

Berkley Zoning By-law

Draft #3

January 1, 2022

Black is existing text

Yellow is new text

Strikethrough is deleted

Red is caution or question

SECTION 1.0 PURPOSE AND AUTHORITY

1.1 PURPOSE. This Zoning By-law (the "By-law") has been enacted to promote the general welfare of the Town of Berkley (the "Town"), 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, but not limited to, the provisions of the Zoning Act, G.L. c. 40A, as amended, and Section 2A of 1975 Mass. Acts 808.

~~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.~~

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. 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. 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.

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~~

1.5 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.

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

SECTION 2.0 DISTRICTS

2.1 ESTABLISHMENT. For the purpose of this Bylaw, the Town of Berkley is hereby divided into several types of districts designated as:

Residential (R)
General Business (GB)
Special Business Overlay (SB)
Highway Business (HB)

2.2 ZONING MAP. The 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.

2.3 OVERLAY DISTRICTS.

The following overlay districts are also hereby established:

Aquifer Protection Overlay District (APOD)
Flood Plain Overlay District (FPOD)

2.4 INTERPRETATION OF ZONING MAP.

2.4.1 Centerline. 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.

2.4.2 Lot Lines. 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.

2.5 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 Regulations. Any principal use not listed shall be construed to be prohibited.

1. There shall be not more than one principal residential building on any lot unless specifically authorized in this By-law.

3.1.2 Permitted Uses. In the following Table of Use 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:

BA	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 Bylaw.

3.2 TABLE OF USE REGULATIONS.

[see separate file]

SECTION 4. USE REGULATIONS BY ZONING DISTRICT

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:~~

Public and private recreational uses;

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;

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.~~

~~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.~~

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

~~Retail store;~~

~~Restaurant or other facility for the preparation of food for retail sale on the premises, without a drive-through window;~~

~~Entertainment or recreation facility — indoor or outdoor;~~

~~Professional Business or Offices, including but not limited to, travel agency, real estate office, or financial agency;~~

~~Bakery;~~

~~Bed and Breakfast;~~

~~Bank without a drive-through or ATM facility;~~

~~Uses as defined in MGL Chapter 40A Section 3;~~

~~Retail service or repair shop including but not limited to small appliances, plumbing, carpentry, and electrical;~~

~~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; Veterinary offices or hospital;~~

~~Medical, dental or optical, clinic;~~

~~Print shop and related arts and trades;~~

~~Funeral Home;~~

~~Public or private club;~~

~~Art gallery;~~

~~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);~~

~~Municipal Buildings, structures, facilities or uses owned and operated by the Town of Berkley; Fraternal Organizations, clubs, etc;~~

~~United State Post Office.~~

~~Any use permitted in a residential district except the subdivision of land for residential use — residential subdivisions, Form "A" lots, etc~~

Uses by Special Permit granted by the Planning Board in accordance with the criteria of Section 7.C.2:
Permitted uses under Section B1 above in a building of 20,000 square feet of gross floor area or greater;
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;
Bank with an Outside ATM or drive through;
Fast Food Restaurant or restaurant with a drive-through window;
Gasoline Service Station;
Commercial Kennel;
Warehouse and Distribution;;
Self Storage facility;
Assisted Living Residence;
Continuing Care Retirement Community;
Nursing Home or Rest Home;
Hotel or motel;
Any other use with a drive through component;
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
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.

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.

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

Retail store;
Restaurant or other facility for the preparation of food for retail sale on the premises, without a drive-through window;
Entertainment or recreation facility — indoor or outdoor;
Professional Business or Offices, including but not limited to, travel agency, real estate office, or financial agency;
Bakery;
Bed and Breakfast;
Bank without a drive through or ATM facility;
Uses as defined in MGL Chapter 40A Section 3;
Retail service or repair shop including but not limited to small appliances, plumbing, carpentry, and electrical;
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;
Veterinary offices or hospital;
Medical, dental or optical, clinic;
Print shop and related arts and trades;
Funeral Home;
Public or private club;

Art gallery;
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);
Municipal Buildings, structures, facilities or uses owned and operated by the Town of Berkley;
Fraternal Organizations, clubs, etc; 20. United State Post Office.

Uses by Special Permit granted by the Planning Board in accordance with the criteria of Section 7.C.2:
Permitted uses under Section B above in a building of 20,000 square feet of gross floor area or greater;
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;

Bank with an Outside ATM or drive-through;

Fast Food Restaurant or restaurant with a drive-through window;

4. Gasoline Service Station;

Commercial Kennel;

Warehouse and Distribution,;

Self Storage facility;

Assisted Living Residence;

Continuing Care Retirement Community;

Nursing Home or Rest Home;

Hotel or motel;

Any other use with a drive-through component;

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

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.

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.

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.

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 in the same district 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 in the same district 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 10.6, 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 as set forth in the Table of Use Regulations:

1. Boarders in Single-Family Dwelling. The renting of rooms and/or furnishing of board to not more than two persons in a single-family dwelling by the owner/occupant thereof shall be allowed as an accessory use upon the grant of a special permit.

2. Contractor's yard for the outdoor storage of building materials and equipment on a parcel with 2 or more acres; provided, however, that such use shall be screened from public view and the view of any abutter. By special permit, the Planning Board may allow such use on a parcel smaller than two (2) acres.

3. Commercial landscaping, including storage of equipment, materials, supplies; provided, however, that such use shall be screened from public view and the view of any abutter. By special permit, the Planning Board may allow such use on a parcel smaller than two (2) acres.

4. The overnight unenclosed parking of commercial vehicles owned or operated by a resident of the premises, subject to the following limitations:

a. parking of commercial vehicles less than 15,000 gvw are allowed as of right;

b. parking of a single commercial vehicle of more than 15,000 gvw but less than 35,000 gvw is also allowed as of right;

- c. parking of more than one commercial vehicle of more than 15,000 gvw but less than 35,000 gvw is allowed by special permit from the Board of Appeals;
- d. parking a single commercial vehicle larger than 35,000 gvw is allowed by special permit.

3.3.4 Prohibited Accessory Uses. The following accessory uses are prohibited:

1. Unregistered Motor Vehicles. Not more than two (2) unregistered motor vehicles or trailers or major part(s) thereof, except for farm vehicles, shall remain ungaraged upon any premises at any time unless under a Class 1 or Class 2 license for sale of motor vehicles. No unregistered motor vehicle may be stored or maintained upon any premises within fifty (50) feet from a street, public way or way laid out on a recorded plan.
2. Residence Districts. In the Residence Districts, the following accessory uses are prohibited:
 - a. Commercial kennels;
 - b. Commercial auto repair or service.

3.4 HOME OCCUPATIONS

3.4.1 Home Occupation - As of Right. One (1) only home occupation may be allowed as of right on a property, provided that it:

1. is conducted solely within a dwelling and solely by the person(s) occupying the dwelling as a primary residence;
2. is clearly incidental and secondary to the use of the premises for residential purposes;
3. does not utilize exterior storage of material or equipment (including the parking of commercial vehicles unless otherwise authorized herein);
4. does not exhibit any exterior indication of its presence or any variation from residential appearance;
5. does not produce any customer or client vehicle trips to the home occupation site and has no nonresident employees;

3.4.2 Home Occupation - By Special Permit. One (1) only home occupation may be allowed on a property by special permit issued by the Board of Appeals, provided that it:

1. fully complies with Sections 3.4.2, 3.4.3, and 3.4.4, above.
2. is conducted within a dwelling solely by the person(s) occupying the dwelling as a primary residence and, in addition to the residents of the premises, by not more than two additional employees; where employees leave vehicles on the premises while conducting business elsewhere, they shall be counted as nonresident employees.

3. a special permit for such use is granted by the Board of Appeals, subject to conditions including, but not limited to, restriction of hours of operation, maximum floor area, and number of off-street parking spaces. Such special permit shall be limited to five years, or the transfer of the property, whichever first occurs.

4.0 DIMENSIONAL REGULATIONS

4.1 TABLE OF DIMENSIONAL REQUIREMENTS

4.1.1 General. 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 of Dimensional Requirements. The Special Permit Granting Authority may impose greater requirements where needed for the protection of the neighborhood and to minimize adverse impact.

[SEE SEPARATE FILE]

4.2 SPECIAL LOT AREA REGULATIONS

4.2.1 Minimum Lot Area; R District. The following uses require a minimum lot area of 87,120 square feet: B.5.

4.2.2 Minimum Lot Area; Multifamily Dwellings. Any dwelling with two units, but not more than four units, shall be located on a lot with at least 65,340 square feet per dwelling unit.

4.3 SPECIAL DIMENSIONAL REGULATIONS

~~**4.3.1 Lots Over Five acres.** Any lot with more than five acres next to a lot occupied by (i) a single family dwelling or (ii) a farm or (iii) land conserved through a Conservation Restriction, shall provide a landscaped buffer strip 50 feet wide containing no buildings, parking or outdoor storage. Mature existing vegetation is preferred to clear-cutting and planting of young material.~~

4.3.1 Permitted Encroachments. Steps, fireplaces, chimneys shall be permitted within the front side and rear setbacks.

4.3.2 Stands. 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.

4.3.3 Setbacks. In the GB and SB Districts, no structures, parking, or storage shall be located in the front setback area.

