

## **THE FOLLOWING IS FOR INFORMATIONAL PURPOSE ONLY**

### **TOWN OF BERKLEY - ARTICLE 21 ZONING**

#### **SECTION 1. PURPOSE**

These regulations are enacted to promoted the general welfare of the Town of Berkley, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the town, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by the provisions of the Zoning Act, G.L. c. 40A, as amended, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

#### **SECTION 2. ESTABLISHMENT OF DISTRICTS**

- A. The Town of Berkley is hereby divided into several types of districts designated as:
  1. Residential ( R)
  2. General Business (GB)
  3. Special Business Overlay (SBO)
- B. Districts are hereby established as shown on a map entitled, "Official Zoning Map Town of Berkley", dated October 9, 2007 as amended. The map with all explanatory matter thereon and amendments thereto, is hereby incorporated and made a part of this Bylaw and is filed with the Town Clerk.
- C. Where the boundary lines are shown upon the Official Zoning Map of the Town of Berkley within the street lines of public and private ways, or utility lines, the center of such ways or lines shall be the boundary lines, unless otherwise indicated.
- D. Where the boundary lines are shown approximately on the location of property or lot lines, and the exact location of property, lot or boundary lots is not indicated by means of dimension shown in figures, then the property or lot lines shall be those lines as depicted on the Official Zoning Map.
- E. The words and terms shall have the meaning defined below; singular shall include plural; and the word "shall" indicates a requirement.

#### **SECTION 3. DEFINITIONS**

##### ***ACCESSORY BUILDING OR USE:***

A building or use located on the same lot as the principal permitted building or use and customarily incidental to such main permitted building or use.

##### ***ASSISTED LIVING RESIDENCE:***

A housing option for older adults who need some assistance with activities of daily living, but do not require the kind of 24-hour nursing and medical care provided by nursing facilities. The residences provide a combination of housing, personal services, and health care to

individuals who cannot or choose not to live alone due to limitations with activities of daily living as defined by Massachusetts General Law Chapter 19D, Section 1.

***BUILDING:***

A structure having a roof and used or intended to shelter people, animals, or goods.

***CONTINUING CARE RETIREMENT COMMUNITY (CCRC):***

A residential community for older adults that combines independent retirement living, assisted living and nursing facility care, usually on one campus.

***DRIVE-THROUGH FACILITY:***

A commercial facility which provides a service directly to a motor vehicle or where the customer drives a motor vehicle onto the premise and to a window or mechanical device through or by which the customer is serviced without exiting the vehicle. This shall not include the selling of fuel at a gasoline filling station or the accessory functions of a carwash facility such as vacuum cleaning stations.

***DRIVEWAY/ CURB CUT SPACING:***

The distance between connections, measured from the closet edge of pavement of the driveway or curb cut to the next closest edge of the pavement along the public/private roadway.

***DWELLING:***

A single unit providing independent living facilities for one household, including permanent provisions for living, sleeping, cooking, eating and sanitation.

***FAST FOOD RESTAURANT:***

Any restaurant serving the majority of its food in disposable containers, packages, or other similar wrapping, for consumption on or off the premises.

***FRONTAGE:***

A continuous boundary line between a lot and a single street providing physical and legal access to the lot.

***GROSS FLOOR AREA:***

Sum of the area of all stories of a building measured from the exterior faces of the exterior walls including any floor area below grade when used for office, business, storage or other purposes, but excluding any area used exclusively for heating, air conditioning or other mechanical equipment, and excluding floor area intended or designed for accessory off-street parking.

***HOME OCCUPATION:***

An activity conducted in a dwelling by a resident thereof which makes use of no equipment or process creating noise, vibration, glare, fumes, odors, electrical or radio magnetic interference detectable to persons on adjacent premises, and which does not generate a greater volume of traffic or parking than would normally be expected from a residence.

***INDUSTRY:***

Extraction, developing, manufacturing, assembling, processing or treatment of raw or processed materials, parts, or assemblies using other than manual power. A light industry is one using quiet motive power and processes which do not generate more noise, odor, smoke, fumes, vibrations, glare, electrical or magnetic interference, or hazard of fire, explosion or

pollution of ground water than could be expected of any of the other permitted uses in that location. A heavy industry is one generating one or more of the above neighborhood impacts.

*LOT:*

An area of land in one ownership with definite boundaries, described by plan or deed and recorded in the North Bristol Registry of Deeds or the Land Court.

*LOT COVERAGE:*

The portion of a lot that is impervious (does not absorb water). This portion includes, but is not limited to, all areas covered by buildings, roofed structures, driveways, sidewalks, and any area of concrete asphalt.

*LOT LINE:*

A boundary line separating a lot from another lot or lots or from a street or other public place.

*NONCONFORMING STRUCTURE OR USE:*

A structure or use lawfully in existence or lawfully begun at the time this by-law or any amendment thereof becomes effective which does not conform to the requirements of this by-law or of such amendment.

*NURSING HOME:*

Residential facility providing long term care for frail elders, short term care for individuals who have been hospitalized and need rehabilitation before returning home, and specialty care for individuals with physical and neurological disabilities.

*OWNER:*

A person or persons, legal entity, firm or corporation, or a duly designated agent, having a legal or equitable interest in a property.

*REST HOME:*

Facility licensed by the Massachusetts Department of Public Health to provide 24-hour supervision and supportive services for individuals who do not routinely need nursing or medical care. Also known as a residential care facility.

*SETBACK:*

An open yard, unbuilt upon, extending across a lot to the depth of 50 feet, or other depth specified according to this by-law, from any street line. No structure or building or part thereof, other than uncovered steps, shall be located in or project into the setback. Also called the front yard.

*SIDE YARD:*

An open space, unbuilt upon, inside and contiguous to all lot lines other than street lines to the depth of 15 feet, or other depth specified according to this by-law. No structure or building shall be located in or project into any side yard, except that uncovered steps, bulkheads, eaves, bay windows and attached chimneys may project into a side yard, but shall not be closer than 10 feet to a lot line.

*SPECIAL PERMIT:*

A written authority granted after a duly advertised public hearing to locate, build, or use structures or land in accordance with the provisions of this bylaw, for certain uses, including the expansion or alteration of existing nonconforming uses and buildings.

***SPECIAL PERMIT GRANTING AUTHORITY:***

The Board of Selectmen of the Town of Berkley or such other board as may otherwise be designated by this by-law for certain categories of special permits.

***STACKING LANE:***

An area of stacking spaces and driving lane provided for vehicles waiting for drive-through service, that is physically separated from other traffic and pedestrian circulation on the site.

***STACKING SPACE:***

An area within a stacking lane for vehicles waiting to order and/or finish a drive – through transaction.

***STREET:***

A way open and dedicated to public use, including a way in a subdivision approved under the provisions of the Subdivision Control Law, section 81K through 81GG of Chapter 41, General Laws.

***STRUCTURE:***

Any combination of materials attached to or requiring a fixed location on or in the ground. For the purposes of location on a lot, the following shall not be deemed to be structures prohibited within a setback or side yard: boundary walls and fences, utility poles, support posts not over 4 feet in height for mailboxes and name signs.

***USE:***

The purpose for which a building, structure or land is intended, designed or used.

***WIDTH OF LOT:***

Lot width is defined as the distance between the sidelines required to allow a circle to be placed between sidelines. The required circle shall be tangential to the frontage of a given lot and shall be entirely contained within the lot boundaries. In a business District: for 100' frontage lots the circle diameter shall be 90'. In a residential district: for 200' frontage lots the circle diameter shall be 181'. Beginning on June 2, 2008, no building or structure shall be constructed on a lot having less width than the required lot width. The following properties are specifically exempt from this definition: 1) Lots, buildings and structures which are exempt from the provisions of this definition under the provisions of MGL Ch 40A, Sec 6; and 2) Any lot shown on a plan recorded with the Registry of Deeds or filed with the Land Court prior to the effective date of this By Law amendment.

