ZONING BY-LAWS
TOWN OF
ASHBURNHAM, MASSACHUSETTS

A TRUE COPY, ATTEST: **LINDA A. RAMSDELL**
REVISED OCTOBER 29, 2013 **TOWN CLERK**

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ZONING BY-LAWS

TOWN OF ASHBURNHAM, MASSACHUSETTS

SECTION 1. GENERAL

1.1 Purpose

The purpose of this By-law is to promote the health, safety and general welfare of the inhabitants of the Town of Ashburnham, to lessen the danger of fire and congestion and to protect and preserve the surface and groundwater resources of the Town and the region from any use of land or buildings which may reduce the quality and quantity of its water resources, and further to conserve the natural resources of Ashburnham, to prevent temporary and permanent contamination of the environment and to improve the Town under the provisions of Chapter 40A, General Laws.

1.2 Basic Requirements

1.21 All buildings or structures herein erected, reconstructed, altered, enlarged, or moved and used of premises in the Town of Ashburnham shall be in conformity with the provisions of this By-Law. Any building, structure or land shall not be used for any purpose or in any manner other than is permitted within the district in which such building, structure or land is located. Any use not specifically enumerated in a district herein shall be deemed prohibited. In accordance with Chapter 40A, General Laws, and notwithstanding any provisions to contrary, this By-Law shall not prohibit or limit the use of land for any church or other religious purpose or for any educational purpose which is religious, sectarian denominational, or public, or for any municipal purpose. This By-Law shall not repeal, annul or in any way impair or remove the necessity of compliance with any rule, regulation, by-law, permit or provision of law. Where this By-Law imposes a greater restriction upon the use of land, buildings or structures, the provisions of this By-Law shall control.

1.22 No building shall be erected except on a lot fronting on a street, way or road (as defined by this By-Law), and there shall be not more than one principal building on any lot, except as allowed in this By-Law.

1.3 Non-Conforming Uses

1.31 Continuation – the lawful use of any land existing at the time of the enactment or subsequent amendment of this By-Law may be continued although such use did not conform with the provisions of the By-Law as adopted or amended.

1.32 Extension – except for agricultural, horticultural or floricultural uses, the extent of non-conforming use of land not covered by a building or structure may not be increased by more than twenty-five (25) percent of the land area in non-conforming use at the time the By-Law is adopted or amended except by special permit from the Board of Appeals after a finding that such extension will not be detrimental or injurious to the neighborhood.

1.33 Abandonment – all non-conforming uses which have been abandoned or discontinued for more than two (2) years shall not be re-established except by special permit from the Board of Appeals after a public hearing and a finding that such re-establishment will not be detrimental or injurious to the neighborhood.

1.34 Changes – once changed to a conforming use, no land shall be permitted to revert to a non-conforming use.

1.4 Non-Conforming Buildings and Structures

1.41 Continuation – the lawful use of any building or structure existing at the time of the enactment or subsequent amendment of this By-Law may be continued although such building or structure did not conform with the provisions of the By-Law as adopted or amended.

1.42 Alteration and Enlargement – a non-conforming building may be altered or enlarged provided that such alteration or enlargement conforms to applicable yard, building height and lot coverage requirements, but a non-conforming extension or alteration of a non-conforming structure may be permitted by special permit and only if there is a finding by the Zoning Board of Appeals that such extension or alteration shall not be substantially more detrimental to the neighborhood than the existing non-conforming structure. In no case may the height of a permitted non-conforming alteration or extension of a non-conforming structure exceed that of the applicable schedule of dimensional regulations except by a variance.

1.43 Restoration – a non-conforming building or structure which has been damaged or destroyed may be repaired or rebuilt, subject to the provisions of Section 1.32, 1.33 and 1.42.

1.5 Definitions

In this By-Law, the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed.

Accessory Building – A building devoted exclusively to a use subordinate to and customarily incidental to the principal use.

Accessory Dwelling Unit – An Accessory Dwelling Unit is a self-contained housing unit that is clearly a subordinate part of the single-family dwelling and complies with Section 5.16 of this Bylaw.

Accessory Use – A use subordinate to and customarily incidental to the principal use.

Assisted Elderly Housing – Private or private nonprofit elderly housing comprised of individual studio, one bedroom, and two bedroom dwelling units for residents over the age of sixty-five (65). On-site services and facilities such as meals, cleaning, laundry, recreation, fitness, transportation, and social activities are an integral part of the development. Medical services may be offered but no long-term hospital or nursing home care is provided within the assisted elderly housing development. Town water and sewer must serve assisted elderly housing unit(s).

Bed & Breakfast – Private, owner-occupied building with no more than five (5) guest rooms which includes a breakfast in the room rate and which serves meals to overnight guests only.

Building – Any structure built for the support, shelter or enclosure of person, animals, goods or property of any kind.

Conforming Use – Use of buildings, structures or land which complies with all the use and dimensional requirements of the zoning district in which the use is located.

Customary Home Occupation – An occupation engaged in by a resident of the premises including but not limited to carpentry, cooking, dressmaking, electrical work, handicrafts, interior decorating, masonry work, painting, plumbing, repairs of appliances or other small items and other similar activities but not including the display or sale of goods not produced on the premises.

Dwelling – Any fixed structure, not a mobile home, containing one or more dwelling units.

Dwelling Unit – A room or group of rooms designed and equipped exclusively for use as living quarters for only one family including provisions for living, sleeping, cooking and eating.

Family – One or more persons occupying a dwelling unit and living as a single, non-profit, housekeeping unit.

Family Type Camp Grounds – An area used for a range of overnight accommodations, from tenting to serviced trailer sites, including accessory facilities which support the use, such as administration offices, laundry facilities, washrooms, support recreational facilities, but not including the use of mobile homes, trailers or other forms of moveable shelter on a permanent year-round basis.

Groundwater – All water found beneath the surface of the ground.

Gross Floor Area – The sum, in square feet, of the floor areas of all roofed portions of a building, as measured from the interior faces of the exterior walls.

Hazardous Materials – Material including but not limited to, any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or the environment, when improperly stored, treated, transported, disposed of, or otherwise managed. The term shall not include oil.

Hazardous Waste – Those wastes and materials designated as hazardous in the Regulations of the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws, Chapter 21C (310 CMR 30.00)

Height of Building – The vertical distance of the highest point of the roof above the mean grade of the ground adjoining the building.

Impervious Surfaces – Materials or structures on or above the ground that do not allow precipitation or surface water to penetrate directly into the soil.

Living Space – The floor area used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathroom, toilet, laundry and storage spaces, communicating corridors, stairways, spaces with less than four (4) feet clear headroom, garages, breezeways and carports.

Lot – A single area of land in one ownership with definite boundaries as described on a recorded deed or recorded plan.

Lot Line – A property boundary separating a lot from a street or adjoining lots; for example, street, side and rear lot lines.

Mobile Homes – A structure designed as a dwelling unit for living purposes, capable of being moved on its own wheels by a motor vehicle whether retained on wheels or fixed to a permanent foundation.

Non-Conforming Use – Use of buildings, structures or land which does not comply with all the use and dimensional requirements of the zoning district in which the use is located, but which was in existence at the time the use regulation became effective and was lawful at the time it was established.

Overnight Cabin – A building containing only one or two habitable rooms, which is adapted and used to provide transient sleeping accommodations for hire to not exceed four (4) persons but not adapted or used for cooking or preparing meals or for residence by the same person for more than 90 days.

Premises – One or more lots in the same ownership, contiguous or separated only by a road, including all buildings, structures and improvements thereon.

Primary Residence – A building in which is conducted the principal use of the lot on which it is located. For residentially zoned lots, such a building would be a dwelling.

Principal Building – A building in which is conducted the principal use of the lot on which it is located.

Principal Use – The Main or primary purpose for which a structure or lot is designed, arranged or intended, or for which it may be used, occupied or maintained under this By-Law.

Pushcart – any wagon, cart, trailer or similar wheeled container, not a self-propelled "motor vehicle" as defined in M.G.L., Chapter 90, Section 1, from which food or beverage is offered for sale to the public.

Recreational Vehicle – A vehicle or vehicular attachment with or without motive power designed for temporary sleeping or living quarters for one or more persons, which is not a dwelling and which may include a pick-up camper, travel trailer, tent trailer, beach buggy and motor home.

Seasonal Farm Stand Non-exempt - Facility for the sale of produce, wine and dairy products on property non-exempted by M.G.L. Chapter 40A, Section 3, operated on a non year round basis.

Street, Way or Road – An accepted town way, or a way established by or maintained under county, state or federal authority, or a way established by a subdivision control law, or a way determined by the Planning Board to have sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

Supportive Housing – Facilities comprising personal and other supportive services with a non-medical focus, limited to persons 55 years and older, including but not limited to, assisted living, congregate care and independent living and should specifically exclude skilled nursing facilities, intermediate care facilities, nursing facilities, custodial care facilities and continuing care retirement communities, or such facilities which provide multiple levels of care within a single facility. Town water and sewer must serve supportive housing facility(ies).

Surface Water – Any lake, stream, spring, impoundment, or pond as determined by the Massachusetts geographic information service based upon the United States Geological Survey one to twenty five thousand scale quadrangle maps. Surface water shall include the land located thereunder and the banks thereto. Surface water shall exclude all reservoirs, aquifers, ground waters and man-made farm ponds used for

irrigation, as well as all so-called great ponds of the Commonwealth which do not drain into any lake, stream, spring or pond as described above.

Trailer – A vehicle without motive power, designed to be towed by a passenger automobile but not designed for human occupancy and which may include a utility trailer, boat trailer and horse trailer.

Watershed – Lands lying adjacent to water courses and surface water bodies which create the catchment or drainage areas of such water courses and bodies.

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SECTION 2. USE DISTRICTS

2.1 Types of Districts

For the purpose of this By-Law the Town of Ashburnham is hereby divided into the following districts:

R-A Residential

R-B Residential

B Business

VC-C Village Center Commercial

VC-R Village Center Residential

I Industrial

W Wetland and Watershed Protection

WSP Water Supply Protection (Overlay) District

F Flood Plain District

LI-A Light Industrial

LI-B Light Industrial

G-B Green Business

The Village Center Commercial (VC-C) and Village Center Residential (VC-R) Districts are intended to foster appropriate reuse of existing structures and new construction within the downtown area in harmony with the historic character and dense development pattern of the downtown.

The Water Supply Protection District is an overlay district encompassing all lands within the Town of Ashburnham, lying within the watershed of the Upper Naukeag Lake Reservoir, which now provides public water supply. This overlay district is superimposed on the zoning districts and shall apply to all new construction, reconstruction, or expansion of existing buildings and/or expanded uses. Applicable activities or uses which fall within the Water Supply Protection District must comply with the requirements of this district as well as with the underlying zoning. All regulations of the Town of Ashburnham Zoning By-Laws shall remain in effect.

The LI-A and LI-B Light Industrial districts shall include light manufacturing, retail, business, and office as allowed in the Schedule of Use Regulations. The purpose of this district is to provide areas for industrial and commercial uses in an open setting that will not have objectionable influences on adjacent residential and commercial districts and are not dangerous by reason of fire or explosion, nor injurious or detrimental to the neighborhood by reason of dust, odor, fumes, wastes, smoke, glare, noise, vibration or other noxious or objectionable feature as measured at the nearest property line.

The Green Business is intended to foster businesses that will support tourism and passive and outdoor recreation while preserving the natural beauty and ecological significance of the area.

2.2 Location of Districts

2.21 Districts R-A, R-B, B, VC-C, VC-R, I, G-B, LI-A, LI-B, W and WSP are located and bounded as shown on a map entitled "Zoning Map of Ashburnham, Massachusetts", dated May 2009, and on file as subsequently amended in the offices of the Town Clerk and the Zoning Enforcement Officer.

G-B: Route 119 from the Ashby town line to the New Hampshire state line 2000 feet on either side of the road, excluding the existing business district already designated at Route 119 and Route 101, as depicted on the map referenced above.

LI-A: Light industrial use from South Pleasant Street to the Gardner line on the south side of Route 101 and southwest of the railroad bed on the north side of Route 101 overlaying the already established industrial zone, but excluding any residentially zoned parcels in this area, as depicted on the zoning map.

LI-B: Light industrial use along Route 12, starting 1000 feet beyond Hunter Avenue on the north side of Route 12 and continuing along Route 12 to the Winchendon town line and on the south side of Route 12 as depicted on the map referenced above.

2.22 The WSP District is located and bounded as shown on a map entitled "Watershed Boundary for Public Water Supply", Ashburnham, MA prepared by the Office of the Planning Coordinator, City of Fitchburg, for the Montachusett Regional Planning Commission, dated November, 1992, and on file with in the offices of the Town Clerk, Zoning Enforcement Officer and the Water Department in the Town of Ashburnham.

2.23 The Flood Plain District is hereby established as on overlay district. The underlying permitted uses are allowed provided that they meet the Flood Plain District additional requirements as well as those contained in the

Massachusetts State Building Code dealing with construction in flood plains. The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-19 on the Ashburnham Flood Insurance Rate Maps (FIRM) and the Flood Boundary and Floodway Maps dated June 15, 1984 on file with the Town Clerk, Planning Board and Building Inspector. Where the above maps are inadequate for the detail required, detailed Flood Plain plans shall be prepared by a registered professional engineer with costs to be borne by the applicant. These maps, as well as the accompanying Flood Insurance Study of Ashburnham are incorporated herein by reference.

2.24 The Zoning Map, Water Supply Protection, Watershed Boundary Map, Flood Insurance Rate Maps, and Flood Boundary and Flood Maps, with all explanatory matter thereon, are hereby made part of this By-Law.

2.25 Boundary Identification

a. Where a boundary is shown as following a street, railroad, or utility, the boundary shall be the center line thereof, unless otherwise indicated.

b. Where a boundary is shown outside of a street, railroad, or utility and approximately parallel thereto, the boundary shall be deemed parallel to the nearest line thereof, and the figure placed on the zoning map between the boundary and such line shall be the distance in feet between them, as measured at a right angle from such line unless otherwise indicated.

c. Where a boundary is shown as following a watercourse, the boundary shall coincide with the center line thereof as said line existed at the date of the Zoning Map.

d. Where a boundary shall include a numerical figure followed by the letters, M.S.L., it is at that number of feet above Mean Sea Level. The basic source for determining such a line shall be the United Stated Geological Survey as interpreted by the Zoning Enforcement Officer or subsequent field surveys.

e. Where the location of a boundary is otherwise uncertain, the Zoning Enforcement shall determine its position in accordance with the distance in feet from other lines or bounds as given on the Town of Ashburnham Zoning Map and good engineering practice. Where the bounds of the Water Supply Protection District, as referenced in Section 2.22, are in doubt or dispute, the burden of proof shall be upon the owner(s) of the land in question, who may engage a registered professional engineer/professional registered land surveyor to determine more accurately the location and extent of watershed lands.