~~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.~~

4.4 CORNER LOTS

4.4.1 General. A corner lot or a lot opening on two streets shall be subject to the regulations for front yards set forth in the Table of Dimensional Requirements with respect to every street on which it fronts. In the case of corner lots, frontage shall be measured between one side lot line and the mid-point of the corner. Corner lots shall not have rear lot lines.

4.4.2 Sight Triangle. On a corner lot, no visual obstruction between 2 ½ and eight feet above the lowest elevation at the curb line shall be permitted within the area of a triangle formed on two sides by the intersecting ways and on the third side by a line drawn between points on each of said intersecting ways 25 feet from the corner. For the purpose of this section, the word "visual obstruction" shall mean any shrub, tree, wall, fence, sign, temporary building, pile of material, terrace or retaining wall, but shall not include permanent buildings or structures otherwise in compliance with this zoning

4.5 ACCESSORY BUILDINGS

4.5.1 Dimensional Requirements and Location. Except as otherwise provided herein, the following dimensional rules shall apply to accessory structures:

1. Less than 120 Square Feet GFA. An accessory building less than 120 square 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.

2. More than 120 Square Feet GFA. An accessory building more than 120 square feet shall comply with all setback and yard requirements in the district.

3. No accessory building or structure, except a permitted sign or roadside stand, shall be located within a required front yard setback.

4. 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.

5. Accessory structures and buildings shall be located on the same lot as the principal structure on the premises.

4.5.2 Permitted Accessory Structures. The following accessory structures are permitted in all districts:

1. Accessory building not more than 20 feet in height above the average grade level around the structure; provided, however, that a barn shall not be subject to this requirement.

2. Boundary fences, walls, or hedges shall be permitted provided that they do not exceed six (6) feet in height and provided that no fence which obstructs vision shall exceed thirty-six (36) inches in height within twenty (20) feet of the street line or within twelve (12) horizontal feet of a habitable room in an abutting dwelling.

3. Flag poles of a height not to exceed 20 feet are permitted and shall be exempt from the setback requirements of this Section.

4. Swimming pools, game courts, and the like are accessory structures and shall comply with

the State Building Code and all applicable setback requirements of this Zoning By-Law.

4.5.3 Prohibited Accessory Structures. In the Residential District, the following accessory structures are prohibited, unless, in the case of a lawful business use, 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.
3. Recreational vehicle storage or parking in a required yard.

SECTION 5.0 NONCONFORMING USES AND STRUCTURES

5.1 APPLICABILITY.

Except as herein after provided, this Bylaw 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 Bylaw 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 Bylaw, 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, not substantially more 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 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 two years, shall lose its protected status and be subject to all of the provisions of this Bylaw; provided, however, that by special permit the Zoning Board of Appeals may reestablish a nonconforming use or structure otherwise abandoned or not used upon a finding that such reestablishment shall not result in substantial detriment to the neighborhood.

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.

~~SECTION 6. NONCONFORMING BUILDINGS AND USES AND STRUCTURES~~

~~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.~~

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

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

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.

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.

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

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

SECTION 6.0 GENERAL REGULATIONS

6.1 PARKING AND LOADING

6.1.1 Applicability. All uses other than single family residences shall provide sufficient off street parking on the same lot as the principal use, 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 of Parking Requirements and this Section.

6.1.2 Table of Parking Requirements.

USE	REQUIRED SPACES
-----	-----------------

Assisted Living Facility	1 per staff person and 1 space for every 4 beds
Auto Repair	1 per 400 sf of GFA PLUS 1 per employee
Bank	1 per 175 sf GFA devoted to customer service PLUS 1 per 250 sf GFA not devoted to customer use
Barber Shop or Beauty Salon or Tanning Salon or Tattoo 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 sf of GFA 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 sf of retail floor area, or none required if less than 100 sf
Funeral Home	1 per 50 sf of public floor area PLUS 1 per two employees
Motor vehicle light 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 sf of banquet, assembly or meeting space.
Libraries, museums, clubs, and social buildings	1 per 250 sf of GFA PLUS 1 per two employees
Non-medical offices	1 per 250 sf of GFA
Nursing or Rest home Long term care facility	1 space per 4 beds
Other general, personal, consumer and retail services	1 per 250 sf of GFA PLUS 1 per employee
Other business, institutional or professional use not specified	1 per 200 sf of GFA PLUS 1 per 2 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 sf of educational space

Self storage facility	Minimum of 3, or 1 per 10,000 sf of GFA, whichever greater
-----------------------	------------------------------------------------------------

6.1.3 Parking Design and 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, the Planning Board may approve a site plan showing shared egress and ingress by and between adjacent properties. No parking area shall be located or designed so as to require backing onto or off a public way
4. Each off-street parking space shall have minimum dimensions of nine (9) by twenty (20) feet excluding the driveway to such space.
5. 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.~~
6. No parking lot shall be illuminated so as to cause glare for motorists, pedestrians or neighboring premises.
7. 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.
8. 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.
9. 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.
10. Aisles and spaces shall be consistent with the following:

Aisle Width	Parking Angle (in degrees)				
	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
-----------------	----------	----------	----------	----------	-------

6.1.4 Drive-Through Facilities. All drive-through facilities shall require a special permit from the Planning Board.

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.

~~6.1.5 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.

6.1.5 Loading. 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.

6.1.6 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.

6.2 SIGNS

6.2.1 Purpose. 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. 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.

6.2.2 Permit Required. No sign(s) shall be attached, erected or otherwise installed on any property without first obtaining a sign permit from the Building Inspector.

6.2.3 General Requirements. A sign permit may be granted only in accordance with the following requirements:

1. Flashing, shimmering and/or rotating lights shall not be permitted.
2. All signs shall be limited to the identification of premises, their occupants or users, the placement or the business conducted therein.

3. No sign shall be placed which prevents the driver of a vehicle from having a clear and unobstructed view of approaching or merging traffic.

4. No signs shall be internally illuminated.

6.2.4 Exemptions. The following signs shall be exempted from these regulations:

1. Signs of less than two (2) square feet in surface area identifying occupancy of a residence, including any home occupation.

2. Historic or commemorative plaques not exceeding two (2) square feet in surface area.

3. No trespassing, no hunting and similar ownership signs not exceeding two (2) square feet in surface area.

6.2.5 Signs in the Residential District. 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.

6.2.6 Signs in the General Business and Special Business Districts. The following are permitted:

1. Wall mounted signs. The sign or signs shall be firmly affixed to a building. 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. 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. 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. 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. 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. 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. 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.

6.2.7 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.

6.3 PERFORMANCE STANDARDS FOR USES REQUIRING SPECIAL PERMIT OR SITE PLAN APPROVAL

6.3.1 Procedures. Applicants for special permits or site plan approval for nonresidential or multifamily uses shall comply with these Performance Standards. “Nonresidential or multifamily use” shall not mean a single or two family dwelling.

1. The SPGA or the Planning Board (as the case may be) may adopt rules and regulations for administration of these Performance Standards. The Planning Board has adopted such regulations, entitled “Planning Board Rules & Regulations Governing the Issuance of Special Permits and Site Plan Approval in the General Business and Special Business Districts.”

2. The SPGA or Planning Board may require the establishment of an escrow account, pursuant to 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.

6.3.2 Exemptions. The following are exempt from these performance 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.

6.3.3 Landscaping Standards. The Planning Board or SPGA may adopt Regulations to screen various unsightly site features, establish buffer areas, to landscape large parking areas, to preserve open space on a development site, to require maintenance of planted areas, and to regulate fencing, berms, and retaining walls.

6.3.4 Lighting Standards. The Planning Board or SPGA may adopt Regulations to provide for adequate lighting of access ways, parking areas, and pedestrian walkways in order to promote public safety and security, including Regulations to reduce overspill and glare, limit the height of lighting fixtures, hours of operation, and types of lighting.

6.3.5 Drainage Standards. The Planning Board or SPGA may adopt Regulations to provide for adequate site stormwater management including design of detention/retention areas, ground infiltration facilities, piping, and test holes.

6.3.6 Parking and Loading Standards. The Planning Board or SPGA may adopt Regulations to provide for improved internal circulation, proper stacking of vehicles, access/egress design standards, and loading.

6.3.7 Standards for Service Facilities. The Planning Board or SPGA may adopt Regulations to provide for adequate screening of service facilities.

6.3.8 Standards for Construction. The Planning Board or SPGA may adopt Regulations to provide for construction standards during site development, including pavement, curbing, utility connections, bollards, land disturbance, replication, trenching for utility connections, preservation of existing vegetation, revegetation, limit of clearing, grading, phasing, and irrigation.

6.3.9 Standards for Access Connections. The Planning Board or SPGA may adopt Regulations to provide for access connections, including separation, width, shared driveways, and leveling areas.

6.3.10 Standards for Drive-Through Facilities. The Planning Board or SPGA may adopt Regulations to provide for safe drive-through facilities, including stacking lanes, window location, pedestrian safety, and outdoor service facilities.

