(Attorney General Approval)

Brief Summary:

Article 39; redefined accessory structure. Article 40; new Sewer Connection Limitation By-Law. Article 41; new Water Resource Protection District By-Law. Article 42; increase amount of fines.

Zoning By-Law

October 23, 1990 (Town Meeting Action)
January 14, 1991 (Attorney General Approval)

Brief Summary:

Article 7: Ground and Surface Water Resource Overlay Protection District By-Law.

Zoning By-Law

May 7, 1991 (Town Meeting Action)
(Attorney General Approval)

Brief Summary:

Article 32: Revised Residence District D language.

Zoning By-Law

April 4, 1994 (Town Meeting Action)
(Attorney General Approval)

Brief Summary:

Article 23: Amended definition of "Structure".
Article 31: Miscellaneous amendments.

Zoning By-Law

April 7, 1997 (Town Meeting Action)
(Attorney General Approval)

Brief Summary:

Article 13: Substituted a new definition of "Lot Width".
Article 15: Added regulation for Telecommunication Service Facilities.

Zoning By-Law

November 17, 1997 (Town Meeting Action)
(Attorney General Approval)

Brief Summary:

Article 1: Added a new "Limited Commercial District" use.

Zoning By-Law

April 6, 1998 (Town Meeting action)
(Attorney General Approval)

Brief Summary:

Article 17: Substituted a new Personal Wireless Telecommunication Service Facilities Use Regulation.

Article 18: Substituted a new Flood Plain District Use Regulation.

Zoning By-Law and Map

April 3, 2000 (Town Meeting action)
(Attorney General Approval)

Brief Summary:

Article 21: Amended the issuance of Special Permits by assigning the Special Permit Granting Authorities.

Article 22: Amended Off Street Parking Regulations to include Driveway and Curb Cut Regulations.

Article 24: Created Single Residence Zoning District E.

Zoning By-law

April 2, 2001 (Town Meeting action)
(Attorney General Approval)

Brief Summary:

Article 16: Revised Section 5.1 Frontage as it pertained to common driveways and added a new section 6.28

Article 17: Amended Section 5.5 to measure height from pre-construction grade.

Article 18: Miscellaneous amendments and corrections.

Zoning By-law

April 1, 2002 (Town Meeting action)
(Attorney General Approved)

Brief Summary:

Article 16: Delete Sections 4.9 and 6.10 and substitute with revised Section 4.9 Ground and Surface Water Overlay Protection Districts

Article 17: Amends Section 4.8 "Flood Plain"

Zoning By-Law

April 7, 2003 (Town Meeting action)
Attorney General Approved

Brief Summary:

Article 22: Added Section 4.11 Helicopter landing, storage and parking facilities
June 2, 2003 (Town Meeting action)
(Attorney General Approved)

Article 1: Revised Section 4.11 Helicopter landing, storage and parking facilities

Zoning By-Law

April 4, 2005
(Attorney General Approved)

Brief Summary:

Article 17: Revised Section 7.4.4 by changing the words “75 days” to “100 days”
Article 18: Amended Section 6.9 Site Plan Review Special Permit
Article 19: Added new Section 6.12 Division of Land and Development of Multiple
Dwellings and Section 6.13 Residential Conservation Cluster
Article 20: Added new Section 6.14 Inclusionary Housing
Article 21: Amended Section 4.1.10(i) requiring a Special Permit for raising and keeping
livestock

Zoning By-Law

April 3, 2006
(Attorney General Approved)

Brief Summary:

Article 20: Added tidelands provisions to Section 5.2 and added Section 4.1.10 by adding
a new section (j) concerning tidelands.
Article 22: Amended Section 6.2.2, “off street parking spaces” by adding “with the advise of the
Planning Board.”

Zoning By-Law

April 4, 2007
(Attorney General Approved)

Brief Summary:

Article 6: Added new Section 6.15, Stormwater Management Special Permit
Article 7: Amended Section 2.10 by deleting it and adding a new text portion.
Article 8: Amended Section 5.6, Accessory Structure, by adding the words “or twenty-five
(25) feet whichever is lesser” at the end of the first section.
Article 10: Amended the Zoning Bylaw by adding the definition of lot frontage as Section
2.11, deleting the first two sentences in Section 5.1 “Frontage”, and renaming section 5.1 to
“Adequate Frontage”.
Article 21: Corrected Section 4.1.10 by deleting the words “in paragraphs (a) through (h) in the
first sentence.
Article 22: Corrected Section 4.1.2 by adding the words “except those requiring a special permit

- pursuant to Section 4.1.10(i).
- Article 24: Amended Section 6.2.7 “Driveways/Curb Cuts” by adding requirement to notify abutters.
- Article 25: Amended Section 4.3.11 by deleting 4.3.11.2, striking out “nor above the second story” in Section 4.3.11.3 and renumbering sections 4.3.11.2 through 4.3.11.5.
- Article 32: Amended Standard 1 for common driveway width in Section 6.2.8.
- Article 34: Added new Section 6.16, “Topographical Changes and Land Clearing Special Permit”.
- Article 36: Added new Section 7.9 “Planning Board Fees and Expenses”

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