**SECTION 4. USE REGULATIONS BY ZONING DISTRICT**

**A. Residential District:**

One and One-Half Acre Lots. The following uses may be located on a lot at least one and a half acres (65,340 square feet) in area, meeting the dimensional

requirements of section 4 hereof; single family dwellings, religious facilities, agriculture, parks, home occupations including day care for not over ten children. Not more than one principal permitted building, or use, together with its accessory buildings and uses, may be located on any lot. At least 30,000 sq. ft. of which must be contiguous land and must not be subject to wetlands classification, as defined by Massachusetts General Laws, Chapter 131.

Two Acre Lots. The following uses may be located on a lot at least two acres (87,120) square feet this in area, meeting the relevant dimensional requirements of Section 4 hereof; offices and studies in the home of a resident professional, such as a physician, engineer, consultant or artist; children's camps; municipal and governmental facilities and uses and public educational institutions; provided that not more than one principal permitted building, together with its accessory buildings and uses, may be located on any lot.

Special Permit Uses. The following uses shall require a special permit to be located in Berkley on a lot of one and one-half acre or greater area, as may be specified by the Special Permit Granting Authority:

- A. Public and private recreational uses;
- B. Multi-family dwellings, not to exceed four dwelling units per building and provided that the area shall comprise at least one and one-half acres (65,340 square feet) per dwelling unit;
- C. Uses permitted under paragraph 2 above but which do not comply with the applicable area or other dimensional requirements, provided the applicant demonstrates to the satisfaction of the SPGA that such dimensional deficiency will have no adverse effect on the area.

Prohibited Uses. The following uses are prohibited: uses which are noxious, offensive, harmful, or dangerous by reason of significant emission of smoke, fumes, odor, noise, electromagnetic radiation or interference, vibration, glare, or by reason of danger of explosion or fire, pollution of ground or surface water, air or soil; including specifically, but not limited to, heavy industry; asphalt or cement mixing plant; petroleum or other chemical refining or processing plant; hazardous, solid, or radioactive waste disposal or treatment facility; provided, that a municipal waste disposal facility on land owned by the Town of Berkley and serving Berkley inhabitants shall not be subject to this prohibition.

#### **B. General Business District:**

The purpose of the General Business District is to accommodate general business development in areas served by major traffic arteries with careful control over the layout of such uses. Business uses offer needed goods and services and provide employment for residents.

- (1) The following are permitted uses in a building with 20,000 square feet of gross floor area or less:
1. Retail store;
  2. Restaurant or other facility for the preparation of food for retail sale on the premises, without a drive-through window;
  3. Entertainment or recreation facility – indoor or outdoor;

4. Professional Business or Offices, including but not limited to, travel agency, real estate office, or financial agency;
5. Bakery;
6. Bed and Breakfast;
7. Bank without a drive-through or ATM facility;
8. Uses as defined in MGL Chapter 40A Section 3;
9. Retail service or repair shop including but not limited to small appliances, plumbing, carpentry, and electrical;
10. Consumer personal services including but not limited to barber shop, beauty or tanning salon, health spa, dry-cleaning/laundry pick-up only, bicycle repair, dance/music school, photo studio;
11. Veterinary offices or hospital;
12. Medical, dental or optical, clinic;
13. Print shop and related arts and trades;
14. Funeral Home;
15. Public or private club;
16. Art gallery;
17. Lumber and Feed Establishments (Only if outdoor storage does not exceed 30% of the lot area and is fully screened from roadways and all abutting properties);
18. Municipal Buildings, structures, facilities or uses owned and operated by the Town of Berkley;
19. Fraternal Organizations, clubs, etc;
20. United State Post Office.
21. Any use permitted in a residential district except the subdivision of land for residential use – residential subdivisions, Form “A” lots, etc

(2) Uses by Special Permit granted by the Planning Board in accordance with the criteria of Section 7.C.2:

1. Permitted uses under Section B1 above in a building of 20,000 square feet of gross floor area or greater;
2. An increase to the maximum lot coverage in the General Business District to 60% where applicants provide enhanced landscaping and drainage designs meeting EPA and MDEP Low Impact Development standards;
3. Bank with an Outside ATM or drive-through;
4. Fast Food Restaurant or restaurant with a drive-through window;
5. Gasoline Service Station;
6. Commercial Kennel;
7. Warehouse and Distribution,;
8. Self Storage facility;
9. Assisted Living Residence;
10. Continuing Care Retirement Community;
11. Nursing Home or Rest Home;
12. Hotel or motel;
13. Any other use with a drive-through component;
14. Auto body shop provided that all work is done within an enclosed building and there shall be no storage of motor vehicles on the premises other than those in process of, or awaiting repair, or awaiting delivery or pickup after repair; and
15. Building materials and contractor’s yards provided that all materials and equipment stored outside are screened from view from public ways or

abutting properties by an opaque fence or dense vegetative screening of at least six (6) feet high and such storage does not exceed 30% of the total lot area.

### **C. Special Business Overlay District:**

The purpose of the Special Business Overlay District is to accommodate general business and Adult Entertainment uses in areas served by major traffic arteries with careful control over the layout of such uses.

(1) The following are permitted uses in a building, with 20,000 square feet of gross floor area or less:

1. Retail store;
2. Restaurant or other facility for the preparation of food for retail sale on the premises, without a drive-through window;
3. Entertainment or recreation facility – indoor or outdoor;
4. Professional Business or Offices, including but not limited to, travel agency, real estate office, or financial agency;
5. Bakery;
6. Bed and Breakfast;
7. Bank without a drive-through or ATM facility;
8. Uses as defined in MGL Chapter 40A Section 3;
9. Retail service or repair shop including but not limited to small appliances, plumbing, carpentry, and electrical;
10. Consumer personal services, including but not limited to barber shop, beauty or tanning salon, health spa, dry-cleaning/laundry pick-up only, bicycle repair, dance/music school, photo studio;
11. Veterinary offices or hospital;
12. Medical, dental or optical, clinic;
13. Print shop and related arts and trades;
14. Funeral Home;
15. Public or private club;
16. Art gallery;
17. Lumber and Feed Establishments (Only if outdoor storage does not exceed 30% of the lot area and is fully screened from roadways and all abutting properties);
18. Municipal Buildings, structures, facilities or uses owned and operated by the Town of Berkley;
19. Fraternal Organizations, clubs, etc;
20. United State Post Office.

(2) Uses by Special Permit granted by the Planning Board in accordance with the criteria of Section 7.C.2:

1. Permitted uses under Section B above in a building of 20,000 square feet of gross floor area or greater;
2. An increase to the maximum lot coverage in the GB District to 60% where applicants provide enhanced landscaping and drainage designs meeting EPA and MDEP Low Impact Development standards;
3. Bank with an Outside ATM or drive-through;
4. Fast Food Restaurant or restaurant with a drive-through window;

4. Gasoline Service Station;
6. Commercial Kennel;
7. Warehouse and Distribution,;
8. Self Storage facility;
9. Assisted Living Residence;
10. Continuing Care Retirement Community;
11. Nursing Home or Rest Home;
12. Hotel or motel;
13. Any other use with a drive-through component;
14. Auto body shop provided that all work is done within an enclosed building and there shall be no storage of motor vehicles on the premises other than those in process of, or awaiting repair, or awaiting delivery or pickup after repair; and
15. Building materials and contractor's yards provided that all materials and equipment stored outside are screened from view from public ways or abutting properties by an opaque fence or dense vegetative screening of at least six (6) feet high and such storage does not exceed 30% of the total lot area.
16. Adult Entertainment Uses / Sexually Orientated Businesses as defined in Section 11, below.