6.3.11 Standards for Architectural/Building Design. The Planning Board or SPGA may adopt Regulations to provide for architectural details of proposed buildings, building location, mass, proportion and scale, rooflines, windows, and signs.

6.3.12 Noise Standards. The Planning Board or SPGA may adopt Regulations to provide for control of noise, including maximum sound level, hours of operation for certain activities.

6.3.13 Traffic Management Standards. The Planning Board or SPGA may adopt Regulations to provide for traffic management and safety standards, including minimizing hazards to public health and safety as a result of traffic, providing safe access and circulation on the site for expected vehicles, pedestrians, and emergency vehicles, providing off-site traffic mitigation, where required, to offset the impact of the development, reducing the traffic impacts of the proposed development on the area and the Town by incorporating traffic management devices; and minimizing the impact on scenic roads, historic districts, natural resources, and community character.

6.3.14 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 this Section.

6.3.15 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.

SECTION 7.0

SPECIAL REGULATIONS

7.1 ADULT ENTERTAINMENT USES

7.1.1 Purpose. The purpose of this Section 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 this Section is to prevent crime, maintain property values, protect the town's retail trade and protect and preserve the quality of residential neighborhoods. This Section does not prohibit adult entertainment uses, but rather provides reasonable alternative avenues of expression throughout the town.

7.1.2 Definitions. See Section 11, "Adult Entertainment Uses."

7.1.3 Special Permit Required. All Adult Entertainment Use Establishments are allowed in the Special Business District upon the grant of a special permit by the Zoning Board of Appeals.

7.1.4 Requirements. All Adult Uses shall comply with the following requirements:

1. 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.
2. 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.
3. 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.
4. There shall be no viewing booths within an Adult Entertainment Use.

7.1.5 Sign Requirements. 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.

1. 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.
2. No pictures, publications, videotapes, movies, covers or other advertising items that fall within the definition of an Adult Entertainment Use shall be displayed in the windows of, or on the building of, any adult entertainment use establishment.

7.1.6 Special Permit Application. In addition to the application form of the Special Permit Granting Authority, the applicant shall submit a site plan 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 10.6. The site plan shall also show when appropriate the distances between the proposed Adult Entertainment Use 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. All applications for a Special Permit must include the following information:

1. Names and addresses of the legal owner(s) of the Adult Entertainment Use Establishment.
2. 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.
3. The number of employees, or proposed number of employees, as the case may be.
4. Proposed security precautions.

7.1.7 Decision. 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. 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.

7.1.8 Prohibition. 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.

7.2 WIRELESS TELECOMMUNICATIONS FACILITIES (WTF)

7.2.1 Purpose. The purpose of this Section is to establish regulations and procedures for Wireless Telecommunications Facilities (WTF) so as to allow and encourage such uses in the Town with minimal harm to the public health, safety, and general welfare. Specifically, the purposes of this Section are to:

1. Protect and preserve the character and appearance of the Town, including, but not limited to, the scenic, historic, environmental, natural and man-made resources, residential areas and land uses from potential adverse impacts of wireless communication facilities;
2. Encourage the location of telecommunications facilities in nonresidential areas;
3. Minimize the overall number and height of such facilities throughout the community;

4. Encourage facilities to be located in areas where the adverse impact will be minimal on adjacent properties and residential neighborhoods;

5. Encourage facilities to be configured in ways that minimize the adverse visual impact of the facilities through careful design, siting, landscape screening, and innovative camouflaging techniques;

6. Enhance the ability of the providers of WTF to provide such services to the community quickly, effectively, and efficiently;

7. Avoid potential damage to adjacent properties from tower and antenna failure through sound engineering and careful siting of structures; and

8. Guide sound development while promoting the health, safety and general welfare of the Town consistent with all applicable local, state, and federal laws.

7.2.2 Applicability. The provisions of other sections of this Bylaw notwithstanding, the regulations and restrictions set forth herein shall apply to the placement, construction, installation, modification, monitoring and removal of Wireless Telecommunication Facilities. No WTF shall be placed, constructed, installed, or modified within the Town on or after the date of enactment of this Section, except in accordance with the provisions of this Section.

1. Facilities Permitted by Right. A concealed WTF may be installed in a structure on a lot in a nonresidential district provided all the requirements for a building permit are met.

2. Facilities by Special Permit. All other WTFs shall require the issuance of a Special Permit by the Zoning Board of Appeals, referred to in this Section as the Special Permit Granting Authority (SPGA).

7.2.3 Exemptions. The following shall be exempt from the provisions of this Section:

1. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission, provided that: (1) the tower is not used or licensed for any commercial purpose; (2) the tower must have a cost or replacement value of less than ten thousand dollars (\$10,000); and (3) the tower must be removed if the use is discontinued for six (6) months or longer;

2. Communication facilities used for the purposes set forth in G. L. c. 40A, s. 3;

3. Facilities used for noncommercial Town or State public safety purposes; and

4. Licensed commercial mobile radio services primarily used in support of the licensee's own business purpose, provided that (i) such services are not used as a dispatching or communication service for third parties and (ii) any facilities used in connection therewith may not exceed the maximum height allowed under Section 4.0. Examples include, but are not necessarily limited to: commercial mobile radio services used by a taxi or limousine company to communicate with its vehicles and repair, service, delivery, towing and fuel delivery companies communicating with their respective vehicles.

7.2.4 Location. WTFs shall be located according to the following priorities. Applicants shall demonstrate that they have investigated locations higher in priority ranking than the one for which they are applying and whether such sites are available and, if applicable, under what conditions. The priorities are:

1. Within an existing structure concealed;
2. On industrial or commercially zoned land;
3. Within an existing structure and camouflaged;
4. Camouflaged on an existing structure, such as but not limited to an existing electric transmission tower or an existing radio antenna, a water tower, or building, and of a compatible design;
5. Co-located with an existing WTF;
6. On Town owned land which complies with other requirements of this Section and where visual impact can be minimized and mitigated;
7. If adequately demonstrated to the SPGA in the special permit process that each of the priorities set forth above is not feasible, erection of a new facility that complies with the other requirements of this Section and where visual impact can be minimized and mitigated.

7.2.5 Height. Towers and/or mountings shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten-year period) technically practical;

1. Ground-Mounted Facilities. The maximum height of a ground mounted WTF shall not exceed one hundred (100) feet.
2. Roof-Mounted Facilities. A roof-mounted WTF shall not project more than fifteen (15) feet above the height of the building or structure on which they are mounted nor project more than fifteen (15) feet above the height limit of the zoning district within which the Facility is located, whichever is less.
3. Side-Mounted Facilities. A side-mounted WTF shall not project above the parapet of the building or top of any wall or structure on which they are mounted.
4. Side and roof-mounted WTFs shall not be allowed on a building or structure of less than two stories.

7.2.6 Setbacks.

1. Ground-Mounted Facilities. Any new ground mounted WTF shall be set back at least one time the height of the WTF plus 10 feet from each lot line of the site on which the WTF is located.

2. Non-Concealed Antenna. Any non-concealed antenna shall be set back at least one time the height of the antenna, as measured from the ground level, from each lot line of the site on which the antenna is located. However, if the antenna is being attached to an existing tower whose setback is already approved, either by right, by special permit or by variance, and if the SPGA determines that the addition of the antenna does not materially alter the basis of that prior approval, then no new, independent setback requirement shall be created by the addition of the antenna.

3. Reduction of Setback. In nonresidential districts or on Townowned land, the SPGA may grant a special permit to allow a lesser setback if it makes a finding that such lesser setback provides adequate safety, promotes co-location or improves design, and will not negatively impact the appearance and character of the neighborhood.

7.2.7 Screening and Landscaping.

1. Existing on-site vegetation shall be preserved to the maximum extent practical.

2. To the maximum extent feasible, facilities shall minimize adverse visual effects on the environment. The SPGA may impose reasonable conditions to ensure this result, including landscaping, painting, and lighting standards.

3. Satellite dishes and/or antennas shall be situated on a structure in the least obtrusive location feasible, preferably with limited visibility from abutting streets.

7.2.8 Miscellaneous Standards.

1. To the maximum extent feasible, all network interconnections from the communications site shall be via underground lines;

2. Traffic associated with the WTF shall not adversely affect abutting ways.

3. Night lighting of any WTF shall be prohibited unless required by the Federal Aviation Administration.

4. There shall be no signs associated with facilities, except for small instructional signs, "No Trespassing" signs, and a required sign giving a phone number where the owner can be reached on a 24-hour basis. All signs shall conform to the provisions of Section 6.2 of this Bylaw.

5. Roof-mounted Personal Wireless Service Facilities shall not individually or in the aggregate have a front surface area facing surrounding streets and adjacent properties that exceed fifty (50) square feet in area.

7.2.9 Prohibitions. The following shall be prohibited:

1. Lattice style towers, guyed towers and other WTFs requiring three or more legs and/or guy wires for support shall not be allowed.

2. Advertising signs shall not be allowed.

3. Fences using razor wire or barbed wire or similar types shall not be allowed.

4. A WTF shall not be located on a nonconforming building or structure, unless zoning relief is granted to extend, alter or change the building or structure in accordance with G.L. c. 40A, s.6 and section 5.0 of this Bylaw.