The boundary final determination to be made by the Zoning Enforcement Officer. Any and all fees shall be at the owners expense.

f. Where a district boundary other than a Wetland and Watershed Protection District boundary divides a lot, a use permitted as a matter of right or by exception in the less restricted district may be extended not more than fifty (50) feet into the more restricted portion of the lot.

g. The Water Supply Protection District is herein established to include all lands within the Town of Ashburnham, lying within the watershed of the Upper Naukeag Lake reservoir, which now provides public water supply. The map entitled "Water Supply Protection District, Town of Ashburnham," on file with the Town Clerk and Water Commission, delineates the boundaries of the district.

SECTION 3. USE REGULATIONS

3.1 Basic Requirements

No building, structure, or land shall be used for any purpose or in any manner other than as permitted and set forth in Section 3.2, Schedule of Use Regulations, of this By-Law and in accordance with the following notation:

Y	(Yes)	- User permitted as a matter of right.
Sp	(Special Permit)	- Use allowed as an exception under Special Permit by the Board of Appeals or Planning Board as provided hereafter.
N	(No)	- Use prohibited.

Uses permitted as a matter of right and uses allowed by the Board of Appeals shall be in conformity with all dimensional requirements, off-street parking requirements, and any other pertinent requirements of this By-Law.

The Planning Board is designated as the Special Permit Granting Authority (SPGA) for all Special Permits requiring Site Plan Review under section 5.10 of this bylaw and any Special Permits being granted in conjunction with a Planned Unit Development (PUD) Special Permit under Section 5.19 of this bylaw.

The Zoning Board of Appeals is designated as the Special Permit Granting Authority (SPGA) for all Special Permits that also require a variance from the Zoning Board of Appeals.
(Revision approved by ATM 5-5-12, approved by Attorney General 8-30-12)

3.2 Schedule of Use Regulations

Use	R-A	R-B	G-B	LI-A	LI-B	B	VC-C	VC-R	I	W	WSP
3.21 Public, Semi Public and Institutional											
a. Church or other place of worship, parish house, rectory, convent, and other religious institutions.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
b. Schools, public, private, religious, sectarian, or denomination.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
c. Colleges or junior colleges and buildings accessory thereto.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
d. Nursery school or other use for the care of children or a privately organized camp.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
e. Library, Museum or civic center.	SP	SP	SP	N	N	SP	Y	Y	N	N	N
f. Public buildings and premises for government use.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
g. Public utility buildings and structures.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
h. Hospital, sanitarium, nursing, rest or convalescent home, charitable institution or other non-correctional use.	SP	SP	N	N	N	Y	SP	N	N	N	N
i. Flood control or water supply use.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
j. Country or tennis club, or other non-profit social, civic, or recreational lodge or club, but not including any use, the principal activity of which is one customarily conducted as a business.	SP	SP	SP	N	SP	SP	SP	N	SP	SP	SP
k. Conservation or preservation of land or water-bodies in an essentially natural condition.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
l. Cemetery.	SP	SP	SP	N	N	N	N	N	N	N	N
m. Road and/or railroad.	Y	Y	SP	Y	Y	Y	Y	Y	Y	SP	SP
3.22 Residence											
a. Single-family detached dwelling other than a mobile home.	Y	Y	Y	N	N	SP	N	Y	SP	N	Y

Use	R-A	R-B	G-B	LI-A	LI-B	B	VC-C	VC-R	I	W	WSP
b. Conversion of a single-family dwelling existing prior to the adoption of this By-Law to accommodate not more than two (2) families.	SP	SP	SP	SP	SP	SP	Y	SP	SP	N	SP
c. Cellar hole or basement area used as a dwelling for not more than two (2) years.	Y	Y	N	N	N	N	N	N	SP	N	SP
d. Two (2) family or semi-detached dwelling.	SP	SP	N	N	N	SP	N	SP	SP	N	SP
e. Mobile home park not including mobile home sales except to renters of lots within the park.	N	SP	N	N	N	N	N	N	N	N	N
f. Family type campground.	N	SP	SP	N	N	N	N	N	N	N	N
g. Mobile home used as a dwelling within a mobile home park.	N	Y	N	N	N	N	N	N	N	N	N
h. Renting of one (1) or two (2) rooms with or without the furnishing of board by a resident family to not more than three (3) non-transient persons.	Y	Y	N	N	N	SP	SP	SP	SP	N	SP
i. Professional office or studio of a resident physician, dentist, attorney, architect, artist, musician, engineer, or other member of a recognized profession.	Y	Y	Y	SP	SP	Y	Y	Y	Y	N	SP
j. Customary home occupation conducted on the premises by a resident of the premises provided that not more than one (1) full-time employee, or equivalent thereof, excluding immediate family, is employed therein in connection with such use and that there is no exterior storage of material or equipment and no display of products visible from the street.	Y	Y	Y	SP	SP	Y	Y	Y	SP	N	SP
k. Accessory use.	Y	Y	Y	Y	Y	Y	Y	Y	Y	SP	SP
l. Assisted Elderly or Supportive Housing.	SP	SP	N	N	N	SP	SP	SP	N	N	N

Use	R-A	R-B	G-B	LI-A	LI-B	B	VC-C	VC-R	I	W	WSP
m. Accessory Dwelling Unit within an existing or new owner-occupied, single-family dwelling when the conditions outlined in §5.16.3, a, 1-9 have been met.	SP	SP	SP	N	N	N	SP	SP	N	N	N
n. Accessory Dwelling Unit in a detached structure on a single-family home lot only when the conditions outlined in§5.16.3, a, 1-9 have been met.	SP	SP	SP	N	N	N	SP	SP	N	N	N
o. Multi-Family Dwellings above non-residential use (up to 3 dwelling units).	N	N	N	N	N	Y	Y	N	N	N	N
p. Multi-Family Dwellings above non-residential use (4 or more dwelling units)	N	N	N	N	N	SP	SP	N	N	N	N
q. Three-Family Homes (Except as allowed under section 5.13, Open Space Residential Development)	N	N	N	N	N	N	SP	N	N	N	N
r. Multi-Family Dwellings (4 or more dwellings, except as allowed under section 5.13, Open Space Residential Development).	N	N	N	N	N	N	SP	N	N	N	N
3.23 Agriculture											
a. Farm-Including cultivation and tillage of the soil; the production, cultivation, growing, harvesting, and preparation for market or storage of any agricultural, floricultural, or horticultural commodities; the keeping of bees; and forestry or lumbering operations.											
Parcels less than five (5) acres	SP	SP	SP	Y	Y	SP	N	N	Y	Y	SP
Parcels of five acres (5) or larger	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	SP

Use	R-A	R-B	G-B	LI-A	LI-B	B	VC-C	VC-R	I	W	WSP
b. Farm – Including dairying, the raising, breeding, keeping and preparing for market or storage of livestock, cattle, poultry, swine, and other domesticated animals used for food purposes, and fur-bearing animals.											
Parcels less than five (5) acres	SP	SP	SP	Y	Y	SP	N	N	Y	Y	SP
Parcels of five (5) acres or larger	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	SP
c. Sales room or stand for the display or sale of agricultural or horticultural products, the major portion of which is grown or produced on the premises by a resident proprietor.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	SP
d. Seasonal Farm Stand, non-exempt.	SP	SP	SP	SP	SP	SP	N	N	SP	N	N
3.24 Business											
a. Retail store distributing merchandise to the general public.	N	N	SP	Y	Y	Y	Y	SP	SP	N	N
a.(1) Adult Entertainment Establishments, as defined in Section 5.12	SP	SP	SP	SP	SP	SP	N	N	SP	SP	SP
b. Craft, consumer, professional, personal or commercial service establishment dealing directly with the general public.	N	N	SP	Y	Y	Y	Y	Y	SP	N	N
c. Office or agency for non-resident business or professional use.	SP	N	Y	Y	Y	Y	Y	Y	SP	N	N
d. Bank or other financial institution.	N	N	N	Y	Y	Y	Y	N	SP	N	N
e. Drive-up bank or other financial institution.	N	N	N	SP	SP	SP	SP	N	SP	N	N
f. Restaurant, tavern or other establishment providing food and beverage within a building.	SP	SP	SP	Y	Y	Y	Y	SP	SP	N	N

Use	R-A	R-B	G-B	LI-A	LI-B	B	VC-C	VC-R	I	W	WSP
g. Outdoor seating associated with restaurants, taverns or other establishment providing food or beverage (Subject to applicable licensing requirements).	SP	SP	SP	Y	Y	Y	Y	N	SP	N	N
h. Restaurant or other establishment providing food, beverages, and live entertainment within a building.	N	N	SP	SP	SP	SP	SP	N	N	N	N
i. Pushcart food vendor	N	N	N	N	N	Y	Y	N	N	N	N
j. Drive-in or open-air restaurant or other establishment providing food and beverages with no live or mechanical entertainment. No drive-through restaurants allowed in VC-C District	N	SP	SP	Y	Y	SP	SP	N	SP	N	N
k. Sales facility for motor vehicles, trailers, mobile homes, boats, farm implements or machinery with repair services and storage permitted.	N	N	N	SP	SP	Y	N	N	SP	N	N
l. Service station and/or repair garage for motor vehicles, not including auto body, welding or soldering shop.	N	N	SP	Y	Y	SP	N	N	SP	N	N
m. Gas station with convenience store	N	N	SP	Y	Y	SP	N	N	SP	N	N
n. Auto body, welding or soldering shop.	N	N	N	SP	SP	SP	N	N	SP	N	N
o. Commercial greenhouse.	SP	Y	SP	Y	Y	SP	N	SP	SP	N	N
p. Undertaking establishment or funeral home.	SP	N	N	SP	SP	Y	SP	SP	N	N	N
q. Animal or veterinary hospital.	N	SP	N	Y	Y	SP	N	N	N	N	N
r. Commercial sale, care, breeding or boarding of dogs, cats, or other domestic pets.	SP	SP	SP	SP	SP	Y	N	N	SP	N	N
s. Drive-in or open-air business other than a restaurant and appurtenant buildings or structures.	N	N	SP	SP	SP	SP	SP	SP	N	N	N
t. Storage of construction equipment and building material.	SP	SP	N	Y	Y	SP	N	N	Y	N	N
u. Bed & Breakfast	SP	SP	SP	SP	SP	SP	SP	SP	N	N	N
v. Hotel, motel, or overnight cabins.	N	SP	SP	SP	SP	Y	SP	SP	N	N	N

Use	R-A	R-B	G-B	LI-A	LI-B	B	VC-C	VC-R	I	W	WSP
w. Commercial indoor amusement or recreation place, or place of assembly. A maximum of two movie screens shall be allowed in the VC-C District.	N	N	N	SP	SP	SP	SP	N	N	N	N
x. Commercial outdoor amusement or recreation place not including an outdoor movie theatre.	N	N	SP	SP	SP	SP	N	N	N	N	N
y. Wireless Communication Facilities & Towers.	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	N
z. Self-Storage Facilities. With no outdoor storage allowed.	N	N	N	SP	SP	SP	N	N	SP	N	N
aa. Art Galleries	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
bb. Outdoor Farmers Market	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
3.25 Wholesale and Industry											
a. Freight and terminal or storage warehouse.	N	N	N	Y	Y	N	N	N	Y	N	N
b. Wholesale warehouse including office or showroom facilities.	N	N	N	Y	Y	N	N	N	Y	N	N
c. Passenger station.	N	N	N	SP	SP	Y	Y	N	SP	N	N
d. Airport or heliport.	N	SP	N	SP	SP	N	N	N	SP	N	N
e. Light industrial use including manufacturing, processing, fabrication, assembly, packaging and storage.	N	N	N	Y	Y	SP	N	N	Y	N	N
f. Excavation, processing and storage of soil, loam, sand, gravel, rock and other mineral deposits.	N	SP	N	SP	SP	N	N	N	SP	SP	SP
g. Reclamation, processing, storage and sale of scrap materials.	N	N	N	Y	SP	N	N	N	Y	N	N
3.26 Scientific Research and Development											
a. Activities connected with scientific research or scientific development or related production.	SP	SP	N	Y	Y	Y	SP	SP	Y	N	SP
b. Accessory use necessary in connection with scientific research, scientific development, or related production.	SP	SP	N	Y	Y	Y	SP	SP	Y	N	SP

Use	R-A	R-B	G-B	LI-A	LI-B	B	VC-C	VC-R	I	W	WSP
3.27 Wind Energy Facilities											
a. Large Wind Energy Facilities, only when the requirements and conditions of §5.17 have been met.	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
b. Small Wind Energy Systems. * Allowed by-right (Y) only when the criteria and requirements of §5.18 have been met. Otherwise such systems shall be allowed only by a Special Permit, per §5.18.3(B).	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*

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3.3 Special Conditions

3.31 Prohibited Uses in the Wetlands and Watershed Protection District and the Water Supply Protection District:

a. Solid waste landfills, dumps, auto recycling, auto graveyards, junk and salvage yards, landfilling or storage of sludge and septage, with the exception of the disposal of brush or stumps;

b. Outdoor storage of salt, de-icing materials, pesticides, or herbicides;

c. Stockpiling and disposal of snow or ice removed from highways and streets located outside of the Water Supply Protection District or the Wetlands and Watershed District that contain sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal;

d. Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic chemical, including but not limited to septic systems cleaners which contain toxic chemicals such as methylene chloride and 1-1-1 trichloroethane, or other household hazardous wastes. (See list of prohibited chemicals at the Board of Health office);

e. Wastewater treatment works subject to 314 CMR 5.00 (those works which discharge over 15,000 gallons per day to the ground), except the following:

1.) The replacement or repair of an existing system(s) or of an existing subsurface sewage disposal system with wastewater treatment works, which will not result in an increase in design capacity greater than the design capacity of the existing system(s);
2.) Treatment works approved by Mass. Department of Environmental Protection and designed in accordance with 314 CRM 5.00 for the treatment of contaminated ground or surface waters;

f. Storage of liquid petroleum products of any kind, except for storage which is incidental to:

1.) Normal household use and outdoor maintenance or the heating of a structure;

2.) Emergency generators required by statute, rule or regulation, or;

3.) Waste oil retention facilities required by M.G.L. C.21, S.52A, and;

4.) Treatment works approved by Mass. Department of Environmental Protection and designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters;

Provided that such storage shall be in a free standing, above ground container, within a diked, impermeable area sufficient to contain the volume of the tank plus 10% to prevent spills or leaks from reaching groundwater, and provided that the storage tank and piping must comply with all applicable provisions of 527 CMR 9.00 Massachusetts Board of Fire Prevention regulations.

g. Uses, not agricultural, which generate, use, treat, process, store, or dispose of hazardous wastes, except for the following:

1.) Very small quantity generators of hazardous waste, as defined by 310 CMR 30.00 which generate less than 100 kilograms or less than 27 gallons of hazardous waste per month may be allowed by Special Permit;

2.) Household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;

3.) Waste oil retention facilities required by M.G.L. C.21, S. 52A, and;

4.) Treatment works approved by Mass. Department of Environmental Protection and designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters;

h. Individual sewage disposal systems that are designed to receive more than 100 gallons of sewage per quarter acre per day or 440 gallons of sewage per acre per day, whichever is greater, provided that:

1.) The replacement or repair of an existing system, which will not result in an increase in design capacity above the original design, shall be exempted;

2.) In calculating the maximum sewage disposal system density, it shall be assumed that each residential bedroom will generate 110 gallons of sewage;

3.) Maximum sewage disposal system density shall be calculated on an individual per lot basis (i.e. a 3-bedroom house generates 330 gallons of sewage per day requiring a ¾ acre minimum lot area);

4.) In addition to meeting the standards above, all lots shall also conform to any applicable minimum lot size requirements contained in the Town of Ashburnham Zoning By-Law.