(3) *Prohibited Uses.* Any use not listed is prohibited. The following uses are prohibited: uses which are noxious, offensive, harmful, or dangerous by reason of significant emission of smoke, fumes, odor, noise, electromagnetic radiation or interference, vibration, glare, or by reason of danger of explosion or fire, pollution of ground or surface water, air or soil; including specifically, but not limited to, heavy industry; asphalt or cement mixing plant; petroleum or other chemical refining or processing plant; hazardous, solid, or radioactive waste disposal or treatment facility; provided, that a municipal waste disposal facility on land owned by the Town of Berkley and serving Berkley inhabitants shall not be subject to this prohibition.

**SECTION 5. DIMENSIONAL REGULATIONS**

A. Table of Dimensional Requirements.

No building or use shall be permitted to be located, erected, relocated or altered, except on a lot and in a manner specified in the following table:

MINIMUM REQUIREMENTS

Permitted Use	Lot area (In sq. ft.)	Width ***** and Frontage (In ft.)	Setback *** (In ft.)	Side Yard (In ft.)
<b>Residential District</b>				
1 and 1.5 acres	65,340	200	50	15
on at least 2 acres	87,120	200	50	30 *
Special Permit **	As Required	As Required	As Required	As Required
<b>General Business District</b>	40,000	100	35****	20
<b>Special Business Overlay</b>	40,000	100	35****	20



**Notes:**

\* Next to a lot occupied by a single family dwelling or farm or land conserved through a Conservation Restriction, there shall be provided a landscaped buffer strip 100 feet wide containing no buildings, parking or outdoor storage. Mature existing vegetation is preferred to clear cutting and planting of young material.

\* Steps, fireplaces, chimneys shall be permitted within the front side and rear setbacks

\*\* The Special Permit Granting Authority may impose greater requirements where needed for the protection of the neighborhood and to minimize adverse impact.

\*\*\* Roadside stands for sale of locally grown farm products may be located within the required setback, but at least 10 feet from the street line.

\*\*\*\* No structures, parking, or storage shall be located in the setback.

B. Other Standards

1. Maximum building Height in residential zone shall be limited to thirty-five (35) above the average elevation of the finished grades of the building lot. Height shall be measured to the highest point on the roof of the building.
2. Maximum Lot Coverage GB: 50 %
3. In the General Business at least 30,000 square feet of each lot must be contiguous land and must not be subject to wetlands classification as defined by Massachusetts General Laws Chapter 131.
4. In a business zone, no building or other improvement shall exceed four stories or 50 feet in height. Height shall be measured to the highest point on the roof of the building.

C. Parking.

All uses other than single family residence shall provide sufficient off street parking on lot, together with safe and convenient access ways, to accommodate all employees, occupants, customers, clients or patrons, and also any supply or delivery trucks, including any needed loading or unloading docks or space as determined by the table in Section 5(D), below and Section 9 Off Street Parking Requirements.

D. Parking Table

<b>USE</b>	<b>REQUIREMENTS *</b>
Assisted Living Facility	1 space per staff person and 1 space for every 4 beds
Auto Repair	1 per 400 sq ft of gross floor area PLUS 1 per employee
Bank	1 per 175 sq ft gross floor area devoted to customer service PLUS 1 per 250 sq ft gross floor area not devoted to customer use
Barber Shop or Beauty Salon or Tanning Salon or Tatto Parlour or Nail Service	3 per operator's station

Church or similar place of assembly	1 per 5 occupants PLUS 1 per two employees
Continuing Care Retirement Community	1 space per staff person and 1 space for every 4 beds
Doctor, dentist, veterinarian, or clinic offices	1 per 200 sq ft of gross floor area PLUS one per employee
Drive-through Restaurant	If no sit-down tables, minimum of 10 spaces PLUS 1 per employee
Farm Stands, nurseries, greenhouses	1 per 250 sq ft of retail floor area, or none required if less than 100 sq ft.
Funeral Home	1 per 50 sq ft of public floor area PLUS 1 per two employees
Gasoline Service Station	3 per service bay PLUS 1 per employee
Hotel/motel	1 per unit PLUS 1 per two employees PLUS 1 space for each 150 sq ft of banquet, assembly or meeting space.
Libraries, museums, clubs, and social buildings	1 per 250 sq. ft. of gross floor area PLUS 1 per two employees
Non-medical offices	1 per 250 sq ft gross floor area
Nursing or Rest home	1 space per 4 beds
Other personal, consumer and retail services	1 per 250 sq ft of gross floor area PLUS 1 per employee
Other business, institutional or professional uses not specified	1 per 200 sq ft of gross floor area PLUS 1 per two employees
Recreation Facility	1 per four occupants/ 1 per four of the maximum capacity
Restaurants and theatres	1 space per three persons occupancy as allowed under the Building Code. An additional 5 spaces shall be required for a take out area without seating.
Schools, colleges, child care and day care centers	1 per 400 sq. ft of educational space
Self storage facility	Minimum of 3, or 1 per 10,000 sq ft of gross floor area, whichever is greater
* (Occupants = Design Occupancy Load under the state building code.)	

E. Previously Recorded Lots Exempt.

Any lot which was duly recorded by plan or deed in the North Bristol Registry of Deeds or the Land Court and was in a separate ownership at the time of adoption of any increase of the dimensional requirements of this by-law may be built upon for single family residential use even though such lots do not conform to the dimensional requirements of Section 5(A), above, provided such lot has at least 5,000 square feet of area and 50 feet frontage. Any lot shown on an approved subdivision plan or endorsed by the planning board as not requiring subdivision approval which was a building lot prior to the adoption of this by-law, may be built upon for a single family residential use within five years following such approval or endorsement, and may be transferred into separate ownership within said five years and built upon for single family use at any time thereafter.

#### F. Accessory Buildings.

Accessory Building less than 120 sq feet shall be located in any side or rear yard no closer to the lot line than seven (7) feet and no closer than fifty feet (50) from the front lot line.

### **SECTION 6. NONCONFORMING BUILDINGS AND USES AND STRUCTURES**

A. Applicability. This zoning by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning by-law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

B. Nonconforming Uses. The 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. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

1. Change or substantial extension of the use;
2. Change from one nonconforming use to another, less detrimental, nonconforming use.

C. Nonconforming Structures. The 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. The following types of change to nonconforming structures to the neighborhood. The following types of changes to nonconforming structures may be considered by the 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;
3. Reconstructed after a catastrophe, provided that the owner shall apply for a building permit and start operations for reconstruction on said premises within two years after such catastrophe, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure.

D. 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, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals.

E. Nonconforming Single and Two Family Residential Structures. Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and the issuance of a building permit, where applicable. The Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

F. Abandonment or Non-Use. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning by-law.

\*Single family use or structure shall be exempt

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

## **SECTION 7. ADMINISTRATION AND PROCEDURES**

### **A. Administration**

1. *Permits*. This By-Law shall be administered by the Inspector of Buildings. Pursuant to the State Building Code, the Inspector of Buildings may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the Commonwealth. Buildings and structures may not be erected, substantially altered, moved, or changed in use without written certification by the Inspector of Buildings that such action is in compliance with then-applicable zoning, and that all necessary permits have been received under federal, state, or local law. Issuance of a Building Permit or Certificate of Use and Occupancy, where required under the Commonwealth's State Building Code, may serve as such certification.
2. *Enforcement*. The Inspector of Buildings shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this By-Law and of permits and variances issued thereunder, including notification of noncompliance and request for legal action through the Selectmen to Town Counsel.
3. *Penalties*. The penalty for violation of any provision of this By-Law, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals shall be Three Hundred dollars (\$300.00) for each offense. Each day that each violation continues shall constitute a separate offense.