7.2.10 Justification of Need. The following standards shall apply in the issuance of any special permit for a WTF and shall be prepared by a licensed professional engineer:

1. Coverage area. The applicant shall provide a map of the geographic area in which the proposed Facility will provide adequate coverage.

2. Adequacy of other Facility sites controlled by the applicant. The applicant shall provide written documentation of any facility sites in the Town and in abutting towns or cities in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. Said documentation shall demonstrate that these facility sites do not already provide, or do not have the potential to provide by site adjustment, adequate coverage.

3. Capacity of existing facility sites. The applicant shall provide written documentation that it has examined all facility sites located in the Town and in abutting towns in which the applicant has no legal or equitable interest to determine whether those existing facility sites can be used to provide adequate coverage.

4. Adequate coverage through the least disruptive means. The applicant shall provide written documentation that the proposed facility uses the least disruptive technology (through the use of repeaters or other similar technology as it may be developed subsequent to adoption of this Section) in which it can provide adequate coverage in conjunction with all facility sites listed above.

7.2.11 Application; Procedures. The applicant or co-applicant for any permit for a WTF must be a licensed carrier who has authority from the FCC to provide wireless communication services for the facility being proposed. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of the filing of the application for the permit and ___ copies of the following additional information:

1. A color photograph or rendition of the proposed equipment and mountings. A rendition or computer-simulated photograph shall also be prepared illustrating the WTF at the proposed location, viewed from at least two (2) prominent locations along the surrounding rights-of-way;

2. A description of the proposed equipment and mountings;

3. A Justification of Need, as defined in Section 7..1.10, above.

4. Confirmation that the WTF complies with all applicable Federal and State standards.

5. A description of the capacity of the WTF, including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations;

6. A map and list describing all of the Applicant's current and expected future sites for WTFs in the Town.

7. A locus plan at a scale of 1" = 40' showing the exact location of the proposed WTF and all property lines, streets, landscape features, residential dwellings, and buildings within three hundred (300) feet of the facility.

7.2.12 Regulations. The SPGA shall maintain a set of regulations that contains the necessary policies, procedures, and standards to implement the provisions of this section.

7.2.13 Special Permit Criteria. A special permit shall be granted under this Section only if the SPGA shall find that the project is in harmony with the general purpose and intent of this Section and the SPGA's regulations. In addition, the SPGA shall make the findings required by § 10.5 of this Bylaw and the following additional findings:

1. That the applicant is not already providing adequate coverage or is unable to maintain adequate coverage without the special permit;

2. That the applicant is not able to use existing facility sites either with or without the use of repeaters to provide adequate coverage;

3. That the proposed WTF minimizes any adverse impact on historic resources, scenic views, residential property values, and natural or man-made resources;

4. That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities;

5. That the WTF shall comply with the appropriate FCC regulations regarding emissions of electromagnetic radiation and that the required monitoring program is in place and shall be paid for by the applicant; and

6. That the applicant has agreed to rent or lease available space on any tower it controls within the Town or contiguous towns, under the terms of a fair market lease, without discrimination to other wireless service providers.

7.2.14 Conditions. If a special permit is granted, in addition to such terms and conditions as may be authorized by § 10.5 of this Bylaw, the SPGA may impose such additional conditions and safeguards as public safety, welfare and convenience may require.

7.2.15 Denial. Any decision by the SPGA to deny a special permit under this section shall be in conformance with the Telecommunications Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

7.2.16 Term of Permit. In its informed discretion, the SPGA may limit the special permit to a fixed or conditional period of time as it may determine appropriate. At the end of the approved time period, the facility shall be removed by the carrier or a new special permit shall be required.

7.2.17 Report. All permitted and special permitted wireless communication facility carriers shall periodically file with the SPGA, every five years (or sooner if specified in a special permit), on operational aspects of the facility including: power consumption; power radiation; frequency transmission; the number, location, and orientation of antennas; and types of services provided.

7.2.18 Removal Requirements. Any WTF that ceases to operate for a period of one year shall be removed. Cease to operate is defined as not performing the normal functions associated with the WTF and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the Facility site shall be remediated such that all WTFs that have ceased to operate are removed. If all ground mounted Facilities have ceased to operate, the mount (including the foundation) shall also be removed and the site shall be revegetated by the owner. Existing trees shall only be removed if necessary to complete the required removal. The applicant shall, as a condition of the special permit, provide a financial surety or other form of financial guaranty acceptable to the SPGA, to cover the cost of removal of the Facility and the remediation of the landscape, should the Facility cease to operate.

7.3 SOLAR ENERGY SYSTEMS

7.3.1 Purpose. The purpose of this Section is to provide a permitting process for solar photovoltaic installations for cost-effective, efficient, and timely implementation to increase the use of distributed generation; to integrate these installations into the Town in a manner that minimizes their impacts on the character of neighborhoods, on property values, and on the scenic, historic, and environmental resources of the Town, and to protect health and safety.

7.3.2 Definitions. See Section 11.0, “Solar Energy Systems.”

7.3.3 Medium or Large Scale Photovoltaic Solar Developments.

1. Special permit required. Medium or large scale photovoltaic solar developments require a special permit per the Table of Uses.
2. In addition to the standard special permit application requirements of Section 10.5, a special permit application for large and medium scale photovoltaic solar energy systems the site plan submitted shall include the following additional information:
 - a. Property lines and physical features, including roads, for the project site;
 - b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;

- c. Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from or to nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
- d. One- or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all Massachusetts Electric Code (527 CMR 12.00) compliant disconnects and overcurrent devices;
- e. Documentation of the major system components to be used, including the panels, mounting system, and inverter;
- f. Name, address, and contact information for proposed system installer;
- g. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- h. The name, contact information and signature of any agents representing the project proponent;
- i. Zoning district designation for the parcel(s) of land comprising the project site;
- j. Locations of active farmland and prime farmland soils, wetlands, permanently protected open space;
- k. Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage & Endangered Species Program (NHESP) and "Important Wildlife Habitat" mapped by the DEP;
- l. Locations of floodplains or inundation areas for moderate- or high-hazard dams;
- m. Locations of local or national historic districts;
- n. Documentation of actual or prospective access and control of the project site;
- o. An operation and maintenance plan;
- p. Proof of liability insurance;
- q. A public outreach plan, including a project development time line, which indicates how the project proponent will meet the required special permit review notification procedures and otherwise inform abutters and the community.
- r. Site plans submitted for the above shall be prepared by a Massachusetts licensed professional engineer.

7.3.4 Design Standards for Large and Medium Scale Photovoltaic Solar Developments; Special Permit Required.

1. Utility notification. No grid intertie photovoltaic system shall be installed until evidence has been given to the special permit granting authority that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

2. Utility connections. Reasonable efforts, as determined by the special permit granting authority, shall be made to place all utility connections from the solar photovoltaic installation to the point of interface with the grid tie-in 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.

3. Safety. The large or medium scale ground mounted solar energy system owner or operator shall provide a copy of the special permit application to the Fire Chief for review. All means of shutting down the solar installation shall be shown on the application and plans filed, and shall be clearly marked onsite.

4. Fencing. Fencing that is required for safety and prevention of access to photovoltaic equipment shall be set back from roads and property lines to the greatest extent possible and shall be separate from other visual screening that is required.

5. Visual Screening. Screening, by opaque fence and/or landscape planting, shall be provided, as per conditions set by the SPGA, to prevent the solar energy system from being visible from the street or streets which the system has frontage on, from adjoining streets which abut the lot, or from a distance of 250 feet or less from an adjoining residential property. This regulation is not intended to require screening of solar energy systems where the topography within the site of the solar installation and adjoining the solar energy system site rises or falls to an extent that fencing or landscape screening is impractical or unnecessary. If the natural circumstances of existing landscape and vegetation provide screening that is satisfactory to the SPGA, additional visual screening may not be required.

6. Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ordinances. Maintenance of vegetation shall be by mowing. No chemicals, weed killers or herbicides shall be used at any time.

7. Stormwater management. Best management practices shall be used for controlling and managing stormwater run-off and drainage for the medium-scale ground-mounted solar photovoltaic installation in compliance with all applicable federal, state and local regulations.

8. Glare. The SPGA may require a glare analysis and proposed mitigation, if any, to minimize the impact of glare on affected properties.

9. Wetlands. The SPGA may review the proposed installation with the Conservation Commission.

10. Impact Report. The SPGA may require an environmental impact report or statement.

7.3.5 Design Standards for Large and Medium Scale Photovoltaic Solar Developments; No Special Permit Required.

1. Site plans and construction drawings submitted shall be prepared by a Massachusetts licensed professional engineer.

2. Provide evidence that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator and that the utility company has approved the connection.

3. Utility connections shall be underground to the connection point of the grid tie in or to the property line of the site. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

4. All means of shutting down the solar installation shall be shown on the plans filed, and shall be clearly marked on site.

5. Safety fencing shall be provided to prevent access to photovoltaic equipment. Safety fencing shall be set back from roads and property lines to the greatest extent possible and shall be separate from other visual screening that is required.

