

## Draft #4: October 16, 2020

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## SECTION 1.0 PURPOSE AND AUTHORITY

**1.1 PURPOSE.** This Zoning By-law (“this By-law”) has been enacted to promote and protect the public health, safety, convenience, and general welfare of the inhabitants of the Town of Manchester-by-the-Sea and 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.

**1.2 AUTHORITY.** This By-law is enacted in accordance with the provisions of the General Laws, Chapter 40A, and any and all amendments thereto, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

**1.3 SCOPE.** For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.

**1.4 APPLICABILITY.** Except as set forth in Section 5.1 or as otherwise provided herein, all buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of this By-law. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. When the application of this By-law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-law shall control.

~~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 ByLaw is more stringent it shall control.~~

**1.5 AMENDMENTS.** This By-law may from time to time be changed by amendment, addition, or repeal by the Town in the manner provided in G.L. c. 40A, s.5, and any amendments thereto.

**1.5.1 Change of Zoning Boundary.** If geographic change of a zoning boundary description is proposed, words of boundary description change for insertion in the warrant shall be accompanied by a brief written statement of the nature, extent and location in the Town of the zoning map change proposed, together with three black-line prints of a diagram to scale showing the area to be changed, stating pertinent dimensions in feet.

**1.5.2 Costs.** The costs of publication and of mailing of notices of hearing and the costs of holding such zoning hearing and of making a public record of the proceedings at such hearing, if such a record be made, shall be paid by the planning board, but the planning board may determine whether a fee to cover such costs shall be required of the zoning amendment proponents.

## SECTION 2.0 DISTRICTS

**2.1 ESTABLISHMENT.** For the purpose of this By-Law, the Town of Manchester-by-the-Sea is hereby divided into the following zoning districts, **as shown on the Zoning Map(s):**

Single Residence District A	SRA
Single Residence District B	SRB
Single Residence District C	SRC
Residence District D1	RD1
Residence District D2	RD2
Single Residence District E	SRE
General District	GD
Limited Commercial District	LCD

**2.2 ZONING MAP.** The location and boundaries of the zoning districts are shown on the map entitled "Zoning Map, Manchester-by-the-Sea, Map 1A," prepared by the Horsley Witten Group, dated April 13, 2004, as may be amended (the "Zoning Map").

~~following identified zoning maps as they may be hereinafter amended, and are collectively referred to as "The Zoning Map." 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] [See Maps]~~

**2.3 ZONING MAP INTERPRETATION.** For the purposes of interpretation of the Zoning Map, the following shall apply:

**2.3.1 Center Line.** Zoning District boundaries which appear to follow streets, railroads, wood roads or brooks shall coincide with the center line thereof.

**2.3.2 Lot Line.** Zoning District 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.

**2.3.3 Parallel.** Zoning District 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.~~

## **2.4 SPLIT LOTS**

**2.4.1 By Town Boundary.** When a lot is situated in part in the Town and in part in an adjacent municipality, the provisions of this By-law shall be applied to the portion of such lot in the Town in the same manner as if the entire lot were situated in the Town.

**2.4.2 By Zoning District Boundary.** When a lot is transected by a zoning district boundary, the regulations of this By-law applicable to the larger part of the area of such lot may also by the grant of a special permit from the Planning Board be deemed to govern in the smaller part beyond such zoning district boundary but only to an extent not more than thirty (30) linear feet in depth beyond such zoning district boundary.

## SECTION 3.0 USE REGULATIONS

### 3.1 PRINCIPAL USES

**3.1.1 Applicability of Use Regulations.** Except as otherwise provided by law, in each district no building, structure, or land shall be used or occupied except for the purposes permitted as set forth in the accompanying Table of Use and Parking Regulations. Any principal or accessory use not listed shall be construed to be prohibited.

1. No dwelling shall be erected except on a lot fronting on a street, and there shall be not more than one principal residential building on any lot.

**3.1.2 Permitted Uses.** In the following Table of Use and Parking Regulations, the uses permitted by right in the district shall be designated by the letter (Y). Uses designated (N) shall not be permitted in the district. Those uses that may be permitted by special permit in the district, in accordance with Section 10.5, shall be designated by identification of the Special Permit Granting Authority, which is either:

ZBA	Zoning Board of Appeals
PB	Planning Board
SB	Select Board

**3.1.3 Uses Subject to Other Regulations.** Uses permitted by right or by special permit shall be subject, in addition to these use regulations, to all other provisions of this By-law.

### 3.2 TABLE OF USE AND PARKING REGULATIONS

See Appendix A.

### 3.3 ACCESSORY USES

**3.3.1 Permitted Accessory Uses in All Districts.** The following accessory uses are specifically permitted as indicated by right or by special permit:

1. Accessory Scientific Uses. Uses, whether or not on the same parcel as activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Board of Appeals, provided that the Board finds that the proposed use does not substantially derogate from the public good.
2. Family Day Care Homes. Small family day care homes, are allowed as an accessory use as of right in all districts. Large family day care homes are allowed in all districts only upon the issuance of a special permit by the Board of Appeals.

**3.3.2 Nonresidential Accessory Uses.** Any use permitted as a principal use is also permitted as an accessory use provided such use is customarily incidental to the main or principal building or use of the land. Any use authorized as a principal use by special permit may also be authorized as an accessory use by special permit provided such use is customarily incidental to the main or principal building or use of the land. Any use not allowed in the district as a principal use is also prohibited as an accessory use. Accessory uses are permitted only in accordance with lawfully existing principal uses. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section 11.6 shall also require site plan review and approval.

**3.3.3 Residential Accessory Uses.** The following accessory uses are specifically permitted as of right or by special permit in a single or two-family residence whether in or outside a Residence District, as set forth herein:

1. Boarders in Single-Family Dwelling. The renting of rooms and/or furnishing of board to not more than four (4) persons in a single-family dwelling by the owner/occupant thereof shall be a permitted accessory use.
2. Contractor's yard for the storage of building materials, equipment; provided, however, that such use may be located on a parcel larger than 2 acres as of right, or by special permit on a smaller parcel.
3. Commercial landscaping equipment, materials, supplies; provided, however, that such use may be located on a parcel larger than 2 acres as of right, or by special permit on a smaller parcel.
4. The overnight parking of commercial vehicles owned or operated by a resident of the premises, unless garaged on the premises, are subject to the following limitations:
  - a. one commercial vehicle less than 14,000 gvw is allowed as of right; larger vehicles or more than one vehicle less than 14,000 gvw may be allowed by special permit from the Zoning Board of Appeals.
5. Home Occupation. The office of a doctor, dentist or other member of a recognized profession is allowed provided there is no display or advertising except for a small professional sign not over one square foot in area. Also allowed are customary home occupations including photographers, artists, home-cooking, dressmaking, millinery, hairdressing, and other similar occupations, by a person resident on the premises, provided there are no more than incidental sales from the premises, 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.

6. Swimming Pools. The Inspector of Buildings may grant a building permit for a swimming pool accessory to a residential use subject to the following conditions:

- a. Lot must be conforming and coverage conforming.
- b. No swimming pool shall be constructed within the setbacks required for the principal dwelling. This distance being measured from the inside edge of the pool rim to the lot line.
- c. All swimming pools shall have a fence at least four feet high as required by the State Building Code that enclose and effectively limit access to the pool.
- d. All lighting associated with a swimming pool must be directed downward and must not create light spillage closer to the property line than the setbacks of the principal dwelling.
- e. Any swimming pools that do not satisfy the above criteria a-d may be constructed only by the issuance of a special permit from the Zoning Board of Appeals.
- f. Landscaped fence perimeter to screen visibility.

**3.3.4 Prohibited Accessory Uses.** In the Residence Districts, the following accessory uses are prohibited:

- a. Commercial kennels;
- b. Commercial auto repair or service.
- c. Storage of recreational vehicles, boats, and trailers in a required side or rear yard setback area from the property line.

## SECTION 4.0 DIMENSIONAL REGULATIONS

### 4.1 GENERAL REGULATIONS

**4.1.1 Minimum Area and Dimensional Requirements.** Except as provided in Section 4.2 or 4.3, no building shall be erected on or moved to a lot having less than the minimum applicable frontage and area shown in Table 2: Table of Dimensional Regulations, 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 in Table 2, below. No lot shall be changed as to size or shape so as to result in the violation of the requirements set forth in Table 2, below. **Unless otherwise provided herein, no lot shall exceed the building coverage requirements set forth in Table 2, below.**

See Table 2 (to be inserted in final draft).

**4.1.2 Computation of Lot Area.** For purposes of this Section 4.0 the area of a lot shall not include:

1. The area within the limitation of the street **right of way;**
2. Tideland lying below Mean High Water (per U.S. Geodetic Survey), except that such tideland shall be included for determining minimum setbacks.

**4.1.3 Setbacks.** 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.

**4.1.4 Building Height Regulations.** No structure shall be erected or altered so that it exceeds 2.5 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.

#### 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.~~

### 4.2 LIMITED COMMERCIAL DISTRICT

**4.2.1 General.** **Notwithstanding any other provision in this By-law,** the following requirements shall be met in the Limited Commercial District.

**4.2.2 Lot Area and Width.** 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.

**4.2.2 Coverage.** 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.

**4.2.3 Parking.** No part of any private parking area shall be located within fifty (50') feet of any street within the Limited Commercial District and no part of any private parking area shall be located within two hundred (200') feet of the state layout of Route 128.

**4.2.4 Street Buffer Strip.** In the Limited Commercial District, the SPGA or Planning Board may require landscaped buffer strip at least fifty (50) feet wide, continuous except for approved driveways. The buffer strip shall be planted with grass, medium height shrubs, evergreens and shade trees having a minimum four inches in caliper measured four feet from ground level planted at least every thirty (30) feet along the road frontage. Evergreens and shade trees shall be at least eight feet in height at time of planting. At all street or driveway intersections, trees or shrubs shall be set back a sufficient distance from such intersections so that they do not present an obstruction to sight lines.

**4.3 ACCESSORY STRUCTURES**

**4.3.1 General.** 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 (1.5) stories as defined in Section 12.0 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, as set forth in Table 3: Table of Accessory Structure Requirements.

<b>DISTRICT</b>	<b>MINIMUM DISTANCE FROM SIDE AND REAR LOT LINES</b>	<b>MINIMUM DISTANCE FROM FRONT LOT LINE</b>
Single Residence A	10 ft.	NA
Single Residence B	5 ft.	NA
Single Residence C	15 ft.	NA
Residence D1 and D2	5 ft.	NA
Single Residence E	15 ft.	NA
General	5 ft.	NA
Limited Commercial	100 ft.	150 ft.

**4.3.2 Special Requirements.**

1. No accessory building or structure, except a permitted sign or roadside stand, shall be located within a required front yard setback.
2. Accessory structures or buildings with a footprint larger than 125 square feet shall be set back from side or rear property lines in accordance with the provisions of the Table 2.
3. An accessory building attached to its principal building or within ten (10) feet of it shall be considered an integral part thereof and as such shall be subject to the front, side, and rear yard requirements applicable to the principal building as set forth in Table 2.
4. Accessory structures and buildings shall be located on the same lot as the principal structure on the premises.
5. Fences shall be permitted provided that they do not exceed seven (7) feet in height and provided that no fence which obstructs vision of traffic shall exceed thirty-six (36) inches in height within twenty (20) feet of the street line.
6. Flag poles of a height not to exceed 20 feet are permitted and shall be exempt from the setback requirements of this Section.
7. Swimming pools, game courts, and the like are accessory structures and shall comply with the State Building Code and all applicable setback requirements in Table 2.

**4.3.3 Prohibited Accessory Structures.** In the Residence Districts, the following accessory structures are prohibited, unless a special permit is granted from the Board of Appeals:

1. Membrane storage structures for more than 6 months.
2. Steel storage unit, such as a pod, for more than 6 months.



## **SECTION 5.0 NONCONFORMING USES AND STRUCTURES**

### **5.1 APPLICABILITY**

Except as herein after provided, this By-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing on this By-law or any amendments thereto, but shall apply to any change or substantial extension of such use, to a building permit or special permit issued after the first notice or said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or a structural change to a single or two family residential structure does not increase the nonconforming nature of said structure.

**5.1.1 Commencement of Construction or Operation.** Construction or operations under a building permit or special permit shall conform to any subsequent amendments to this By-law, unless the use or construction is commenced within a period of not more than twelve months after the issuance of the permit and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

### **5.2 NONCONFORMING USES**

The Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this Section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

**5.2.1 Permissible Changes.** The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

1. Change or substantial extension of the use;
2. Change from one nonconforming use to another, less detrimental, nonconforming use. When a special permit is granted under this subsection, no use variance shall be required with regard to use or dimensional aspects of the application.

### **5.3 NONCONFORMING STRUCTURES**

The Zoning Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this Section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

**5.3.1 Permissible Changes.** The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:

1. Reconstructed, extended or structurally changed;
2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

#### **5.4 VARIANCE REQUIRED**

Except as provided in Section 5.5, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance; the extension of an exterior wall at or along the same nonconforming distance within a required yard shall also require the issuance of a variance from the Zoning Board of Appeals.

#### **5.5 NONCONFORMING SINGLE AND TWO FAMILY RESIDENTIAL STRUCTURES**

Nonconforming single and two family residential structures may be extended, altered, or structurally changed upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and that such reconstruction, extension, alteration or change does not increase the gross floor area of the structure by more than 100%.

**5.5.1 Permissible Changes.** The following circumstances shall not be deemed to increase the nonconforming nature of said structure and a building permit may be issued:

1. *Insufficient Area.* Alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements.
2. *Insufficient Frontage.* Alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.
3. *Encroachment.* Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and not result in any increase in building height in the area of encroachment.

If the Inspector of Buildings determines that proposed alteration, extension or change exceeds the one or more of the criteria set forth above, the Zoning Board of Appeals may, by special permit, allow such alteration, extension or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming

structure to the neighborhood. In the case of voluntary demolition of a single or two family structure, reconstruction thereafter shall be governed by Section 5.7.

## **5.6 ABANDONMENT OR NON-USE**

A nonconforming use or structure which has been abandoned, or not used for a period of three years, shall lose its protected status and be subject to all of the provisions of this By-law; provided, however, that by special permit the Zoning Board of Appeals may reestablish a nonconforming use or structure otherwise abandoned or not used.

## **5.7 RECONSTRUCTION AFTER CATASTROPHE OR VOLUNTARY DEMOLITION**

Any nonconforming structure, other than a nonconforming single or two-family dwelling governed by Section 5.5, may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions.

### **5.7.1 Procedures.**

1. Reconstruction of said premises shall commence within three years after such catastrophe or demolition.
2. Building(s) reconstructed as of right shall be located on the same footprint as the original nonconforming structure and shall be only as great in gross floor area as the original nonconforming structure.
3. In the event that the proposed reconstruction would (a) cause the structure to exceed the gross floor area of the original nonconforming structure or (b) cause the structure to be located other than on the original footprint, a special permit from the Board of Appeals shall be required. Such special permit shall be obtained prior to demolition.

## **5.8 REVERSION TO NONCONFORMITY**

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

## **5.9 SUBSTANDARD LOTS**

When a prior lawful nonconforming structure is located on a lot which does not meet current dimensional requirements, such lot shall not be changed, unless the change does not result in an increase of an existing nonconformity or a new nonconformity.

## **5.10 EMINENT DOMAIN**

When a lot is changed by eminent domain so as to become deficient in area, frontage, building setback, or lot coverage, any structure located thereupon shall be considered a nonconforming structure subject to the rules of this Section 5.0.

~~6.1 Noneconforming 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.~~

## SECTION 6.0 GENERAL REGULATIONS

### 6.1 OFF-STREET PARKING

**6.1.1 General.** 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.

**6.1.2 Number of Spaces.** The standards set forth in the Table 4: Table of Uses and Parking 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 18 feet. In parking areas of more than six (6) spaces, one third of the spaces may be compact car spaces, with minimum dimensions of 8 feet by 16 feet.

PARKING CODE	NUMBER OF SPACES
A	2 spaces
B	3 spaces
C	5 spaces
D	6 spaces
E	1 space per 300 sq. ft of gross floor area
F	1 space per 150 sq. ft. of gross sales or service floor area
G	1 space for each three persons of rated capacity
H	1 space for each four persons of rated capacity
I	1 space per 100 square feet of area in service bays
J	1 space per each 3 employees on duty during normal work period, plus 1 space per each company car or truck
K	1 space per every 3 seats and/or each 60 inches of permanent bench seating, or, where no fixed bench seats are used, one space per each 4 persons maximum occupancy
L	1 space for each staff person, plus one space per each five persons of rated capacity in the largest auditorium, plus one space for each student vehicle which can be expected at any time on the premises
M	1 space per 10 children maximum rated capacity, plus one space per employee on largest shift
N	Spaces required for each component of the mixed use
O	Parking spaces adequate to accommodate all normal demand as determined by the Inspector of Buildings, with the advice of the Planning Board

**6.1.3 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.

**6.1.4 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.

**6.1.5 Setbacks.** No part of any private parking area shall be located within a required front yard as noted in Section 4.0, 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~~ No parking area shall 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 nonprimary 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.