### **B. Board of Appeals**

1. *Establishment*. The Board of Appeals shall consist of three members and two associate members.
2. *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:
  - a) To hear and decide applications for special permits, where so designated.
  - b) 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 G.L. c. 40A, s.10. The Board of Appeals shall not grant use variances.
  - c) 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.
  - d) 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.

### **C: Special Permits.**

1. *Special Permit Granting Authority.* Unless specifically designated otherwise, the Board of Selectmen shall act as the Special Permit Granting Authority.
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:
  - a) Social, economic, or community needs which are served by the proposal;
  - b) Traffic flow and safety, including parking and loading;
  - c) Adequacy of utilities and other public services;
  - d) Neighborhood character and social structures;
  - e) Impacts on the natural environment; and
  - f) Potential fiscal impact, including impact on town services, tax base, and employment.
3. *Procedures.* Whenever an application for a special permit is filed with a Special Permit Granting Authority, the applicant shall also file, within five (5) working days of the filing of the completed application with said Authority, copies of the application, accompanying site plan, and other documentation, to the Board of Health, Conservation Commission, Inspector of Buildings, Police Chief, Fire Chief, Planning Board, and applicable water district for their consideration, review, and report. The copies necessary to fulfill this requirement shall be furnished by the applicant.
  - a) An application shall not be deemed complete until all copies of required information and documentation have been filed with the Special Permit Granting Authority.
  - b) The special permit granting authority shall notify applicants by registered mail, within 14 days of submittal, of incomplete application status, and the applicant shall have 14 days from the mailing of such notice to complete an application.
  - c) Reports from other boards and officials shall be submitted to the Special Permit Granting Authority by the date of the public hearing, but in any case within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto.
  - d) In the event that the public hearing by the Special Permit Granting Authority is held prior to the expiration of the 35 day period, said authority shall continue the Public Hearing to permit the formal submission of reports and recommendations within that 35 day period.
  - e) The Decision/Findings of the Special Permit Granting Authority shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.
  - f) The provisions of this Section 3 shall not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two family structure. The Board of Appeals may establish procedures governing such applications by regulation.
  - g) The Special Permit Granting Authority shall comply with the provisions of MGL Chapter 40A, Section 9A.

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.

5. *Plans.* The applicant shall submit a plan as may be required by the Special Permit Granting Authority.

a. The provisions of this Section 7 shall not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two family structure. The Board of Appeals may establish procedures governing such applications by regulation.

6. *Lapse.* Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 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. *Regulations.* The Special Permit Granting Authority may adopt regulations for the administration of special permits.

#### **D. Site Plan Review.**

1. Applicability. The following types of activities and uses require site plan review by the Planning Board:

- a) Construction, exterior alteration or exterior expansion of, or change of use within, an institutional, commercial, industrial, or multi-family structure involving more than 500 square feet;
- b) Construction or expansion of a parking lot for an institutional, commercial, industrial, or multi-family structure or purpose.

2. Exemptions.

- a) A building wholly or partially destroyed may be rebuilt without recourse to this section if rebuilt without change to the building footprint or the square footage of usable space.
- b) The construction, reconstruction, or alteration of a single and two family residence is exempt from the requirements of this Section.

3. Procedures.

- a) Use, Structure, or Activity Available As of Right. An application for a building permit to perform work as set forth herein available as of right shall be accompanied by an approved Site Plan. Prior to the commencement of any activity set forth herein available as of right, the project proponent shall obtain site plan approval from the Planning Board. Applicants for site plan approval shall submit five (5) copies of the site plan to the Planning Board for review, and within three (3) days thereafter shall also submit a copy of the site plan to the Board of Selectmen, Board of Health, Police Chief, Fire Chief, the Inspector of Buildings, and the Conservation Commission for their advisory review and comments. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a majority of those present and shall be in writing. No building permit shall be issued by the Inspector of Buildings without the written approval of the site plan

by the Planning Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Planning Board.

- b) Use or Structure Available by Special Permit or Variance. An application for a special permit or a variance to perform work as set forth herein shall be accompanied by an approved site plan. Applicants for site plan approval shall submit five (5) copies of the site plan to the Planning Board for review, and within three (3) days thereafter shall also submit a copy of the site plan to the Board of Selectmen, Board of Health, Police Chief, Fire Chief, the Inspector of Buildings, and the Conservation Commission for their advisory review and comments. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a majority of those present and shall be in writing. No special permit or variance shall be issued by the Board of Appeals without the written approval of the site plan by submittal of the site plan without action by the Planning Board. Where the Planning Board approves a site plan "with conditions", and said site plan accompanies a special permit or variance application to the Board of Selectmen or Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance.
- c) Where the Planning Board serves as the special permit granting authority, it shall consolidate its site plan review and special permit procedures.
- d) An application for site plan approval shall be accompanied by a fee, as set forth in the Planning Board's Rules and Regulations.
- e) The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein.
- f) No deviation from an approved site plan shall be permitted without modification thereof.

#### 4. Preparation of Plans.

Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the Board. Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1" = 40'.

#### 5. Contents of Plan.

The contents of the site plan are as follows:

- a) Five (5) separate plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the planning board. The plans are as follows:
  1. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a

locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the planning board.

2. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling storm water drainage.
3. Utility and landscaping plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including flood plain areas.
4. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.
5. Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.

a.) The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof.

b) A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this by-law.

c) The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to Town of Berkley subdivision regulations.

d) The Planning Board may require narrative assessments of the on-site and off-site impacts of the proposed project, including traffic, drainage, noise, and other environmental factors. The Planning Board may require that such narrative assessments be prepared by qualified experts.

e) Certification that the proposal is fully compliant with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board.

#### 6. Waiver of Technical Compliance.

The Planning Board may, upon written request of the applicant, waive any of the technical requirements of Section 7.D.4 where the project involves relatively simple development plans or constitutes a minor site plan.

#### 7. Minor site plan.

Applications for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of 500 square feet but not exceed a total gross floor area of 2000 square feet, or will not generate the need for more than 10 parking spaces, shall be deemed a minor site plan. For the purposes of computing



the total gross floor area of a minor site plan, the Planning Board shall aggregate all such applications made within the five (5) previous calendar years. Minor site plans shall set forth all of the information required by Section 6.D.4; provided, however, that the scale of the site plan may be 1" = 80', and the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey.

#### 8. Approval.

Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, 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 storm water drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

- a) Maximize pedestrian and vehicular safety both on the site and egressing from it;
- b) Minimize obstruction of scenic views from publicly accessible locations;
- c) Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
- d) Minimize glare from headlights and lighting intrusion;
- e) Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.
- f) Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substance;
- g) Ensure compliance with the provisions of this Zoning By-Law, including parking and landscaping.

#### 9. Lapse.

Site plan approval shall lapse after one year 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 Planning Board upon the written request of the applicant.

#### 10. Regulations.

The Planning Board may adopt and from time to time amend reasonable regulations for the administration of these Site Plan guidelines.

### **E. Amendments.**

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

### **F. Applicability.**

1. Other Laws. Where 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.

2. Conformance. Construction or operations under a Building Permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of six months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

### **G. Separability.**

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision herein.