6. Visual screening, by evergreen landscape planting or existing evergreens, shall be provided to prevent the solar energy system from being visible from the street or streets which the system has frontage on, from adjoining streets which abut the lot, or from a distance of 200 feet or less from buildings on an adjoining property or across the street. This regulation is not intended to require screening of solar energy systems where the topography within the site of the solar installation and adjoining the solar energy system site rises or falls to an extent that fencing or landscape screening is impractical or unnecessary.

7. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ ordinances. Plans shall show habitat impacts are mitigated during construction and over the life of the facility. Maintenance of vegetation shall be by mowing. No chemicals, weed killers or herbicides shall be used at any time.

8. Best management practices shall be used for controlling and managing stormwater run-off and drainage in compliance with all applicable federal, state and local regulations.

9. Plans submitted shall show a glare analysis and proposed mitigation, if any, to minimize the impact of glare on neighboring properties.

10. All regular building permit sign-offs shall be approved by local boards or authorities, including the Conservation Commission and Fire Chief.

7.3.6 Small Scale Ground Mounted Photovoltaic Solar Energy Systems; Special Permit Requirements.

1. A special permit application for small scale ground mounted photovoltaic solar energy systems shall include the information on the site plan that is required by Section 10.6.
2. The SPGA may impose reasonable conditions for landscape screening or fencing.
3. Findings required for special permit for small scale ground mounted photovoltaic solar energy systems:
 - a. The general findings required for all special permits under Section 10.5 are required to be made.
 - b. The proposed ground mounted residential photovoltaic solar energy system will not have any negative impact on neighbors or abutters within 300 feet.
 - c. The proposed small scale ground mounted residential photovoltaic solar energy system will not have any negative impact on views from a public way.
 - d. The Planning Board may allow a small scale ground mounted photovoltaic system that is larger than 750 square feet of collector area. If an increase in size above 750 square feet of collector area is requested as a part of the special permit application, the increase in size will not have any negative impact on neighbors or abutters within 300 feet or on views from a public way.
 - e. The SPGA may require a glare analysis and proposed mitigation, if any, to minimize the impact of glare on affected properties

7.3.7 Abandonment or Decommissioning.

1. Removal Requirements. Any commercial large- or medium-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life, is no longer operational or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Select Board, Planning Board, and Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal.
2. Decommissioning. Decommissioning shall consist of:
 - a. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
 - b. Disposal of all solid and hazardous waste brought to the site or generated by the owner or operator or otherwise related to the large-scale ground-

mounted solar photovoltaic installation in accordance with local, state, and federal waste disposal law and regulations.

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

3. Abandonment. The large or medium scale ground mounted solar photovoltaic installation shall be considered abandoned when it does not operate for more than one year without the written consent of the special permit granting authority. If the owner or operator of the large or medium scale ground mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this Section within 150 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous, or decommissioned large or medium scale ground mounted solar energy system. As a condition of special permit approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation.

4. Financial Assurance. Proponents of large scale ground mounted solar photovoltaic installations shall be required to provide a form of surety to cover the cost of removal and restoration of the site in the event the site is abandoned. The amount and form of surety shall be determined by the Planning Board, but in no event shall the amount exceed 125% of the cost of removal. Applicants shall submit a fully inclusive cost estimate of the costs associated with the removal of the large scale ground mounted solar energy system prepared by a qualified engineer. The cost estimate accounts for inflation over the life of the system. All subsequent owners/ operators of the system shall continue to provide a form of surety acceptable to the Town until the commercial scale solar energy system has been removed.

7.4 MEDICAL MARIJUANA TREATMENT CENTERS

7.4.1 Purpose. The purpose of this Section is to:

1. Establish specific zoning standards and regulations for medical marijuana treatment centers, and medical marijuana growing and cultivation operations; protect the public health, safety and welfare of Berkley residents;
2. Regulate the siting, design, placement, safety, monitoring, modification, and removal of a Medical Marijuana Treatment Center (RMD); and marijuana cultivation; and
3. Minimize the adverse impacts of an RMD on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other land uses potentially incompatible with said facilities.

7.4.2 Definitions. See “Medical Marijuana Treatment Centers” in Section 11.0.

7.4.3 SPGA. For all purposes pursuant to this Section, the Select Board is hereby designated as the Special Permit Granting Authority (SPGA). All special permit applications made pursuant to this Section shall conform to the standards and criteria and procedural provisions as required by the rules and regulations of the Planning Board.

7.4.4 Special Permit Criteria. In addition to the specific criteria contained within Section 10.5, the SPGA shall consider the following criteria, where relevant before issuing a special permit for development within the Medical Marijuana Treatment Center:

1. Shall comply with all requirements of 105 CMR 725.000;
2. Adequacy of the site in terms of the size of the proposed use(s);
3. Suitability of the site for the proposed use(s), an RMD shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate. The 500 foot distance under this Section is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD;
4. Suitability of security for the proposed use(s);
5. Impact on traffic and safety;
6. Impact on the visual character and security the surrounding neighborhood;
7. Adequacy of parking; an RMD shall provide 1 space for each 400 gross square feet of floor area used for treatment, dispensing and processing and 1 space for each 2,000 gross square feet of floor area used for cultivation;
8. Adequacy of utilities, including sewage disposal, water supply and storm water drainage;
9. Shall provide free home delivery qualifying patients within the Town;
10. Provide proof of an agreement with the Town on payment in lieu of taxes.

7.4.5 Cultivation Prohibited. Cultivation, as defined in this Section, by any qualifying patient, personal care-giver, or Medical Marijuana Treatment Center in any location other than where specifically permitted shall be disallowed. This disallowance shall include cultivation, even where proposed as an accessory use, by any qualified patient, personal caregiver, or Medical Marijuana Treatment Center.

7.4.6 Design. A Medical Marijuana Treatment Center shall be designed and constructed in accordance with the underlying zoning district and the requirements of all applicable provisions of Section 4.0.

7.4.7 As-Built Plan. An as-built plan, certified by a registered professional land surveyor or engineer, shall be submitted to the SPGA and Building Inspector before the issuance of a permanent occupancy permit. The as-built plan shall attest to a development's conformity to its approved site plan by indicating landscaping, buildings, drainage flow, number of parking stalls, and limits of parking areas and drives.

7.4.8 Modifications. Any changes in the approved special permit shall be submitted to the Planning Board for review and approval prior to issuance of permanent occupancy permit. The special permit is granted for a period of two years and shall lapse if substantial use or construction has not been commenced by such date, except for good cause shown and provided that said construction once begun shall be actively and continuously pursued to completion within a reasonable time. Good cause and reasonable time shall be determined by a vote of the SPGA.

7.5 ADULT USE MARIJUANA ESTABLISHMENTS

7.5.1 Purpose. The purpose of this Section is to regulate all types of Adult Use Marijuana Establishments (“Marijuana Establishments”).

7.5.2 Definitions. See Section 11.0, “Adult Use Marijuana Establishments.”

7.5.3 Special Permit Granting Authority. The Special Permit Granting Authority (SPGA) shall be the Select Board.

7.5.4 Application Requirements. All applicants are encouraged to contact the Planning Board to schedule a pre-application meeting. In addition to all the application requirements related to special permits the applicant shall include the following at the time of application:

1. Copies of all licenses, permits and documentation demonstrating application status, registration or licensure by the Commonwealth of Massachusetts Cannabis Control Commission.
2. A security plan showing the arrangement of pedestrian circulation and access to the public points of entry to the premises from the nearest public or private street or off-street parking area. The security plan shall detail how the property will be monitored so as to avoid, deter and prevent illegal activities from taking place upon or about the applicant’s premises and shall show the location of any walkway structures, lighting, gates, fencing and landscaping.
3. A list of all managers, officers, directors, persons or entities having direct or indirect authority over the management, policies, security operations or cultivation operations of the Marijuana Establishment.
4. A list of all persons or entities contributing 10% or more of the initial capital to operate the Marijuana Establishment, including capital in the form of land or buildings.
5. Proof that the Marijuana Establishment is registered to do business in the Commonwealth of Massachusetts as a domestic business corporation or another domestic business entity in compliance with 935 CMR 500 and is in good standing with the Secretary of the Commonwealth and Department of Revenue.
6. Documentation of a bond or other resources held in an escrow account in an amount sufficient to adequately support the dismantling or winding down of the Marijuana Establishment, if required.

7. An odor control plan detailing the specific odor-emitting activities or processes to be conducted on-site, the source of those odors, the locations from which they are emitted from the facility, the frequency of such odor-emitting activities, the duration of such odor-emitting activities, and the administrative and engineering controls that will be implemented to control such odors, including maintenance of such controls.

8. An applicant who is not the property owner shall submit evidence in the form of a deed, an executed lease or valid purchase and sale agreement documenting the applicant's contingent property interest and legal right to operate a Marijuana Establishment at the property.

7.5.5 Use Regulations.

1. No special permit shall be granted for any Marijuana Establishment sited within a radius of five hundred (500) feet of a public or private, primary or secondary school, licensed daycare center, public library, public park or playground. The 500 foot distance under this section shall be measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed Marijuana Establishment. Each applicant for a special permit under this section shall submit a plan signed by a licensed surveyor, depicting compliance with the linear distance requirements set forth herein.