3.32 Prohibited Uses in the Wetlands and Watershed Protection District

No building or structure intended for human occupancy shall be constructed. Continuation, alteration, extension, restoration and abandonment shall be as provided in Section 1.3, Non-Conforming Uses and 1.4, Non-Conforming Buildings and Structures.

3.33 Special Conditions in the Wetlands and Watershed Protection District and the Water Supply Protection District.

a. Sodium chloride for ice control shall be used at the minimum salt to sand ration which is consistent with highway public safety requirements, and its use shall be eliminated on roads which may be closed to the public in winter.

b. The storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow shall be covered and located on a paved surface with berms, or within a structure designed to prevent the generation and escape of contaminated run-off.

c. Fertilizers, pesticides, herbicides, lawn care chemicals, or other leachable materials shall be used in accordance with the Lawn Care Regulations of the Massachusetts Pesticide Board, 333 CMR 10.03 as amended, with manufacturer's label instructions and all other necessary precautions to minimize adverse impacts on surface and groundwater.

d. The storage of commercial fertilizers and soil conditioners shall be within structures designed to prevent the generation and escape of contaminated run-off or leachate.

e. To the extent feasible, all new permanent animal manure storage areas shall be covered and/or contained to prevent the generation and escape of contaminated runoff or leachate.

f. All liquid hazardous materials, as defined in M.G.L. Chapter 21E, must be stored either in a free standing container within a building, or in a free standing container above ground level with protection to contain a spill the size of the container's total storage capacity.

g. To the extent feasible, run-off from impervious surfaces shall be recharged on the site by being diverted toward areas covered with vegetation for surface infiltration. Such run-off shall not be discharged directly to surface

water bodies. Dry wells shall be used only where other methods are infeasible, and shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. All recharge areas shall be permanently maintained in full working order by the owner.

h. A Special Permit shall be required for the rendering impervious of more than 15%, or 2,500 square feet of any lot, provided that a system for artificial recharge of precipitation to groundwater is developed, which shall not result in degradation of groundwater.

3.34 Flood Plain District Regulations

a. In the Floodway, designated on the Flood Boundary and Floodway Map, the following provisions shall apply:

1.) All encroachments, within the Floodway, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that an equal amount of compensatory flood storage area, having an unrestricted hydraulic connection to the same waterway or water body, is provided within the same property bounds. Compensatory storage shall mean a volume not previously used for flood storage on the same property and shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project.

2.) Any encroachment meeting the above standard shall comply with the flood plain requirements of the State Building Code.

Except for structures designed for flood control or water storage purposes, allowed or permitted uses shall not substantially reduce natural water storage capacities nor substantially affect natural stream flow.

Septic tanks, cesspools and leaching fields shall not be permitted.

Driveways and roads are permitted where alternative means of access are impractical.

b. Subdivision Standards for the Flood Plain District

All subdivision proposals and other proposed new development shall be reviewed by the Planning Board's engineer at the applicants expense to determine whether such proposals will be reasonably safe from flooding. If

any part of a subdivision proposal or other new development is located within the Flood Plain District established under the Zoning By-Law it shall be reviewed to assure that:

1.) The proposal is designed consistent with the need to minimize flood damage, and

2.) All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damage, and

3.) Adequate drainage systems shall be provided to reduce exposure to flood hazards, and

4.) Base flood elevation (the level of the 100 year flood) data shall be provided for proposals greater than 50 lots or 5 acres, whichever, is the lesser, for that portion within the Flood Plain District.

c. Health Regulation Pertaining to the Flood Plain District

The Board of Health, in reviewing all proposed water and sewer facilities to be located in the Flood Plain District established under the Zoning By-Laws, shall require that:

1.) New and replacement water supply systems shall be designed to prevent infiltration of flood waters in the system, and

2.) New and replacement sanitary sewage systems be designed to prevent infiltration of flood waters into the systems and discharges from the systems into flood waters.

d. Flood Plain District Regulations for Mobile Homes

1.) Within Zone A1-19, all mobile homes shall provide that:

a.) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level and

b.) Adequate surface drainage and access for a hauler are provided, and

c.) In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart, and reinforcement is provided for piers more than six feet above ground level.

2.) The placement of mobile homes, except in an existing mobile home park or mobile home subdivision, are prohibited in the floodway (or coastal high hazard area or V-zone.

3.35 Village Center

a. Retail operations with more than ten thousand (10,000) square feet of gross floor area on any individual floor shall be prohibited in the Village Center - Commercial and Village Center-Residential Zoning Districts.

b. More than one principle building shall be allowed on any lot located in the Village Center - Commercial and Village Center - Residential Zoning Districts, subject to issuance of a Special Permit by the Planning Board that such buildings would be in keeping with the purpose of the Village Center Zoning District(s), per Section 2.1 of the Zoning Bylaw, and the following findings:

1. No principal building shall be located in relation to another principal building on the same lot, or on adjacent lot, so as to cause danger from fire;

2. All principal buildings on the lot shall be served by access ways suitable for fire, police, and emergency vehicles;

3. All of the multiple principal buildings on the same lot shall be accessible via pedestrian walkways connected to the required parking for the premises, and to each principal building.

3.36 Open Space Residential Development
(Deleted by ATM 5-5-12, approved by Attorney General 8-30-12)

SECTION 4. DIMENSIONAL REGULATIONS

4.1 Basic Requirements

No building, structure or use in any district shall be built, located, enlarged or permitted which does not conform to the applicable Dimensional Regulations as set forth in Sections 4.2 and 4.3 and the Special Regulations as set forth in Section 5.1, 5.2, 5.3 and 5.4 of this By-Law.

4.2 Table 1 (see page 116)

4.3 Special Conditions

4.31 Recorded Lots – A lot or parcel of land in a Residential District having an area or width less than that required by this Section may be developed for a single residential use provided that such lot or parcel complies with the specific exemptions of Chapter 40A, General Laws.

4.32 Frontage – The frontage of a lot shall be measured as the straight line distance between the points of intersection of the side lot lines and the street line. Corner lots shall meet the frontage requirement on at least one (1) street. In all residential districts, with the exception of Open Space Residential Developments, seventy-five (75%) percent of the required frontage shall be maintained for a minimum depth of fifty (50) feet measured at a ninety-degree angle from the front lot line towards the back lot line.

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

4.34 Visual Corner Clearance – In any district no structure, fence, planting, or off-street parking (except a transparent fence in which the solid area is not more than five percent (5%) of the total area) shall be maintained between horizontal parallel planes two and one-half (2 1/1) feet and seven (7) feet above street level, within the triangular area prescribed by the two street lines and a straight line connecting points on such lines twenty-five (25) distant from the point of intersection.

4.35 Projections – Nothing herein shall prevent the projection of steps, stoops (not exceeding thirty (30) square feet in area), caves, cornices, window sills or belt courses into any required yard.

4.36 Height Limitation – The limitation on height of buildings and structures in the schedule shall not apply in any district to chimneys, ventilators, towers, spires, or other ornamental features of buildings, which features are in no way used for living purposes.

4.37 Fences and Walls – A fence or wall of not more than four (4) feet in height is permitted along any lot line (except on corner lots as modified above) and six (6) feet in height along any rear yard line. Fences or walls of greater height are permitted if they are set back a distance equal to two-thirds (2/3) their height.

4.38 Swimming Pool Fence – Outdoor swimming pools having a capacity of 4,000 gallons or more shall be completely surrounded at all times by a fence or wall not less than four feet in height above grade. With regard to above ground pools, the pool wall itself may serve as a fence. All gates or doors opening through such enclosure shall be of not less than four feet in height and shall be equipped with a self-closing and self-latching device located at least four feet above the underlying ground and inaccessible from the outside to small children. Every such gate or door shall be kept locked at all times and any ladders serving above ground pools shall be removed when the swimming pool is not in use.

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SECTION 5. SPECIAL REGULATIONS

5.1 Accessory Buildings

No detached accessory building or structure shall be located closer to any principal building than a distance equal to the height of such accessory building or structure. No accessory building or structure shall be located within the required front yard area nor shall it be located in any side yard nearer to the lot line than ten (10) feet, or in the rear yard area nearer to the lot line than five (5) feet. In no case shall accessory buildings cover more than thirty percent (30%) of the total required rear yard area.

5.2 Signs

5.21 General – The following provisions shall apply to signs in all districts:

a. Any sign not expressly permitted or exempted under this Section 5.2 is prohibited.

b. No sign shall be erected adjacent to any public or private way in such a manner as to obstruct clear and fee vision or where, by reason of its position, shape, color, illumination or wording the sign may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device or otherwise constitute a hazard to pedestrian or vehicular traffic.

c. Flashing, moving or animated signs are prohibited.

d. No free-standing sign shall exceed twenty (20) feet in height.

e. No sign shall be located within three (3) feet of a street line or other lot line.

f. No sign shall be permitted within a public way without the written permission of the Board of Selectmen.

5.22 Residential Districts – In Residential Districts the following signs only are permitted.

a. Two (2) non-flashing signs, not over two (2) square feet in area per sign, on the premises indicating the name, or name and profession or occupation, of the owner or occupant.

b. Two (2) non-flashing signs, not over six (6) square feet in area per sign, pertaining to a permitted accessory use on the premises.

c. Two (2) temporary unlighted signs, not over six (6) square feet in area per sign, which advertise the sale, rental or lease of the premises or any part thereof

which shall be removed promptly after such sale, rental or lease has been effected.

d. Not more than one (1) temporary unlighted sign per building trade, not to exceed six (6) square feet in area per sign, which advertises the construction, improvement, removal, demolition, landscaping or tree work on the premises which shall be removed promptly on completion of said work.

e. Two (2) non-flashing signs, not over six (6) square feet in area, pertaining to any religious, educational, other public or semi-public use on the premises.

5.23 Business and Industrial Districts – In Business and Industrial Districts the following signs only are permitted in addition to those permitted in Residential Districts.

a. Two (2) non-flashing building signs per establishment, not over thirty (30) square feet in area per sign, attached to a wall and not projecting more than two (2) feet from the face of the wall nor extending beyond the face of said wall vertically or horizontally which advertise an establishment within the building.

b. Two (2) non-flashing free-standing directory signs, not over ten (10) square feet per establishment and not to exceed one hundred (100) square feet in area per sign, indicating the establishments located on the premises.

c. One (1) double-sided, free-standing, illuminated sign, not over seventy-five (75) square feet in area per side, indicating the owner and/or oil company operating the automotive service station on the premises.

Village Center Districts – In Village Center Districts, the following signs only are permitted in addition to those permitted in Residential Districts.

a. Two (2) non-flashing signs per establishment. Such signs may include any of the following:

(1) Wall sign, attached parallel to the exterior surface of a building or structure and projecting not more than fifteen (15) inches from the building surface. Such sign shall not exceed thirty (30) square feet in area; shall not obscure architectural features of the building, not limited to features such as arches, sills, mouldings, cornices, and transoms, and shall not extend above the lowest point of the roof, nor beyond the ends of the wall to which it is attached.

(2) Projecting sign, mounted to a wall and perpendicular to the building surface. Such sign shall be flat, shall not exceed ten (10) square feet in area on each side, and shall have a minimum clearance of eight (8) feet above grade when located adjacent to or projecting over a pedestrian

way, and thirteen (13) feet when projecting over an alley or driveway. A sign which overhangs a public way (including a sidewalk) shall not project closer than two (2) feet to the curb line and shall be covered by a public liability insurance policy which names the Town as the insured party.

(3) Awning sign painted on or attached to the cover of a moveable metallic frame, of the hinged, roll or folding type of awning. Such sign must be painted on or attached flat against the surface of the awning, but not extend beyond the valance or be attached to the underside; and shall have a minimum clearance of eight (8) feet above grade for pedestrian clearance. Lettering on an awning sign shall not extend ten (10) inches in height, and the total area of an awning sign shall not exceed twenty (20) square feet.

(4) Window sign, painted or mounted onto a windowpane, or hung directly inside the window, with the purpose or effect of identifying any premises from the sidewalk or street. The area of such signs shall not exceed thirty per cent (30%) of the window area in which they are displayed.

(5) Non-flashing, freestanding sign not to exceed 10 square feet in area. The building must have a 25 ft. setback from the street for the allowance of this type of sign. Placement shall not be less than 10 feet from the street's edge.

b. One (1) wall-mounted, non-flashing directory sign per building, not exceeding twelve (12) square feet, plus one (1) square foot for the name of each establishment in the building.

c. Notwithstanding the above, the total area of all signs on any building or parcel shall not exceed one and one-half square feet (1.5 sq. ft.) per linear foot of storefront.

d. All signs shall be made of wood or metal or other natural material. Colors should be chosen to complement the façade color of the building and dark backgrounds with light-colored lettering shall be preferred.

e. Signs shall be illuminated only with steady, stationary, shielded light sources directed solely onto the sign without causing glare. Internal illumination of signs is prohibited. Signs shall not be illuminated directly or indirectly between the hours of 11:00 p.m. and 7:00 a.m. unless the premises are open during such hours.

5.24 Exempted Signs – The following signs are exempted from provisions of Section 5.21, 5.22, and 5.23.

a. Any sign which is required or authorized by any law, rule, regulation or permit of the federal or state governments or any agency thereof or any public authority created thereby.

b. Any sign erected or placed on any Town premises under the provisions of any Town By-Law or Building Code or by direction or order of the Town Board or Committee having lawful jurisdiction over such premises.

c. Any sign not exceeding four (4) square feet in area, limited solely to directing traffic within a parking area or indicating parking restrictions in the use of such parking area.

d. Any sign, not exceeding one (1) square foot in area, marking or identifying privately-owned land.

e. Any temporary, unlighted signs, not exceeding two (2) of not more than two (2) square feet in area each, advertising the sale or offering of pets, personal or household articles and a vehicle, trailer or boat belonging to the owner or occupant of the premises, which shall be removed promptly following the sale or disposal of said articles.

f. Customary signs on gasoline pumps, indicating in usual size and form the name and type of gasoline and the price thereof.

g. Holiday decorations and lights when in season.