**6.1.6 Parking Area Plantings.** Parking areas 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 area 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.

**6.1.7 Special Permit.** The Special Permit Granting Authority, or, if there is none, the Planning Board, may grant a special permit to waive any parking or loading requirement, when such waiver shall result in better design and cause no detriment to the neighborhood.

## 6.2 SIGNS

**6.2.1 General.** Advertising and other signs shall be permitted only as expressly provided in Sections 3.3.1.5, 4.1.8 and this Section 6.2. Signs shall also be subject to the applicable provisions of the General By-Laws of the Town of Manchester-by-the-Sea.

**6.2.2 Flashing, Animated, and Illuminated Signs.** No flashing or animated signs shall be permitted in any district. No illuminated sign of any kind shall be permitted in a Residence District.

**6.2.3 Real Estate Signs.** 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.

**6.2.4 General and Limited Commercial Districts.** In the General District and Limited Commercial District, the following signs are permitted:

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.
2. One nonilluminated announcement sign no larger than 3 feet by 3 feet, at the entrance or gates of a building.
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.
4. In the General District, in addition to the signs permitted by this Section, 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.

**6.2.5 Special Permit.** The Special Permit Granting Authority, or, if there is none, the Planning Board, may grant a special permit to waive any signage requirement, when such waiver shall result in better design and cause no detriment to the neighborhood.

### **6.3 LANDSCAPING AND SCREENING**

**6.3.1 Purpose.** This Section is intended to ensure that the proposed development shall screen negative impacts from public and private views, and shall minimize tree, vegetation, and soil removal, and grade change. Proposed landscaping shall require native and drought-tolerant species and prohibit invasive or nonnative plants.

**6.3.2 Large Parking Areas.** Parking areas containing over 20 spaces shall have at least one shade tree per ten (10) parking spaces, such tree to be a minimum of 2½ inches in diameter and located either in the parking area or within 10 feet of it. At least 5% of the interior of the parking area shall be maintained with landscaping, including trees, in landscape islands or plots of at least nine (9) feet in width with no more than 20 parking spaces between each island or plot. Trees shall be located to provide visual relief from sun and wind interruption within the parking area and assure safe patterns of internal pedestrian and vehicular traffic. Other traffic calming measures such as crosswalks, bike lanes, rumble-strips and landscape islands may be required as necessary.

~~9.55 Visual Screening. In residential districts design and construction of driveways and parking areas must include a vegetative screen or buffer to shield neighboring properties. All~~

compactors, dumpsters, generators or transformers and switch gear, and power generators must be suitably screened from neighboring properties.—

**6.3.3 Fencing.** Fencing up to seven (7) feet in height, may be allowed in lieu of or in conjunction with plantings. Design and height of such fencing, with accompanying landscaping, shall be subject to the approval of the SPGA or Planning Board.

**6.3.4 Retaining Walls.** Retaining walls shall be constructed to a maximum height of six (6) feet. If site conditions require elevation changes of greater than six (6) feet, retaining walls shall be terraced and landscaped. Any retaining wall greater than 36 inches in height shall be designed by a structural engineer. The face of any retaining wall visible from a residential district shall be designed with textured or natural stone.

**6.3.5 Berms.** The SPGA or Planning Board may require a berm or berms in appropriate circumstances to promote the goals of this Section.

**6.3.6 Unsightly Uses and Areas.** Exposed storage areas, refuse disposal facilities, HVAC, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be screened from view from neighboring properties and streets using dense, hardy evergreen plantings, or earthen berms, or wall or tight fence complemented by evergreen plantings.

**6.3.7 Maintenance.** All landscaping features, structures and areas required for buffering or screening shall be properly maintained. Dead shrubs or trees shall be replaced within one growing season as a condition of approval.

**6.3.8 Special Permit.** The SPGA or the Planning Board, during the course of special permit or site plan review, may waive any provision of this Section, upon a finding that no substantial detriment shall result.

## **6.4 PERFORMANCE STANDARDS FOR MULTIFAMILY OR NONRESIDENTIAL USE**

**6.4.1 Purpose.** The following performance standards have been adopted in order to control the size, scale, and impacts of nonresidential and multifamily developments that require a special permit and/or site plan review.

**6.4.2 Procedures; Rules and Regulations.** Applicants for special permits or site plan approval for nonresidential or multifamily uses shall comply with these Performance Standards. “Nonresidential or multifamily use” shall mean any use other than a single or two family dwelling, or a multifamily dwelling with up to five (5) units. The SPGA or the Planning Board (as the case may be) may adopt rules and regulations for these Performance Standards. The SPGA or Planning Board may require the establishment of an escrow account, pursuant to M.G.L. c. 44, s. 53G during the special permit process or site plan approval, to cover all or part of the cost of the technical review required by the project, including services provided by, but not

limited to, attorneys, traffic engineers, landscape architects, civil engineers, fiscal analysts, and other professionals.

**6.4.3 Exemptions.** The following are exempt from these special permit standards:

1. **Emergency Response.** Emergency responses performed by a private entity or a public agency and fire or burglar alarms.
2. **Municipal Uses and Structures.** All uses and structures, including schools, leased, owned or operated by the Town.
3. **Events.** Properly permitted or authorized parades, fairs or outdoor entertainment between the hours of 7:00 A.M. and 11:00 P.M.

**6.4.4 Lighting Standards.** The proposed development shall not produce lighting so as to unreasonably interfere with the use and enjoyment of property within the Town. Lighting practices and systems shall (i) reduce light pollution, light trespass and glare in order to preserve and enhance the natural, scenic, and aesthetic qualities of the Town; (ii) conserve energy and decrease lighting cost without decreasing night time safety, security, and productivity; and (iii) preserve the night sky as a natural resource to enhance nighttime enjoyment of property within the Town.

1. **Shielding.** All outdoor light fixtures shall be shielded so as to meet the goals of this Section.

2. **Light Trespass.** Light overspill and glare, including direct light from the light source, is to be confined within the property boundaries. Lighting shall also comply with International Dark Sky Standards when feasible.

3. **Light Intensity.** Outdoor lighting shall be designed to provide the minimum intensity needed at any particular time. LED lighting is preferred.

4. **Illuminated Surfaces.** Preferred surfacing for lighted areas shall be of materials such as blacktop which reflect a relatively small fraction of incident light. Parking area lighting shall be reduced or eliminated outside business hours. The SPGA or Planning Board may require an electrical configuration for parking areas which support shut off for specific unused areas to reduce the glare from lighting.

5. **Searchlights.** The operation of laser shows or searchlights for advertising purposes is prohibited; provided however, that same may be authorized for a period of not more than fourteen days by special permit issued by the SPGA or Planning Board.

6. **Indoor Lighting.** Indoor light sources will not be projected outside in a manner to defeat the intent of this Section.

7. **Outdoor Signs.** Outdoor light fixtures used to illuminate an outdoor sign shall be mounted on top of the sign structure or otherwise restricted to prevent up-light and light trespass.

8. **Flickering and Flashing Lights.** No flickering or flashing lights shall be permitted. Processes, such as arc welding, which create light flashes shall be confined within buildings or shielded to prevent either direct glare or flashing.

9. **Height of Fixtures.**

a. *Wall Mounted Fixtures.* Luminaires attached to a building for area lighting shall be mounted no higher than fifteen (15) feet above grade;

b. *Pole Mounted Fixtures.* Pole mounted exterior lighting fixture types shall be mounted no higher than 20 feet above grade.

10. **Hours of Operation.** Except as may be deemed appropriate for site safety or security, all external lighting, including lighting accessory to authorized signs, shall be extinguished one half hour after the facility is closed for the business day. Such lighting may be timed to resume one half hour prior to the arrival of the first employee on the premises. **Motion activated lights are encouraged for security purposes.**

**6.4.5 Noise Standards.** The proposed development shall not unreasonably interfere with the reasonable use and enjoyment of property within the Town as a result of the generation of noise. Practices and systems shall (i) reduce noise pollution in order to preserve and enhance the natural and aesthetic qualities of the Town; (ii) preserve property values; and (iii) preserve neighborhood character.

1. **Limitation.** No person or entity shall operate or cause to be operated any source of sound in a manner that creates a sound level of 10 dBA above ambient, as set forth in 310 CMR 7.10, measured at the property boundary of the receiving land use.

2. **Hours of Operation.** As a condition of any special permit or site plan approval, the SPGA or Planning Board may prohibit or regulate the following circumstances regarding hours of operation.

a. The loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or other objects or materials for sale or storage or use in a manner that causes a condition of noise pollution at any time but most specifically between the hours of

6:00 P.M. and 8:00 A.M. across a real property boundary in any district established under this By-law.

b. Operating or permitting the operation of tools or equipment used in construction, drilling or demolition work between the hours of 6:00 P.M. and 8:00 A.M. on weekdays or Saturday or at any time on Sundays or Holidays so that the sound creates a condition of noise pollution across a real property boundary.

c. The operation of construction devices between the hours 8:00 A.M. and 6:00 P.M. including such items as compressors, jackhammers, bulldozers, cranes, etc., in a manner that causes a condition of noise pollution that could be avoided by the application of best available technology, which might include mufflers where commercially available.

**6.4.6 Site Development Standards.** To the extent practicable, the proposed development shall be located to preserve and enhance the natural features of the site, to avoid disturbances of environmentally sensitive areas, to minimize adverse impacts of development on adjoining properties, to minimize the alteration of the natural features of the site and to preserve and enhance scenic points, historic buildings and places and similar community assets which add value and attractiveness to the development and the Town.

1. **Land Disturbance.** Site/building design shall preserve natural topography outside of the development footprint to reduce unnecessary land disturbance and to preserve natural drainage on the site.

2. **Replication.** Clearing of vegetation and alteration of topography shall be replicated with native vegetation planted in disturbed areas as needed to enhance or restore wildlife habitat.

3. **Clearing for Utility Trenching.** Clearing for utility trenching shall be limited to the minimum area necessary to maneuver a backhoe or other construction equipment. Roots should be cut cleanly rather than pulled or ripped out during utility trenching. Tunneling for utilities installation should be utilized wherever feasible to protect root systems of trees.

4. **Site Design.**

a. Placement of buildings, structures, or parking facilities shall not detract from the site's scenic qualities and shall blend with the natural landscape.

b. Building sites shall be directed away from the crest of hills, and foundations shall be constructed to take advantage of the natural terrain.

c. Sites shall be designed in such a way as to avoid impacts to rare and endangered species and wildlife habitat on a site, and to maintain contiguous forested areas.

**5. Archeological or Historical Resources.** The SPGA or Planning Board may require applicants to submit the proposed development plan to the Town's Historical Commission and/or the Massachusetts Historical Commission for review and comment regarding possible archaeological or historical resources on the site.

**6. Preservation of Existing Vegetation.** Priority shall be given to the preservation of existing stands of trees, trees at site perimeter, contiguous vegetation with adjacent sites (particularly existing sites protected through conservation restrictions), and specimen trees. Understory vegetation beneath the dripline of preserved trees shall be retained in an undisturbed state. During clearing and/or construction activities, all vegetation to be retained shall be surrounded by temporary protective fencing or other measures before any clearing or grading occurs, and maintained until all construction work is completed and the site is cleaned up. Barriers shall be large enough to encompass the essential zone of all vegetation to be protected. All vegetation within the protective fencing shall be retained in an undisturbed state.

**7. Revegetation.** Proper revegetation techniques shall be employed during construction using native plant species, proper seed bed preparation, fertilizer and mulching to protect germinating plants. Revegetation shall occur on cleared sites within seven (7) calendar days of final grading and shall occur during the planting season appropriate to the selected plant species.

**8. Limit of Clearing.** Development envelopes for structures, driveways, wastewater disposal, lawn areas and utility work shall be designated to limit clearing and grading. In order to minimize the clearing and grading on a site associated with construction activities such as parking of construction vehicles, offices/trailers, stockpiling of equipment/materials, such activities may be limited to areas already planned for permanent structures. Topsoil shall not be stockpiled in areas of protected trees, wetlands, and/or their vegetated buffers.

**9. Finished Grade.** Finished grades should preserve, match, or blend with the natural contours and undulations of the land to the greatest extent possible. Finished grade shall be no higher than the trunk flare(s) of trees to be retained. The design of grade changes at the base of existing large trees shall be subject to the approval of the SPGA or Planning Board or its agent.

**10. Topsoil.** A minimum of 6 inches of topsoil shall be placed on all disturbed surfaces which are proposed to be planted.

11. **Irrigation.** The SPGA or Planning Board may require that water for the purpose of irrigation shall be provided by an onsite well, after consultation with the Water Department.

12. **Phasing of Development.** The SPGA or Planning Board may limit the extent of a site exposed at any one time through phasing of construction operations. Effective sequencing shall occur within the boundaries of natural drainage areas.

**6.4.7 Pedestrian and Vehicular Access; Traffic Management Standards.** The proposed development and/or redevelopment shall be designed with a forecast for the next five years from the time of application to (i) minimize hazards to public health and safety as a result of traffic; (ii) provide safe access and circulation on the site for expected vehicles, pedestrians, and emergency vehicles; (iii) provide off-site traffic mitigation, where required, to offset the impact of the development; (iv) reduce the traffic impacts of the proposed development on the area and the Town by incorporating traffic management devices; and (v) minimize the impact on scenic roads, historic districts, natural resources, and community character. The development shall not degrade safety for pedestrians, bicyclists, motor vehicle occupants, or property.

1. **Access.** To the extent feasible, access to nonresidential uses and structures shall be provided via one of the following: (i) Access via a common driveway serving adjacent lots or premises; (ii) Access via an existing side street; (iii) Access via a cul-de-sac or loop road shared by adjacent lots or premises. Access via roadways abutting residential districts shall be avoided where possible. Access and egress to a development with frontage on more than one street shall be in a manner that causes the least impact to the surrounding neighborhoods as determined by the SPGA or Planning Board.

2. **Driveways.** Each development shall be served by an adequate driveway. The SPGA or Planning Board may, in certain circumstances, allow additional driveways as a condition of approval where the access is shared or the project has frontage on two separate streets. All driveways shall be designed to afford adequate sight distance to pedestrians, bicyclists, and motorists exiting to public ways. Improvements may be required on the public way for vehicular turning movements in or out of the site and safe pedestrian access to adjoining sidewalks, paths, walking trails or bikeways.

3. **Curb Cuts.** Curb cuts shall be limited to the minimum width for safe entering and exiting, and shall in no case exceed 24 feet in width for a two-way cut, or 22 feet for a one way cut, unless waived by the SPGA or Planning Board for commercial truck traffic. The location of driveway openings in relation to traffic and to adjacent streets shall provide for the convenience and safety of vehicular and pedestrian movement within the site. The number of curb cuts on state and local roads shall be minimized.

**4. Interior Circulation.** The proposed development shall assure safe interior circulation within its site by separating pedestrian, bikeways, and vehicular traffic.

**5. Transportation Plan Approval.** The proposed development shall be subject to Transportation Plan approval by the SPGA or Planning Board. The Transportation Plan shall consist of the following information:

a. A plan showing the proposed parking, loading, and traffic circulation within the site; access and egress points; and other features related to traffic generated by the proposed use.

b. A traffic study, prepared by a qualified traffic engineer, detailing the expected traffic impacts. For proposed development in excess of 25,000 gross square feet, the required traffic study shall substantially conform to the Institute of Transportation Engineers "Traffic Access and Impact Studies for Site Development: A Recommended Practice," latest edition (TIAS). The SPGA shall approve the geographic scope and content of the TIAS. In addition, the applicant shall submit a Transportation Demand Management (TDM) plan tailored to the specific uses and the geographic location of the site.

c. Proposed mitigation measures, if any, such as left-turn lanes, roadway widening, signage, signalization of intersections.

d. For proposed development in excess of 25,000 square feet of gross floor area, the applicant shall submit a Traffic Management Component (TMC) as part of the Transportation Plan. The TMC shall provide information on the number of expected person trips to and from the site, broken down by various travel modes (e.g., single occupancy vehicle, carpool, walk, bicycle, commuter rail, shuttle bus, etc.). The TMC may also incorporate one or more of the following techniques to reduce the number of single occupancy vehicle trips by employees coming to and departing from the proposed use:

(1) Establishment of or contribution to a Traffic Management Association (TMA) within the region, which shall provide shuffle services for employees and other services as may be appropriate;

(2) Employee carpools or vanpools sponsored by the employer or the TMA;

(3) Subsidized commuter rail passes, provided by the employer, and sold on the site or offered through payroll deduction;

(4) Monetary incentives to employees who do not use a parking space;

(5) On-site shower facilities and/or bicycle racks for employees who do not drive to work;

(6) Other techniques as may be deemed appropriate by the SPGA or Planning Board or its traffic consultant.