2. All aspects of a Marijuana Establishment relative to the cultivation, possession, processing, distribution, dispensing or administration of marijuana, marijuana products, or related supplies must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the building. A Marijuana Establishment shall not be located in a trailer, storage freight container, motor vehicle or other similar movable enclosure.

3. No outside storage of marijuana, marijuana products, or related supplies is permitted.

4. The Marijuana Establishment shall provide an odor control plan that provides for proper and adequate ventilation at such facilities in such a manner so as to prevent pesticides, insecticides or other chemicals used in the cultivation or processing of marijuana or marijuana related products from being dispersed or released outside the facilities. All resulting odors, smoke, vapor, fumes, gases and particulate matter from marijuana or its processing or cultivation shall be effectively confined to the premises or so disposed of so as to avoid any air pollution.

5. The Marijuana Establishment shall provide for adequate and proper security at the premises so as to avoid, deter and prevent illegal activities from taking place upon or about the applicant's premises.

6. No marijuana or marijuana product shall be smoked, eaten or otherwise consumed or ingested on the premises. All Marijuana Establishments permitted under this section shall comply with all state and local laws, rules and regulations governing the smoking of tobacco.

7.5.6 Dimensional Requirements. A Marijuana Establishment shall comply with the dimensional controls set forth in the Section 4.0.

7.5.7 Abandonment or Cessation of Use. A Marijuana Establishment shall be required to remove all materials, plants, equipment and other paraphernalia within ninety days of ceasing operations or immediately following revocation of its license issued by the Cannabis Control Commission. The SPGA may require the Marijuana Establishment to post a bond or other resources held in an escrow account in an amount sufficient to adequately support the dismantling and winding down of the Marijuana Establishment.

7.5.8 Special Permit Approval Criteria. After notice and public hearing, and after due consideration of the evidence submitted, including the reports and recommendations of other Town departments and the criteria for special permit decisions set forth in Section 10.5, the SPGA may grant such a special permit provided that it finds in addition that:

1. The Marijuana Establishment does not derogate from the purposes and intent of this Section and the Zoning Bylaw.

2. The application information submitted is adequate for the SPGA to consider approving the special permit request.

3. The proposed establishment is designed to minimize any adverse impacts on abutting properties.

4. The security plan provides sufficient assurance that adequate security controls have been implemented to ensure the protection of the public health and safety during hours of operation and that any marijuana or marijuana related products are adequately secured on-site or via delivery.

5. The odor control plan proposed adequately provides for the ongoing safe operation of the establishment and minimizes any adverse impacts to abutting properties from odor-emitting activities to be conducted on-site.

6. The proposed design and operation of the Marijuana Establishment will meet the requirements of this Section.

7.5.9 Lapse. A special permit grant under this section shall lapse if not exercised within one year of issuance.

SECTION 8.0

SPECIAL RESIDENTIAL REGULATIONS

8.1 ACCESSORY APARTMENTS

8.1.1 Purpose. The purpose of this Section is to allow accessory apartments in owner-occupied single-family dwellings in order to:

1. Add moderately-priced rental units to the housing stock to meet the needs of small households, both young and old;
2. Make housing units available to moderate-income households who might otherwise have difficulty finding housing in the town;
3. 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.

8.1.2 Special Permit Required. 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. No more than one accessory (1) apartment shall be allowed within a single-family dwelling.

8.1.3 General Requirements. The accessory apartment shall be subject to the following provisions:

1. The apartment will be a complete, separate housekeeping unit that functions as a separate unit from the principal dwelling.
2. The accessory apartment shall not exceed 900 square feet or fifty percent of the living space of the main dwelling. The apartment shall be built to the smaller square foot dimension.
3. Garages and basements shall not be included in the calculation for the living space.
4. The alterations shall be limited to only one structure on the lot, the principal dwelling.
5. The unit shall be provided with a separate closet.
6. 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.
7. The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.
8. Any new outside entrance to serve an accessory apartment shall be located on the side or in the rear of the building.

9. The apartment shall not be held in, or transferred into separate ownership from the principal dwelling under a condominium form of ownership, or otherwise.
10. At least one parking space is available for use by occupants of the apartment.
11. The record owner of the lot shall reside on the property, in either the principal dwelling or the accessory apartment. Any 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.
12. The sanitary disposal system for the accessory apartment and principal structure shall comply with the applicable Berkley Board of Health and Title V regulations.
13. 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.
14. The special permit shall be recorded at the Registry of Deeds or Land Court against the title of the record owner of the lot.
15. Prior to the issuance of a building permit, the applicant must submit proof of the recording of the special permit
16. 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.

8.1.4 Sale of Principal Dwelling Unit. When a principal dwelling unit which has received a special permit for an accessory apartment is sold, the new owner(s), if they wish to continue to exercise the special 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.

~~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~~

8.2 FLEXIBLE DEVELOPMENT

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.
5. Encourage screening of new residential development from the Town's roads, open spaces and scenic areas.
6. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
7. Protect existing and potential municipal water supplies.
8. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision.
9. Minimize the total amount of disturbance on the site.
10. Preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
11. Encourage the provision of diverse housing opportunities and the integration of a variety of housing types.

8.2.2 Definitions. See "Flexible Development" in Section 11.0.

8.2.3 Applicability. In accordance with the following provisions, a Flexible Development 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 Flexible Development may be authorized upon the issuance of a special permit by the Planning Board. Applicants for Flexible Development 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 Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, 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 Flexible Development; 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 Flexible Development.

8.2.7 Maximum Number of Dwelling Units. The maximum number of dwelling units allowed in a Flexible Development 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 Flexible Development 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 Flexible Development, a bonus of one dwelling unit or 10% the Maximum Number may be awarded.

8.2.9 Affordable Component. As a condition of the grant of any special permit for a Flexible Development, 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 homeownership 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 Flexible Development shall consist exclusively of single family dwellings.

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 Flexible Development 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 Flexible Development. 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 50 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 Flexible Development after determining whether the Flexible Development better promotes the purposes of Section 7.3.1 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 Bylaw.

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 Special Business 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 of Dimensional Requirements.
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 10.5.

8.4 BED AND BREAKFAST ESTABLISHMENTS AND BREAKFAST IN-HOME STAY/ROOM RENTAL

8.4.1 General. A Bed & Breakfast Establishment shall be allowed upon the grant of a special permit from the Planning Board. The following requirements shall apply:

1. Establishment limited to not more than three (3) guests;
2. Parking must be off street, on premises, with one (1) space per room rented and one (1) per owner.
3. No other uses except for customary home occupation shall be permitted on the property.
4. No additions or external modifications may be made to the property for lodging use.
5. A certificate of occupancy required and premises shall be subject to annual inspection.

SECTION 8. RATE OF DEVELOPMENT

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:

To prevent the development of traffic conditions which are hazardous to citizens due to heavy vehicular travel or usage.

To coordinate the timing of land development in Berkley with the economic feasibility of the expansion of public services.

To preserve the unique rural character and natural resources of the Town.

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

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 9.0 SPECIAL DISTRICTS

9.1 AQUIFER PROTECTION OVERLAY DISTRICT (APOD)

9.1.1 Purpose. The purpose of this Section 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; to conserve the natural resources of the town; and to protect the groundwater and the major recharge areas of the Town from adverse land use practices.

9.1.2 Definitions. See Section 11.0, "Aquifer Protection Overlay District."

9.1.3 Location. 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 entitled "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.

This map is on file in the office of the Town Clerk. At the request of the owner(s) of land and at the owner's expense, 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.

9.1.4 Permitted Uses. The following specific uses of land are permitted within the boundaries of the Aquifer Protection Overlay District.

1. 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;
2. 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;
3. 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;
4. Conservation of soils, water, plants, and wildlife;
5. Outdoor recreation, nature study, fishing, hunting;

6. Runoff from impervious surfaces shall be recharged on-site and diverted towards areas covered by vegetation for surface infiltration to the maximum extent possible;

7. Normal residential lawn and garden maintenance;

9.1.5 Uses Not Permitted. The following uses are not permitted:

1. Storage of animal manures, unless such storage is covered or contained, or in accordance with the specifications of the National Resource Conservation Service (NRCS).

2. Dry cleaning processing plants.

3. Floor Drains – No floor drain may be permitted in any structure as per 310CMR 22.21 (2)(a)8.

4. The manufacture, use, storage or disposal of hazardous substances.

5. 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.

6. 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.

7. The mining/removal of land within four feet of the historical high groundwater table elevation as per 310 CMR 22.21 (2)(b)6.

8. 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.

9. Sewage treatment facilities but not individual sewage disposal systems.

10. Underground storage of petroleum or similar product.

11. Commercial photographic processing.

12. 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.

13. Industrial uses which discharge process wastewater on-site.

9.1.6 Uses Requiring Special Permit. The following uses require a special permit from the Planning Board:

1. 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.
2. Any use not mentioned above or in the sections of these Bylaws shall be By a Special Permit.
3. 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.