5.25 Non-Conforming Signs – Signs not in conformance with other provisions of the Section 5.2 shall be subject to the following provisions:

a. Any non-conforming sign legally erected prior to the adoption of this By-Law may continue to be maintained for a period of not longer than five (5) years after the effective date of this By-Law; provided however, that during said five (5) year period no such sign be enlarged, redesigned or altered except in accordance with the provisions of this By-Law and provided further than any such sign which has not been destroyed or damaged to such an extent that the cost of restoration would exceed thirty-five (35) percent of the replacement value of the sign at the time of the destruction or damage, shall not be repaired or rebuilt or altered except in accordance with the provisions of this By-Law.

b. The exemption herein granted shall terminate with respect to any sign which (1) shall have been abandoned; (2) advertises or calls attention to any products, businesses or activities which are no longer carried on or sold for at least sixty (60) days; or (3) shall not have been repaired or properly maintained within sixty (60) days after notice to that effect has been given by the Board of Selectmen.

5.3 Off-Street Parking and Loading Requirements

5.31 Basic Requirement – In any district where permitted, no use of premises shall be authorized or extended, and no building or structure shall be erected or enlarged unless there is provided for such extension, erection, or enlargement, off-street automobile parking space within three hundred (300) feet of the principal building, structure, or use of the premises, in accordance with the following minimum specifications. An area of two hundred (200) square feet of appropriate dimensions for the parking of an automobile, exclusive of drives or aisles, shall be considered as one off-street parking space.

5.32 Schedule of Minimum Off-Street Parking Requirements

a. Two (2) spaces per dwelling unit in all housing except that constructed for elderly persons of low income which shall have one and a quarter (1.25) spaces per dwelling unit.

b. One (1) space for each sleeping room in a tourist home, boarding or lodging house, motel or hotel, plus required spaces for facilities used for eating, drinking, and assembly, as outlined in section h below

c. One (1) space for each campsite in family type campgrounds.

d. One (1) space for each two (2) beds in a hospital or sanitarium.

e. One (1) space for each four (4) beds for other institutions devoted to the board, care or treatment of humans.

f. One (1) space for each two hundred (200) square feet or fraction thereof, of floor area of any retail, retail/wholesale, wholesale, or service establishment.

g. One (1) space for each eight hundred (800) square feet, or fraction thereof, of floor area of any wholesale establishment, but not less than five (5) spaces per enterprise.

h. One (1) space for each two (2) employees and one (1) space for three (3) seats, permanent or otherwise, for patron use for restaurants, and other places servicing food or beverage.

i. One (1) space for each two (2) persons employed or anticipated to be employed on the largest shift for all types of business, industrial, professional or other permitted uses.

j. One (1) space for each two hundred fifty (250) square feet, or fraction thereof, of floor area of any office or professional building; except that one (1) space per one hundred fifty (150) square feet shall be provided for medical offices.

k. One (1) space for each one hundred fifty (150) square feet, or fraction thereof, of floor area of any bank, plus one (1) space for each two hundred fifty (250) square feet of area not devoted to customer service.

l. One (1) space for each eight hundred (800) square feet of floor area, or one (1) space per employee, whichever is greater, for any industrial use.

m. One (1) space for each four (4) persons capacity for any theater, auditorium or other place of amusement or assembly.

n. Adequate spaces to accommodate customers, patrons and employees of other business and professional uses not specified, but not less than one (1) space per two hundred (200) square feet of area devoted to customer service.

o. Adequate spaces to accommodate customers, patrons, and employees at automobile service stations, drive-in establishments, open air retail business and amusements and other permitted uses not specifically enumerated herein shall be provided.

5.33 Off-Street Loading – In any district where permitted or allowed, business, wholesale or industry uses as listed in Section 3.2, Schedule of Use Regulations, shall be provided as necessary with adequate off-street loading facilities located entirely on the same lot as the building or use to be served so that trucks, trailers and containers shall not be located for loading, unloading or storage upon any public way.

5.34 Parking in the Village Center Zoning District District and in a Planned Unit Development (PUD)
The standards of Section 5.32 must be met for the additional parking demand created by new buildings, additions or changes of use unless, in performing a Site Plan Review and Approval under Section 5.10 or issuing a Special Permit under the provisions of Section 5.19, Planned Unit Development (PUD), the Planning Board determines that special circumstances dictate a different provision in order to meet all parking needs. In performing a Site Plan Review and issuing a PUD Special Permit, the Planning Board may authorize a smaller number of parking spaces because of staggered hours of use or other circumstances. The Planning Board shall determine all parking space calculations based on information in the most recent edition of the Parking Generation manual by the Institute of Transportation Engineers (ITE), on studies and surveys done by qualified persons regarding parking, on parking requirements and use for similar facilities in the Montachusett region and/or other appropriate information.
(Revision approved by ATM 5-5-12, approved by Attorney General 8-30-12)

5.4 Minimum Residential Floor Area

No multi-family dwelling shall be erected, reconstructed, remodeled or altered so that the floor area of living space shall be less than four hundred fifty (450) square feet per apartment of one (1) bedroom or less and six hundred (600) square feet per apartment of two (2) bedrooms or more.

5.5 Wireless Communications Facilities and Towers

5.5.1 General Purpose

The purpose of this section shall be to regulate the placement, design, construction, removal, and modifications of wireless communication facilities and towers so as to promote the economic viability of Ashburnham and to protect its historic, cultural, natural, and aesthetic resources. To accomplish the purpose of this bylaw, no permit for the installation of a wireless communications facility or wireless communications tower shall be granted by the Town of Ashburnham Building Inspector until a Special Permit has been issued by the Town of Ashburnham Zoning Board of Appeals (ZBA).

5.5.2 Special Permit Review Criteria

(a) No wireless communications facility shall be erected, constructed, or installed without first obtaining a special permit from the Town of Ashburnham Zoning Board of Appeals. A special permit is required for new tower construction (or major modification of a preexisting tower) and for new wireless communications facilities (or major modification of a preexisting facilities) to be mounted on a tower or structure.

(b) Exemptions: The following types of wireless communications facilities and towers are exempt:

(1) Amateur radio tower – construction or use of an antenna structure by a federally licensed amateur radio operator as exempted by M.G.L. Chapter 40A, Section 3.

(2) A tower or antenna erected by the Town exclusively for municipal public safety communications purposes.

5.5.3 Consistency With Federal Law

These regulations are intended to be consistent with Section 704 of the 1996 Telecommunications Act. Accordingly, they shall not prohibit or have the effect of prohibiting the provision of wireless communication services; shall not unreasonably discriminate among providers of functionally equivalent services; shall not regulate wireless services based on the environmental effects of radio frequency emissions to the extent that these facilities comply with the Federal Communications Commission Regulations concerning such emissions.

5.5.4 Definitions:

Abandoned Tower: A tower not being used for the purpose it was permitted for a period of twelve months.

Adequate Coverage: Coverage is adequate within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that the majority of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be signal strength of at least 90 dBm. It is acceptable for there to be minor temporary loss of signal within the area of adequate coverage. The outer boundary of the area of adequate coverage is that location past which the signal does not regain uniformly.

Antenna: A device used to transit and/or receive electromagnetic waves, which is attached to a tower or other structure.

Antenna Support Structure: Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

Available Space: The space on a tower or structure to which antennas of a telecommunications provider is both structurally able and electromagnetically able to be attached.

Base Station: The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider may be located on a single tower or structure.

Building-Mounted Antenna Support Structure: Any antenna support structure mounted on, erected on, or supported in whole or part by a building or structure occupied and/or used for purposes other than wireless telecommunications.

Building For Equipment Shelter: An enclosed structure used to contain batteries, electrical equipment, telephone lines, transmitters, etc. used by the carriers on the towers.

Channel: The segment of the radiation spectrum to or from an antenna, which carries one signal. An antenna may radiate on many channels simultaneously.

Colocation: Locating the wireless communications equipment of more than one provider on a single tower.

Communication Tower: A monopole or self-supporting tower, constructed as a free-standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving wireless communications.

Consultant: Certified expert engineer licensed by the Commonwealth of Massachusetts, hired at the expense of the applicant to review the application and verify that the new tower is necessary at the proposed site, or any other review required under this bylaw.

Carrier: A company that provides wireless service as defined by Section 704 of the 1996 Telecommunications Act.

dBm: Unit of measure of the power level of a signal expressed in decibels above one milliwatt.

dBu: Unit of measure of the electric field strength of a signal, expressed in an absolute measure for describing service areas and comparing different transmitting facilities independent of the many variables (see dBm above) introduced by different receiver configurations.

EA: See Environmental Assessment

Emergency Power: Electrical Generators usually powered by propane gas or diesel fuel so as to provide uninterrupted service in the case of electrical utility failure, provided that any generators used may not emit more than 50 decibels over the ambient noise level at the property line.

Environmental Assessment: An EA is the document required by the FCC and NEPA when a personal wireless facility is placed in certain designated areas.

FAA: Federal Aviation Administration.

Facility Site: A property, or any part thereof, which is owned or leased by one or more wireless communications facility(s) and where required landscaping is located.

Fall Zone: The area on the ground within a prescribed radius from the base of a tower, typically the area within which there is a potential hazard from falling debris, or collapsing material.

FCC: Federal Communications Commission

Frequency: The number of cycles completed each second by an electromagnetic wave, measured in hertz (Hz), megahertz (MHz, or one million hertz), or gigahertz (GHz, one billion hertz).

Hertz: One hertz (Hz) is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

Lattice Towers: A type of mount that is self-supporting with multiple legs and crossbracing of structural steel.

Major Modifications: The changing or alteration of any portion of a tower from its description in a previously approved permit, including any addition that increases the height of the tower size of the building for equipment shelter.

Monitoring: The measurement, by the use of instruments in the field, of non-ionizing radiation exposure from wireless communications facilities, towers, antennas, or repeaters.

Monopole: A type of tower that is self-supporting with a single shaft of wood, steel, or concrete.

NEPA: National Environmental Policy Act.

Preexisting Towers and Antennas: Any tower or antenna which was lawfully erected before the effective date of these regulations.

Repeater: A small receiver/relay transmitter and antenna of relatively low power output designed to provide service to areas which are not able to receive adequate coverage directly from a base or primary station.

RFI: Radio Frequency Interference.

RFR: Radio Frequency Radiation.

Scenic View: A scenic view is a wide angle or panoramic field of sight and may include natural and/or manmade structures and activities which may be seen from a stationary viewpoint or as one travels along a roadway, waterway, or path, and may be to an object in the distance such as a mountain, or an object nearby such as an historic building or a pond.

Self-Supporting Tower: A communications tower that is constructed without guy wires.

Special Permit: As defined by Section 6.42 of the Town of Ashburnham Zoning Bylaws.

Spectrum: Relating to any transmissions or reception of electromagnetic waves.

Stealth Tower: A structure designed to blend with or be hidden by surrounding terrain, architectural design, or buildings.

Structurally Able: The determination that a tower or structure is capable of carrying the load imposed by the proposed new antenna(s) under all reasonable predictable conditions as determined by professional structural engineering analysis.

Tower: A vertical structure for antenna(s) that provide wireless communications services.

Tower Height: The vertical distance measured from the base of the tower support structure to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the tower height.

Town: Ashburnham, Massachusetts and/or its elected or appointed officials.

Wireless Communications Facility: All equipment, buildings and locations of equipment (real estate) with which a wireless communications provider transmits and receives the waves which carry their services. This facility may be owned and permitted by the provider or another owner or entity.

Wireless Communications Provider: An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

Wireless Services: Commercial mobile services, unlicensed wireless exchange access services, including cellular services, personal communications services, specialized mobile radio services, and paging services.

5.5.5 Permit Application Requirements:

(A) An applicant for a wireless communications tower or facility permit must be a wireless communications provider or must provide a copy of its executed contract to provide land or facilities to an existing wireless communications provider at the time that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation.

(B) Applicants for wireless communications towers or facilities shall include the following supplemental information in their filings for special permit approval:

(1) Location Map. The location of the proposed structure on the most recent United States Geological Survey Quadrangle map, showing the area within at least a three-mile radius of the proposed tower site.

(2) A map or sketch of the property proposed to be developed, professionally drawn to scale and with the area to be developed clearly indicated.

(3) A report from qualified and licensed professional engineers (consultants) that:

a) Describes the facility height, design, and elevation.

b) Documents the height above grade for all proposed mounting positions for antennas to be colocated on a wireless communications tower or facility and the minimum separation distances between antennas.

c) Describes the tower's proposed capacity, including the number, height, and types(s) of antennas that the applicant expects the tower to accommodate.

d) Documents steps the applicant will take to avoid interference with any established public safety wireless communications, and includes both an intermodulation study that predicts no likely interference problems and certification that the study has been provided to the appropriate public safety agencies. Towers utilized by Ashburnham Public Safety channels will not locate conflicting frequencies on same tower.

e) Describes existing and proposed coverage. In the case of new tower proposals, the applicant shall demonstrate that existing wireless communications facility sites and other existing structures within Ashburnham, in abutting towns, and within a 10 mile radius of the proposed site cannot reasonably be modified to provide adequate coverage and/or adequate capacity to the Town of Ashburnham.

f) Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage, and provides a detailed computer generated Actual Received Level propagation model that describes coverage of the existing and proposed facilities.

g) Describes the output frequency, number of channels and power output per channel for each proposed antenna.

h) Includes a written five-year plan for use of the proposed wireless communications facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town of Ashburnham.

i) Demonstrates the tower's compliance with the municipality's setbacks for towers and support structures.

j) Provides proof that at the proposed site the applicants will be in compliance with all FCC regulations, standards, and requirements, and includes a statement that the applicant commits to continue to maintain compliance with all FCC regulations, standards, and requirements regarding both radio frequency interference (RFI) and radio frequency radiation (RFR). The Town of Ashburnham may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards, and requirements on an annual basis at unannounced times. The Town may allocate to the applicant any reasonable expenses incurred or authorized by it in retaining independent engineers to perform these evaluations.

(4) Commitment to Share Space. A letter of intent committing the tower owner and his or her successors to permit shared use of the tower if the additional user agrees to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC regulations, standards and requirements and the provision of this bylaw.

(5) Existing Structures: For wireless services to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure must be submitted.

(6) Environmental Assessment: To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete Environmental Assessment (EA) draft of final report describing the probable impacts of the proposed facility shall be submitted to the Building Inspector prior to the issuance of a building permit.

(7) Vicinity Map: A topography priority resource map showing the entire vicinity within a 1000 foot radius of the tower site, including the wireless communications facility or tower, public and private roads and buildings and structures, water bodies, wetlands, landscape features and historic sites. The map shall show the property lines of the proposed tower site parcel and all easements or rights of way needed for access from a public way to the tower.

(8) Proposed site plans of the entire wireless communications facility, professionally drawn to scale, showing all improvements including landscaping, utility lines, screening and roads.

(9) Elevations showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities.

(10) Where the proposed site is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.

(11) Construction sequence and estimated time schedule for completion of each phase of the entire project.

(12) Any additional information requested by the Ashburnham ZBA.

(C) Plans shall be drawn at a minimum at the scale of one (1) inch equals fifty (50) feet. The permit application shall be signed under the penalties of perjury.