**6. Reduction in Parking.** In consideration of the applicant providing one or more of the above measures to reduce vehicular traffic to and from the site, the SPGA or Planning Board may reduce the number of required parking spaces below what would ordinarily be required by Section 6.1 of this By-law. To be considered for such a reduction, the applicant's traffic engineer shall determine and justify the parking demand for the project, as well as reduction in needed parking spaces attributable to each traffic management measure.

**7. Level of Service Maintenance or Improvement.**

a. If the proposed project will result in an intersection level of service below a rating of LOS D, the applicant may be required to provide detailed plans with a cost estimate (including reconstruction concepts), that when implemented would result in an intersection level of service rating of D or better.

b. If the proposed project will result in a reduction in level-of-service of one letter grade or an increase of 10 seconds of delay to a signalized or unsignalized intersection, the applicant may be required to provide detailed plans with a cost estimate that when implemented would result in a return to existing conditions.

**8. Dangerous Intersections.** The SPGA may require mitigation for any net increase in traffic volumes of 10% or more at an intersection that has an accident history of more than 5 accidents in the last three years for which data is available.

**9. Sight Distance.** Acceptable sight distance shall be provided and maintained at all access locations, egress locations, and all intersections affected by the Development. At a minimum, these site distances shall meet the stricter of the Massachusetts Highway Department and American Association of State Highway Transportation Officials standards for safe-stopping sight distances.

**10. Maximum Parking.** The maximum parking allowed for a development shall be no more than the minimum number of spaces required under zoning.

**11. Mitigation.** The SPGA or Planning Board may require as a condition of any special permit off-site improvements to mitigate the impact of the proposed development. Such improvements include intersection widening and traffic signals or the components of the TMC.

**12. Pedestrian and Bicycle Safety.** Pedestrian and bicycle circulation, and the amenities required thereof, on and off site, shall be in accordance with the following requirements:

a. All development and redevelopment shall provide for pedestrian and bicyclist connections on the property, and allow for possible future connections with adjoining properties, where deemed appropriate by the SPGA or Planning Board.

b. Pedestrian access shall connect to all building entrances with further connections to local pedestrian arteries.

c. All road and intersection widening and new traffic signals or modification of existing traffic signals required as part of a Development or Redevelopment shall include appropriate bicycle and pedestrian accommodation.

d. The SPGA or Planning Board may require proposed development and redevelopment to provide sufficient rights-of-way on their properties to accommodate expected needs for bicycle and pedestrian use.

e. Sidewalks, crosswalks, walkways, bike racks or other pedestrian access shall be provided to allow access to adjacent properties and between individual businesses within a development.

f. If the property abuts a public bikeway/ right-of-way, a paved access route to the bikeway may be required.

**13. Location of Parking Areas.** Where feasible, the SPGA or Planning Board may require parking areas to be located to the side or behind buildings so as to provide an appropriate setting for the building within the context of the site and neighborhood and allow parking areas to be shared with adjacent businesses. The SPGA or Planning Board may require alternative studies of parking area layouts. Except where physical constraints, site configuration, or safety considerations preclude strict compliance, all parking must be accessible by driveways to the parking areas of adjacent nonresidential uses and land zoned for nonresidential uses.

**14. Parking in Required Front Setback.** The SPGA or Planning Board may prohibit parking within the required front setback.

**15. Traffic Calming Features.** Traffic calming measures such as crosswalks, bike lanes, rumble strips and landscaped islands may be required.

**6.4.8 Aesthetic Standards.** The location, size and design, building materials, and operating characteristics of the proposed development shall be compatible with and will not adversely affect the livability or appropriate development of abutting properties, with natural and built environment in the area and the surrounding neighborhood.

**1. Compatibility with Neighborhood.** The location, size and design, building materials, and operating characteristics of the proposed development shall be compatible with and will not adversely affect the livability or appropriate development of abutting properties, with natural and built environment in the area and the surrounding neighborhood, with consideration to be given to the following:

a. harmony in scale, bulk, massing, and density;

b. consistency with the goals and objectives of the Master Plan and with any other plan that has been adopted by the Town.

**6.4.9 Utilities; Security; Emergency System Standards.** The proposed development shall be adequately served by public or private utilities, security systems, and emergency systems.

**1. Wastewater Treatment and Disposal.** The SPGA or Planning Board may require a report from the Board of Health confirming that the proposed site development provides for wastewater treatment and or disposal in a manner that is consistent with regulations of the Commonwealth of Massachusetts and the Board of Health.

**2. Water.** There shall be sufficient water capacity to meet the flow demands of the proposed use without causing municipal water flow characteristics off-site to fall below the standards adopted by the Town.

**3. Site Security.** There shall be a certification by the Police Chief that the petitioner has provided a written plan for site security, which plan has been approved by the Police Chief.

**4. Underground.** All electrical, cable and telecommunications services shall be installed underground.

**5. Fire Alarm System.** There shall be sufficient municipal fire alarm system capacity to meet the operating requirements of the proposed site development and use under applicable codes, regulations, and statutes enforce by the Fire Chief.

**6.4.10 Fiscal Analysis Standards.** The proposed development shall maintain a positive net fiscal position for the long term, giving consideration to revenue estimates and actual growth in municipal service costs induced by the proposed development.

1. The applicant shall provide an analysis of fiscal costs from the development, including increases in marginal costs, assessment of the capacity of existing municipal facilities to serve the new development, and, by order of magnitude, share of capital costs if improvements are needed.

2. The applicant shall identify an order of magnitude estimate as to the extent to which this development would generate the additional need for responses from police, fire, EMS, schools and affordable housing.

**6.4.11 Waiver of Standards.** The SPGA or Planning Board may, in the course of granting a special permit or site plan approval for nonresidential or multifamily development, waive any of these performance standards where such waiver is not inconsistent with public health and safety, and where such waiver does not derogate from the purposes of this Section because the proposed development will adequately serve the goals and objectives set forth in Section 6.3.1, hereof.

**6.4.12 Enforcement.** The SPGA or Planning Board may ensure compliance with these performance standards at the application stage by requiring evidence of probable compliance, whether by example of similar facilities or by engineering analysis, verified by technical peer review. In addition, the SPGA or Planning Board may require a monitoring program post-permit issuance for compliance purposes for a time period as may be specified in the special permit or site plan approval.

## **6.5 ADDITIONAL PERFORMANCE STANDARDS IN THE LIMITED COMMERCIAL DISTRICT**

**6.5.1 Purpose.** Land uses in the Limited Commercial District may contribute significant recharge to the town's municipal drinking water supply. Because inappropriate development, or development with inappropriate safeguards, may threaten said water supply, no special permit or site plan approval for any use within the Limited Commercial District shall be granted without adherence to the following guidelines.

**6.5.2 Design and Operations Guidelines.** The following design and operation guidelines shall be observed within the Limited Commercial District.

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.

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 M.G.L. Chapter 21C.

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.~~

**Old Section 6.16 “Topographical Changes and Land Clearing Special Permit has been deleted.**

The following new Section is under review:

**6.6 EARTH REMOVAL**

6.6.1 Purpose. The purpose of this Section is to:

1. Protect the Town’s scenic character and natural topography by allowing public review for the removal of excessive amounts of earth and the creation of severe changes to natural slope areas by modifying changes to slopes;
2. Assure minimal impact on the natural flow of subsurface and surface water;; and
3. Minimize impact on neighboring properties and roadways.

6.6.2 Definitions. See Section 12, “Earth Removal.”

6.6.3 Applicability. The special permit granting authority (SPGA) shall be the Planning Board. The following activities occurring in any one year period will require a Special Permit:

1. The change in topography of 10 feet or more;
2. The removal, relocation, or addition of earth in an area greater than 2,000 square feet on a slope greater than 15%;
3. The removal or relocation of more than 250 cubic yards of earth.

6.6.4 Exemptions. The following activities are exempt:

1. Earth removal necessary for the construction of residences, garages for up to four cars, gardens, driveways, walkways, patios, septic systems, wells, normal agricultural uses, utility installations, and one of the following: swimming pools, tennis courts, other athletic facilities, accessory garages or storage structures;

2. Construction activities undertaken by the town.

6.6.5 Application Requirements. The applicant shall provide the Planning Board with 12 copies of the application and a site plan including all plans and maps and project descriptions. The plan should be prepared by a professional surveyor, engineer or architect. The site plan shall be prepared at a scale no greater than 1"=40' illustrating and show the following:

1. existing and proposed structures;
2. existing and proposed contour lines at 2-foot increments, limits and depths of earth removal;
3. the types of earth being removed and the types of materials being used to restore or rebuild the contours of the site;
4. stockpile locations for materials being moved;
5. wetlands and 100 ft. flood lines, if any;
6. A description of the efforts to be employed to provide erosion and sedimentation control, to control dust and to protect abutting properties and public roadways;
7. If requested by the SPGA, a plan showing test boring location to determine the depth of soil and/or rock or ledge;
8. Water table location and the proximity of the proposed excavations to it along with a soil boring log;
9. Monitoring wells;
10. A narrative describing pre- and post-construction stormwater runoff, measures proposed to prevent disturbance to surface or ground water, soil erosion, changes in water runoff, changes in groundwater level and flooding, location of any temporary structures, hours of operation and an overall timetable for the project, routes for transporting the material and types of fill to be used on site;
11. A photographic survey of the site prior to disturbance;
12. A landscape plan showing proposed or relocated vegetation and indicating species and size of all new or relocated trees;

13. A plan illustrating temporary and permanent stormwater management and erosion and sediment control structures including any anticipated ponding of water during the course of the excavations, if required by the SPGA.

These submittals may require review by the Conservation Commission if so determined by the SPGA.

6.6.6 Decision. The application may be approved provided that the SPGA finds the following requirements are satisfied:

1. The resulting land and topography will limit land disturbance and recreate the natural contours of the land to the greatest extent possible and will not seriously degrade or detract from the existing natural topography and natural drainage patterns of the site;
2. Suitable areas are designated for temporary uses such as vehicle parking and stockpiling of materials;
3. Temporary erosion and sedimentation control measures are employed in accordance with the plan and the BMP until a disturbed area is permanently stabilized; and
4. There will be no adverse impact to abutting properties including, but not limited, to erosion, flooding, drainage of natural aquifers or water tables to adversely affect uphill vegetation.

6.6.7 Financial Surety. The Board may, at its discretion, require a performance guarantee in accordance with 11.5 of this Zoning Bylaw.

**Recommend moving Stormwater to General Bylaws.**

## SECTION 7.0 SPECIAL REGULATIONS

### 7.1 PERSONAL WIRELESS TELECOMMUNICATION SERVICE FACILITIES

**7.1.1 Purpose.** 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 Section.

**7.1.2 Definitions.** See Section 12, "Personal Wireless Telecommunication Service Facilities."

**7.1.3 Special Permit.** All Personal Wireless Telecommunication Service Facilities shall require a special permit from the Planning Board. 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 this Section, and **the following additional criteria:**

~~1. This Bylaw creates an allowed use by Special Permit of the Planning Board for Personal Wireless Telecommunication Service Facilities.~~

1. Minimum lot dimensions and set backs as determined by the Planning Board to be appropriate for the use proposed.

2. Mitigate against potential negative impacts on visual quality upon neighboring properties by incorporating reasonable design, siting and screening methods; and

3. Protect against potential damage to neighboring properties from tower/structure failure or collapse and falling ice.

4. 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 7.1.6 below; and

5. Provide for testing and monitoring of radio frequency emissions, as set forth in Section 7.1.4.

**7.1.4 Testing and Monitoring.** **Testing and monitoring shall be a condition of every special permit as set forth below:**

1. 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.
2. 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.
3. 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.

**7.1.5 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 4.0 of this By-law.

**7.1.6 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]~~

**7.2 HELICOPTOR LANDING, STORAGE, OR PARKING FACILITIES**

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

**7.2.1 Special Permit.** 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. 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.

### 7.3 — 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 M.G.L. Chapter 90, Section 7A, as amended, and the rules and regulations of the Registrar of Motor Vehicles, unless a special permit therefor has been obtained from the Zoning Board of Appeals. The Board shall not issue a special 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 special 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 M.G.L. Chapter 140, Sections 58 and 59.~~

### 7.4 REGULATION OF MARIJUANA BUSINESSES

**7.4.1 Purpose.** The purposes of this Section are:

1. to exercise lawful oversight and regulation of Medical Marijuana Treatment Centers (also known as Registered Marijuana Dispensaries) and Marijuana Establishments, together referred to herein as Marijuana Businesses, consistent with Chapter 369 of the Acts of 2012, An Act To Ensure Safe Access to Marijuana, Chapter 55 of the Acts of 2017, all regulations which have or may be issued by the Department of Public Health and/or the Cannabis Control Commission, including, but not limited to 105 CMR 725.00 et seq. and 935 CMR 500.00, et seq., and the Town's regulatory powers; and
2. to limit the siting and operation of Marijuana Businesses to locations appropriate to such use, and to regulate such use through conditions necessary to protect community safety while ensuring legitimate patient access.

**7.4.2 Applicability.** The commercial cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of marijuana is prohibited unless permitted as a Marijuana Business under this Section. No Marijuana Business shall be established except in conformity with this Section and all applicable laws and regulations, including such regulations as may be promulgated by the Board of Health, and the requirements of 105 CMR 725.00 et seq. and 935 CMR 500.00, et seq. Nothing in this By-Law shall be construed to supersede any state or federal laws or regulations governing the sale and distribution of narcotic drugs.

**7.4.3 Definitions.** See Section 12, “Marijuana Businesses.” Where not expressly defined in Section 12, terms used in this Section shall be interpreted as defined in M.G.L. c. 94I and M.G.L.

c. 94G and regulations promulgated and/or incorporated thereunder, and otherwise by their plain language.

**7.4.4 Special Permit Granting Authority (SPGA).** The SPGA for the purposes of this Section shall be the Planning Board.

**7.4.5 Eligible Locations.** Marijuana Businesses may be allowed by special permit in the Limited Commercial District, subject to all requirements of this By-law, the requirements of the Board of Health, and applicable state laws and regulations.

**7.4.6 General Requirements and Conditions.** The following requirements and conditions shall apply to all Marijuana Businesses:

1. All Marijuana Businesses must obtain a special permit from the Planning Board pursuant to the requirements of Section 6.2 (Signs), 11.6 (Site Plan Review), Section 11.5 (Special Permits) and the requirements of this Section 7.4. The Planning Board may grant a single special permit incorporating the requirements of Sections 6.2, 11.6, 11.5 and this Section 7.4 for a Marijuana Business.
2. No special permit shall issue without demonstration by the applicant of compliance with all applicable state laws and regulations, and with all local regulations.
3. No Marijuana Business shall be located within 300 feet of a residential zoning district, or within 500 feet of any lot containing a school, child care center, or playground.
4. No smoking, burning or consumption of any product containing Marijuana or Marijuana infused products shall be permitted on the premises of a Marijuana Business except as may be expressly permitted by law.
5. No products shall be displayed in the facilities windows or be visible from any street or parking area.
6. Signs for all Marijuana Businesses shall, at a minimum, comply with Section 6.2 of this By-law, the provisions of 105 CMR 725.105(L) ("Marketing and Advertising Requirements"), the provisions of 935 CMR 500 et seq., and the terms and conditions of the special permit issued pursuant to Section 11.5.

**7.4.7 Special Permit Requirements.** A Marijuana Business shall be allowed only by special permit in accordance with M.G.L. c. 40A, s. 9; with the requirements of Section 11.5 of this By-law, with the terms and conditions of the special permit issued pursuant to this Section 7.4.

1. Uses. A Special Permit for a Marijuana Business shall be limited to one or more of the uses for which RMD's and Marijuana Establishments are authorized to engage in by law.

2. Hours of Operation. The hours of operation of a Marijuana Business shall be established by the SPGA.
3. Term of a Special Permit. Special permits shall be valid for a period of two (2) years from the effective date of the special permit.
4. Transferability of a Special Permit. Special Permits may be transferred only with the approval by the SPGA, in the form of an amendment to the special permit, conditioned upon satisfactory submission of all information required for an original special permit.

**7.4.8 Application.** In addition to the application requirements set forth in the rules of the SPGA, a special permit application for a Marijuana Business shall include the following:

1. The name and address of each owner of the establishment and property owner;
2. Copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the establishment;
3. Evidence of the applicant's right to use the site for the establishment, such as a deed, or lease;
4. Proposed security measures for the Marijuana Business demonstrating compliance with all requirements of 105 CMR 725.110, "Security Requirements for Registered Marijuana Dispensaries," including but not limited to secure storage areas, limited access areas, security and alarm systems compliant with 105 CMR 725.110(D), and the requirements of 935 CMR 500 et seq. A copy of the approved security measures shall be provided to the Police Department. The above information may be confidential and exempt from the provisions of M.G.L. c. 66, and as such shall not be part of the public record.
5. As applicable, the Proposed Operations and Maintenance Manual for the Medical Marijuana Treatment Center demonstrating compliance with all requirements of 105 CMR 725.110, "Security Requirements for Registered Marijuana Dispensaries," including but not limited to procedures for limiting access to the facility to persons authorized under 105 CMR 725.110(A); and procedures for transport of Marijuana and/or MIPs as provided under 105 CMR 725.110(E). Pursuant to 105 CMR 725.200 (C), the above information may be confidential and exempt from the provisions of M.G.L. c. 66, and as such shall not be part of the public record.