### **SECTION 8. RATE OF DEVELOPMENT**

A. The purpose of this section is to regulate the timing of development of building lots in residential subdivision and street lots (ANR - FORM A) in a manner which promotes the health, safety, convenience and welfare of the inhabitants of the Town of Berkley. This bylaw has the following broad objectives:

1. To prevent the development of traffic conditions which are hazardous to citizens due to heavy vehicular travel or usage.
2. To coordinate the timing of land development in Berkley with the economic feasibility of the expansion of public services.
3. To preserve the unique rural character and natural resources of the Town.

B. For the purpose of administering Section 8 (Rate of Development), the Planning Board shall be the Special Permit Granting Authority.

C. The Building Commissioner shall not issue building permits authorizing more than ten (10) dwelling units during any twelve month period to any parcel or parcels of land which, as of the effective date of this bylaw, were contiguous and in the same ownership as several lots; or of continuous street frontage as one large parcel sufficient to create two or more lots in accordance with zoning regulations; or in different ownership's each involving one (1) or more of the same principals; or to any one (1) applicant or set of applicants involving one (1) or more of the same principals, unless the Special Permit Granting Authority (S.P.G.A.) has granted a Special Permit for rapid development. Such Special Permit shall be granted only upon determination of the S.P.G.A. that all Special Permit criteria as set forth in MGL Chapter 40A Section has been fulfilled and that such development, after a public hearing, in the opinion of the S.P.G.A. as expressed in an affirmative vote thereof; (a) would serve a salient housing need; (b) would be economically infeasible if limited to ten (10) construction permits over a twelve month period and (note "or") (c) would not overburden existing public services. (Public services shall include, but are not limited to, fire, police, and ambulance services, public highway maintenance, and public school transportation services.) This bylaw shall apply to all legally created lots as defined by MGL Chapter 40A (The Zoning Act), especially Section 6, in addition to lots legally created under the provisions of MGL Chapter 41 Sections 81K-81GG (The Subdivision Control Law) and all current conditions of zoning control as set forth in the Town of Berkley Zoning Bylaw and as it may, from time to time, be amended.

### **SECTION 9. OFF STREET PARKING**

A. Parking Requirements

1. All required off-street parking shall be accommodated on the same premises as the activity it serves.
2. Required parking and loading areas and their access drives shall be paved with bituminous concrete.
3. There shall not be more than one entrance and one exit from such lots per three hundred feet of street frontage. If necessary to meet this standard uses shall be arranged with shared egress and ingress. No parking area shall be located or designed so as to require backing onto or off a public way
4. Adequate off-street loading that does not conflict with the required parking spaces shall be provided. These facilities shall be sized and arranged so that no trucks need to back onto or off a public way or be parked on a public way while loading, unloading or waiting to do so.
5. Each off-street parking space shall have minimum dimensions of nine (9) by twenty (20) feet excluding the driveway to such space. Aisles and spaces shall be consistent with the following:

<b>Aisle Width</b>	<i>Parking Angle (in degrees)</i>				
	0	30	45	60	90
One-Way traffic	13 ft	11 ft	13 ft	18 ft	24 ft
Two-Way traffic	20 ft	20 ft	21 ft	23 ft	24 ft

6. Drainage facilities for each parking area shall be designed and constructed to contain storm water run-off on the premises in accordance with the Rules and Regulations for water quality adopted by the Berkley Planning Board.
7. No parking lot shall be illuminated so as to cause glare for motorists, pedestrians or neighboring premises.
8. No paved area designated for parking on a lot shall be located closer than twenty (20) feet from any street. No paved area designed for parking on a lot shall be located closer than seven and a half feet from any building wall.
9. All parking lots consisting of ten (10) or more parking spaces shall provide two-hundred (200) square feet of interior landscaping for every ten (10) spaces. These landscaping areas shall contain a minimum of two (2) canopy trees, a minimum of ten (10) feet in height and minimum three inch caliper, and two (2) understory trees/shrubs, a minimum of two (2) feet in height. To prevent cars from parking too close to trees or damaging shrubs, a curb or wheel stop shall be provided for interior parking lot landscaped islands.

4. Drive-through facilities

1. Drive-through facilities shall provide a minimum of (8) eight stacking spaces (within the site) before the order board. The facility shall provide another (4) four stacking spaces between the order board and the transaction window. If the facility has two transaction windows the (4) four stacking spaces may be split between each of the windows. An additional stacking space shall be provided after the last transaction window(s).

2. Each stacking space shall be a minimum of twenty (20) feet in length and ten (10) feet in width along straight portions. Stacking spaces and stacking lanes shall be a minimum of twelve (12) feet in width along curved segments. Stacking lanes shall be delineated from traffic aisles, other stacking lanes and parking areas with striping, curbing, landscaping and the use of alternative paving materials or raised medians.
3. Entrances to stacking lane(s) shall be clearly marked and be a minimum of sixty (60) feet from the intersection with the public street. The distance shall be measured from the property line along the street to the beginning of the entrance.
4. Stacking lanes shall be designed to prevent circulation congestion, both on site and on adjacent public streets. The circulation shall: (a) separate drive-through traffic from site circulation, (b) not impede or impair access into or out of parking spaces, (c) not impede or impair vehicle or pedestrian traffic movement, and (d) minimize conflicts between pedestrian and vehicular traffic with physical and visual separation between the two. Stacking lanes shall not interfere with required loading and trash storage areas and loading or trash operations shall not impede or impair vehicle movement. If said separate stacking lane is curbed, an emergency by-pass or exit shall be provided. Stacking lanes shall not enter or exit directly into a public right-of-way. Stacking lanes shall be integrated with the on-site circulation pattern.
5. The intersection of stacking lanes and walk-in customer access shall be a minimum of fifty (50) feet from any access connections and/or transaction windows. Said intersections shall be provided with a crosswalk. These crosswalks shall use enriched paving and striping and include warning signage aimed at both the pedestrian and vehicle. Any outdoor service facilities (including menu boards, speakers, etc.) shall be a minimum of one hundred (100) feet from the property line of abutting residential uses. Menu boards shall be a maximum of thirty (30) square feet, with a maximum height of six (6) feet and shall be shielded from any public street and residential properties.
6. Traffic Impact Study: A detailed traffic impact analysis shall be submitted for any special permit or site plan approval application containing a drive-through facility. A registered professional engineer experienced and qualified in traffic engineering shall prepare the traffic impact study. The traffic impact study shall contain the following information:
  - i. Existing traffic conditions- average daily and peak hour volumes, average and peak speeds, sight distances, accident data for the previous 3 years, and levels of service (LOS) of intersections and streets affected by the proposed development. Generally, such data shall be presented for all streets and intersections adjacent to or within 1000 feet of the project boundaries, and shall be no more than 12 months old at the date of application, unless other data is specifically approved by the Board.
  - ii. Projected traffic conditions for design year of occupancy shall include: statement of design year of occupancy, average annual background traffic growth, impacts of proposed developments which have already been approved, under construction and /or are pending before a town board.
  - iii. Projected impacts of the proposed development shall include: Projected peak hour and daily traffic generated by the development on roads and ways in the vicinity of the development; sight lines at the intersections of the proposed access connection and adjacent streets; existing and

proposed traffic controls in the vicinity of the proposed development; and the projected post development traffic volumes and levels of service of intersections and streets likely to be affected by the proposed development (as defined above).

- iv. Proposed mitigation shall include: A plan (with supporting text) to minimize traffic and safety impacts through such means as physical design and layout concepts, staggered employee work schedules, promoting use of public transit or carpooling, or other appropriate means; and an interior traffic and pedestrian circulation plan designed to minimize conflicts and safety problems. Measures shall be proposed so that all streets and intersections to be impacted by the project shall have the same Level of Service or better than the pre-development conditions at post-development.