5.5.6 Tower and Antenna Design Requirements

(a) **Protection of Scenic Character:** Proposed facilities shall not unreasonably interfere with any scenic views, paying particular attention to such views from the downtown business area, public parks, natural scenic vistas or historic buildings or districts. Towers shall, when possible, be sited off ridge lines and where their visual impact is least detrimental to scenic views and areas. Height and mass of facilities shall not exceed that which is essential to their intended use. In determining whether the proposed tower will have an undue adverse impact on the scenic beauty of a ridge of hillside, the Town shall consider, among other things, the following:

(1) The period of time during which the proposed tower will be viewed by the traveling public on a public highway, public trail, or public body of water;
(2) The frequency of the view of the proposed tower by the traveling public;
(3) The degree to which the view of the tower is screened by existing vegetation, the topography of the land, and existing structures;
(4) Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
(5) The distance of the tower from the viewing vantage point and the proportion of the facility that is visible above the skyline;
(6) The number of travelers or vehicles traveling on a public highway, public trail, or public body of water at or near the critical vantage point, and
(7) The sensitivity or unique value of the particular view affected by the proposed tower.

To assist the Town in its review, it may require the applicant to fly or raise a three-foot diameter balloon at the maximum height of the proposed facility at a location within fifty (50) horizontal feet of the center of the proposed facility.

The applicant shall provide photographs of the balloon test taken from at least four vantage points previously designated by the ZBA.

Only self-supporting monopoles and stealth towers are acceptable. The ZBA may, at its sole discretion, waive any of the requirements of Section 5.5.6 for the purpose of approving the development of a wireless communications facility utilizing innovative siting techniques that camouflage or conceal the presence of antennas or towers.

(b) **Lighting, Bulk, Height, Glare:** All wireless communications facilities, including towers and antennas, shall be designed and constructed so as to minimize the visual impact of height and mass of said tower. Materials utilized for the exterior of any structure shall be of a type, color, and style so as to minimize glare and blend into the environment. Towers shall not be artificially illuminated. Tower sites will not be allowed if the FAA or other federal or state authority require lighting at proposed site unless required in the future by the FAA.

(c) **Transmitter Building:** Facilities buildings shall be built to accommodate all anticipated tenants on a tower, one building per site. Buildings seen from the road must be consistent with the historic colonial character of the Town.

(d) **Landscaping and Screening:** Base of tower as well as the building accessory to the tower shall be screened from view by a suitable vegetation screen that is consistent with existing vegetation. A planted or existing vegetative screen shall be maintained. Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

(e) **Height Limitations:** In order to protect public safety and to preserve the scenic, rural character and appearance of Ashburnham, antennas and all related facilities shall not exceed the lesser of 90 feet above the average height of the tree line within 200 feet of the base of the tower, or 170 feet total tower height. However, additional height may be approved upon finding by the ZBA that the additional height is required in order to provide adequate coverage up to and including 190 or to eliminate the need for other towers in the Town. Additional height must not have an undue visual impact on the scenic character or appearance of the area.

(f) **Fencing and Signage:** The area around the tower shall be completely fenced for security to a height of 8 feet and gated. Use of multiple strands of barbed wire is required. A painted sign no greater than two square feet stating the name of the facility's owner and a 24 hours emergency number shall be posted on the entry gate. In addition, "No Trespassing" and any other mandated warning signs shall be posted and maintained at the site. No commercial signs or lettering shall be placed on a tower. If possible the tower will be equipped with an anti-climbing

device. The wireless communications facility owner shall maintain adequate insurance on all wireless communications facilities.

(g) **Utilities:** All utilities must be routed underground via conduit from public road to site where feasible.

(h) **Access Road:** Vehicle access to site shall be required and shall conform to all Conservation Commission guidelines and be at least eighteen feet wide. A sturdy, posted swinging, lockable gate must be installed which is more than 15 feet and less than 30 feet off the public road upon which said access is situated, a KNOX box or keys shall be provided to a designated town official for municipal access.

(i) **Removal of Abandoned Antennas and Towers:**

(1) The owner of a facility/tower shall annually, by January 15, file a declaration with the Town of Ashburnham Land Use Clerk certifying the continuing safe operation of said facility/tower installed subject to these regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and shall be considered abandoned.

(2) A facility/tower shall also be considered abandoned when it has not been used for the purpose for which it was permitted, for a period of twelve months.

(3) The applicant or subsequent owners shall provide and maintain a financial surety bond in the amount of $25,000.00 (twenty-five thousand dollars) payable to the Town of Ashburnham to cover the costs of removal of each wireless communications facility applied for and the remediation of the landscape, should the facility be deemed abandoned. The bond shall not limit the applicant's financial liability to the Town for said facility/tower removal.

(A) The owner of a facility/tower shall have 90 (ninety) days to remove said tower from the date it is deemed abandoned as stated above.

(B) The town may exercise its option to remove said facility/tower at its own discretion upon notification of owner, anytime after the 90 (ninety) day waiting period.

(j) **Emergency Power:** Emergency power shall emit no more than 50 decibels over ambient noise level at all property lines.

(k) **Noise:** Noise at the site perimeter from the operation of any machinery or equipment shall be minimized.

(l) **Property Consideration:** An applicant shall demonstrate that all municipally-owned property in the geographic area was considered.

(m) **Electric Power:** Power to the site shall be provided by Ashburnham Municipal Light Plant.

(n) **Distance of Tower or Repeaters:**

(1) No repeater shall be located closer than 50 feet to an existing residential dwelling unit. No repeater shall be located less than 25 feet, nor more than 70 feet above ground.

(2) No tower or personal wireless service facility with the exception of repeaters shall be located:

(A) Within any of the following prohibited areas:
   a. Massachusetts or Federally regulated wetlands.
   b. A Massachusetts Certified Vernal Pool

(B) Within 100 feet horizontally of any Massachusetts regulated wetland.

(C) Within 200 feet horizontally of the Outer Riparian Zone measured horizontally from any river or perennial stream.

(D) Within 300 feet of any existing permanently occupied residential dwelling for monopoles.

(E) Within the overall height of the stealth or camouflaged facilities to the property line unless incorporated within an existing building, tower or steeple.

(o) **Documentation:** Engineering and Environmental Assessment impact as well as FAA notice of determination of no hazard of flight zone shall be submitted with any application.

(p) **Colocation Requirements:** An application for a new (non-colocated) wireless communications tower shall not be approved unless the Zoning Board of Appeals finds that the wireless communications facility planned for the proposed tower cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:

(1) The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts, and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.

(2) The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts and such interference cannot be prevented at a reasonable cost.

(3) The proposed antennas and equipment, along or together with existing facilities, equipment or antennas, would create RFI in violation of federal standards or requirements.

(4) The proposed antennas and equipment, alone or together with existing facilities, equipment or antennas, would create RFR in violation of federal standards or requirements.

(5) Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function, or are too far from the area of needed coverage to function reasonably, as documented by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts.

(6) Aesthetic considerations make it unreasonable to locate the planned wireless communications equipment upon an existing or approved tower or building.

(7) There is no existing or approved tower in the area in which coverage is sought.

(8) Other unforeseen specific reasons make it unreasonable to locate the planned wireless communications equipment upon existing or approved tower or building.

(q) Towers shall be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights when overall permitted height allows. Towers shall be designed structurally, electrically and in all respects to accommodate both the applicant's and additional antennas when overall permitted height allows.

(r) Wireless communication towers shall be a minimum distance of two and one half (2.5) miles from each other unless it is determined by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts that a closer proximity is needed for "Adequate Coverage" as defined in Section 5.5.4. Under no circumstances shall any wireless communications tower be within a distance of one (1) mile to each other unless such tower is a stealth tower and the applicant's technology cannot be used on an existing tower as determined by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts.

5.5.7 Modifications to Existing Wireless Communications Facilities Special Permit:

An alternation or addition to a previously approved wireless communications facility shall require an additional special permit when any of the following are proposed:

(a) A change in the number of buildings or facilities permitted on the site;

(b) Changes in technology used by the wireless communications facility;

(c) An addition or change of any external equipment or an increase in the height of the tower, including profile of additional antennas, not specified in the original application; or

(d) Change in ownership.

5.5.8 Continuing Obligations:

Upon receiving a permit, the permittee shall annually, by January 15, document that the facility is in compliance with all FCC standards and at the same time the permittee shall provide a list of the most recent RFR readings at the site, their distances from the tower/transmitter, dates of the readings and the name of the person or company who took readings.

5.5.9 Fees:

The Town shall establish a schedule of fees to cover permitting and monitoring costs. Fees may include the reasonable costs of an independent technical assessment of the application by a consultant.

5.6.0 Severability:

If a court of competent jurisdiction holds any portion of this bylaw unconstitutional or invalid, the remainder of this bylaw shall not be affected.

5.6.1 Conflicts:

If any definition or term as used in this bylaw is inconsistent with or would result in a conflict with an applicant's compliance with any FCC regulation or licensing requirement, the FCC regulation or licensing requirement shall control.

5.6 Soil, Vegetation, Rock, and Gravel Removal

5.61 Purpose

The purpose of this section is to prevent the degradation of the town's natural resources including its soil, surface and groundwater and naturally occurring vegetation due to the improper or uncontrolled removal or redisposition of soils, vegetation and earth materials. Unless otherwise provided for in this by-law, this section shall not apply to the removal of less than 19 cubic yards of material from a lot for non-commercial purposes for maintenance or improvement of the lot or: the removal or alteration of existing vegetation upon a lot for non-commercial purposes related to the routine maintenance or improvement of the lot.

5.62 General Provisions

a. Excavation, removal, stripping, or mining of any earth material, soil and vegetation except as hereinafter permitted on any parcel of land, public or private, in Ashburnham is prohibited.

b. Exclusion jurisdiction to issue Earth removal Permits shall be with the Board of Appeals.

c. The Building Inspector shall have the authority to enforce all conditions of any Permit issued under this Section of the Zoning By-Law.

d. All earth removal operations in existence in Ashburnham on the effective date of this section shall be subject to the requirements stated herein. However, all Earth Removal Permits issued prior to the effective date of this Section shall remain in effect until their expiration date. At such time, said operation shall be subject to the provisions of this Section, unless otherwise allowed by the Board of Appeals for a period not to exceed six (6) months.

e. An annual fee shall be required for an earth removal permit as established by the Board of Appeals.

5.63 Application for Soil, Vegetation, Rock and Gravel Removal

Materials for Submission

All applicants for a Soil, Vegetation, Rock and Gravel Removal Permit must, at a minimum, submit the following materials to the Board of Appeals.

a. A plan or plans to scale, (1" = 4') prepared and stamped by a Registered Engineer and a Registered Land Surveyor, and subdivided into five acre lots showing the property lines of the parcel of land under consideration along with all abutters to the property, existing and final contours in two foot (2)

elevation increments, existing and proposed final drainage of the site, including all culverts, streams, ponds, swamps, and siltation basins, and all wetlands pursuant of MG. Ch. 131, Sec. 40, means of entrance and egress from the property, locus map, and any other pertinent data deemed necessary by the Board of Appeals.

b. A plan, study, or report showing the proposed ultimate use of the land conforming with the existing zoning by-law. Proper planning for future land use shall be a primate consideration affecting the issuance of Soil, Vegetation, Rock and Gravel Removal Permit.

c. A complete list of the names and addresses of the current abutters of the property where such removal is proposed.

d. An operation schedule showing the active area (not to exceed five (5) acres) where the removal will begin and also how the total parcel will be developed in progressive five (5) acres increments.

e. A log of soil borings taken to the depth of the proposed excavation with a minimum of five borings per five acre section. Additional borings may be requested by the Board of Appeals if necessary.

f. A plan showing all refuse and debris burial sites on or off the property. (May be shown on plan as required in (a) above.)

g. The full legal name and address of the owner of record, the operator of the removal operation and of the applicant.

5.64 Within ten (10) days of receipt of application and plan, the Board of Appeals shall furnish the Planning Board with a copy of said plan. The Planning Board may investigate the case and make a written report of its recommendations to the Board of Appeals. The Board of Appeals shall not take final action on such application until it has received a report thereon from the Planning Board or until thirty (30) days have elapsed since the Planning Board's receipt of such plan without submission of a report.

5.65 Permit for Soil, Vegetation, Rock and Gravel Removal

a. General. The Board of Appeals may issue Soil, Vegetation, Rock and Gravel Removal Permits for R-B, I, W districts, complete with conditions imposed, for areas not to exceed twenty (20) acres. All permits shall conform to the minimum restoration and operating standards contained herein and such other conditions as the Board of Appeals may deem necessary. Said permit shall allow the working of only five (5) acres at any one time. Upon completion of the earth removal operation on a five (5) acre parcel, or a part thereof, and substantial restoration of said parcel as determined by the Board of Appeals,

according to the restoration standards and the permit conditions, application may then be made to the Board of Appeals for a permit renewal. Such permit renewal shall allow the removal of earth on another five (5) acre section, as shown by the operating schedule submitted with the permit application. This procedure shall be followed until the operation is completed. No soil being removed under Special Permit may take place within 300 feet of a street or way, nor within 100 feet of the high water mark of any natural water course, nor within 100 feet of a lot line. Soil may be disturbed within these established boundaries if it is considered part of the site restoration work and has received prior approval by the Board of Appeals.

Removal of soils shall not take place below a level that would be considered an undesirable grade for the future development of the area, or to an elevation within six (6) feet of the springtime high water table unless such elevation has been approved by the Board of Appeals as a desirable improvement that will enhance the future development of the area. A monitoring well shall be installed by the property owner to verify groundwater elevations.

The Board of Appeals may specify engineering review of the application and plan. The registered professional engineer shall be specified by the Board of Appeals and fees to be bourn by the applicant.

b. Accuracy of Information. The permit shall be considered a non-transferable revocable permit to remove earth materials. If it is found that incorrect information was submitted in the application, or that conditions of the permit are being violated, or that the governing regulations are not being followed, the permit shall be suspended until all provisions have been met and promises made to conform. Failure of the permit holder to comply within the time specified by the Board of Appeals for correction of violations shall cause the permit to be revoked, forfeiture of the security of the town, and the imposition of all fines.

c. Compliance Review. The Board of Appeals shall discuss and review the permit periodically, and at a minimum, annually. Written progress reports showing conformance with regulations and permit conditions shall be submitted to the Board of Appeals by the Building Inspector or his designated agent every three (3) months at a minimum, or when otherwise deemed appropriate by the Board of Appeals. The Building Inspector may employ a registered professional engineer to act as his agent in the inspection of the work to insure compliance with this section of the zoning by-law and to report to the Building Inspector his recommendations as to the approval or disapproval of the work. In the event that the Board of Appeals employs an engineer under section 5.65a of this by-law for plan review, then the Building Inspector will, if possible, employ the same engineer for site inspection. Inspection fees to be at the permittee's expense.

d. Effective Date. A Soil, Vegetative, Rock and Gravel Removal Permit shall not be in effect until the applicant has filed the proper security as required in Paragraph 5.69, paid the required fees as required by Paragraph 5.62e. recorded the special permit at the Registry of Deeds, and paid for an engineering review under 5.65a.