9.1.7 Special Permits and Procedure. After public notice and public hearing 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:

1. Is in harmony with the purpose and intent of this Bylaw and will promote the protection of this district.
2. Is appropriate to the natural topography, soils and other characteristics of the site to be developed.
3. Will not have, during construction and after, an adverse environmental impact on an aquifer or its recharge area.
4. 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~~

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 Berkley designated as Zone A, AE, VE, and X most recent 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 FIRM that are wholly or partially within the Town of Berkley are FIRM Panels (all prefixed by 25005C) 0251G, 0252G, 0253H, 0254G, 0256F, 0257F, 0258F, 0259F, 0261G, 0262G, and 0263G.

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 Flood Insurance Study (FIS) report dated July 6, 2021. 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 Building Inspector for its reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building Code. All development in the FPOD, 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; Wetlands Protection Regulation, Department of Environmental Protection (DEP) (currently 310 CMR 10.00); Inland Wetlands Restriction, DEP (currently 310 CMR 13.00); Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00); and Minimum requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5). Any variances from the provisions and requirements of the above referenced State regulations shall be granted only in accordance with the required variance procedures of these State regulations.

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 X. Within Zone X 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.

SECTION 10.0 ADMINISTRATION AND ENFORCEMENT

10.1 PERMITS.

10.1.1 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 Bylaw and no permit shall be granted for a new use of a building, structure or land which use would be in violation of this Bylaw. When a special permit, site plan approval, or variance has been ~~may be~~ granted with conditions, such conditions shall be enforced by the Inspector of Buildings.

10.1.2 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 Bylaw and other applicable codes in effect at the time of issuance.

10.2 ENFORCEMENT.

10.2.1 Inspector of Buildings. The office of the Inspector of Buildings is responsible for the enforcement of this Bylaw. 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.

10.2.2 Request for Enforcement. As set forth in G.L. c. 40A, s. 7, the Inspector of Buildings shall respond in writing to any request for enforcement within fourteen (14) days.

10.2.3 Penalties. Any person violating any provision of this Bylaw, upon conviction, shall be fined \$300 for each offense, and each day that such violation continues shall constitute a separate offense.

10.2.4 Noncriminal Disposition. In addition to the procedures for enforcement as described in the previous paragraph, the provisions of this Bylaw 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 Bylaw 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.

10.3 ZONING BOARD OF APPEALS

10.3.1 Establishment. The Board of Appeals shall consist of three appointed members and two associate members.

10.3.2 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:

1. To hear and decide applications for special permits, when so designated.

2. To hear and decide appeals or petitions for variances from the terms of this Bylaw, 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.

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.

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

10.3.4 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.

10.4 PLANNING BOARD.

10.4.1 Establishment. The Planning Board shall consist of five (5) elected members.

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

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

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

10.5 SPECIAL PERMITS.

10.5.1 Special Permit Granting Authority. When designated by this Bylaw, the Board of Appeals, the Board of Selectmen, and the Planning Board shall act as the Special Permit Granting Authority (SPGA).

10.5.2 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 Bylaw, 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.

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

10.5.4 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 Bylaw. Such conditions may include, but are not limited to the following:

1. Setback requirements greater than the minimum required by this Bylaw;
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.

10.5.5 Referral. The Board of Appeals, Board of Selectmen and Planning Board, when serving as the SPGA, 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.

10.5.6 Plans. Unless otherwise provided by the rules and regulations of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 10.6, herein. The provisions of this Section shall not apply to applications for special permits pursuant to Section 5.0 to alter a nonconformity. The Zoning Board of Appeals shall establish procedures governing such applications by regulation.

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

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

10.5.9 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.

10.6 SITE PLAN REVIEW.

10.6.1 Purpose. 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 suitable development that will not result in a detriment to the neighborhood or the environment.

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

1. 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
2. Any site development which involves cutting or removal of vegetation, shall be permitted only upon site plan approval from the Planning Board. Site plan approval shall be granted only if the Planning Board finds that such approval is consistent with the purposes set forth in this Section 10.6;
3. B&B in the GB and SB Districts; solar energy systems, wireless communication facilities.

10.6.3 Procedure. The Planning Board shall serve as the approval authority for site plan review. A public hearing shall be conducted in accordance with the requirements of G.L. c. 40A, s. 11. All decisions shall be made by a majority of the Board, as constituted. The written decision of the Board shall be filed with the Town Clerk within 90 days of the close of the public hearing.

10.6.4 Site Plan Requirements. Applications shall be accompanied by at least eleven (11) prints of the plans of the proposal. Plans subject to site plan review shall be prepared by a Registered Architect, Landscape Architect, or Professional Engineer licensed by the Commonwealth of Massachusetts. The site plan shall consist of 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 sewage 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.

The applicant shall also provide the following required written submittals:

6. 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.

7. 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.

8. 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.

9. 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.

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

11. An itemized list of waivers, if any, being requested from the Planning Board's Rule and Regulations Governing the Issuance of Special Permits in the General Business and Special Business Districts.

10.6.5 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.

10.6.6 Waiver of Technical Compliance; Minor Site Plans. 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.

1. 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 this Section; 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.

10.6.7 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 Bylaw in considering all site plans, in order to promote the following goals:

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 Bylaw.

10.6.8 Performance Guarantee. As a condition of site plan approval, the Planning Board may require that construction and site alteration permitted and specified by said approval 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).

10.6.9 Release of Guarantee. Performance guarantees 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. 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 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 as aforesaid, the said Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

10.6.10 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.

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

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

10.6.13 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.

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 thirtyfive (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, **whether presently nonconforming or not**, involving more than 500 square feet;~~

~~b) Construction or expansion of a parking lot for an institutional, commercial **(define)** 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.~~

~~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.~~

10.7 SITE PLAN REVIEW FOR DOVER AMENDMENT USES.

10.7.1 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.

10.7.2 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.

10.7.3 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.

10.7.4 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.

10.7.5 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.

10.7.6 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.

10.7.7 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.

10.8 REQUEST FOR REASONABLE ACCOMMODATION.

10.8.1 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). See also G.L. c. 40A, s. 3. 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.

10.8.2 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.

10.8.3 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).

10.8.4 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.

10.8.5 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.

10.8.6 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.

10.8.7 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.

10.8.8 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.

10.8.9 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.

SECTION 11.0 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.

Adult Entertainment Use: For the purposes of Section 7.1, an Adult Entertainment Use shall mean 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.

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 G.L. c. 272, s. 31.

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 G.L. c. 272, s. 31.

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 G.L. c. 272, s. 31.

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 G.L. c. 272, s. 31.

Adult live nudity establishments: an establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in G.L. c. 272, s. 31.

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 G.L. c. 272, s. 31.

Sexually orientated business: a business having as a substantial or significant portion of its stock in trade any of the following: 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 videos, movies, photographs or other filmed material which are distinguished or characterized by depicting sexual conduct or sexual excitement as defined G.L. c. 272, s. 31.

“Substantial or significant portion of stock in trade” shall be deemed to exist under any of the following circumstances. 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; 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; 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 G.L. c. 272, s. 31.

~~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.~~

Aquifer Protection Overlay District: For the purposes of Section 9.1, the following definitions shall apply:

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.

Bed and breakfast: The providing of room and breakfast in a dwelling to not more than three transient guests for remuneration. There shall be no more than two persons per room. There shall be adequate off-street parking for residents and guests.

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

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.

~~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.~~

Child Care Center: A facility as defined in G.L. c. 15D, s. 1A.

Club: A building or portion thereof or an area which is used to meet the social and recreational needs of a group or organization to which membership is required, with or without the sale of alcoholic beverages.

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.

Dwelling, Multifamily: Three or more dwelling units on a single lot, irrespective of structure type, ownership or tenure.

Dwelling, Single-Family: A detached residential building intended and designed to be occupied exclusively by a single family.

Dwelling, Two-Family: A detached residential building intended and designed to be occupied exclusively by two families.

Dwelling Unit: A building or portion of a building intended as living quarters for a single family, having a single set of kitchen facilities (a stove plus either or both a refrigerator and sink) not shared with any other unit.

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 provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overland, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

Family day care home, large: Any private residence operating a facility as defined in M.G.L. c. 15D, [§ 1](#).

Family day care home, small: Any private residence operating a facility as defined in M.G.L. c. 15D, [§ 1](#).

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.

Funeral Establishment: A building or part thereof used for human funeral services. Such building may contain space and facilities for a) embalming and the performance of other services necessary for the preparation of the dead for burial; b) the performance of autopsies and other surgical procedures; c) the storage of caskets, funeral urns, and other related funeral supplies; d) the storage of funeral vehicles; e)

facilities for cremation; and f) the living quarters of an individual whose bona fide occupation is in the funeral establishment.

General service establishment: Establishments for trades and crafts which require manual dexterity, including but not limited to shops such as the following: plumbers, electricians, painters, paperhangers, upholsterers, sign painters, printers and monument works.

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 unit as regulated in Sections 3.4.1 and 3.4.2 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.

Hotel or Motel: A building or buildings intended and designed for transient, overnight or extended occupancy, divided into separate units within the same building with or without a public dining facility. If such hotel or motel has independent cooking facilities, such unit shall not be occupied by any guest for more than four (4) continuous months, nor may the guest reoccupy any unit within thirty (30) days of a continuous four-month stay, nor may the guest stay more than six (6) months in any calendar year.