## SECTION 10. SIGNAGE

- A. This section is adopted pursuant to MGL Chapter 40A, MGL Chapter 93, Section 29, MGL Chapter 143, Section 3 and governs the placement of signs within the Town of Berkley. No sign(s) shall be attached, erected or otherwise installed on any property without first obtaining a sign permit from the Building Inspector.
- B. *Purpose.* The purpose of this section is to provide standards for the installation of signs so as to reduce traffic safety hazards, protect property values, promote economic development, and protect the aesthetic appearance of the town.
- C. *General Requirements.* A sign permit may be granted only in accordance with the following requirements:
  - i. Flashing, shimmering and/or rotating lights shall not be permitted.
  - ii. All signs shall be limited to the identification of premises, their occupants or users, the placement or the business conducted therein.
  - iii. No sign shall be placed which prevents the driver of a vehicle from having a clear and unobstructed view of approaching or merging traffic.
  - iv. No signs shall be internally illuminated.
- D. *Exemptions.* The following signs shall be exempted from these regulations:
  - i. Signs of less than two (2) square feet in surface area identifying occupancy of a residence;
  - ii. Historic or commemorative plaques not exceeding two (2) square feet in surface area
  - iii. No trespassing, no hunting and similar ownership signs not exceeding two (2) square feet in surface area
- E. *Residential.* The display of a sign pertaining to the use or uses of the premises with a total area of not more than nine (9) square feet. Lighting, if any, shall be by indirect white light only.
- F. *General Business.*
  1. Wall mounted signs.
    - a. The sign or signs shall be firmly affixed to a building.

b. The sign or signs shall not extend beyond the wall or the building to which it is attached. Roof signs shall not project more than four (4) feet above the roofline.

c. The sign or signs shall not project more than twelve (12) inches (in the case of a sign parallel with the wall, or four (4) feet (in the case of a sign projecting perpendicular from the wall) from the face of the wall on which it is attached.

d. No one wall mounted sign shall be greater than 120 square feet and no longer than 15 feet in length, which includes logos, business name and all other visual and/or written communication.

e. Wall mounted signs shall not total more than 180 square feet and shall cover no more than 15% of the wall area on which they are mounted.

2. Free standing signs.

a. No part of any free standing sign other than the post or other support structure shall be located lower than eight (8) feet above the ground level (except for signs beyond eight (8) feet from the boundary line), and no sign shall be more than twenty-three (23) feet in height above the ground level and no wider than fifteen (15) feet.

b. No face of a standing sign shall be larger than one hundred and twenty (120) square feet, nor shall any sign be located in such a way so as to impede or obstruct the view of traffic and in no event shall any part be less than eight (8) feet from any boundary line.

3. Window signs.

a. Signs painted or placed on the inside of the glass of a window may be permitted in addition to the above, provided that the aggregated area of such signs(s) do not exceed fifty (50%) percent of the area of the window glass.

## SECTION 11. ADULT ENTERTAINMENT USES SEXUALLY ORIENTATED BUSINESS

### A. Purpose.

The intent of the bylaw is to regulate the locations of adult entertainment uses in order to lessen the harmful secondary effects on adjacent areas. These secondary effects, which are documented in various studies of cities and towns include an increase in crime, a decline in property values, a flight of existing businesses and gradual blight of residential neighborhoods. The purpose of the Adult Entertainment Use bylaw is to prevent crime, maintain property values, protect the town's retail trade and protect and preserve the quality of residential neighborhoods. The bylaw does not prohibit adult entertainment uses, but rather provides reasonable alternative avenues of expression throughout the town.

### B. Definitions

Within this section the following definitions shall be used:

**ADULT BOOKSTORE.** An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than ten percent (10%) of the subject establishment's inventory stock; or ten percent (10%) of the subject

premise's gross floor area, or 200 sq ft, whichever is greater.

*ADULT CLUB.* An establishment having twenty-five (25) percent or more of its entertainment devoted to a person or persons working or performing in a state of full or partial nudity, or distinguished or characterized by an emphasis on a matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.

*ADULT MOTION PICTURE THEATRE.* An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.

*ADULT PARAPHERNALIA STORE.* An establishment having as a substantial or significant portion of its stock, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than ten percent (10%) of the subject establishment's inventory stock; or ten percent (10%) of the subject's premise's gross floor area, or 200 sq ft, whichever is greater.

*ADULT LIVE NUDDITY ESTABLISHMENTS.* An establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in sections 31 of chapter 272 of the Massachusetts General Laws.

*ADULT VIDEO STORE.* An establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than ten percent (10%) of the subject establishment's inventory stock; or ten percent (10%) of the subject premise's gross floor area, or 200 sq ft, whichever is greater.

*ADULT ENTERTAINMENT USE .* For the purposes of this by-law, Adult Entertainment Use shall be defined as any of the following: Adult Bookstore, Adult Club, Adult Motion Picture Theater, Adult Paraphernalia Store, Adult Video Store, Adult Live Nudity Establishment, Sexually Oriented Business as defined below, or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition an adult use is any use or combination of uses which either have greater than ten percent (10%) of the subject establishment's inventory stock; or ten percent (10%) of the subject premise's gross floor area, or 200 sq ft, whichever is greater devoted to materials for sale or rent distinguished by or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.

*SEXUALLY ORIENTATED BUSINESS:* A business having as a substantial or significant portion of its stock in trade any of the following:

- a. Books, magazines, newspapers, or other written material which are distinguished or characterized by depicting or describing sexual conduct or sexual excitement as defined in General Laws Chapter 272, Section 31 as amended
- b. Videos, movies, photographs or other filmed material which are distinguished or characterized by depicting sexual conduct or sexual excitement as defined in General Laws Chapter 272, Section 31 as amended

- c. Toys and novelty items which are distinguished or characterized by depicting sexual conduct or sexual excitement as defined in General Laws Chapter 272, Section 31 as amended;
- d. Sexual paraphernalia consisting of devices, objects, tools or toys which are distinguished or characterized by depicting sexual conduct or sexual excitement as defined in General Laws Chapter 272, Section 31 as amended, and which are without medical utility; As used in this definition a "substantial or significant portion of stock in trade" shall be deemed to exist under any of the following circumstances.
- e. When the cost of such portion of the stock in trade on hand exceeds more than ten percent (10%) of the cost of all stock in trade on hand;
- f. When monthly sales, including rentals, from such portion of the stock in trade exceeds more than ten percent (10%) of the monthly sales of all stock in trade;
- g. When an area of more than ten percent (10%) of the floor area open to or observable by customers is wholly or partially used for the display or storage of such portion of the stock in trade

VIEWING BOOTHS. An enclosed portion of any commercial building or structure smaller than 20' X 20' used for the purpose of the private showing, displaying, or projecting of any motion pictures, other film products, video tapes or live acts distinguished by or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws for a fee.

#### C. Adult Entertainment Use Establishments

All Adult Entertainment Use Establishments as defined above are allowed in the Special Business Overlay District upon the granting of a special permit by the Zoning Board of Appeals. All Adult Uses shall comply with the following requirements:

#### D. Additional Sitting Requirements

- I. An Adult Entertainment Use shall not be allowed within a building containing other retail, consumer or residential uses, or within a shopping center, shopping plaza, or mall.
- II. The building shall be designed so that noise from any proposed entertainment is not audible (0 decibels) outside. Also all building openings, entries and windows shall be screened in such a manner as to prevent the visual access to the interior of the establishment from the exterior.
- III. A five (5) foot high solid fence or a landscaped buffer of evergreen trees or shrubs five (5) foot high at the time of planting shall be provided and maintained along the side and rear property lines.
- IV. There shall be no viewing booths within an Adult Entertainment Use establishment.