5.66 Removal Incidental to Development, Construction or Improvement

This by-law shall not be deemed to prohibit the removal of sod, loam, soil, clay, sand, gravel or stone as may be required to be excavated for the purpose of constructing ways and services in accordance with a plan approved or endorsed by the Planning Board in accordance with the Subdivision Control Law and the Subdivision Regulations and Procedural Rules of the Planning Board.

Where soil is to be removed in connection with the preparation of a specific site for building, removal may take place only after the issuance of a building permit by the Building Inspector. Removal will be allowed only from the area for the building, driveways, parking areas, and from areas where removal is specifically required by the Board of Health in connection with disposal systems.

5.67 Operation Standards for Removal and Restoration

All soil, vegetation, rock and gravel removal activities controlled by this section shall be subject to the following standards:

a. Time of Operation.

1. Excavation and site maintenance may be carried on from 8:00 A.M. until 4:30 P.M., Monday through Saturday.

2. Trucking from the site may be carried on from 7:30 A.M. through 6:00 P.M., Monday through Saturday.

b. Site Preparation.

1. Only the active area described in the permit application may be made ready for earth removal.

2. No standing trees are to be bulldozed over, or slashed and bulldozed into piles. All trees must be cut down. All wood and brush must be piled for removal or chipping. Wood chips may remain on the site. No trees are to be buried on the site.

3. Stumps shall be buried in predesignated areas as shown on application plans.

4. Any change in stump burial must be submitted to the Board of Appeals for approval.

5. All topsoil removed from the active, removal area shall be piled and adequately protected from erosion for future site restoration.

6. No topsoil shall be removed from the site until all areas have been restored and permission has been granted by the Board of Appeals and as detailed in the Town By-laws under Chapter XIII, Soil Removal.

7. Prior to any excavation of earth removal, adequate siltation basins shall be constructed to prevent the run-off of silted water from the site.

8. All excavation shall be done so as to create contours to channel run-off waters into the siltation basins.

9. No siltation basin shall exceed seven (7) feet in depth.

10. Siltation basins must be cleaned when sediment deposits are within eighteen (18) inches of the outfall invert.

c. Site Maintenance.

1. No open face excavation shall exceed twenty-five (25) feet in height.

2. No excavation shall be closer than one hundred (100) feet to a property line unless approved by the Board of Appeals.

3. No slope shall exceed a two (2) foot horizontal to a one (1) foot vertical (2:1) grade.

4. No earth removal operation shall create excessive amounts of dust or allow roads leading into or from a site to become excessively dust producing.

5. Proper dust control methods shall be employed and approved by the Board of Appeals.

d. Screening and Access.

1. An immediate program of site screening shall start when site preparation begins.

2. All entrances shall be screened with existing vegetation, evergreens, or other suitable natural methods, so as to prevent a direct view into the earth removal area.

3. All areas within fifty (50) feet of a traveled way or abutting property lines shall be reforested immediately upon completion of the earth removal operation of that area. Said reforestation shall be done in accordance with the standard as stated in 5.68 of this section paragraph b through g inclusive.

4. A minimum of one hundred-fifty (150) trees per acre shall be used for this reforestation.

5. All access roads shall be level with intersecting streets for a distance of sixty (60) feet.

6. A STOP sign shall be installed so as to warn any vehicle entering onto a town street.

7. All access roads shall be equipped with a suitable locking gate to prevent unauthorized entry.

8. The Board of Appeals may prescribed routes for transporting materials in and out of the site within the town boundaries.

9. The permittees shall be responsible for the cleaning, repair and/or resurfacing of streets used in removal activity which have been adversely affected by such activities.

e. Temporary Buildings.

1. All temporary structures shall be specified in the special permit application and shown on the plan.

2. Any structure erected on the premises for use by personnel or storage of equipment shall be located at least forty (40) feet from any existing roadway and at least thirty (30) feet from any lot line.

3. Any temporary structure will be removed no later than ninety (90) days after the expiration date of the permit.

f. Mechanical Crushing and Screening.

1.) All crushing and screening permits shall be granted for a period not to exceed six (6) months.

2.) Said permits shall be granted as a cleanup procedure only.

3.) Washing of processed materials will not be allowed.

4.) Operation of crushing or screening equipment shall be from 7:30 a.m. until 5:00 p.m., Monday through Friday.

5.) All crushing and screening equipment shall be equipped with suitable dust and noise control devices.

6.) Under no conditions shall the crushing and screening cause a nuisance beyond the property line.

5.68 Restoration Standards

a. All restoration must be completed with sixty (60) days after the termination of a Soil, Vegetation, Rock and Gravel Removal Permit or by the first of June if the permit terminates between December first through March thirty-first.

b. No slope shall be left with a grade steeper than a two (2) foot horizontal to a one (1) foot vertical (2:1)

c. All siltation basins shall be filled with earth, and a natural drainage pattern must be re-established. No area upon the site which will collect water shall remain unless approval is granted by the Board of Appeals or unless the area was shown on the original application plans.

d. All topsoil which was on the site prior to earth removal operations shall be replaced to a minimum depth of six (6) inches on all disturbed areas. Sites that had less than six (6) inches of topsoil shall be restored with a minimum of four (4) inches over the entire area.

e. Seeding – The entire area shall be seeded with grass or legume which contains at least sixty percent (60%) perennials. The planted area shall be protected from erosion during the establishment period using good conservation practices. Areas which wash out shall be repaired immediately.

f. Reforestation – All areas which are disturbed in the earth removal operation shall be reforested with fifty percent (50%) coniferous and fifty percent (50%) deciduous trees planted at the rate of one hundred fifty (150) trees per acre. All trees used are to be a minimum of two (2) year transplants. Areas which are to be used for agricultural purposes after earth removal operations are completed may be reforested in the following manner:

1.) Trees shall be planted twenty-five (25) feet deep from a public road or property line.

2.) The remaining area shall immediately be planted with grass or other suitable agricultural planting material.

g. Within ninety (90) days of completion of operations, all equipment, accessory buildings, structures, and unsightly evidence of operation shall be removed from the premises.

5.69 Security Requirements

There shall be filed with the Town Treasurer, a continuous bond or deposit of money in a form approved by the Board of Appeals and Town Counsel in the minimum amount of one thousand dollars ($1,000) per acre to be excavated, or other amount as deemed appropriate by the Board of Appeals and shall be of a sufficient amount to cover ten (10) acres, or the total parcel, whichever is smaller, as determined by and satisfactory to the Board of Appeals. After completion of the total project, and at the applicant's written request, the Board of Appeals may grant a partial release of any security posted by the applicant. One (1) year after such a partial release is granted and if in the opinion of the Board of Appeals no damage or deterioration to the finished project has developed, the Board of Appeals will issue a final release of the security. If, during the year following the date of a partial release, slumping, gullying, erosion or any other unsatisfactory condition appears, the applicant shall be responsible for, and shall make any necessary repairs, before final release of security is granted. The bonding agent shall be required to give the Board of Appeals, by Registered or Certified Mail, a sixty (60) day notice prior to any termination or cancellation of the bond.

5.7 Mobile Home Parks

5.70 Mobile Home Parks, Application for Permit – Application for a permit from the Board of Appeals for a mobile home park shall be accompanied by a plan, in duplicate, prepared by a Registered Professional Engineer, Registered Architect or Registered Land Surveyor which shall show:

a. The boundaries of the lot or lots for which the permit is requested;

b. The existing and proposed contour of the land at intervals not to exceed ten (10) feet referred to Mean Sea Level;

c. The location of all proposed driveways parking areas and mobile home sites;

d. The location and size of all proposed public facilities;

e. The proposed provisions for drainage, including drainage calculations;

f. The proposed sanitary sewer system;

g. The proposed landscaping plan; and

h. Other information necessary to indicate the physical characteristics of the proposed mobile home park.

5.72 Reference to Planning Board – Within ten (10) days of receipt of the application and plan, the Board of Appeals shall transmit to the Planning Board a copy of said plan. The Planning Board may investigate the proposed plan and make a written report of its recommendations to the Board of Appeals. The Board of Appeals shall not take final action on such application until it has received a report thereon from the Planning Board or until thirty (30) days have elapsed since the Planning Board's receipt of such plan without submission of a report.

5.73 Conditions of Permit – The Board of Appeals may issue a permit for a mobile home park providing the following conditions shall be met:

a. The owner or operator of the mobile home park shall have a valid license to operate said park issued by the Board of Health under the authority of Chapter 140, Section 32B, General Laws.

b. The total area of land included within the park shall be six (6) acres or more;

c. There shall be a minimum of six thousand (6,000) square feet of lot area, of appropriate dimensions, for each mobile home, of which, one thousand (1,000) square feet per mobile home shall be provided for common open space and active recreation, exclusive of paved areas;

d. No mobile home shall be placed within thirty (30) feet of any other mobile home;

e. There shall be a maximum of fifty (50) mobile homes in a single park;

f. No mobile home lots shall have frontage on any existing public road;

g. No mobile home shall be placed closer than fifty (50) feet to any exterior lot line;

h. The mobile home park shall be connected to the public water system at no expense to the Town; and

i. A continuous landscaped area not less than eight (8) feet in width containing evergreen shrubs, trees, fences, walls or any combination thereof forming an effective visual barrier of not less than six (6) feet in height shall be located on

all exterior lot lines of the park, except that driveways shall be kept open to provide visibility for vehicles entering and leaving the park.

5.8 Temporary Mobile Home Location

a. The provisions of Section 1.2 and 3.2 notwithstanding, a mobile home may be located and occupied for a period not to exceed twelve months by the owner of a lot for the purpose of rebuilding and existing residence which has been damaged or destroyed by a disaster and made uninhabitable.

b. The provisions of section 1.2 and 3.2 notwithstanding, a mobile home may be located and occupied for a period not to exceed twelve months by the owner of a lot for the purpose of constructing a new residence.

c. No mobile home shall be located or occupied for the above purposes until the owner of the lot has obtained a building permit for the proposed construction and has installed a septic system and a water supply. The permitted period of occupancy shall being upon compliance with the provisions of this sub-section.

d. An extension of the permitted period of occupancy may be granted by the Board of Appeals after an application and public hearing. Such extension shall be for not more than twelve months, and no more than one such extension may be granted.

e. The rights of location and occupancy of a mobile home granted under this section shall cease upon the expiration of the permitted period of location and occupancy or upon the issuance of a certificate of occupancy according to the provisions of Section 6.3, whichever occurs first, and the provisions of Section 1.2 and 3.22 with respect to mobile home shall than apply forthwith.

5.10 Site Plan Review

5.101 Introduction

A. General Purpose. To accomplish the purposes set forth in Section 1 of this (Zoning) Bylaw including but not limited to facilitating traffic flow and control, assuring adequate drainage of surface water and protecting the environment, property values, abutting properties and visual amenities. To facilitate the administration of this section, no permit for any of the activities and uses under Section 5.101.B shall be granted until the provisions of this Bylaw have been met.

B. Applicability. The following types of activities and uses require site plan review:

1. Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, recreational, commercial, or industrial structure and/or use.

2. Construction or expansion of a parking lot for a municipal, institutional, recreational, commercial, industrial, or multi-family structure or purpose.

3. Under Section 5.106, Waiver of Technical Compliance and Site Plan Review Level, the Planning Board may waive the applicability of site plan review under these provisions if the Board makes a written determination that the proposed changes to the site are minimal and do not require site plan review.

4. There shall be three levels of Site Plan Review under this bylaw based on the extent of the proposed use. New construction greater than 500 square feet but not greater than 2,000 square feet shall be reviewed as a "Minor Site Plan" and any new construction greater than 2,000 square feet shall be reviewed as a "Major Site Plan", as set forth in Section 5.106(A). A change of use or new construction of up to 500 square feet shall be reviewed by the Building Inspector under an "Abbreviated Plan Review" procedure as set forth in Section 5.106.C.

5.102 Procedures. The Applicant for Site Plan Review approval shall submit 18 copies of the application and plans to the Planning Board for review. The Planning Board, following the procedures in Section 5.103, shall solicit input and comments from other Town Departments, Board and Committees.

The Planning Board shall review and render its decision, upon the site plan, within sixty (60) days of its receipt The Planning Board shall take the following action upon each application: approve, approve with conditions or disapprove. Any site plan approval issued by the Planning Board, with or without conditions, shall require a concurring vote of a majority of the Board and shall be in writing. No Building Permit or Certificate of Occupancy shall be issued by the Building Inspector until the written approval of the Site Plan has been issued 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.

A. Application for Building Permit. An application for a Building Permit to perform work as set forth in Section 5.101.B (Applicability) available as a matter of right in the Ashburnham Zoning Bylaw, as denoted in Section 3.2, Schedule of Use Regulations, by the letter "Y", shall be accompanied by an approved site plan.

B. Application for Special Permit or Variance. An application for a Special Permit, as denoted in Section 3.2, Schedule of Use Regulations, by the letters "SP" or a Variance, approved subject to Section 6.43 of the Ashburnham Zoning Bylaw, to perform work as set forth in Section 5.101.B shall be accompanied by an approved Site Plan; in the alternative, any Special Permit or Variance granted for work set forth in Section 5.101.B shall contain the following condition: The work described herein requires the approval of a site plan by the Planning Board pursuant to Section 5.10 of the Ashburnham Zoning Bylaw. Any conditions imposed in such site plan approval shall also be conditions of this Special Permit/Variance.

C. Where the Planning Board approves a site plan "with conditions", and said approved Site Plan accompanies a Special Permit or Variance application to the Board of Appeals, the conditions imposed by the Planning Board shall also be incorporated into any Special Permit or Variance granted by the Board of Appeals.

D. Where the Planning Board serves as the Special Permit Granting Authority for proposed work, it shall consolidate its Site Plan Review and Special Permit procedures.

E. The Applicant may request, and the Planning Board may grant, an extension of the time limits set forth therein.

F. No deviation from an approved site plan shall be permitted without modification thereof. Modifications may be requested and shall be processed in the same manner as an original application for site plan review in accordance with this bylaw.

5.103 Coordination with Other Boards.
Upon receipt of the Site Plan Review application, the Planning Board shall transmit a copy of the Application and Plan to the Selectmen, Fire Department, Water and Sewer Commission, Board of Health, DPW Director, Conservation Commission, Building Inspector, Historical Commission, Police Department, Light Department and the Planning Board's Consulting Engineer for their written recommendation. Failure to respond to the Planning Board within 14 days shall indicate approval by said agencies. The Planning Board decision shall address any departure from the recommendations of the other town agencies.

5.104 Presubmission Review.
Prior to investing in extensive professional design efforts for Site Plans, it will often prove useful to review the proposed development/use of land with the Planning Board, in order that general approaches and potential problems can be freely explored. The Planning Board encourages Applicants to meet with the Town Planner to review their development proposals and/or Applicants are invited to submit a Pre-Application Sketch of the proposed project to the Planning Board at the Public Comment period at a regular meeting of the Planning Board. Sketches, which need not be professionally prepared, will assist the discussion and might show some but not all of the information required to be shown on a site plan. At this review, the Board may vote to waive the applicant's need to submit an application for site plan review under this provision (Section 5.10) or may waive certain submission requirements, as provided for under Section 5.106.