**7.4.9 Renewals.** A special permit may be renewed for successive two (2) year periods provided that a written request for renewal is made to the SPGA not less than three (3) months prior to the expiration of the then-existing term. Any request for a renewal of a special permit shall be subject to publication notice requirements as required for an original application for a special permit. Such notice shall state that the renewal request will be granted unless, prior to the expiration of the existing special permit, a written objection, stating reasons for such objection, is

received by the SPGA. If any such objection is received, the SPGA shall hold a public hearing on the renewal request and shall proceed in a manner consistent with the proceedings required for an original application. The special permit shall remain in effect until the conclusion of the public hearing and decision of the SPGA either granting or denying the special permit renewal request. In granting any renewal, the SPGA may alter or impose additional conditions, and/or may provide for revocation of the special permit if any identified violations of this By-Law or any other applicable regulation are not corrected within a specified time period.

#### 6.19.7 Severability

~~If any provision of this Section or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Section are severable. [Added 2015] [Amended 2018]~~

### ~~6.20.1 TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS~~

#### ~~Section 6.20.1 Purpose~~

~~On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016 by Chapter 351 of the Acts of 2016 and thereafter, on July 28, 2017 by Chapter 55 of the Acts of 2017) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses no later than April 1, 2018. Currently under the Zoning Bylaw, a non-medical Marijuana Establishment (hereinafter, a "Recreational Marijuana Establishment"), as defined in G.L. c. 94G, §1, is not specifically addressed in the Zoning Bylaw. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.~~

#### ~~Section 6.20.3 Temporary Moratorium~~

~~For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through December 31, 2018 or until such time as the Town adopts~~

~~Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning Bylaws in response to these new issues. [Added October 2017]~~

## **7.5 ADULT ENTERTAINMENT ESTABLISHMENTS**

**7.5.1 Purpose.** It is the purpose of this Section governing Adult Entertainment Establishments to address and mitigate the secondary effects of Adult Entertainment Establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in the Town. All of said secondary impacts are adverse to the health, safety and general welfare of the Town and its inhabitants.

1. The provisions of this By-law have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this By-law to restrict or deny access by adults to Adult Entertainment Establishments or to sexually oriented matter or materials that are protected by the Constitution of the United States of America or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this By-law to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

**7.5.2 Authority.** This By-law is enacted pursuant to M.G.L. Chapter 40A and pursuant to the Massachusetts Constitution to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of certain Adult Entertainment Establishments for the reasons set forth, above.

**7.5.3 Applicability.** An Adult Entertainment Establishment may be permitted as set forth in the Table of Use Regulations by special permit by the Board of Appeals provided a written determination is issued by said Board that the special permit decision criteria of Section 10.5 have been met.

**7.5.4 Location.** Adult Entertainment Establishments may be authorized by Special Permit in the Limited Commercial District.

**7.5.5 Conditions.**

1. In no instance shall the Board of Appeals issue a special permit to any person convicted or violating G.L. c. 119, s. 63 or G.L. c. 272, s. 28.

2. No pictures, publications, electronic media, or other implements, items, or advertising that fall within the definition of adult merchandise shall be displayed in store windows or be visible from areas used by the general public.

## 7.6 COMMON DRIVEWAYS

**7.6.1 General.** Frontage along the length of any way in existence when the Subdivision Control Law became effective in the Town shall in no way be used as frontage as specified in the Zoning By-law unless the way meets the following minimum standards.

**7.6.2 Limitations.** 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.

**7.6.3 Standards.** Common driveways shall be built in accordance with the following standards:

1. Minimum driveway width: 16' (18' if over 100' in length) for residential use; 24' all other uses.
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'.
5. No more than two lots shall be served by a common driveway without a special permit from the Planning Board.

**7.6.4 Waiver.** These common driveway 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.

~~In issuing building permits for construction on lot(s) with frontage considered by the Inspector of Buildings to provide impractical vehicular access, or otherwise satisfying only technical and not practical frontage compliance, the Inspector of Buildings 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~~

~~6.1.7 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 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:~~

- ~~1. 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;~~
- ~~2. certify in such application that such notice has been mailed; and~~
- ~~3. 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.~~

~~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.~~

## SECTION 8.0 SPECIAL RESIDENTIAL REGULATIONS

### 8.1 ACCESSORY DWELLING UNITS

8.1.1 Purpose. The purpose of this Section is to:

1. Provide older homeowners with a means of obtaining rental income, companionship, security and thereby the opportunity to remain comfortably in their homes that they might otherwise be forced to vacate;

2. Create moderately priced rental units to help meet the needs of smaller households, young families, local employees and the elderly who may have difficulty finding housing options;

3. Create new housing options that reinforce, and are sympathetic with, the existing fabric of our Town;

4. Encourage existing non-conforming apartments to comply with zoning and building codes;

5. Encourage the development of accessory dwelling units provided that they are kept small in size, the primary residence is owner-occupied, and they cannot be held under separate ownership.

**8.1.2 Requirements.** The following requirements shall apply:

1. An Accessory Dwelling Unit (ADU) is a dwelling unit which is subordinate to the principal single-family dwelling.

2. All single-family homes in all zoning districts may be modified to contain a single ADU, provided that they do not have more than one dwelling unit already in existence.

3. The ADU may not be rented for time periods less than six months. No subletting of the ADU is allowed.

4. The ADU shall not be larger than 1200 square feet of living area nor have more than two bedrooms as determined by the Inspector of Buildings.

5. A minimum of one additional off-street parking space must be provided for the ADU.

6. No new exterior entries may be added to the front or principal facade of the building. New unit entries may be created via a shared interior entry vestibule or located on the side or rear of the building.

7. The ADU shall be allowed in detached structures that are accessory to the principal residence and shown to be in existence at least one year prior to the enactment of this Section. Such structures must comply with the same setback and lot coverage requirements applicable to the principal residence.

8. The ADU permit shall be renewed every five years requiring reaffirmation of owner occupancy. If there is a transfer in ownership of the property, a new ADU permit must be obtained.

**8.1.3 Procedures.** The owner shall apply for an ADU permit and a building permit from the Inspector of Buildings. Upon the completion of the building modifications the applicant provides the Inspector of Buildings with:

1. An affidavit that one of the units in the building will be occupied by the owner at least six months of the year;
2. Proof of a deed restriction, recorded at the Registry of Deeds, requiring that the ADU cannot be sold under separate ownership.
3. Upon the submission of these satisfactory documents the Inspector of Buildings may issue the ADU certificate of occupancy.

## **8.1 — ACCESSORY DWELLING UNITS**

**8.1.1 Purpose.** This Section permits the construction of accessory dwelling units in Single Residence A, B, C, and E Districts in order to meet the following objectives:

1. 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;
2. To make it financially possible for existing homeowners to stay in their homes;
3. To provide security;
4. To provide regulations that are enforceable and bring illegal conversions under control;
5. To insure that all accessory dwelling units that are created will comply with the building codes and health, safety and fire regulations; and
6. To allow the best use of older homes by encouraging the preservation of these homes.

~~**8.1.2 Special Permit.**—An owner or owners of a single family dwelling in Single Residence A, B, C, and E Districts may apply to the Board of Appeals for a special permit for the construction of one accessory dwelling unit which may only be located in such single family dwelling.~~

~~**8.1.3 Requirements.**—After notice and public hearing the Board of Appeals may grant a special permit provided that:~~

- ~~1. Except in Single Residence District E, the lot size shall be two (2) times the minimum lot size as determined by the zoning regulations.~~
- ~~2. The single family dwelling shall have existed on the lot as of March 1, 1984.~~
- ~~3. Off-street parking for at least four (4) vehicles shall be provided in a manner consistent with the character of a single family dwelling.~~
- ~~4. 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.~~
- ~~5. The construction and occupancy of the accessory dwelling unit will not be detrimental to the neighborhood or injurious to persons or property.~~
- ~~6. 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.~~
- ~~7. 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.~~
- ~~8. Adequate provisions shall be made for the disposal of sewage, waste and drainage caused by the occupancy of such dwelling unit.~~
- ~~9. There is no other accessory dwelling unit in the dwelling.~~

~~**8.1.4 Application.**—The Applicant for the special permit shall submit plans showing at a minimum the following items:-~~

- ~~1. Lot size and location of parking;~~
- ~~2. 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;~~
- ~~3. Elevations of building if exterior changes occur;~~

4. Additional information requested by the Board of Appeals.

~~8.1.5 Occupancy.~~ The accessory dwelling unit shall not be occupied until a Building Permit and a Certificate of Occupancy are issued by the Inspector of Buildings.

## ~~8.2 PLANNED RESIDENTIAL DEVELOPMENT (PRD)~~

~~8.2.1 Purpose.~~ A Planned Residential Development is allowed by special permit from the Planning Board only in , an alternative pattern of land development to the pattern permitted in Residence C District and Residence E District. This Section 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. The PRD should 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.

~~8.2.2 Environmental Impact Study (EIS).~~ Not less than 120 days prior to submission of the Definitive Site Plan, the special 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, 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; an evaluation of the impact on public lands and recreational areas; 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.

- ~~1. 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.~~
- ~~2. 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.~~

~~8.2.3 Standards. No special permit shall be granted under this Section 8.2 unless the following conditions are met:~~

~~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.~~

~~2. 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 Planning Board's 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.~~

~~3. Permitted Uses. The Planning Board may authorize 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.~~

~~4. 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.~~

~~5. 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. Height. All structures in the Planned Residential Development (PRD) shall~~

comply with the height regulations of Section 4.0 of this By-law.

~~7. 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.~~

~~8. 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 in light of the preexisting traffic on such way, and 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.~~

~~9. 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.~~

~~8.2.4 Common Open Space. 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 this Section.~~

~~1. 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.

2. 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.

3. 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: A legal description of the common open space; A statement of the purposes for which the common space is intended to be used and the restrictions on its use and alienation; and the type and name of the corporation, nonprofit organization or trust which will own, manage and maintain the common open space.

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.

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.

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.

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.

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

8.2.5 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:

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.~~

~~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.~~

~~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.~~

~~8.2.6 Recommendations of Other Boards. 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, 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, an evaluation of the impact on public lands and recreational Areas, and an an evaluation on the impact on public sewers.~~

~~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.~~

~~8.2.8 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.~~

## **8.2 RESIDENTIAL CONSERVATION CLUSTER**

**8.2.1 Purpose.** The purpose of this Section 8.2 is to:

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.
4. Encourage screening of new residential development from the Town's roads, open spaces and scenic areas.
5. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
6. Protect existing and potential municipal water supplies.
7. 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.
8. Minimize the total amount of disturbance on the site.
9. Preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
10. Encourage the provision of diverse housing opportunities and the integration of a variety of housing types.
11. Further the goals and policies of the Manchester-by-the-Sea Comprehensive Plan, as revised.

**8.2.2 Definitions.** See "Residential Conservation Cluster in Section 11.0.

**8.2.3 Applicability.** In accordance with the following provisions, a Residential Conservation Cluster may be created, whether a subdivision or not, from any parcel or set of contiguous parcels with two times the minimum lot area required in the district.

**8.2.4 Procedures.** A Residential Conservation Cluster may be authorized upon the issuance of a special permit by the Planning Board. Applicants for Residential Conservation Cluster shall file with the Planning Board eleven (11) copies of the following:

1. A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board.
2. Where wetland delineation is in doubt or dispute, the Planning Board may require appropriate documentation.
3. Data on proposed wastewater disposal, which shall be referred to a consulting engineer for review and recommendation.
4. The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.

**8.2.5 Design Process.** Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, houselots, 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, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.

5. *Lot Lines.* The final step is simply to draw in the lot lines (if applicable).

**8.2.6 Modification of Lot Requirements.** The Planning Board encourages applicants for Residential Conservation Cluster to modify lot size, shape, and other dimensional requirements for lots within a Residential Conservation Cluster, subject to the following limitations:

1. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Residential Conservation Cluster; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.

2. At least 50% of the required side and rear yards required in the district shall be required in the Residential Conservation Cluster.

**8.2.7 Maximum Number of Dwelling Units.** The maximum number of dwelling units allowed in a Residential Conservation Cluster shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements (the "Maximum Number"). The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

**8.2.8 Density Bonus.** The Planning Board may award a density bonus to increase the number of dwelling units beyond the Maximum Number. The density bonus for the Residential Conservation Cluster shall not, in the aggregate, exceed 20% of the Maximum Number. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:

1. For each additional ten percent (10%) of the site over the open space required below and set aside as contiguous open space, a bonus of one dwelling unit or ten (10%) percent of the Maximum Number may be awarded.

2. Where the Planning Board determines that the applicant has offered significant amenities to the Town, including but not limited to infrastructure improvements, equipment, or technical assistance, or the preservation of land outside the Residential Conservation Cluster, a bonus of one dwelling unit to 10% the Maximum Number may be awarded.

**8.2.9 Affordable Component.** As a condition of the grant of any special permit for a Residential Conservation Cluster, a minimum of (10%) of the total number of dwelling units (i.e., the Maximum Number of dwelling units, plus any Density Bonus units) shall be restricted in perpetuity. The restriction shall be approved as to form by legal counsel to the Planning Board to ensure that the dwellings units will count on the Commonwealth's Subsidized Housing Inventory, and a right of first refusal upon the transfer of such restricted units shall be granted to the local Affordable Housing Trust for a period not less than 120 days after notice thereof.

**8.2.10 Types of Buildings.** The Residential Conservation Cluster may consist of the following types of dwellings: Single family in all eligible districts, Two-family in the RD1 and RD2, and Three family in the G District. Residential structures shall be oriented toward the street serving the premises and not the required parking area.

**8.2.11 Roads.** The principal roadway(s) serving the site shall be designed to conform with the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

**8.2.12 Parking.** Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

**8.2.13 Contiguous Open Space.** A minimum of 20% of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

1. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in Section 1, above. In no case shall the percentage of contiguous open space which is wetlands exceed fifty (50%) of the tract.

2. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.

3. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to 10% of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bikepaths.

4. Underground utilities to serve the Residential Conservation Cluster site may be located within the contiguous open space.

**8.2.14 Ownership of the Contiguous Open Space.** The contiguous open space shall, at the Applicant's election, be conveyed to

1. the Town or its Conservation Commission;

2. a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

3. a corporation or trust owned jointly or in common by the owners of lots within the Residential Conservation Cluster. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

**8.2.15 Buffer Areas.** A buffer area of 25 feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation; or (ii) where the land abutting the site is held by the Town for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

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

**8.2.17 Condominium or Homeowners' Association.** In order to maintain and repair any common areas or the required open space, the developer shall create a condominium homeowner's association. The documents establishing such association shall be approved as to form by Town Counsel.

**8.2.18 Decision.** The Planning Board may approve, approve with conditions, or deny an application for a Residential Conservation Cluster after determining whether the Residential Conservation Cluster better promotes the purposes of Section 7.3.1 of this Residential Conservation Cluster By-Law than would a conventional subdivision development of the same locus.

**8.2.19 Relation to Other Requirements.** The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this By-Law.

### **8.3 SENIOR HOUSING**

**8.3.1 Purpose.** The objectives of this Section are to achieve the following public purposes:

1. To provide for the development and use of alternative housing and nursing care for seniors.
2. To create home health care, housing and other supportive services for the senior population outside of an institutional setting.
3. To provide housing which is affordable.
4. To provide such accommodations in a manner harmonious with the surrounding land uses while protecting community character, natural resources and open space.

**8.3.2 Definitions.** See Section 11, "Senior Housing Facility."

**8.3.3 Applicability.** The Planning Board may grant a special permit for a Senior Housing Facility as defined in Section 11 as set forth in the Table of Use Regulations, subject to the requirements of this Section.

1. This Section shall not apply to Senior Housing Facilities existing on the date of adoption of this Section.

**8.3.4 Dimensional Requirements and Design Standards.** Dimensional requirements and design standards shall be as follows:

1. Minimum Lot Size. The minimum lot size (square feet) shall be that required in the district.
2. Building Height. Any addition or new construction shall not exceed 35 feet in height in a Residence District or 45 feet in height in a General or Limited Commercial District. By separate special permit, the Planning Board may allow building height greater than that set forth above. This shall not preclude the reuse and renovation of existing structures which may exceed this height limit.

3. Building Coverage. The maximum building coverage, including accessory buildings, shall conform with Table 2 for new construction or expansion of existing structures.

4. Building Setbacks. Buildings shall have the setbacks required in the district by Table 2.

5. Setback from Residential Dwellings. All buildings associated with the Senior Housing Facility shall be no closer than 50 feet from existing residential dwellings; however, with respect to accessory structures not greater than 300 square feet, the Planning Board, in its discretion, may reduce said setback by an amount up to but not greater than 30 feet if it determines that said structure will not adversely impact the use and enjoyment of the existing residential dwelling.