#### E. Sign Requirements

- I. Sign content shall identify the name of the establishment only and shall contain no advertisement in addition to this identification. Only one identification sign to be mounted on the building wall face shall be allowed for an adult entertainment use. All other signs whether on the exterior of the building or visible from the exterior of the building are prohibited.
- II. No adult entertainment establishment may have any flashing lights visible from outside the establishment. Furthermore, no sign shall rotate, or contain reflective or



fluorescent elements.

- III. No pictures, publications, videotapes, movies, covers or other advertising items that fall within the definition of an adult bookstore, adult club, adult motion picture theater, adult paraphernalia store, adult live video store, adult video store or sexually oriented business shall be displayed in the windows of, or on the building of, any adult entertainment use establishment.

F. Special Permit Submission And Approval

A site plan shall be submitted by the applicant in order that the Special Permit Granting Authority may determine that the above standards have been met. The site plan shall be prepared and submitted in accordance with Section 7.D. Site Plan Review of this by-law. The site plan shall also show when appropriate the distances between the proposed adult entertainment use establishment and any residential use or zoning district, public or private school, church or other religious facility, public park or recreation area, group day care center, family day care center, nursing home and hospital, municipal building, and any other adult entertainment use establishment(s). All applications for a Special Permit must include the following information:

- I. Names and addresses of the legal owner(s) of the Adult Entertainment Use Establishment.
- II. Name and addresses of all persons having a fee, equity and/or security interest in such establishment and the on-site manager. In the event a corporation, partnership, trust or other entity is listed, the name and address of every person who has an ownership interest and/or beneficial interest in the entity must be listed in order that the Special Permit Granting Authority will know who are the persons who will actually own and control the establishment. The applicant and/or owner must disclose if they have been convicted of violating the provisions of Massachusetts General Laws section sixty-three of chapter one hundred and nineteen or section twenty-eight of chapter two hundred and seventy-two.
- III. The number of employees, or proposed number of employees, as the case may be.
- IV. Proposed security precautions.

G. In approving a Special Permit, the Special Permit Granting Authority may attach such conditions, limitations and safeguards as are deemed necessary to protect the immediate area and the Town, including limitations on hours of operation, provided however that no such conditions in fact prohibit the use of the property for the use intended. No Special Permit shall take effect until such decision has been recorded in the Registry of Deeds.

H. The Special Permit shall be issued to the owner of the establishment and shall not transfer with a change in ownership of the business and/or property.

I. Special Permits for Adult Entertainment Establishments shall not be granted to any person or persons convicted of violating the provisions of Massachusetts General Laws Chapter 119, Section 63, nor Massachusetts General Laws Chapter 272, Section 28, similar laws in other states.

J. Lapse of Permit. Any special permit granted hereunder for an adult entertainment use establishment shall lapse after one year, including such time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or if in the case of a permit for construction, if construction has not begun by such date except for good cause, including such time to pursue or await the determination of an appeal referred to in Massachusetts General Laws Chapter 40A, Section 17, from the grant thereof.

- i. The Special Permit shall lapse after two years, unless a shorter term is specified by the Special Permit Granting Authority. Upon receipt of a valid application, the Special Permit Granting Authority may grant another Special Permit provided that the Board finds that all conditions of this Section and of approval have been complied with.
- ii. The Special Permit shall not be renewed if any of the following has taken place on or in proximity to and associated with the premises, a) unlawful sexual activity; b) gambling; c) drug use; d) violent crimes; e) offenses against children; f) repeated public disturbances requiring intervention by the police; and, g) any other illegal activities.
- iii. Violation of any of the conditions of approval of the Special Permit shall be grounds for non-renewal of the Special Permit as provided for above.

K. Prohibited Uses. Nothing in this By-law is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violated any Town Ordinance or Statute of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter, or the exhibition or public display thereof.

## Section 12: AQUIFER PROTECTION DISTRICT

### A. Purpose and Intent:

The purpose of this Aquifer Protection District is to prevent the contamination of and protect and preserve the availability of clean ground water, which provides existing as well as potential water supply to the Town of Berkley's residences and businesses;

1. To conserve the natural resources of the town;
2. To protect the groundwater and the major recharge areas of the Town from adverse land use practices.

### B. Definition of Terms:

Aquifer: A geologic formation composed of rock, sand, or gravel, capable of yielding over eighty gallons per minute of potentially usable, or recoverable, amounts of water.

Groundwater: Water in the surface zone beneath the water table where most or all pore spaces are filled with water.

Hazardous substance: Any hazardous substance or mixture of such physical, chemical, or infectious characteristics as to pose significant actual or potential hazard to water supplies, or to human or animal health, if such substance or mixture were discharged to land or waters of this town.

Impervious surface: Natural or manmade material on or above the ground that does not allow surface water to penetrate into the subsurface soil.

Leachable waste: Waste materials, be they directly relatable or by-products of surface or subsurface generators including solids, sewage, sludge, and agricultural wastes that are capable of releasing waterborne contaminants to the surrounding environment.

Mining of land: Removal or relocation of geologic materials, including topsoil, for the purpose of extracting soil, sand, loam, gravel, metallic cores, or bedrock.

Pervious Surface: Surface areas that consist of natural or manmade material on or above the ground that allows surface water to penetrate into the subsurface soil and which do not become impervious due to use or other actions.

Recharge area: That area (including primary, secondary, and tertiary recharge areas) composed of permeable stratified sand and gravel, and certain wetlands that collect surface water and carry it to aquifers.

Primary recharge area: Part of the recharge area that lies directly over the designated aquifer, and adjacent areas of strata, from which groundwater flows directly into the aquifer.

Secondary recharge area: Part of the recharge area that lies adjacent to the primary area, and from which groundwater moves down gradient into the aquifer.

Tertiary recharge area: These are the upstream drainage areas that traverse the primary and/or secondary recharge areas.

Septage: Sludge produced by domestic waste that is pumped from septic tanks.

Solid waste: Discarded solid material, decomposing or not, which may contain other liquid or gaseous materials, but with insufficient liquid content to be free-flowing. This includes, but is not limited to, rubbish, garbage, scrap materials, junk, refuse, inert fill material.

### C. Scope:

The Aquifer Protection District encompasses those areas of the Town where groundwater flow rates equal (100 – 300) gallons per minute or greater, as delineated on a map at a scale 1:X, titled “Aquifer Protection District, Town of Berkley” and is the most recent on file at the office of the Town clerk. These boundaries reflect the USGS hydrogeologic information as of the date of the enactment hereof. The boundaries encompass the aquifer, and the aquifer’s most significant recharge areas. The Aquifer Protection District imposes additional regulations, in cases of conflicting use regulations, the more restrictive zoning requirements shall apply.

### D. Delineation of Aquifer Protection District:

Certain Aquifer Protection Districts are hereby established within the Town. These Districts contain aquifers and/or aquifer recharge areas as determined by United States Geological Survey (USGS) standard geological and hydrogeologic investigations that have included observation wells, exiting boring data, geophysical techniques, pump tests, water samples and geologic maps.

The boundaries of this District are delineated on a map at a scale of 1:X titled “Aquifer Protection District, Town of Berkley” and is the most recent. This map is on file in the office of the Town Clerk. These boundaries reflect the best USGS hydrogeologic information available as of the date this map was created. Where these boundaries are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where the boundaries should be properly located. At the request of the owner(s), the town may engage a professional geologist; hydrogeologist, engineer, or other qualified expert trained and experienced in hydrogeology to determine more accurately the location and extent of an aquifer or recharge area, and may charge the owner(s) for the entire cost of the investigation.