5.105 Contents of the Site Plan.
A. Five (5) separate plans prepared at a scale of one (1) inch equals forty (40) feet (1"=40') or such other scale as may be approved by the Planning Board. Of the 18 required plan copies, four (4) of the following Site Plans shall be submitted on 24" by 36" sheets and 14 (fourteen) shall be submitted on 11" by 17" sheets. Site 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 proposals. 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 public safety plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and fire fighting facilities on and adjacent to the site.

4. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.

5. Landscape plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and stock of each shrub or tree, proposed erosion control measures, all proposed recreation facilities and open space areas, and all wetlands, as defined under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, within 100 feet of any proposed construction, including floodplain areas. The Site Plan shall be designed to meet the additional Landscaping Requirements, as outlined in Section 5.107.3.

B. 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. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.

C. A written summary of the contemplated projects shall be submitted with the site plan indicating 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 bylaw.

D. A Table with the following information:

1. Area of lot.
2. Area and size of building.
3. Maximum area of building to be used for selling offices, business, industrial or other uses if applicable.
4. Maximum number of employees where applicable.
5. Maximum seating capacity where applicable.
6. Maximum sleeping capacity where applicable.
7. Number of parking spaces required for the intended use, based on Section 5.3.
8. Number of parking spaces existing at the site (including street parking adjacent to site).

E. A Site Plan Review application complete with name of owner and/or Applicant. Where any Site Plan Review is submitted by an individual or agency other than the owner of the affected land, the applicant must provide an original letter from the owner authorizing the applicant to submit the Site Plan Review with an original notarized signature. A copy of any Purchase and Sales agreement, along with evidence of the owner's rightful ownership of the land, such as a deed must be submitted with all applications. Where the owner is a corporation, corporate documents must be submitted indicating who has signed authority to enter into agreements on behalf of the corporation. Applications shall include a Municipal Lien Certificate, or similar document, indicating no outstanding taxes or assessments are due on the property.

F. The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to the Town of Ashburnham Planning Board Subdivision Rules and Regulations, the Massachusetts Storm Water Policy as well as any other storm water design requirements of the Town of Ashburnham.

G. The Planning Board may require a narrative statement detailing the impact of the proposed use on municipal services and the environment. Such statement shall conform to Section 4.3.6, Development Impact Statements, of the Town of Ashburnham Planning Board Subdivision Rules and Regulations.

H. Certification that the proposal is in compliance with the provisions, if applicable, of the American with Disabilities Act (ADA) and the Massachusetts Architectural Access Board. Applicants shall show compliance with 521 CMR 21.00 and 22.00.

I. All Site Plan Review Applications shall include all Administrative Fees, as required under the Planning Board's Regulations Governing Fees and Fee Schedule. No site plan review application shall be considered complete until and unless all such fees are paid.

5.106 Waiver of Technical Compliance and Site Plan Review Level.

A. The Planning Board may, upon written request of the Applicant, waive any of the requirements of Section 5.10, where the project involves relatively simple development plans or constitutes a Minor Site Plan. An application 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 areas of 500 square feet but not exceed a total gross floor area of 2000 square feet, or an application which will not generate the need for more than 5 parking spaces shall be deemed as a "Minor Site Plan." Any application for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed 2,000 square feet, or generates the need for more than 5 parking spaces shall be deemed a "Major 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.

B. Minor Site Plans shall set forth all of the information required by Section 5.105; 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, unless the Planning Board waives any other of the requirements, as authorized by this Section.

C. In addition, for Site Plan Review applications that involve a change of use or for new construction that is less than or equal to 500 square feet, the Applicant shall submit a request for a Plan Review to the Building Inspector on an application form determined by the Building Inspector, along with sufficient plans and documentation to fully describe the proposed use and/or structure and its site. Upon submission of an application the Building Inspector deems complete, the Building Inspector shall transmit copies of such application, plans and documentation to those Town Officials as specified in Section 5.103 as well as the Planning Board. The Building Inspector shall have thirty (30) days from time of completed application to review and make determination on such Plan Review Applications.

5.107 Approval and Review Objectives.
Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. Site Plan Review applications located in the Ashburnham Village Center Zoning District shall also meet the Center Village District Site Plan Review Principles in Section 7 of the Planning Board's Subdivision Rules and Regulations and those in Section 5.107.2. Any new building construction or other site alternation 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 the Objectives in Section 5.107.1 below.

5.107.1 General Review Objectives
A. Minimize the volume of cut and fill, the number of removed trees 10" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of storm water flow increase from the site, soil erosion, and the threat of air and water pollution.

B. Maximize pedestrian and vehicular safety both on the site and exiting from it.

C. Minimize obstruction of scenic views from publicly accessible locations.

D. 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.

E. Minimize glare from headlights and lighting intrusion.

F. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.

G. Minimize contamination of groundwater from onsite wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances.

H. Ensure compliance with the provisions of this Zoning Ordinance, including parking and landscaping.

5.107.2 Village Center Review Objectives.
In addition the following review objectives shall be applicable for any Site Plan Review applications located within the Ashburnham Village Center Zoning District:

A. No off-street parking area, except for one required driveway, shall be located between the street line and the front line of the building.

B. All off-street parking areas shall be screened from adjacent properties by provision within the required side and/or rear yard with:

- Dense plantings with a minimum height of four feet; or
- Appropriate low fencing as permitted by Section 4.37 of the Bylaws.

The Planning Board may establish and adopt design review principles and standards, beyond those outlined for the Village Center, intended to guide the applicant in the development of site and building design and consider these principles and standards in its review of proposed actions. These principles and standards shall not be regarded as inflexible requirements and they are not intended to discourage creativity, invention or innovation. The Planning Board is specifically precluded from mandating any official aesthetic style for Ashburnham or for imposing the style of any particular historical period.

5.107.3 Landscaping Requirements

A. Required landscaping shall be provided as set forth in Table A.

B. Buffers along street lines and other landscaped areas required by Table A (other than buffers protecting residential uses and/or districts) shall be reserved exclusively for plantings, pedestrian facilities such as benches and walkways, required fences, necessary traffic control signs and those free standing signs which conform to the requirements of Section 5.2 of this Bylaw. Required buffers protecting residential uses and/or districts shall be reserved exclusively for plantings and fences.

The Site Plan Review application shall include a chart showing the following information:

1. Number of trees and/or shrubs required.
2. Number of trees and/or shrubs shown on plan.

TABLE A
REQUIRED LANDSCAPING

Requirement by Lot Area	Percent of Total Automobile Parking and Circulation Area To Be Landscaped	Depth of Buffer Along Street Lines	Width of Buffer For Abutting Residential Uses and/or Districts
Up To & Including 15,000 Sq. Ft.	No requirements	5 Feet	5 Feet
15,001 to 30,000 Sq. Ft.	4 Percent	5 Feet	5 Feet
30,001 to 43,560 Sq. Ft.	5 Percent	10 Feet Front Yard Street Line. 5 Ft. All Other Street Lines	10 Feet
43,561 to 100,000 Sq. Ft.	6 Percent	10 Feet Front Yard Street Line. 5 Ft. All Other Street Lines	10 Feet
100,001 Sq. Ft. Up To But Not Including 217,800 Sq. Ft (5 Acres)	7 Percent	15 Feet Front Yard Street Line. 17 Ft. All Other Street Lines	15 Feet
5 Acres or More	8 Percent	25 Feet Front Yard Street Line. 20 Ft. All Other Street Lines	20 Feet

5.108 Lapse. Site Plan Approval shall lapse after two (2) year(s) from the grant thereof if a substantial use 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.

5.109 Regulations. The Planning Board may adopt and from time to time amend reasonable regulations for the administration of these site plan requirements."

5.11 Developmental Rate Limitation

Intent: To avoid large year-to-year variations in development rates in Ashburnham while allowing development consistent with history average rates.

5.11.1 - Single-family and two-family conversion limitation.

a. The Building Inspector shall issue no more than thirty-six (36) building permits for the construction of new residential dwelling units per calendar year. All completed applications will be signed and dated upon receipt. For the purpose of this section, an application shall be accepted for review only if it conforms to all applicable building and zoning requirements and has received all necessary approvals from pertinent town boards, including the Board of Health, Planning Board, Zoning Board of Appeals, and Conservation

Commission. After thirty-six (36) permits have been issued for that year, applications will no longer be accepted until the start of the following calendar year. No permits shall be carried over from one calendar year to the next. Building permits for no more than six (6) dwelling units shall be issued to any one applicant within a calendar year, unless the development schedule in Section 5.11.1(b) allows a greater number.

b. Development Schedule:
Building permits for new dwelling units in a development shall be authorized in accordance with the following schedule, only if the town wide limit referred to in section 5.11.1(a) has not been reached. Dwelling units shall be considered as part of a single parcel or contiguous parcels of land which have been in the same ownership at any time subsequent to the date of adoption of this section.

Number of New Units In Development	Dwelling Units Allowed Per Year
1 – 4	100%
5 – 12	40%
13 – 20	33%
21+	20%

In computing the number of dwelling units authorized under a schedule, the figure shall be rounded to the nearest whole number. This yearly schedule shall commence on the date of the issuance of the first building permit in a development.

c. Special Development. A Special Permit may be granted by the Zoning Board of Appeals authorizing more rapid development than allowed under paragraph (b), for housing development determined by that Board to have unusually low impact on public services because of its location, occupancy, or design, and to serve an important unmet housing need of Ashburnham residents without over burdening town services.

5.11.2 Zoning Change Protection.

The protection against subsequent zoning changes granted by General Laws Chapter 40A, Section 6 to land in sub-division shall, in case of a development whose completion has been constrained by Section 5.11.1, be extended to the minimum time for completion allowed under Section 5.11.

5.11.3 Review

This section shall be reviewed by the Planning Board five years after its approval and may be amended or deleted in accordance with G.L., c. 40A, Sec. 5.

5.11.4 Validity

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

5.12 Adult Entertainment Establishments

5.12.1 Purpose

It is the intent and purpose of this section to regulate adult entertainment establishments to promote the health, safety and general welfare of the citizens of Ashburnham and to guard against adverse secondary effects on the youth of the town. Furthermore, it is the intent and purpose to establish reasonable and uniform regulations to prevent any deleterious location and concentration of adult entertainment establishments within the town, thereby reducing the adverse secondary effects from such adult entertainment establishments. The provisions of this chapter have neither the purpose nor effect of imposing limitations or restrictions on the content of any communicative materials. Similarly, it is not the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

5.12.2 Definitions

Adult Entertainment Uses: Shall include the following uses:

(1) Adult Bookstores, as defined by G.L., Ch. 40A, Sec. 9A;
(2) Adult Motion Picture Theaters, as defined by G.L., Ch. 40A, Sec. 9A;
(3) Adult Paraphernalia Store, as defined by G.L., Ch. 40A, Sec.9A;
(4) Adult Video Store, as defined by G.L., Ch. 40A, Sec. 9A;
(5) Establishment Which Displays Live Nudity for Its Patrons, as defined by G.L. Ch. 40A, Sec. 9A.

5.12.3 Adult Entertainment Overlay District

The Adult Entertainment Overlay District is established over all the zoning districts of the Town of Ashburnham, except for the Village Center – Commercial and Village Center – Residential zoning districts. The Adult Entertainment Overlay District use regulations shall be as herein described in the Adult Entertainment District.

5.12.4 Spacing Requirements

A. Special permits shall not be granted for an adult entertainment establishment if it is to be located less than 1,000 feet from the following uses. Measurement of distances shall be from the lot line of any of the uses described herein.

(1) Another adult entertainment establishment.
(2) Residential users.
(3) Public or private nursery schools.
(4) Public or private day-care centers.
(5) Public or private kindergartens.
(6) Public or private elementary schools.
(7) Public or private secondary schools.
(8) Playgrounds, parks, or athletic fields.
(9) Religious institutions.
(10) Governmental buildings.

B. Reduction of spacing requirement: The Board of Appeals may waive the one-thousand foot restriction contained in subsection A by special permit; provided, however, that the Board of Appeals shall not, under any circumstances, grant a special permit for an adult entertainment establishment which shall be closer than 750 feet to any of the uses listed in subsection A. To grant a special permit reducing the spacing requirement, the Board shall find that:

(1) The proposed use will not be contrary to the public intent or injurious to nearby properties and that the spirit of this chapter will be observed;

(2) The proposed use will not enlarge or encourage the development of a "skid row" area;

(3) The establishment of an additional regulated use in that area will not be contrary to any program of neighborhood conservation nor will it interfere with any program or urban renewal;

(4) All applicable regulations of this chapter will be observed; and

(5) No portion of the establishment shall be located on the ground level of any building.

5.12.5 Special Permit Required; Conditions

A. Special Permit: No adult entertainment establishment shall commence operations without first applying for and receiving a special permit from the Board of Appeals.

B. Conditions: The following conditions shall be attached to any special permit for adult entertainment establishments:

(1) Adult entertainment establishments shall not be allowed within a building containing other retail, consumer or residential users.

(2) No adult entertainment establishment shall be located within 60 feet of a public or private way.

(3) Any adult entertainment establishment shall cease its operations between the hours of 11:00 p.m. and 11:00 a.m. each day.

(4) No adult entertainment establishments may have visible from the exterior of the premises any flashing lights.

(5) At all times when an adult entertainment establishment is open for business, the entire area of the premises must be continually illuminated to the degree of not less than one foot candle (measured 30 inches from the floor), except those portions of the room covered by furniture.

C. Statutory prohibition. No special permit for an adult use shall be issued to any person convicted of violating MGL Ch. 119, Section 63 or MGL Ch. 272, Section 28.

5.13 Open Space Residential Development

5.13.1 Introduction

"Open Space Residential Development" (OSRD) in accordance with this bylaw shall be allowed by right as a type of subdivision in the RA, RB and GB zones, on one or more parcels of land in common ownership, except for parcels located in the Flood Plain District. OSRD may consist of any combination of single family and two-family structures in which the buildings are clustered together in one or more groups in accordance with this by-law. Multifamily structures of not more than four (4) units may also be permitted by the Planning Board if they serve the purpose of the OSRD Bylaw, as stated in § 5.13.2. The land not included in the building lots shall be preserved as Open Space.