6. Minimum Lot Frontage. The minimum lot frontage shall conform to the requirements of the district where such use is located.

7. Town Services. Where available, facilities shall be serviced by public water and sewer of sufficient capacity to serve the project. Any extension and/or replacement of sewer and/or water lines necessary to provide sufficient capacity shall be the responsibility of the applicant.

8. Transportation Services. The operator of the facility shall be required to provide or arrange for transportation to town services and facilities.

9. Common Open Space: In the Residence Districts, there shall be an area of common open space equal to at least 10% of the lot area. The common open space shall be retained in perpetuity for conservation or passive recreation use. No more than 25% of the minimum required open space shall be situated within wetlands.

10. Parking. The minimum number of parking spaces shall be as set forth in Table 1.

11. Access and On-site Circulation. Adequate on-site circulation shall be provided to and from the site, taking into consideration the adjacent sidewalks and streets and accessibility of the site and building(s) thereon for emergency vehicles. Adequate provision shall be made for off-street loading and unloading requirements of delivery vehicles and passengers using private transportation.

12. Public Safety. The facility shall have an integrated emergency call, telephone and other communication system to provide monitoring for its residents. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Fire Department for the emergency evacuation of residents with emphasis on ensuring the safety of residents with physical impairments.

13. Landscaping. Landscaping and screening is required to obscure visibility from beyond the boundaries of the premises of parking areas, dumpster locations and loading

areas. The minimum setback from all property lines of such parking areas, dumpster locations, and loading areas, except for their points of ingress and egress, shall be 15 feet.

**8.3.5 Accessory Uses.** The operator of the Senior Housing Facility may also provide optional services on the site for the convenience of residents, including but not limited to transportation, barber/beauty services, sundries for personal consumption, laundry services and other amenities, provided such uses serve primarily the residents and staff of the Senior Housing Facility and the accessory uses shall be wholly within a residential structure and shall have no exterior advertising display. A Senior Housing Facility may also provide adult social day care to nonresident participants as an accessory use.

**8.3.6 Special Permit Procedure.** The procedure for a special permit under this Section shall be governed by Section 11.5.

## ~~8.6 — DIVISION OF LAND AND DEVELOPMENT OF MULTIPLE DWELLINGS~~

~~8.6.1 Purpose.~~ The purpose of this Section 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.

~~8.6.2 Applicability.~~ The following shall require a special permit from the Planning Board under the provisions of Section 11.5:

~~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~~

~~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~~

~~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 Section 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.~~

~~6.11 — 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 Inspector of Buildings 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 Inspector of Buildings 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]~~

## **9.0 SPECIAL DISTRICTS**

### **9.1 FLOOD CONTROL OVERLAY DISTRICT**

**9.1.1 Purpose.** The purpose of the Flood Control Overlay District (FCOD) 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.

**9.1.2 Location.** The Flood Control Overlay District will consist of those areas designated as A1, A2 and B1 in Figure 8 of a report prepared for the Town by the consulting firm of Camp, Dresser and McKee entitled "Storm Drainage Improvements for the Bennett's Brook Drainage Area" dated October, 1971. Said maps are on file with the Department of Public Works.

**9.1.3 Overlay District.** The Flood Control Overlay District shall overlay other districts in this By-law. Any land lying within the Flood Control Overlay 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 Overlay District.

**9.1.4 Use Regulations.** Any use otherwise permitted in the underlying district is permitted as a matter of right within the Flood Control Overlay District except those uses expressly regulated in this Section. The following uses are hereby regulated:

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.
2. Erection or construction of new buildings and enlargement or moving of existing structures.

**9.1.5 Area and Yard Requirements.** The portion of any lot within the Flood Control Overlay 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.

**9.1.6 Special Permit.** Any use designated by Section 9.1.4 of this Section 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.

### **9.2 FLOOD PLAIN OVERLAY DISTRICT**

**9.2.1 Purpose.** The purpose of the Flood Plain Overlay District (FPOD) is to:

1. Ensure public safety through reducing the threats to life and personal injury;
2. Eliminate new hazards to emergency response officials;
3. Prevent the occurrence of public emergencies resulting from loss of water quality, contamination, and pollution due to flooding;
4. 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;
5. Eliminate costs associated with the response and cleanup of flooding conditions; and
6. Reduce damage to public and private property resulting from flooding waters.

**9.2.2 Overlay District.** The FPOD is herein established as an overlay district. Any use otherwise permitted in the underlying district is permitted as a matter of right in the FPOD, provided the use meets all applicable local laws and regulations and the following additional requirements of the Massachusetts State Building Code dealing with construction in flood plains and coastal high hazard areas as applicable. The FPOD includes all special flood hazard areas within the Town of Manchester-by-the-Sea designated as Zone A, AE, AH, AO, or VE on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the Town of Manchester-by-the-Sea are panel numbers 25009C0429F dated July 3, 2012; and panel numbers 25009C0431G, 25009C0432G, 25009C0433G, 25009C0434G, 25009C0441G, 25009C0442G, 25009C0451G, 25009C0453G, 25009C0454G, and 25009C0475G, dated July 16, 2014. The exact boundaries of the District shall be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 16, 2013, as those documents were updated by FEMA Letter of Map Revision (LOMR) dated March 12, 2017, for panels 25009C0453G and 25009C0454G, effective as of July 25, 2017. The FIRM, FIS booklet, and LOMR are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Director of Public Works.

**9.2.3 Base Flood Elevation and Floodway Data.**

1. Unnumbered A Zones. Base Flood Elevation Data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.
2. Zones A and AE. In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway

data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

**9.2.4 Notification of Watercourse Alteration.** In a riverine situation, the following must be notified of any alteration or relocation of a watercourse:

1. Adjacent communities;
2. NFIP State Coordinator;
3. Massachusetts Office of Water Resources  
251 Causeway Street, Suite 600-700  
Boston, MA 02114-2104
4. NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6th Floor  
Boston, MA 02110

**9.2.5 Use Regulations.** 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 Inspector of Buildings for its reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building Code. 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) Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal high hazard areas; [Revised 2012] Wetlands Protection Regulation, Department of Environmental Protection (DEP) (currently 310 CMR 10.00); Inland Wetlands Restriction, DEP (currently 310 CMR 13.00); [Revised 2012] Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00); [Revised 2012] 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 aboverferenced State regulations shall be granted only in accordance with the required variance procedures of these State regulations.

1. Zone VE. Located within the Flood Plain District are areas designated as coastal high hazard areas (Zone VE). 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.

2. Zone AO. Within Zone AO on the FIRM, adequate drainage paths are required around structures on slopes to guide flood waters around and away from proposed structures.

3. Zone VE. Man-made alteration of sand dunes within Zone VE, which would increase potential flood damage, is prohibited. [Revised 2012]

### **9.3 GROUND AND SURFACE WATER RESOURCE PROTECTION OVERLAY DISTRICT**

**9.3.1 Findings.** The Town of Manchester-by-the-Sea finds that:

1. The groundwater underlying the Town is a major source of its existing and future water supply, including drinking water.

2. The aquifer system supplying Manchester-by-the-Sea with its groundwater supply is integrally connected with numerous surface waters, lakes, and streams.

3. The surface water supplies of Gravelly and Round Ponds supplement the Town's groundwater resource, and are similarly considered an indispensable natural resource.

4. Accidental spills and discharges of toxic and hazardous materials have threatened the quality of such water supplies posing public health and safety hazards.

5. 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.

**9.3.2 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 Protection Overlay Districts (GSRPOD) and careful regulation of development activities within these districts can reduce the potential for ground and surface water contamination.

**9.3.3 Definitions.** See Section 12, "Ground and Surface Water Resource Protection Overlay Districts."

**9.3.4 Ground and Surface Water Resource Protection Overlay District Maps.** The maps delineating the GSRPOD, 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 Protection Overlay 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. [See Maps]

**9.3.5 Overlay District.** The GSWRPOD shall be considered to be superimposed over any other district established in this By-Law. Land in a GSWRPOD may be used for any purpose otherwise permitted in the underlying district, subject to the additional restrictions presented in this Section. This By-law shall not apply to land or activities located outside of the corporate boundaries of Manchester-by-the-Sea.

**9.3.6 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 Protection Overlay District, the following rules shall apply:

1. Properties located wholly within one zone reflected on the Ground and Surface Water Resource Protection Overlay District Maps shall be governed by the restrictions applicable to that zone.
2. Properties located such that the site lies within more than one zone as reflected on the Ground and Surface Water Resource Protection Overlay District Maps shall be governed by the restrictions applicable to the zone in which the greater part of the property is located.
3. 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.
4. When the Ground and Surface Water Resource Protection Overlay District Maps incorrectly identify the location as being within the GSWRPOD, the Planning Board may grant a special permit to exempt a location from the requirements of this Section, provided that the applicant demonstrates that the GSWRPOD Map is incorrect. 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 Protection Overlay 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).

**9.3.7 Relationship to Other Laws.** This Section is supplementary to other laws and By-laws within the Town. When this Section or any portion thereof imposes a greater restriction than is imposed by other regulations, the provisions of this Section shall control. When this Section

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.

### **9.3.8 Prohibited uses in Zone I, Zone II, and Zone III, and Zone A, Zone B, and Zone C.**

The following uses are prohibited:

1. All underground storage tanks.
2. Automobile graveyards and junkyards, as defined in M.G.L. c. 140B, §1.
3. 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.
4. 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.
5. 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.
6. Storage of animal manures, unless such storage is covered or contained in accordance with the specifications of the Natural Resource Conservation Service.
7. Residential **development on a lot** ~~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.
8. Landfills and open dumps, as defined in 310 CMR 19.006.
9. 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.
10. 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.
11. 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: (a) 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 (b) 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 (c) publicly owned treatment works, or POTWs.

12. 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: (a) very small quantity generators, as defined by 310 CMR 30.00; (b) household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390; (c) waste oil retention facilities required by M.G.L. c. 21, §52A; and (d) treatment works approved by the Department designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters.

13. 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.

14. Storage of liquid hazardous materials, as defined in M.G.L. c. 21E, and/or liquid petroleum products unless such storage is: above ground level; and on an impervious surface; and either: (a) in container(s) or above-ground tank(s) within a building, or (b) outdoors in covered container(s) or above-ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater; 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.

15. 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.

16. 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.

17. Commercial outdoor washing of vehicles.

18. Commercial car washes.
19. Motor vehicle repair operations.
20. Solid waste combustion facilities or handling facilities as defined at 310 CMR 16.00.
21. 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.

**9.3.9 Additional Prohibited Uses in Zone A, Zone B, and Zone C.** The following additional uses are prohibited:

1. **Residential development on a lot with** 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.
2. 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.
3. 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.
4. 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.

9.3.10 Special Permit uses in Zones II and III, and A, B, and C. The following uses require a special permit from the Planning Board:

1. The use, handling, production, and storage of Regulated Substances.
2. Within Zone II and Zone III only, residential development on a lot 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 9.3.12.4, below, are not exceeded.
3. 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 9.3.12.4 are not exceeded.
3. 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.

9.3.11 Special Permit Granting Authority (SPGA). ~~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.~~ The Special Permit Granting Authority (SPGA) under this Section 9.3 shall be the Planning Board. The SPGA shall use the special permit granting criteria set forth in Section 9.3.12 in lieu of those set forth in Section 11.5.

~~A special permit may be 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.~~

1. 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 Inspector of Buildings, 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 lack of opposition ~~no desire to comment~~ by said agency. The applicant shall furnish the necessary number of copies of the application.

9.3.12 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 9.3.11.1, that the intent of this Section 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, in lieu of the criteria otherwise set forth in Section 11.5:

1. The application meets the intent of this Section as well as its specific criteria;
2. The proposed use 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;
3. The proposed use will not cause the average quality of groundwater recharged on the property to violate Class 1 drinking water standards promulgated by the Department; and
4. The proposed use will not cause the average concentration of nitrate-nitrogen in groundwater recharged on the property to exceed five (5) milligrams per liter.

9.3.13 Special Permit Application. In applying for a special permit required, the information listed below shall be submitted to the SPGA:

1. A list of all Regulated Substances which are to be stored, handled, used or produced in the activity being proposed.
2. 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.
3. 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.
4. A site plan illustrating the location of all operations involving Regulated Substances.
5. 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.

9.3.14 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, when in its opinion, such adherence would further the purpose and intent of this Section.

1. 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 offloading areas, and to aboveground and underground storage areas.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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 **in the Board's Regulations**, 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.

9.3.15 General Exemptions. The following uses are exempt from this Section:

1. Exemption 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 Section provided the transporting motor vehicle is in continuous transit.
2. Exemption 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 Section.
3. Exemption 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 Section 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 Inspector of Buildings 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. 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 Section, 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.

5. Exemption 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 Section, 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.

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 Section 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.

7. Exemption for Household Use. 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 Section; 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.

8. Exemption for Municipal Use. 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.

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 this Section; 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~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

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~~[Added 1990] [Revised 2002]~~

## SECTION 10.0 ENERGY REGULATIONS

### 10.1 LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS

**10.1.1 Purpose.** The purpose of this Section is to authorize and regulate large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations such that these standards address public safety, minimize impacts on scenic, natural and historic resources and provide adequate financial assurance for the eventual decommissioning of such installations.

**10.1.2 Applicability.** This Section applies to large-scale ground-mounted solar photovoltaic installations, as defined herein, proposed to be constructed after the effective date of this Section. This Section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment. Large-Scale Ground-Mounted Solar Photovoltaic Installations, as defined herein, shall be allowed by right in the Limited Commercial Zoning District as that district is defined by this By-law.

1. Smaller scale ground or building-mounted solar photovoltaic installations which are accessory to a lawful principal use on the same lot are not otherwise subject to the requirements of this Section, but must comply with the other provisions of this By-law, as applicable.

10.1.3 Definitions. See Section 12, “Large-scale ground-mounted solar photovoltaic installations.”

~~10.1.4 General Requirements. for all As-of-Right Large-Scale Ground-Mounted Solar Photovoltaic Installations (LGSPI)~~

**10.1.4 Compliance with Laws, By-laws and Regulations.** The construction and operation of LGSPI shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, environmental, Wetlands Protection Act, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State and/or Local Building Code. No LGSPI shall be constructed, installed or modified without a building permit.

**10.1.5 Site Plan Approval Required.** LGSPI shall be constructed, installed, used and modified in conformity with a site plan approved by the Planning Board in accordance with Section 11.6 of this By-law and the further requirements set forth herein. All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts. The requirements set forth herein shall be applied coincident with and in addition to those requirements set forth in Section 11.6. The requirements of this Section shall take precedence in the event of a direct conflict.

**10.1.6 Contents.** In addition to the information required under Section 11.6, the applicant shall provide a site plan containing the following information:

1. Property lines and physical features, including structures and roads, for the project site;
2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
3. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
4. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all current National Electrical Code compliant disconnects and over current devices;
5. Documentation of the major system components to be used, including the photovoltaic panels, mounting system, and inverter;
6. Name, address, and contact information for proposed system installer;
7. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
8. The name, contact information and signature of any agents representing the project proponent;
9. How land clearing and construction shall be performed in accordance with Sections 6.5 of this By-law and the General By-law governing storm water discharge, land disturbance, provision for handling toxic or hazardous materials, and post-construction storm water runoff;
10. Documentation of actual or prospective access and control of the project site as set forth in Section 10.1.8;
11. An operation and maintenance plan as set forth in Section 10.1.9;
12. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);

13. Proof of liability insurance written by companies licensed to provide such insurance in Massachusetts and with coverage limits at commercially acceptable levels;

14. Description of financial surety that satisfies Section 10.1.18.

15. A fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation;

16. Public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required site plan approval notification procedures and otherwise inform abutters and the community.

The Planning Board may require additional information, data or evidence as it deems necessary pursuant to the site plan approval process, or may waive documentary requirements as it deems appropriate.

**10.1.7 Professional Review.** The Planning Board may engage, at the applicant's expense, professional and technical consultants, including legal counsel, to assist the Board with its review of the application, in accordance with the requirements of M.G.L. c. 44, s. 53G. The Board may direct the applicant to deposit funds with the Board for such review at the time the application is accepted, and to add additional funds as needed upon notice. Failure to comply with this section shall be good grounds for denying the application. Upon approval of the application, any excess amount in the account attributable to that project, including any interest accrued, shall be repaid to the applicant.

**10.1.8 Site Control.** The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the LGSPI.

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

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

**10.1.11 Dimensional and Density Requirements.** The LGSPI shall meet the dimensional requirements of this Section: ~~except as set forth below.~~

1. Setback. An LGSPI shall be set back from property lines consistent with the applicable regulations for the Limited Commercial District, with the exception of necessary connection equipment to utility transmission facilities.

2. Accessory Structures. All accessory structures to an LGSPI shall be subject to the dimensional requirements of this By-law. All such accessory structures, including but not limited to, equipment shelters, storage facilities, transformers, substations shall be architecturally compatible with each other and shall be landscaped and screened from view by vegetation, located underground, or behind berms, and/or clustered to minimize visual impacts.