Light Manufacturing: Fabrication, assembly, processing, finishing work or packaging.

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 frontage: the boundary of a lot coinciding with the street line, being an unbroken distance along a way currently maintained by the town, county, or state, or along ways shown on the definitive plans of approved subdivisions, through which actual access to the potential building site shall be required. a private way which has not been constructed as part of a subdivision approved in accordance with the subdivision control law may provide frontage only upon a determination by the planning board that it provides adequate access for fire, police, and emergency vehicles. lot frontage shall be measured continuously along one street line between side lot lines, or, in the case of corner lots, between one side lot line and the mid-

point of the corner. lots with interrupted or discontinuous frontage must demonstrate that the required length along the street may be obtained from one (1) continuous frontage section, without any totaling of discontinuous frontage sections.

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

Lot width: 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.

Medical or Dental Office: A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

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

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 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 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.

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.

Owner: A person or persons, legal entity, firm or corporation, or a duly designated agent, having a legal

or equitable interest in a property.

Personal service establishment: Personal services provided by a barbershop or beauty shop, professional, business or governmental office, bank; repair and maintenance of clothing and household articles by a cleaning or laundry agency or automatic equipment; cobbler, tailor, valet service; radio, television and appliance repairs; upholsterer.

Research and Development Facility: Research establishments and laboratories, including biotechnology companies, but excluding laboratories categorized as Level 4 by the National Institutes for Health.

Restaurant: Establishment where as the principal activity food and drink is prepared and served ready for consumption without further processing, whether or not for consumption on the premises, including lunch room, cafeteria, cafe, bar, refreshment stand, drive-in, or similar establishment.

School aged child care facility: A facility as defined in G.L. c. 15D, s. 1A.

Self-storage Facility or Mini-warehouse: A facility where individual portions of the space are rented to consumers for the temporary storage of business or personal items.

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.

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.

Solar Energy Systems: For the purposes of Section 7.2, the following definitions shall apply:

GRID-INTERTIE — A photovoltaic system that is connected to an electric circuit served by an electric utility.

GROUND-MOUNTED — An active photovoltaic solar energy system that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale).

LARGE-SCALE — An active photovoltaic solar energy system that has a rated nameplate capacity greater than 250 kW DC.

MEDIUM-SCALE — An active photovoltaic solar energy system that has a rated nameplate capacity up to 250 kW DC, and a total collector area greater than 750 square feet.

OFF-GRID — A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility.

PHOTOVOLTAIC SYSTEM — (Also referred to as "photovoltaic installation") An active solar energy system that converts solar energy directly into electricity.

RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production of the photovoltaic system in watts of direct current (DC).

ROOF-MOUNTED — An active photovoltaic solar energy system that is structurally mounted to the roof of a building or structure; may be of any size (small-, medium-, or large-scale).

SMALL-SCALE — An active photovoltaic solar energy system that has a total collector area of 750 square feet or less, unless a greater area has been allowed by special permit.

SOLAR ACCESS — The access of a solar energy system to direct sunlight.

Special permit: 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, Planning Board, or Zoning Board of Appeals, as may 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.

Veterinary Establishment: A place for the treatment of animals, including kennels and pet shops, provided that in business districts all animals are kept indoors and there are no noise or odors perceptible from adjoining establishments or buildings.

Warehouse and Distribution Facility: A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises, but not including open storage or bailing of junk, scrap metal, rags, waste paper or used rubber.

Yard, Rear: an open space, unbuilt upon, inside and contiguous to all lot lines other than street lines to the depth specified according to Section 4 of this By-law. no structure or building shall be located in or project into any yard, except that uncovered steps, bulkheads, eaves, bay windows and attached chimneys may project into a yard, but shall not be closer than *** feet to a lot line.

Yard, Side: an open space, unbuilt upon, inside and contiguous to all lot lines other than street lines to the 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.

USE	R	GB	SB	HB
A. RESIDENTIAL USES				
1. Single family dwelling	Y	N	N	N
2. Two or three family dwelling	N	SB	SB	N
3. Multifamily dwelling, not to exceed 4 dwelling units	SB	SB	SB	N
4. Senior Housing	N	PB	PB	N
5. Flexible development	PB	N	N	N
B. INSTITUTIONAL AND COMMUNITY USES				
1. Use of land or structures for religious purposes	Y	Y	Y	Y
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y	Y	Y	Y
3. Child care center or school aged child care program	Y	Y	Y	Y
4. Public and private parks	Y	Y	Y	N
5. Camp for school-aged children (see Section 4.2.2)	PB	Y	Y	N
6. Municipal and governmental facilities and uses including public recreational use (see Section 4.2.1)	Y	Y	Y	Y
7. Essential services	BA	BA	BA	BA
C. AGRICULTURAL USES				
1. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area or two qualified acres	Y	Y	Y	Y
2. Exempt Farmstand	Y	Y	Y	Y
3. Nonexempt Farm	Y	N	N	N
4. Nonexempt Nursery	Y	N	N	N
5. Nonexempt Farmstand	Y	N	N	N
D. COMMERCIAL USES (see D. 21, below)				
1. Retail store	N	Y	Y	N
2. Restaurant or other facility for the preparation of food for retail sale on the premises	N	Y	Y	N
3. Fast-food or restaurant with drive through window	N	PB	PB	PB
4. For profit entertainment or recreation facility, indoor or outdoor	N	Y	Y	N
5. Bar or Tavern with incidental food service	N	PB	PB	N
6. Professional or business office	N	Y	Y	N
7. Medical office or clinic	N	Y	Y	N
8. Bank or financial services office	N	Y	Y	N

9. For profit educational use	N	PB	PB	N
10. Bakery	N	Y	Y	N
11. Bed and Breakfast	N	Y	Y	N
12. General services shop	N	Y	Y	N
13. Personal services shop	N	Y	Y	N
14. Veterinary office or hospital	N	Y	Y	N
15. Commercial kennel	N	PB	PB	N
16. Hotel or motel	N	PB	PB	Y
179. Funeral home	N	Y	Y	N
18. For profit or nonprofit membership club	N	Y	Y	N
20. Art gallery	N	Y	Y	N
21. Any use in Section D, Commercial Uses, with more than 20,000 sf GFA	N	BA	PB	BA
22. Adult Entertainment Establishment	N	N	BA	N
23. Medical marijuana establishment				
24. Adult use marijuana establishment				
25. Any allowed use with a drive through window	N	PB	PB	PB
E. MOTOR VEHICLE USES	R	GB	SB	HB
1. Motor vehicle light service	N	PB	PB	PB
2. Motor vehicle repair or body shop	N	PB	PB	N
3. Motor vehicle or boat sales or leasing	N	PB	PB	N
4. Car wash	N	PB	PB	N
5. Level 2 Charging Station	N	Y	Y	Y
F. LIGHT INDUSTRIAL AND STORAGE USES	R	GB	SB	HB
1. Warehouse and distribution facility	N	PB	PB	Y
2. Self-storage facility	N	PB	PB	BA
3. Lumber or Feed establishment	N	Y	Y	BA
4. Building materials and/or contractor's yard	N	B	BA	N
5. Print shop or publishing establishment	N	Y	Y	BA
6. Research and development facility	N	N	N	Y
7. Light manufacturing	N	N	N	Y
G. ACCESSORY USES	R	GB	SB	HB
1. Home occupation by right (see Section 3.4.1)	Y	Y	Y	Y
2. Home occupation by special permit (see Section 3.4.2)	PB	PB	PB	N
3. Landscaper's yard	PB	N	N	N
4. Contractor's yard	PB	N	N	N
6. Family day care home, small	Y	Y	Y	N
7. Family day care home, large	PB	PB	PB	N
8. Adult social day care	PB	PB	PB	N
9. Accessory scientific uses	PB	PB	PB	N
10. Accessory apartment	PB	PB	PB	N

DISTRICT	R	GB	SB	HB	
Min. Lot Area (sq. ft.)	65,340 (but see Section 4.2.1)	40,000	40,000	40,000	
Min. Lot Width and Frontage (ft.)	200	100	100	100	
Min. Front Setback (ft.)	50	35	35	35	
Min. Side and Rear Yard (ft.)	15	20	20	20	
Max. Building Height (ft./stories)	35	50/4	50/4	50/4*	
Max. Lot Coverage by Building (%)	NA	50	NA	NA	
Contiguous Upland (sq. ft.)	30,000	30,000	NA	NA	
11. One or two boarders in single family dwelling		PB	PB	PB	N
12. Overnight ungaraged parking of commercial vehicle In R District – See Section 3.3.3.4					
H. PROHIBITED USES	R	GB	SB	HB	
1. Asphalt or cement mixing plant	N	N	N	N	
2. Petroleum or other chemical refining or processing plant	N	N	N	N	
3. Hazardous, solid, or radioactive waste disposal or treatment facility	N	N	N	N	
4. Earth removal and quarrying					

TABLE OF DIMENSIONAL REQUIREMENTS

* Up to 75’ and 6 stories by special permit from Planning Board.