### E. Use Regulations:

1. Uses Authorized: The following specific uses of land shall apply within the boundaries of the Aquifer Protection District.

- a) Maximum, one dwelling unit per 65,340 square feet of land area, provided no more than 15% of each, lot including driveways and roofs of buildings and structures, is rendered impervious. Larger percentages, if required, may be constructed with permeable material;
  - b) Subject:Pesticides and fertilizers which are in compliance with mandated and revised federal and state regulations, greater than household quantities, and which are subject to a yearly review and update by the Board of Health;
  - c) Storage of liquid petroleum products of any kind, except those incidental to home or businesses intended to be consumed on-site for space heating, hot water heating, cooking purposes or outdoor maintenance shall be in tanks not exceeding (660 – 1,000) gallons for residential use and (2,000) gallons for commercial use whose design and installation is reviewed and approved by the Fire Department in accordance with safety regulations, 527 CMR 9.0. Storage must be above ground, either in a free standing container within a building or in a free standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity;
  - d) Conservation of soils, water, plants, and wildlife;
  - e) Outdoor recreation, nature study, fishing, hunting;
  - f) Runoff from impervious surfaces shall be recharged on-site and diverted towards areas covered by vegetation for surface infiltration to the maximum extent possible;
  - g) Normal residential lawn and garden maintenance;
2. Uses Not Permitted:
- a) Storage of animal manures, unless such storage is covered or contained, or in accordance with the specifications of the National Resource Conservation Service (NRCS).
  - b) Dry cleaning processing plants;
  - c) Floor Drains – No floor drain may be permitted in any structure as per 310CMR 22.21 (2)(a)8;
  - d) The manufacture, use, storage or disposal of hazardous substances;
  - e) Car washes, Laundromats, automotive service and repair facilities, sanitary landfills, dumps, junk yards, storage or disposal of solid waste. Sludge or septage may only be stored in compliance with 310 CMR 32.30 and 32.31;
  - f) Storage of commercial fertilizers as defined in M.G.L. c. 182, §63, unless such storage is within a structure designed to prevent the generation and escape of leachable waste or contaminated runoff;
  - g) The mining/removal of land within four feet of the historical high groundwater table elevation as per 310 CMR 22.21 (2)(b)6;
  - h) Impervious cover on any lot, including buildings, structures, driveways, parking areas, gravel areas, patios, storage areas or any other impermeable surfaces that exceed 15% percent in the Residential District of land area or 9801 square feet;
  - i) Sewage treatment facilities but not individual sewage disposal systems;
  - j) Underground storage of petroleum or similar product.
  - k) Commercial photographic processing;
  - l) Commercial exterior storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemically treated abrasives or other chemicals used for snow and ice removal;
  - m) Industrial uses which discharge process wastewater on-site.
3. Uses Requiring Special Permit:
- a) Commercial or industrial uses which are permitted in the underlying zone, provided that the development will not increase any loading of contaminants to the groundwater. All such commercial and industrial uses may be constructed and operated in such a manner

as to discharge no wastewater except normal sanitary waste to subsurface disposal systems;

b) Any use not mentioned above or in the sections of these Bylaws shall be By a Special Permit;

c) Replacement, rehabilitation and modification of pre-existing non-conforming uses, in accordance with the Town of Berkley's Zoning Bylaws. The Special Permit Granting Authority shall not grant such approval unless it shall find that such expansion shall not increase the risk of contamination of groundwater.

F. Special Permits and Procedure:

After public notice and public hearing per M.G.L. Chapter 40A, Section 9, and after due consideration of any reports and recommendations of other boards or agents, the Planning Board may grant a Special Permit provided only that the proposed use or work:

a) Is in harmony with the purpose and intent of this Bylaw and will promote the protection of this district;

b) Is appropriate to the natural topography, soils and other characteristics of the site to be developed;

c) Will not have, during construction and after, an adverse environmental impact on an aquifer or its recharge area;

d) Will not adversely affect an existing water supply.

G. Right of Appeal:

Any person aggrieved by a decision of the Planning Board may seek judicial review thereof in accordance with M.G.L. Chapter 40A, Section 17.

H. Invalidity

The invalidity of any section, sentence or provision of this Bylaw shall not affect the validity on any other section, sentence, or provision thereof

## SECTION 13: ACCESSORY APARTMENTS

### 1. *Purpose and Intent:*

The intent of this subsection is to allow accessory apartments in owner-occupied single-family dwellings. Its purpose is to:

a. Add moderately-priced rental units to the housing stock to meet the needs of small households, both young and old;

b. Make housing units available to moderate-income households who might otherwise have difficulty finding housing in the town;

c. Provide older homeowners with a means of obtaining rental income, companionship, security and services, and thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave.

### 2. *Accessory Apartments by Special Permit:*

The Planning Board may grant a Special Permit for the alteration of a single family dwelling to include an accessory apartment in any residential district, subject to the following provision

a. The apartment will be a complete, separate housekeeping unit that functions as a separate unit from the principal dwelling.

b. The accessory apartment shall not exceed 900 S.F. of gross floor area. Accessory apartments shall contain the following:

1. The unit shall be provided with a separate closet.

2. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front.

3. The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.

- c. Any new outside entrance to serve an accessory apartment shall be located on the side or in the rear of the building.
- d. The apartment shall not be held in, or transferred into separate ownership from the principal dwelling under a condominium form of ownership, or otherwise.
- e. At least one parking space is available for use by occupants of the apartment.
- f. The alterations shall be limited to only one (1) structure on the lot, the principal dwelling.  
If the dwelling is located on a lot that does not conform to the dimensional requirements of the Town of Berkley the alterations shall not expand the footprint or the envelope of the building, as it existed on the effective date of this bylaw, by more than 25%, or 500 square feet, whichever is greater. In no case shall an accessory apartment be allowed with less than 30,000 S.F.
- g. The record owner of the lot shall reside on the property, in either the principal dwelling or the accessory apartment.
- h. The sanitary disposal system for the accessory apartment and principal structure shall comply with the applicable Berkley Board of Health and Title V regulations.
- i. Utilities such as water, electric, and gas necessary for the accessory apartment shall be extensions of the existing utilities serving the principal single-family dwelling. No new utility services or meters shall be installed for the use of the accessory apartment.
- j. The Special Permit shall be issued to the record owner of the lot and shall specify that the owner must occupy one of the dwelling units.
- k. The Special Permit shall be recorded at the Registry of Deeds or Land Court against the title of the record owner of the lot.  
Prior to the issuance of a building permit, the applicant must submit proof of the recording of the special permit
- l. Prior to the issuance of a permit, the owner(s) must notify the Building Inspector in writing that the owner will occupy one of the dwelling units on the premises as the owner's permanent/primary residence, except for bona fide temporary absence
- m. When a structure which has received a Permit for an accessory apartment is sold, the new owner(s), if they wish to continue to exercise the Permit, must within thirty (30) day of the sale, submit a sworn and notarized written statement to the Building Inspector stating that they will occupy the principal dwelling unit on the premises as their primary residence. This statement shall be listed as a condition on any permits that are issued under this Section.
- n. No more than one accessory (1) apartment shall be allowed within a single-family dwelling.
- o. Amnesty:

Owners of existing dwellings with an un-permitted accessory apartment shall have one year of amnesty from the effective date of this section to obtain a Special Permit from the Planning Board. By filing the Application for Special Permit for the accessory unit, all owners consent to an inspection without a warrant upon reasonable notice by the Building Inspector and the Fire Department to ensure compliance with all terms of this section and conditions imposed upon the grant of the Special Permit