**10.1.12 Performance Standards.** The LGSPI shall meet the following performance standards:

1. Lighting. Lighting of an LGSPI shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of an LGSPI shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

2. Signage. Signs on LGSPI shall comply with the requirements of all applicable sign regulations, and shall be limited to:

- a. Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger.
- b. Educational signs providing information about the LGSPI and the benefits of renewable energy.
- c. Signs shall be limited to two dimensions (i.e. flat) and shall not be electronic or lighted.

3. Advertising. LGSPI shall not be used for displaying any advertising except for identification of the manufacturer or operator of the LGSPI.

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

5. Screening. A buffer or greenstrip planted with live shrubs or trees, predominantly evergreen, shall if feasible be maintained between the perimeter of the LGSPI and any abutting property line or street unless the existing natural growth is adequate to provide an equivalent buffer. Such a buffer shall be designed so as not to create a hazard upon

entrance or exit from the facility. The Planning Board may vary or waive this requirement consistent with minimizing negative effects on abutting property.

#### **10.1.13 Safety and Environmental Standards.**

1. **Emergency Services.** The LGSPI owner or operator shall provide a copy of the project summary, electrical schematic and approved site plan to the Fire Chief. Upon request the owner and/or operator shall cooperate with local emergency services in developing an emergency response plan, which may include ensuring that emergency personnel have immediate, 24-hour access to the facility. All means of shutting down the LGSPI shall be clearly marked.
2. **Land Clearing.** Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the LGSPI or otherwise prescribed by applicable laws, regulations, and bylaws.
3. **Groundwater Protection.** An LGSPI shall comply with the requirements set forth in Sections 9.3 and the General By-law governing stormwater management, which requirements shall be imposed and conditioned as appropriate through the Site Plan Approval process. No LGSPI shall be required to obtain an independent special permit under either section.

**10.1.14 Monitoring and Maintenance.** The LGSPI owner and/or operator shall maintain the facility in good and safe working condition, and shall schedule inspections by a competent professional at least once every twelve (12) months or more often, pursuant to industry standards and practice. The results of the inspection and any resulting repair work shall be submitted to the Planning Board and the Inspector of Buildings within thirty (30) days of receipt by the owner or operator. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and emergency medical services. The owner and operator shall be responsible for the cost of maintaining the LGSPI and any access road(s), unless accepted as a public way.

**10.1.15 Modifications.** All material modifications to a LGSPI made after issuance of the required building permit shall require prior approval by the Planning Board.

**10.1.16 Contact.** The owner and operator of an LGSPI shall each identify a responsible person for emergency purposes and public inquiry and shall at all times throughout the life of the installation maintain current contact information (name, address, telephone number, e-mail address) for such person(s) on file with the Inspector of Buildings, the Fire Chief, and the Planning Board.

**10.1.17 Discontinuance and Removal.** Any LGSPI, or any substantial part thereof, not in operation for a period of one hundred and eighty (180) continuous days or more without written permission from the Planning Board, or that has reached the end of its useful life, shall be considered discontinued and shall be removed. Upon written request from the Inspector of

Buildings addressed to the contact address provided and maintained by the owner and operator as required above, the owner or operator shall provide evidence to the Inspector of Buildings demonstrating continued use of the LGSPI. Failure to provide such evidence within thirty (30) days of such written request shall be conclusive evidence that the installation has been discontinued. The owner or operator of the installation shall notify the Board and Inspector of Buildings by certified mail of the proposed date of discontinued operations and plans for removal. The owner or operator shall physically remove the installation no more than ninety (90) days after the date of discontinued operations, which period may be extended with written permission of the Inspector of Buildings for no more than sixty (60) days. Removal shall consist of:

1. Remove all of the LGSPI in its entirety, including all associated structures, equipment, security barriers and transmission lines from the site.
2. Dispose of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
3. Stabilize or re-vegetate the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
4. Reinstate gravel or ground cover consistent with the surrounding landscape.
5. Remove all above-ground foundations and supports to a depth of one foot below existing grade.

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

**10.1.18 Financial Surety.** The owner of an LGSPI approved in accordance with this Section shall provide to the Town, acting by and through the Planning Board, security to cover the cost of removal in the event the Town must remove the LGSPI and remediate the landscape. Such surety shall be in an amount and form determined to be reasonable by the Board, which may be an escrow account, bond or otherwise, and shall be provided prior to construction. Surety will not be required for municipal or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

## **10.2 WIND ENERGY CONVERSION FACILITIES**

**10.2.1 Purpose.** It is the express purpose of this Section to permit distributed generation, Wind Energy Conversion Facilities (WECF) in the Limited Commercial District (LCD), while addressing any adverse visual, safety and environmental impacts of the facilities. The intent of

this Section is to enable the review of wind energy conversion facilities and wind monitoring or meteorological towers by the Planning Board in keeping with this By-law. Pursuant to M.G.L. c. 40A, s. 9, the Planning Board is hereby designated as the special permit granting authority for wind energy conversion facilities.

**10.2.2 Definitions.** See Section 12, “Wind Energy Conversion Facilities.”

**10.2.3 Use Regulations for WECF, Wind Monitoring, and Meteorological Towers.** WECFs under this Section shall be allowed only in the LCD, and then only upon issuance of a special permit by the Planning Board in accordance with the requirements of this By-law, including those requirements set forth in this Section and Section 11.5, irrespective of whether the use is a principal or accessory use. Met Towers shall be permitted in the LCD, subject to the issuance of a special permit in conformance with this Section and Section 11.5, and a building permit for a temporary structure. WECFs and Met Towers shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements and the requirements of the relevant utility to which the WECF will be connected.

**10.2.4 Site Control.** At the time of application for a special permit, the applicant shall submit documentation of the legal right to install and use the proposed WECF on the subject lot. Documentation must list all lot owners and any encumbrances on the land that may affect the proposed use, and must demonstrate and act upon the applicant's sufficient legal authority to prevent the building of any structure unrelated to the WECF within the WECF's required setbacks.

**10.2.5 Dimensional Requirements.** WECF and Met Towers shall be subject to the following dimensional requirements:

1. Height. A WECF shall be no higher than four hundred fifty (450) feet above the elevation at its base.
2. Setback. Each free-standing WECF and Met Tower shall be set back from property lines, any structures permitting human occupancy, and roadways, excepting the access roadway, by at least one and one-half times the height of the WECF, and from any residential property lines, including those in abutting towns, by at least thirteen hundred (1300) feet.

#### ~~6.17.4 SPECIAL PERMIT REGULATIONS~~

~~The Planning Board shall grant a special permit only if it finds that the proposal complies with the provisions of this Section 6.17 and with Section 7.5 of the Zoning By-Law.~~

**10.2.6 Design Standards.**

1. Visual Impact. The applicant shall demonstrate through project siting and proposed mitigation that the WECF or Met Tower minimizes impact on the visual character of

surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design, buffering, lighting and cable layout. The Planning Board shall select between three (3) and six (6) sight lines, including from the nearest building with a view of the WECF, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a two (2) mile radius of the WECF. View representations shall have the following characteristics:

- a. View representations shall be in color and shall include actual preconstruction photographs and accurate post-construction simulations of the height and breadth of the WECF (e.g. superimpositions of the WECF onto photographs of existing views).
- b. View representations shall include existing and proposed buildings and tree coverage.
- c. View representations shall include a description of the technical procedures followed in producing the visualization, including without limitation, distances, angles, lenses, etc.

2. Balloon or Crane Test. Within thirty (30) days of the date of application for the special permit, the applicant shall provide a balloon or crane test at the proposed site, or alternate test approved by the Planning Board, to demonstrate the height of the proposed WECF. The date, time and alternate date if needed due to weather, shall be announced in a newspaper having local circulation for the two (2) consecutive weeks prior to the test. Said announcement shall also be sent to all parties receiving notification of the Special Permit application at the applicant's expense.

3. Color. WECFs shall be white.

4. Equipment Shelters. All equipment necessary for monitoring and operation of the WECF should preferably be contained within the turbine tower. If this is infeasible, ancillary equipment may be located outside the tower, provided it is contained either within an underground vault, or enclosed within a separate structure or secured fence.

5. Lighting. Wind turbines shall be lighted only as required by the Federal Aviation Administration (FAA) or other federal, state or county agency or authority. The applicant shall provide a copy of said authority's determination to establish the required markings and/or lights for the structure. Lighting of equipment structures and any other facilities on site (except lighting required by said authority) shall be shielded from abutting properties.

6. Signage. Signs on the WECF shall be limited to those needed to identify the property and the owner, WECF manufacturer and model number, to warn of any dangers, and educational signs. All signs shall comply with the requirements of Section 6.2.

7. 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.

### **10.2.7 Environmental Standards**

1. Land Clearing/Open Space/Animal Habitat. WECFs and Met Towers shall be designed to minimize land clearing and fragmentation of open space areas and shall avoid impact on permanently protected open space when feasible. WECFs should be sited to make use of previously disturbed and/or developed areas wherever possible. WECFs and Met Towers shall also be located in a manner that does not have significant negative impacts on animal habitat in the vicinity (particularly avian species, bats, etc.).
2. Storm Water. Storm water run-off and erosion control shall be managed in a manner consistent with all applicable state and local regulations and the terms and conditions as imposed by the Planning Board.
3. Noise. The WECF and associated equipment shall conform to Massachusetts noise regulations (310 CMR 7.10) and IEC61400-14 as revised from time to time. An analysis, prepared by a qualified engineer, shall be presented to demonstrate compliance with these noise standards and be consistent with Massachusetts Department of Environmental Protection guidance for noise measurement. Notwithstanding the provisions of 310 CMR 7.10, the Planning Board may impose any reasonable limitation on noise generated by the WECF.
4. Shadow/Flicker. WECFs shall be sited in a manner that does not result in significant shadow or flicker impacts, in the sole opinion of the Planning Board.
5. Interference with Existing Services. WECFs may not interfere with radar, airport communications and guidance systems, point-to-point radio communication links, and other radio communications systems.

### **10.2.8 Application Procedures.**

1. Pre-Application Conference. Prior to the submission of an application for a special permit under this By-Law, the applicant is strongly encouraged to meet with the Planning Board at a public meeting to discuss the proposed WECF in general terms and to clarify the filing requirements. The Planning Board shall meet with an applicant under this regulation within twenty-one (21) days or at the next scheduled meeting, following a written request submitted to the Planning Board.
2. Pre-Application Filing Requirements. The purpose of this conference is to inform the Planning Board as to the nature of the proposed WECF. As such, no formal findings are required for the preapplication conference. However, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the

Planning Board of the location of the proposed WECF, as well as its scale and overall design.

3. Professional Fees. The Planning Board may retain technical experts, consultants and legal counsel to verify information presented by the applicant and provide the Planning Board with guidance on reviewing and approving or denying the application. The cost for such a technical expert or consultant will be at the expense of the applicant, as set forth in M.G.L. c. 44, s. 53G and the Board's Regulations.

**10.2.9 Application Filing Requirements.** The following information will be filed with the Planning Board as part of any application for a special permit for a WECF. ~~In addition, the Planning Board may require the submission of any or all of the materials included in Sections 6.17.10.4.1 through 6.17.10.4.3.4, below.~~

1. Name, address, telephone number and original signature (photoreproductions of signatures or digital signatures will not be accepted) of applicant and any co-applicants. Co-applicants shall include the landowner of the subject property and the operator of the WECF. If the applicant or co-applicant will be represented by an agent, the name, address and telephone shall be provided as well as original signature authorizing the agent to represent the applicant and/or co-applicant. Photo-reproductions of signatures or digital signatures will not be accepted;
2. Documentation of the legal right to install and use the proposed WECF and proof of control over the site and required setback area;
3. Assessor's map and lot number of subject property;
4. Zoning district designation for the subject parcel;
5. Locus Map to scale showing the lot lines of the subject property and all properties within thirteen hundred (1300) feet of the property lines, as well as the location of all buildings, including accessory structures, on all properties shown.
6. Property lines for the subject property and all properties adjacent to the subject property within thirteen hundred (1300) feet;
7. Indication of use of all existing buildings and accessory structures on subject property and all adjacent properties within thirteen hundred (1300) feet. Distances, at grade, from the proposed WECF to each building on the site plan shall be shown;
8. Proposed location of WECF, including all turbines, fencing, associated ground equipment, transmission infrastructure and access roads;
9. Location of all roads, driveways and parking areas, public and private, on the subject property and on all adjacent properties within thirteen hundred (1300) feet including driveways proposed to serve the WECF;

10. All proposed changes to the existing property, including grading, vegetation removal or replacement and temporary or permanent roads and driveways;
11. Representations, dimensioned and to scale, of the proposed WECF, including power cable locations, parking areas and any other construction or development attendant to the WECF;
12. Tree cover and average height of trees on the subject property and adjacent properties within three hundred (300) feet;
13. Contours at each two (2) feet Above Mean Sea Level (AMSL) for the subject property and adjacent properties within three hundred (300) feet;
14. Representation of location of viewpoint for the sight-line diagram referenced below;
15. Siting elevations or views at grade from the north, south, east and west at a sufficient radius to include all permanent structures around the proposed WECF shall be provided to the Planning Board. Elevations shall be at either one-quarter (1/4) inch equals one (1) foot or one-tenth (1/10) inch equals one (1) foot scale, showing items 16-20:
16. The WECF and if applicable the security barrier and associated equipment, with total elevation dimensions of all parts of the WECF;
17. Security barrier. If the security barrier will block views of the WECF, the barrier drawing shall be cut away to show the view behind the barrier.
18. Any and all structures on the subject property;
19. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned; and
20. Grade changes or cuts and fills, to be shown as original grade and new grade line, with two (2) foot contours AMSL.
21. Specifications for the proposed WECF or Met Tower shall be provided for all equipment and attendant facilities.
22. Materials of the proposed WECF shall be specified by type, treatment, and color to include the wind turbine tower and all other proposed equipment and facilities.
23. A landscape plan including existing trees and shrubs and those proposed to be added or removed, identified by size of specimen at installation and species.

24. The applicant shall provide a description of any WECF fire protection system and a copy of the project summary, an electrical schematic, and plot or site plan to the local emergency services designated by the Planning Board. The applicant shall cooperate with local emergency services in developing an emergency response plan. All means of disconnecting the WECF shall be clearly indicated on the materials provided, and marked on each wind turbine. The applicant or WECF owner shall maintain a phone number and identify a responsible person for the public and Inspector of Buildings to contact throughout the life of the WECF.

**10.2.10 Monitoring and Maintenance.** The applicant shall maintain the WECF in good condition and shall schedule inspections by a competent professional at least once every twelve (12) months or more often, pursuant to industry standards and practice. The results of the inspection and any resulting repair work shall be submitted to the Planning Board and the Inspector of Buildings within thirty (30) days of the receipt of results of such evaluation by the applicant or WECF owner. Maintenance shall include, but not be limited to, required scheduled and unscheduled inspection, maintenance of all turbine components, including the structural integrity of the foundation, repair, painting, and maintenance of all equipment and support structures and security barriers, access, and landscaping.

1. The applicant shall provide to the Planning Board and the Inspector of Buildings addresses, telephone numbers and any other necessary contact information for the special permit holder, each property owner, and each WECF owner. Notice shall be provided to the Planning Board and the Inspector of any change in this information.

**10.2.11. Modifications.** Any modifications to a WECF made after issuance of the special permit shall require approval by the Planning Board pursuant to this Section.

**10.2.12 Discontinuance of Use.** At such time that a WECF or Met Tower is scheduled to be discontinued, the applicant will notify the Planning Board and the Inspector of Buildings by certified U.S. mail of the proposed date of discontinuation of operations and the plans for removal of the WECF, unless caused by force majeure. The WECF shall be considered discontinued if the WECF is not in operation for one hundred eighty (180) consecutive days, or has reached the end of its useful life. In the case of a two (2)-turbine WECF, the Planning Board shall stipulate in its special permit decision how this requirement shall apply in the event that only a portion of the entire WECF is out of operation for the 180-day period.

1. Upon request, the permit holder shall provide evidence to the Inspector of Buildings demonstrating continued use of the WECF or Met Tower. Failure to provide such evidence within thirty (30) days of a written request from the Inspector of Buildings, addressed to the contact address provided and maintained by the permit holder as required herein, shall be conclusive evidence that such WECF or Met Tower has been discontinued. Upon a finding of discontinuance, the Inspector shall issue a Notice of Discontinuance to the permit holder and to the owner of the site by certified mail, delivery receipt requested.

2. Upon receipt of a Notice of Discontinuance from the Inspector of Buildings, the owner shall physically remove the WECF or Met Tower within ninety (90) days. This period may be extended at the request of the operator and at the discretion of the Planning Board. "Physically Remove" shall include, but not be limited to:

- a. Removal of the wind turbine and tower, all machinery, equipment, equipment shelters, security barriers and all appurtenant structures from the subject property;
- b. Proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations; and
- c. Restoration of the location of the WECF or Met Tower to its natural condition, except that any landscaping or grading may remain in the after-condition. All visible foundations to be removed to two (2) feet below grade in the vicinity of the structure.

**10.2.13 Financial Surety.** As a condition of the issuance of a special permit the Planning Board shall require the applicant to provide a form of surety (i.e., a bond, escrow account or other form of security satisfactory to the Planning Board) to the Town prior to commencing construction of the WECF, to cover costs of the removal in the event the permit holder does not remove the WECF as required. The amount of such surety shall be equal to one hundred twenty-five (125) percent of the cost of removal in compliance with Section 10.2.12. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The permit holder shall adjust the total amount of security every five (5) years as necessary to ensure that it reflects current estimated removal costs plus twenty-five (25) percent contingency.

**10.2.14 Term of Special Permit.** A special permit issued for any WECF shall be valid for twenty (20) years. Upon application the Planning Board may extend the term of the special permit upon a finding of satisfactory operation of the WECF. Upon the expiration of the special permit the WECF shall be removed by the applicant as per Section 10.2.12.

#### ~~6.17.11 SPECIAL PERMIT FILING~~

~~The Special Permit shall not be effective until filed with the Registry of Deeds.~~

## SECTION 11.0 ADMINISTRATION AND PROCEDURES

### 11.1 PERMITS

**11.1.1 Inspector of Buildings.** The office of the Inspector of Buildings is responsible for 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 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. When a special permit, site plan approval, or variance has been may be granted with conditions, such conditions shall be imposed and enforced made part of the record. by the Inspector of Buildings.

**11.1.2 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.

### 11.2 ENFORCEMENT.

**11.2.1 Inspector of Buildings.** The office of the Inspector of Buildings is responsible for the enforcement of this By-law. The Inspector of Buildings is also responsible for the enforcement of any conditions set forth in site plan approval, a special permit, or a variance.

**11.1.2 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.

**11.1.3 Noncriminal Disposition.** In addition to the procedures for enforcement as described in the previous paragraph, the provisions of this By-law may be enforced by the Inspector of Buildings by noncriminal complaint pursuant to the provisions of M.G.L. c. 40, s. 21D. The penalty for violation of any provision of this By-law shall be \$25.00 for the first offense; \$50.00 for the second offense; \$100.00 for the third offense and \$200.00 for the fourth and each subsequent offense.

### 11.3 ZONING BOARD OF APPEALS

**11.3.1 Appointment; Organization.** The Zoning Board of Appeals shall consist of five regular members and two associate members appointed by the Board of Selectmen for three year terms. The regular members shall be appointed such that the term of at least 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.

**11.3.2 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.

**11.3.3 Powers.** The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this By-Law. The Board's powers are as follows:

1. To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority.
2. To hear and decide appeals or petitions for variances from the terms of this By-Law, with respect to particular land or structures, as set forth in M.G.L. c. 40A, s. 10. The Board of Appeals shall not have the power to grant use variances; provided, however, that a use variance may be granted in the Limited Commercial District upon a written finding by the Board of Appeals that, in addition to the requirements set forth in Section 7.4.6 M.G.L. c. 40A, s. 10, the specific conditions set forth in Section 11.5 of this e Manchester by the Sea Zoning By-Law have been considered.
3. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.
4. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

**11.3.4 Regulations.** The Board of Appeals may adopt rules and regulations for the administration of its powers.

**11.3.5 Fees.** The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

~~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 ByLaw, by any regional planning agency in whose area the Town of Manchester bythe 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 198~~

## **11.4 PLANNING BOARD**

**11.4.1 Establishment.** The Planning Board shall consist of seven (7) elected members and one appointed associate member.

**11.4.2 Powers.** The Planning Board shall have the following powers:

1. To hear and decide applications for special permits, when designated as the SPGA in this By-Law.

2. To hear and decide applications for site plan approval pursuant to Sections 11.5 and 11.8.

**11.4.3 Regulations.** The Planning Board may adopt rules and regulations for the administration of its powers.

**11.4.4 Fees.** The Planning Board may adopt reasonable administrative fees and technical review fees for applications for special permits and site plan review.

~~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.

## 11.5 SPECIAL PERMITS

**11.5.1 Special Permit Granting Authority.** When designated by this By-Law, the Board of Appeals, the Board of Selectmen, and the Planning Board shall act as the Special Permit Granting Authority (SPGA).

~~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 ByLaw. 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]~~

**11.5.2 Criteria.** Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.

### 7.5—Special Permits

~~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:~~

~~Adequacy of the site in terms of size for the proposed use;  
Suitability of the site for the proposed use;~~

~~Impact on traffic flow and safety;  
Impact on neighborhood visual character, including views and vistas;  
Adequacy of method of sewage disposal, source of water and drainage;  
Adequacy of utilities and other public services;  
Impact on public or private water supplies, wildlife habitats and other natural resource issues  
deemed appropriate by the special permit granting authority.~~

**11.5.3 Procedures.** An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.

**11.5.4 Conditions.** Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-Law. Such conditions may include, but are not limited to the following:

~~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—~~

1. Setback requirements greater than the minimum required by this By-Law;
2. Requirements as to installation of screening, fencing or other means of protecting adjacent property;
3. Modification of the exterior features or appearance of any structure;
4. Limitation as to size, number of occupants, or method and time of operation of any proposed use;
5. Regulation of number, design and location of access drives and other traffic features;
6. Requirement of off-street parking and other special features;
7. Installation of mechanical or other devices to limit noise, light, odor or other objectional aspects of use; and
8. Requirement for surety bonds or other security for the performance of any conditions attached to the special permit.

**11.5.5 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,~~ as the SPGA may be, 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 SPGA may refer a special permit application to any other town agency, board, or 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 SPGA 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 SPGA 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.

**11.5.6 Plans.** Unless otherwise provided, the rule or regulation of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 11.5, herein.

*(The provisions of this Section shall not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two family structure. The PGA shall establish procedures governing such applications by regulation.)*

**11.5.7 Regulations.** The Special Permit Granting Authority may adopt rules and regulations for the administration of this section.

**11.5.8 Fees.** The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

**11.5.9 Lapse.** Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 36 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

~~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 ByLaw. 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.~~

## 11.6 SITE PLAN REVIEW

**11.6.1 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 is to ensure the design and layout of certain developments permitted as a matter of right, by special permit, or by variance. Site plan review is intended to promote will constitute suitable development that and will not result in a detriment to the neighborhood or the environment.

**11.6.2 Applicability.** The following activities shall require site plan approval from the Planning Board:

a. 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 6.1, require five (5) or more parking spaces, regardless of the number of parking spaces preexisting on the premises; and

b. Any site development which involves cutting or removal of vegetation of , shall be permitted only upon site plan approval the issuance of a special permit from the Planning Board. for Site Plan Review. Site plan approval A special permit shall be granted only if the Planning Board permit granting authority finds that such approval it is consistent with the purposes set forth in this Section 11.6. outlined in Section 6.9.1 of this By Law.

**11.6.3 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. The Planning Board shall serve as the approval authority for site plan review. All decisions shall be made by a majority of the Board, as constituted. Applications shall be accompanied by at least eleven (11) prints of the plans of the proposal.

**11.6.4 Site Plan 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 the following:

1. Locus map at a scale not greater than 1'=2,000';.
2. All existing and proposed buildings and structures;
3. All existing and proposed contour elevations;
4. All existing and proposed parking spaces, driveway openings, driveways, and service areas;
5. All existing and proposed facilities for sewage, refuse, and other waste disposal;
6. All wetlands, surface water, and areas subject to the 100-flood;
7. All existing and proposed facilities for surface water drainage;
8. All existing and proposed landscape features such as fences, walls trees and planting areas, walks and lighting.
9. All contiguous land owned by the applicant or by the owner of the property.

**11.6.5 Additional Application Requirements.** The applicant shall also submit the following in accordance with Section 6.4:

1. 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.
2. 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.
3. 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.

**11.6.6 Waiver of Technical Compliance.** The Board may, upon written request of the applicant, waive any of the technical or procedural requirements of this Section where the project involves relatively simple development plans.

**11.6.7 Decision; Criteria.** Site plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. The Planning Board

shall use the parking, signage, landscaping and other performance standards prescribed in Section 6.0 of this By-law in considering all site plans, in order to promote the following goals:

~~The following objectives, in addition to the performance standards prescribed in Section 6.0 of this Ordinance, shall be utilized by the Planning Board in considering all site plans. These objectives are intended to provide specific guidelines for the applicant in the development of site plans. It is intended that the site plan for each use be prepared with due consideration for:~~

1. 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;
2. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
3. Adequacy of facilities of handling and disposal of refuse and other production by-products;
4. Protection of environmental features on the site and in adjacent area;
5. Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood;
6. 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;
7. Compliance with all applicable sections of this By-Law.

~~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.~~

**11.6.8 Performance Guarantee.** As a condition of **site plan approval** ~~the granting of special permits for any uses requiring a special permit under this section, the Planning Board may~~ shall require that construction and site alteration permitted and specified by said **approval** ~~special permit~~ be secured by one, or in part by one and in part by the other, of the methods set forth in M.G.L. c. 41, s. 81U (except for the statutory covenant). ~~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 Manchesterby the Sea Zoning By Laws.

**11.6.9 Release of Guarantee.** Performance guarantees erformance 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 any bond or 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 site plan approval. 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 site plan approval 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 any bond shall cease and terminate by operation of law, and any deposit shall be returned. 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.~~

**11.6.10 Lapse.** Site plan approval shall lapse after two years from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

**11.6.11 Regulations.** The Board may adopt reasonable regulations for the administration of site plan review.

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

**11.6.13 Appeal.** Any decision of the Planning Board pursuant to this Section shall be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

~~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 ByLaws have been observed. [Added 1987]~~

~~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:~~

- ~~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;~~
- ~~Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;~~
- ~~Adequacy of facilities of handling and disposal of refuse and other production by products;~~
- ~~Protection of environmental features on the site and in adjacent areas;~~
- ~~Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood;~~
- ~~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;~~
- ~~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 Inspector of Buildings 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 ByLaws have been observed. [Amended 1987]

## **11.7 REQUEST FOR REASONABLE ACCOMMODATION.**

**11.7.1 Purpose.** Under the FHA, it is a discriminatory practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling" 42 U.S.C. § 3604(f)(3)(B). The same standard applies under the ADA, which also addresses nonresidential facilities providing services to persons with disabilities. 42 U.S.C. 12112(b)(5).

The purpose of this Section is to facilitate housing and/or services for persons with disabilities and to comply fully with the spirit and the letter of the FHA and, where applicable, the ADA.

**11.7.2 Request.** Any person eligible under the FHA or any provider of housing to persons eligible under the FHA, or any person eligible to operate a nonresidential facility providing services to persons eligible under the ADA, may request a Reasonable Accommodation as provided by the Fair Housing Act and/or the ADA. A Request for a Reasonable Accommodation does not affect a person's or provider's obligations to act in compliance with other applicable laws and regulations not at issue in the requested accommodation.

**11.7.3 Zoning Board of Appeals.** All requests for Reasonable Accommodation under the FHA and/or the ADA shall be submitted to the Zoning Board of Appeals (ZBA).

**11.7.4 Information.** All requests for Reasonable Accommodation shall be in writing and provide, at a minimum, the following information:

1. Name and address of person(s) or entity requesting accommodation;
2. Name and address of property owner;
3. Name and address of dwelling or facility at which accommodation is requested;
4. Description of the requested accommodation and specific regulation or regulations for which accommodation is sought;
5. Reason that the requested accommodation may be necessary for the person or persons with disabilities to use and enjoy the premises; and
6. If the requested accommodation relates to the number of persons allowed to occupy a dwelling, the anticipated number of residents, including facility staff (if any).
7. If necessary to reach a decision on the request for Reasonable Accommodation, the ZBA may request further information from the applicant consistent with the FHA and/or ADA, specifying in detail the information required.

**11.7.5 ZBA Procedures.** The ZBA shall decide a request for reasonable accommodation by majority vote at an open meeting. The ZBA may hold a public hearing using the procedures, including notice, set forth in M.G.L. c. 40A, §§ 11 and 15. The deadlines imposed in M.G.L. c. 40A, s. 11 or s. 15 may be extended upon the request of the applicant and the approval of the ZBA. The ZBA may seek information from other Town agencies in assessing the impact of the requested accommodation on the rules, policies, and procedures of the Town. Upon written notice to the ZBA, an applicant for a reasonable accommodation may withdraw the request without prejudice. The ZBA shall consider the following criteria when deciding whether a request for accommodation is reasonable:

1. Whether the requested accommodation is reasonable;
2. Whether the requested accommodation would require a fundamental alteration of a legitimate City policy; and
3. Whether the requested accommodation would impose undue financial or administrative burdens on the City government.

**11.7.6 Decision.** After conducting an appropriate inquiry into the request for reasonable accommodation, the ZBA may:

1. Grant the request;
2. Grant the request subject to specified conditions; or
3. Deny the request.

The ZBA shall issue a written final decision on the request in accordance with M.G.L. c. 40A, s. 15. If the ZBA fails to render its decision on a request for reasonable accommodation within the time allotted by M.G.L. c. 40A, s. 15, the request shall be deemed granted. The ZBA's decision shall be filed with the Town Clerk and sent to the applicant by certified mail.

**11.7.7 Appeal.** The ZBA's decision pursuant to this Section may be appealed to a court of competent jurisdiction in accordance with M.G.L. c. 40A, s. 17 or otherwise.

**11.7.8 File.** The ZBA shall maintain a file of all requests for reasonable accommodation under the FHA and/or the ADA and a file of all decisions made on such requests. The file(s) may be reviewed in the Office of the ZBA upon request during regular business hours.

**11.7.9 Other Laws.** While a request for a reasonable accommodation is pending, all laws and regulations otherwise applicable to the premises that is the subject of the request shall remain in full force and effect.

## **11.8 SITE PLAN REVIEW FOR DOVER AMENDMENT USES**

**11.8.1 Purpose.** The purpose of this Section is to provide for site plan review of religious uses, educational uses, and child care centers otherwise "exempt" pursuant to G.L. c. 40A, s. 3. These are items B.1, B.2 and B.3 in the Table of Use and Parking Regulations.

**11.8.2 Site Plan Review Required.** Prior to the issuance of any building permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of uses B.1, B.2, or B.3, as set forth in the Table of Use and Parking Regulations, shall require site plan approval from the Planning Board pursuant to this Section.

**11.8.3 Scope of Site Plan Review.** Under this Section, Site Plan Review shall be limited to two inquiries:

1. Whether the use qualifies for protection under G.L. c. 40A, s. 3; and, if so,
2. What reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements, if any, should be imposed on the use.

**11.8.4 Required Information.** All applications for Site Plan Review shall be in writing and provide, at a minimum, the following information:

1. Name and address of applicant person or entity;
2. Name and address of property owner;
3. Description of the proposed use and any documents necessary to establish threshold compliance with G.L. c. 40A, s. 3;
4. Reason that relief is requested from otherwise applicable zoning requirements;
5. If necessary to reach a decision on the application, the Planning Board may request further information from the applicant consistent with G.L. c. 40A, s. 3, specifying in detail the information required.

**11.8.5 Site Plan; Contents.** In addition, the applicant shall submit a site plan with the following information:

1. Legend depicting all pertinent existing and proposed site features.
2. The date and north arrow shall be shown on the plans.
3. All site plans must be stamped by a Registered Professional Civil Engineer and a Professional Land Surveyor. The land surveyor shall perform an instrument boundary survey and shall certify the accuracy of the locations of the buildings, setbacks, and all other required dimensions to property lines.
4. Zoning Chart depicting "Required" vs. "Provided" for all applicable Zoning Criteria including Lot Size, Frontage, Setbacks, Building Height, Lot Coverage, Parking Spaces, Landscaping Requirements.
5. Locus map, at a scale of 1" = 600' or suitable scale to accurately locate the site in Town, oriented on the plan in the same way as the large-scale plan.

6. The location, width, status (public or private), and name of all streets within 100' of the project.
7. On-site and abutting lot lines. On-site lot lines shall be described by bearings and distance. Abutting lot lines shall be shown in a general way.
8. Zoning District lines, including overlay districts if applicable.
9. The location of existing or proposed building(s) on the lot shall be shown with total square footage and dimensions of all buildings.
10. Any streams, brooks, or wetland resource area boundaries within 100' of the property lines.
11. Information on the location, size and type and number of existing and proposed landscape features.
12. Information on the location, size and capacity of existing and proposed on-site and abutting utilities, (water, sewer, drainage, natural gas, electrical cable, etc.) including utilities in abutting side streets, if applicable.
13. Detailed locations and dimensions of all existing and proposed buildings and uses on site and on abutting properties, including exterior details relating to the building footprint. All existing and proposed setbacks from property lines. Any minimum, or below minimum, setback distances shall be clearly noted as such on the plan.
14. Information and details for all site and directional on-site signage shall be submitted.
15. Elevation and facade treatment plans of all proposed structures. Color renderings are required for new construction.
16. Information on the location, size and type of parking, loading, storage and service areas. A parking calculation schedule noting existing, required and proposed spaces for the entire site shall be provided.
17. Details and specifications (if applicable) for proposed site amenities, including, but not limited to fences, recreation facilities, walls or other barrier materials; and special paving materials.

**11.8.6 Decision.** The Planning Board may approve, approve with conditions, or deny an application for site plan approval. In making its decision, the Board shall be guided exclusively by G.L. c. 40A, s. 3. The Board shall file a written decision with the Town Clerk within 90 days of receipt of the application. Failure to file a decision within ninety (90) days shall constitute approval of the site plan.

**11.8.7 Appeal.** Any appeal of the Planning Board's decision shall be made pursuant to G.L. c. 40A, s. 17, to a court of competent jurisdiction.

## SECTION 12.0 DEFINITIONS

For the purpose of this By-law certain terms and words shall have the following meanings. Words used in the present tense include the future; the singular number includes the plural; the plural the singular; the words "used" or "occupied" include the words "designed," "arranged," "intended," or "offered," to be used or occupied; the words "building," "structure," "lot," "land," or "premises" shall be construed as though followed by the words "or any portion thereof"; and the word "shall" is always mandatory and not merely directory. Terms and words not defined herein but defined in the Subdivision Rules and Regulations shall have the meanings given therein unless a contrary intention clearly appears.

**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.

**Accessory Dwelling Unit:** A dwelling unit accessory to the principal unit as governed by Section 8.1.

**Adult Entertainment Establishments:** Shall include and be defined as follows:

**Adult Bookstore:** An establishment having as a substantial or significant portion of its stock in trade printed matter, books, magazines, picture periodicals, motion picture films, video cassettes, or coin operated motion picture machines for sale, barter or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "sexual conduct" as that term is defined in G.L. c. 272, s. 31; "Sexual Devices" or an establishment having for sale sexual devices which shall mean any artificial human penis, vagina or anus or other device primarily designed, promoted or marketed to physically stimulate or manipulate the human genitals, pubic area or anal area, including: dildos, penisators, vibrators, penis rings, erection enlargement or prolonging creams or other preparations or an establishment with a segment or section devoted to the sale or display of such materials.

**Adult Motion Picture Theater:** An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "sexual conduct" as defined in G.L. c. 272, s. 31, for observation by patrons therein.

**Adult Mini Motion Picture Theater:** An enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by emphasis on matter depicting, describing or relating to "sexual conduct" as defined in G.L. c. 272 s. 31 (as defined below) for observation by patrons therein.

**Adult Live Entertainment Establishments:** Establishments which feature live entertainment which consists of entertainers engaging in "sexual conduct" or

"nudity" as defined in G.L. c. 272, s. 31.

**Affordable housing:** A dwelling unit available for rental or sale by a low or moderate income household in accordance with the regulations of the Commonwealth's Department of Housing and Community Development and eligible for inclusion on the Subsidized Housing Inventory.

**Agriculture:** The cultivation of ground for purpose of producing fruits and vegetables for the use of man and beast, or the act of preparing the soil, sowing and planting seeds, dressing plants and removing crops, and includes aquaculture, horticulture, silviculture, viticulture, and raising or feeding of cattle and other livestock.

**Assisted Living Residence:** A residential development subject to certification by the executive office of elder affairs under G.L. c. 19D and 651 CMR 12.00.

**Boarder:** An individual other than a family member occupying a dwelling unit who, for consideration, is furnished sleeping accommodations, meals, and may be provided personal care or other services, but excluding guests at a bed and breakfast.

**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".

**Building height:** See Section 4.1.4 and the definition of "Grade, mean pre-construction."

**Business or Professional Office:** A business establishment, which does not offer a product or merchandise for sale to the public but offers a professional service to the public. However, general or personal service establishments are not to be included in the definition of business offices.

**Child Care Center:** A child care center as that term is defined in G.L. c. 15D, s. 1A.

**Commercial Recreation, Indoors:** Entertainment and recreational facilities operated as a business for gain, including but not limited to bowling alley, theater, fitness center, or sports arena, provided such use is housed indoors in sound-insulated structure protecting neighborhood from inappropriate noise in any season.

**Commercial Recreation, Outdoors:** Golf, swimming, tennis, or other outdoor recreational facility.

**Drive-In or Drive-Through Establishment:** A business establishment that includes service that is provided from a drive-up or drive-through window or other similar arrangement that allows the service of a patron while the patron remains in a vehicle, whether parked or live parked. The term shall include eating establishments and service establishments such as banks, dry cleaners, pharmacies, and the like, and automotive service stations and gasoline stations and the like.

**Dwelling:** A privately or publicly owned permanent structure containing a dwelling unit or dwelling units. The terms "one family," "two family," or "multifamily" dwelling

shall not include hotel, lodging house, hospital, membership club, trailer, however mounted, or dormitory or structure solely for transient or overnight occupancy.

**Dwelling, single family:** A dwelling designed for occupancy by one family.

**Dwelling, two family:** A dwelling with two dwelling units, separated by a fire wall.

**Dwelling, Multifamily:** A building containing three or more dwelling units constructed on a single lot.

**Dwelling Unit:** One or more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit, with permanent provisions for cooking, living, sanitary, eating, and sleeping facilities.

**Earth Removal:** The following definitions shall apply in Section 6.6:

**15% Slope:** A rise in grade of fifteen feet over a horizontal distance of one hundred feet.

**Best Management Practice (BMP):** A structural, non-structural, or vegetative measure which reduces erosion, sediment, peak storm discharge, and/or improves the quality of stormwater runoff as described in the Stormwater Management Handbook.

**Earth:** Oil, sod, loam, peat, humus, clay, sand, gravel, stone, and ledge.

**Electric Charging Station, Level Two:** A facility equipped with a compatible cable such as J-1772, for the recharging of the batteries of motor vehicles.

**Essential Services:** Services and facilities offered by public utility or governmental agency by the erection, construction, alteration, or maintenance of underground or overhead gas, electrical, steam, or water transmission or distribution systems and structures, excluding power plants or transfer stations. Facilities necessary for the provisions of essential services include poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith. Specifically excluded from this definition are municipal, state, or federal services and facilities.

**Family:** One or more persons occupying a dwelling unit and living as a single, housekeeping unit.

**Family day care home, large:** An accessory use as defined in G.L. c. 15D, s. 1A.

**Family day care home, small:** An accessory use as defined in G.L. c. 15D, s. 1A.

**Floor Area, Gross:** The sum of the areas of the several floors of a building, measured from the exterior faces of the walls. It does not include cellars, unenclosed porches or attics not used for human occupancy or any frontage.

**Funeral Home:** Facility for the conducting of funerals and related activities such as

embalming.

**General Service Establishment:** Shop for lawn mower or small appliance repair, upholstery or furniture repair, bicycle repair person, printer, blacksmith, builder, carpenter, caterer, electrician, lawn mower service person, mason, painter, plumber or roofer.

**Grade: Mean pre-construction:** The average elevation as taken at twenty foot intervals around the full perimeter of the building including all attached garages, decks, bays and building extensions.

**Ground and Surface Water Resource Protection Overlay District:** for the purposes of Section 9.3, the following definitions shall apply:

Applicant: Any person filing an application.

Department: The Massachusetts Department of Environmental Protection (DEP).

Person: 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: The 400-foot protective radius required by the Department around a public water supply well or wellfield.

Zone II: That area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield, with no recharge from precipitation), 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: 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: (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:** 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:** 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:** Those substances found in the SPGA's Rules and Regulations, incorporated herein by reference.

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

**Home Occupation:** An accessory use as set forth in Section \*\*\*.

**Hospital:** A building providing 24-hour in-patient or animal services for the diagnosis, treatment or other care of human or animal ailments including, where appropriate, a sanitarium, nursing home, convalescent home, and veterinarian services.

**Hotel:** A building or any part of a building containing rooming units without individual cooking facilities for transient occupancy and having a common entrance or entrances. A hotel may include a restaurant, bar or tavern, and accessory recreational facilities. Does not include a motel, boarding house, lodging house, or rooming house.

**Junk Yard:** A yard, field or other area used as a place for storage for more than thirty days for three or more unserviceable, discarded, worn-out, or junk motor vehicles. Also a yard, field, or other area used as a place of storage for discarded, worn-out or junk plumbing, heating supplies, household appliances or furniture; and/or discarded, scrapped or junk lumber; and/or old scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste, and/or scrap metal.

**Kennel:** An establishment as defined in G.L. c. 140, s. 137A.

**Large-Scale Ground-Mounted Solar Photovoltaic Installation (LGSPI):** for the purposes of Section 10.1, the following definitions shall apply:

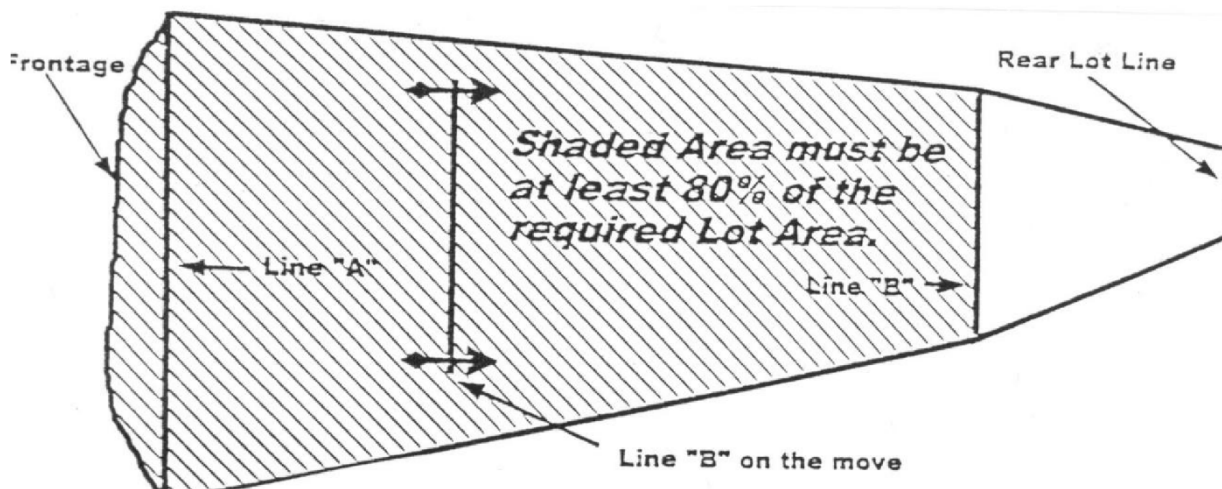
**Large-Scale Ground-Mounted Solar Photovoltaic Installation (LGSPI):** A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

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

**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.

**Lot Frontage:** The distance between opposing side lot lines where they intersect the street measured along, and following the angle or curve of, the street right of way.

**Lot Width:** Lot Width shall mean the length between the side lot lines of a straight line as measured generally 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)



**Manufacturing:** A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products.

**Marijuana Businesses:** The following definitions shall apply in Section 7.4:

**Marijuana Business:** A Medical Marijuana Treatment Center, Marijuana Establishment, or any combination or part thereof.

**Marijuana Establishment:** A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer, or any other type of licensed marijuana-related business for the non-medical, including recreational use of marijuana, as set forth in M.G.L. c. 94G, and any regulations promulgated thereunder.

**Medical Marijuana Treatment Center:** As defined by 105 CMR 725.000, et al., as it may be amended or superseded, and pursuant to all other applicable state laws and regulations, means a not-for-profit entity registered under 105 CMR 725.100, otherwise known as a Registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers, as those terms are defined under 105 CMR 725.004. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of Marijuana.

**Recreational Marijuana Establishment:** a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

**Medical Clinic:** A facility as defined in 105 CMR 145.020, including a mobile clinic and urgent care facility.

**Medical Office:** A building designed and used as an office by physicians, dentists, or psychotherapists for the diagnosis and treatment of human patients that does not include overnight care facilities or licensing as a clinic.

**Private Club, not for profit:** A social, sports or fraternal nonprofit association or organization which is used exclusively by members and their guests which may contain bar facilities.

**Motel:** A building or any part of a building containing rooming units without individual cooking facilities for transient occupancy and having a common entrance or entrances. Generally, does not include a restaurant, bar or tavern, or accessory recreational facilities. Does not include a boarding house, lodging house, or rooming house.

**Motor Vehicle Hourly Rental Station:** A facility at which, by contract, motor vehicles are made available for rent for a period not longer than 24 hours.

**Motor Vehicle Light Service Station:** A building or premises used for the dispensing, sales or offering for sale of motor fuels directly to users of motor vehicles. Other sales activities and any repairs shall be activities minor in scope and clearly subordinate to the sale of motor fuels, oils and lubricants. No drive-through facilities are permitted without further zoning relief.

**Motor Vehicle Repair:** A building or use which is designed or intended to be used for the storage, servicing, repair, maintenance, or cleaning of motor vehicle equipment.

**Motor Vehicle Sales:** Premises for the sale of used or new motor vehicles, including supplying of fuel, oil, lubrication, washing, or repair services, but not to include body work or painting.

**Municipal yards and facilities:** Town yards and related storage facilities for de-icing, sand, construction materials, and the like.

**Parking Area:** Five (5) or more parking spaces serving a nonresidential or multi-family building.

**Personal Service Establishment:** A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, and the like.

**Personal Wireless Telecommunications Service Facilities:** The following definitions shall apply for the purposes of Section 7.1:

**Personal Wireless Telecommunication Service:** Commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

**Personal Wireless Telecommunication Service Facilities:** Facilities for the provision of personal wireless telecommunication services.

**Qualified Acre:** Agricultural land on which the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture.

**Retail:** A facility selling new or used goods to an end user but not otherwise specifically listed in the Table of Use Regulations.

**School Aged Child Care Program:** A school aged child care program as that term is defined in G.L. c. 15D, s. 1A.

**Senior Housing:** The following definitions shall apply in Section 8.6:

**Assisted Living Facility:** A residential development subject to certification by the Executive Office of Elder Affairs under G.L. c. 19D and 651 CMR 12.00.

**Continuing Care Facility:** A facility regulated by G.L. c. 93, s. 76.

**Independent Living Facility:** A facility providing apartments for rent, with optional services on the site for the convenience of residents, including but not limited to transportation, barber/beauty services, sundries for personal consumption, laundry services and other amenities, provided such uses serve primarily the residents and staff of the facility.

**Long Term Care Facility:** A facility, including a convalescent or nursing home, rest home, infirmary maintained in towns, and charitable homes for the aged, as defined and regulated in 105 CMR 150.001.

**Senior Housing:** Housing for persons over the age of 55 subject to the Senior Housing Laws, as defined herein.

**Senior Housing Facility:** An Assisted Living Facility, Continuing Care Facility, Independent Living Facility, or Long Term Care Facility, whether operated as a free-standing facility or in combination with another type of facility on the same lot or adjacent lot in common control.

**Senior Housing Laws:** Collectively and separately, the Fair Housing Act, 42 USC Section 3607(b), 24 CFR Subtitle B, Ch. 1, Section 100.300 et seq. and G.L. c. 151B, s. 4.

**Sign:** For the purposes of Section 6.2, the following definitions shall apply:

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

**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.

**Story, half:** 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.

**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 fence.

**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

**Veterinary facility or clinic:** A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short term care incidental to the use.

**Warehouse:** A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises.

**Warehouse, Mini or Self Storage:** Establishment providing individual storage units for long or short term rental to persons or businesses.

Wind Energy Conversion Facilities: For the purposes of Section 10.2, the following definitions shall apply:

Distributed Generation: Energy generation that is located at or near the end-user.

Height: The height of a wind turbine measured from grade elevation at the base of the tower to the elevation at the tip of the blade at its highest point.

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

Rotor: The blades and hub of the wind turbine that rotate during turbine operation.

Wind Energy Conversion Facility (WECF): All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, all transmission, storage, collection and supply equipment, substations, transformers, site access, service roads and machinery associated with the use.

Wind Monitoring or Meteorological Test Tower (Met Tower): A temporarily installed tower used for supporting anemometer, wind vane and other equipment to assess the wind resource at a predetermined height above the ground.

Wind Turbine: A device that converts kinetic energy of the wind into rotational energy to turn an electrical generator shaft. A wind turbine typically consists of a rotor, nacelle and supporting tower.

**Wholesale:** Sale of goods not at retail.

**Yard:** A portion of a lot, upon which the principal building is situated, unobstructed artificially from the ground to the sky, except as otherwise provided herein. A court shall not be considered to be a yard or any part thereof.

**Yard, Front:** A yard extending for the width of the lot between the front line of the nearest building wall and the front lot line.

**Yard, Rear:** A yard, except by an accessory structure or accessory use as herein permitted, extending for the full width of the lot between the rear line of the building wall and the rear lot line.

**Yard Side:** Yard extending for the full length of a building between the nearest building wall and the side lot line.

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