5.13.2 Purpose

The purpose of an OSRD is to encourage the preservation of open land by providing an alternative pattern of development through which the following objectives are likely to be met:

A. Greater flexibility and creativity in the design of residential subdivisions provided that the overall density of the development is no greater than that which is normally allowed in the district;

B. The permanent preservation of open space, agricultural lands, forest lands, and other natural resources and to encourage a less sprawling form of development that consumes less open land;

C. Maintain the traditional New England rural character and land use pattern in which small villages contrast with open space and farm land;

D. The construction of street(s), utilities and public services in a more economical and efficient manner;

E. Respect for the natural features of the land, including wetlands, watercourses, forests, prime agricultural land, steep slopes, plants, wildlife, historic sites, scenic areas, and rural character;

F. Promote alternatives to strip residential development lining the roadsides in the town to preserve the unobstructed natural views from roadways;

G. Promote the development of housing affordable to low and moderate-income families;

H. Provide wildlife corridors connecting open spaces, needed by wildlife to ensure their survival;

I. To protect and enhance the value of real property;

J. To provide for a diversified housing stock.

5.13.3 Definitions

Affordable Units - shall mean any combination of dwelling units restricted in perpetuity as affordable to persons or families qualifying as an income eligible household. The affordable restriction shall be approved as to form by the town counsel, and a right of first refusal upon transfer of such restricted units shall be granted to the Town or its designee for a period of not less than 120 days after notice thereof.

Basic Maximum Number – The number of dwelling units that would be allowed under the Ashburnham Zoning Bylaw.

Common Open Space - shall mean any Open Space set aside, dedicated, designated or reserved for use as passive, recreation, conservation, agriculture, forestry, natural buffers, and active recreation as permitted by this by-law. Common Open Space shall be Contiguous Open Space wherever possible and shall not include roadways, parking areas or private yards.

Income Eligible Household – shall mean a household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by the Massachusetts Department of Housing and Community Development in guidelines.

Open Space - shall mean any parcel or area of land or water essentially unimproved or set aside, dedicated, designated or reserved for public or private use and enjoyment of the owners and occupants of an OSRD as permitted by this by-law.

5.13.4 Authority

The Planning Board shall act as the approving authority for OSRD applications. The Planning Board may adopt, and from time to time amend, Rules and Regulations consistent with the provisions of this bylaw and G.L. c. 40A and other provisions of the General Laws, including Rules and Regulations Governing the Subdivision of Land, and shall file a copy of said Rules and Regulations with the Town Clerk.

5.13.5 Applicability

A. An Open Space Residential Development (OSRD) may be proposed in accordance with this bylaw within the RA, RB, and GB zoning districts.

B. Subsection A above applies only to subdivisions of land as defined in MGL Ch. 41, §81L, and not to construction of homes or businesses on individual lots that existed prior to (Town Meeting Date) or to lots created through the "Approval Not Required" process with frontage on public ways existing as of May 5, 2012 described in the Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land. However, if a subdivision approval is not required because a new roadway is not proposed; an applicant may nevertheless apply for an Open Space Residential Development under this Section 5.13. In such a case, the application shall be subject to Site Plan Review as described in Section 5.10.

5.13.6 Design Process

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

A. Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archaeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

B. Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community.

C. Aligning the Streets and Trails. Align streets in order to access the house lots or units. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.

D. Lot Lines. Draw in the lot lines using assumed lot lines if the ownership is in condominium, cooperative or other similar form of common ownership.

5.13.7 Design Standards

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

A. Generic Design Standards

1. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, surface water buffers, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.

2. Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.

3. All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

4. The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

B. Site Specific Design Standards

1. 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. Calculations for parking spaces in these developments

shall be rounded up to the nearest integer where necessary. The Planning Board may choose to modify these requirements during the review process in response to conditions specific to an individual proposal.

2. Drainage. The Planning Board shall encourage the use of Low Impact Development techniques that reduce impervious surface and enable infiltration where appropriate.

3. Screening and Landscaping. All structural surface stormwater management facilities shall be accompanied by a conceptual landscape plan.

4. On-site Pedestrian and Bicycle Circulation. Walkways, trails and bicycle paths shall be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate.

5. Additional Criteria for Multi-family Development:

(a) The design and location of the structure(s) on the site shall be consistent with the visual scale and character of single-family development.

(b) No more than three (3) bedrooms shall be permitted per multi-family dwelling unit.

5.13.8 Design Criteria

A. Where the proposed development abuts a body of water, a portion of the shoreline, as well as reasonable access to it, shall be part of the common open space.

B. Residences shall be grouped so that the greatest number of units can be designed to take advantage of solar heating opportunities; so that scenic views and long views remain unobstructed, particularly those seen from roads; so that habitat areas and species listed as endangered, threatened, or of special concern by the Massachusetts Natural Heritage Program shall be protected; and so that historic and prehistoric sites and their environs shall be protected.

C. In areas greater than twenty (20%) percent slope or upon hilltops and ridgelines, lots shall be laid out, to the greatest extent possible, to achieve the following objectives;

1. Building sites shall be located so that the silhouettes of structures will be below the ridgeline or hilltop or, if the site is heavily wooded, the

building silhouettes shall be at least ten (10) feet lower than the average canopy height of the trees on the ridge or hilltop.

2. Where public views will be unavoidably affected by the proposed use, architectural and landscaping measures shall be employed so as to minimize significant degradation of the scenic or aesthetic qualities of the site.

3. The removal of native vegetation shall be minimized.

4. Any grading or earthmoving operation in conjunction with the proposed development shall be planned and executed in such a manner that the final contours are consistent with the existing terrain, both on and adjacent to the site.

5. Safeguards shall be employed where needed to mitigate against environmental degradation from erosion, sedimentation, water pollution, or flooding.

5.13.9 Roads

The principal roadway(s) serving the site shall be designed to conform to the standards of the Rules and Regulations of the Planning Board. OSRDs shall have access on a public way, a way approved by the Planning Board or a way approved under the Subdivision Control Law.

5.13.10 Open Space Requirements

A. A minimum of fifty percent (50%) of the site shall be open space. The percentage of this open space that can be wetland shall not exceed the percentage of wetland for the entire site under existing conditions as shown on the OSRD Plan. Percentage is calculated by dividing the total wetland acres by the total site acres. A sample calculation is provided below:

<u>Sample Calculation</u>

Existing Conditions:
12-acre site with 3 acres of wetland
3 ÷ 12 = 25% wetland coverage

Open Space Requirements:
50% Open Space = 6 acres

Wetland Allowance:
6 acres * 25% wetland coverage = 1.5 acres

Open Space can be 4.5 acres of upland and 1.5 acres of wetland

B. Description of Restriction on Open Space

Further subdivision of open space, or its use for other than conservation, agriculture, forestry, or non-commercial recreation shall be prohibited, and the approved plan shall be so endorsed in writing. These restrictions shall be granted in a Conservation Restriction in accordance with G.L. c. 184 Sec. 31 and 32 in perpetuity, to a grantee approved by the Planning Board, a copy of which is filed with the Massachusetts Executive Office of Environmental Affairs recorded in the Northern District Worcester County Registry of Deeds, shall be enforceable by the Town of Ashburnham, and shall provide that such land shall be kept in an open or natural state and not built upon for residential use or developed for accessory uses including parking or roadways.

1. At least seventy (70%) percent of the Common Open Space shall be Contiguous Open Space, unless otherwise approved by the Planning Board.

2. The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, aquifer protection, agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths) so long as it supports the primary and secondary purposes of the OSRD and is consistent with state and local level environmental protections.

3. Limited access to common open space may be allowed in the form of a walking or hiking/biking path, the total area of which must be no more than two (2%) percent of the total common open space area.

4. If the OSRD is located in an area currently in agricultural use or containing agricultural soils as determined by the U.S. Soil Conservation Service, the landowner is not required to sell that part of the property, which is to become permanent agricultural open space. Said owner shall, however, convey the development rights of that open space in a Conservation Restriction pursuant to G.L. c. 184, Sec. 31 & 32, et. seq. filed with the Massachusetts Executive Office of Environmental Affairs and enforceable by the Town of Ashburnham, prohibiting future development of the property.

5. Any wastewater and stormwater management systems serving the OSRD may be located within the open space. Surface systems, such as

retention and detention ponds, shall not qualify towards the minimum open space required unless approved by the Planning Board. Open space serving such systems is required to be under the control/ownership of either the developer or homeowners association to allow for maintenance.

5.13.11 Ownership of the Open Space

The open space shall be conveyed to:

A. To the Town of Ashburnham, for a park or open space use if accepted by the Town; or,

B. A nonprofit organization, the principal purpose of which is the conservation of open space; or,

C. A corporation, trust, or association owned by the owners of the lots or residential units within the development; or,

D. Remain under ownership of the original property owner, who has conveyed the development rights to this part of the parcel to the developer who in turn has conveyed an undivided equal interest in these rights to each new homeowner in the development; or,

E. A new owner, subject to the conditions in §5.13.11 (D), above; or any combination of the above, subject to approval of the Planning Board.

F. Where applicable, a nonprofit incorporated homeowner's association shall be established requiring membership of each lot owner in the OSRD. The Homeowner's Association shall be responsible for the permanent maintenance of all commonly owned water and septic systems, open space, recreational and thoroughfare facilities, including but not limited to private ways and common driveways. A Homeowner's Association agreement or covenant shall be submitted with the OSRD application guaranteeing continuing maintenance of such common land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of the Town Counsel and the Planning Board.

G. In any case when the Common Open Space is not to be conveyed to the Town, the application for an OSRD shall include a description of how and when the Common Open Space shall be preserved in perpetuity. The applicant shall also provide as part of this description, a proposal agreement authorizing and empowering the Town to perform any and all maintenance of the Common Open Space, and any other facilities in common ownership in the event of a failure to comply with Common Open Space preservation plan or agreement and/or any other agreement whether a homeowner's agreement or otherwise, to maintain the Common Open Space and/or any facilities in common ownership, and providing that, if the Town is

required to perform any maintenance work, the owners of the lots within the OSRD shall pay the costs thereof and that these costs shall constitute a lien upon those lots until such costs have been paid in full.

5.13.12 Common Driveways

A. Common driveways serving no more than five (5) residential units may be allowed in the OSRD, provided that they meet one of the following:

The provision of individual driveways to the lots to be served by the proposed common driveway would require curb cuts which are separated by less than sixty (60) feet along the exterior street line;

The provision of individual driveways to the lots to be served by the proposed common driveway would allow no alternative but to cross a "Wetland Resource Area", as defined by G.L. c. 131 Sec. 40, and/or the Town of Ashburnham Wetlands Protection By-law, or to cross any land in the Flood Plain District as described in § 2 of the Town's Zoning By-laws;

One or more alternate individual driveways which would be necessary in the absence of the proposed common driveway would intersect the roadway at a point of insufficient traffic sight distance, as determined by the Planning Board;

The provision of individual driveways to the lots to be served by the proposed common driveway would adversely affect a significant natural feature or vista.

B. The common driveway shall access the property over the frontage of at least one of the lots being served by the driveway.

C. The common driveway shall not be in excess of five hundred (500) feet in length.

D. The owners of the properties to be served by the common driveway shall provide evidence to the Planning Board that they have a deeded right to the common driveway.

E. The common driveway shall provide adequate access and turnaround for vehicles including moving vans, snowplows, ambulances, fire, and police vehicles. To provide such adequate access, the common driveway shall be built to meet standards as outlined in the Town of Ashburnham Planning Board Rules & Regulations, as amended.

F. All installation of utilities shall meet the requirements as outlined in the Town of Ashburnham Planning Board Rules & Regulations, as amended.

G. Permanent signs indicating the street number address assigned to each lot served by the common driveway shall be installed within ten (10) feet of the intersection of the common driveway with the street, as well as within ten (10) feet of the intersection of an individual lot driveway with the common driveway. Numbered signs shall be placed in a manner that will not cause them to be blocked during heavy snow pack and/or snow removal.

H. Approval of a common driveway(s) in an OSRD shall be subject to a covenant by and between the developer and the Planning Board recorded in the chain of title and running with the land, on a form approved by the Planning Board, acknowledging that the common driveway approval was granted in consideration of the conditions contained within the decision of an OSRD and the grant of covenant, and that the owner, his heirs, executors, successors and assigns, agree that the common driveway shall never be submitted to Town Meeting for a vote to have it become an accepted street. This paragraph authorizes the Planning Board to accept the covenant on behalf of the Town.

I. A lot in an OSRD may be served by a Common Driveway only if it meets the requirements of § 5.13.13 of this by-law, and the ownership of the lot provides mandatory membership in an owners' association responsible for annual and long term maintenance, including, but not limited to, removal of ice and snow from the common drive. The plan required under § 5.13.15 shall identify all land that is to be held and administered by the mandatory owners' association. It shall bear restrictions satisfactory to the Planning Board, to run with the land, restricting the way shown to remain private property and not to be extended, and any other restrictions and easements that are required for common driveway development by these by-laws. It shall incorporate by reference the document(s), satisfactory to the Town Counsel and the Planning Board, creating the mandatory owners' association and setting forth restrictive covenants and easements binding present and future owners of all the lots served by the common driveway. Such document(s) must include, at a minimum the following:

1. Specific standards for the maintenance of all structures designed to be requirements of a common driveway, including, but not limited to the travel way, drainage system, and signage;

2. Provisions for allocating responsibility for snow removal, maintenance, repair, or reconstruction of the common driveway, drainage system, and signage;

3. Text of proposed easement including the metes and bounds description;

4. A procedure for the resolution of disagreements.

5.13.13 Reduction of Dimensional Requirements

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

A. Frontage. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw. The minimum frontage may be reduced from the frontage otherwise required in the zoning district; provided, however, that no lot shall have less than 50 feet of frontage.

B. Setbacks. Every dwelling fronting on the proposed roadways shall be set back a minimum of 20 feet from the roadway right-of-way, and 10 feet from any rear or side lot line. In no event shall structures be closer than 20 feet to each other. Where structures containing three to four dwelling units are being proposed, the side lot lines between units may be 0 feet, however the distance between structures shall be a minimum of 20 feet.

5.13.14 Increases in Permissible Density.

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number for an OSRD Plan. The density bonus for the OSRD shall not, in the aggregate, exceed thirty percent (30%) of the Basic Maximum Number. Computations shall be rounded down to the next whole number. A density bonus may be awarded in the following circumstances:

A. For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of one (1) additional dwelling unit beyond the Basic Maximum Number may be awarded.

B. For every two (2) dwelling units restricted in perpetuity to occupancy by persons or families that qualify as income eligible households, one (1) dwelling unit may be added as a density bonus beyond the Basic Maximum Number. Affordable housing units may be used toward density bonuses only if they can be counted toward the Town's affordable housing inventory as determined by the Massachusetts Department of Housing and Community Development. The applicant shall provide documentation demonstrating that the unit(s) shall count toward the community's affordable housing inventory to the satisfaction of the Planning Board.

Additional lots allowed under § 5.13.14.B will become buildable as additional dwelling unit(s) upon completion and sale of said deed-restricted home, or upon donation of, and recording of a deed to, the lot set aside for such deed-restricted home

to the Town or to a public or non-profit housing agency or trust. The permanently deed-restricted affordable home or lot shall not be subject to the growth management provisions of § 5.11.

C. For every historic structure preserved and subject to a historic preservation restriction, one (1) dwelling unit may be added to the Basic Maximum Number.

5.13.15 Administration

A. Relation to Subdivision Control Law. To facilitate timely processing, promote better communication and avoid misunderstanding, applicants are encouraged to submit a preliminary subdivision plan. This plan should include alternative OSRD designs and must include how a non-OSRD, or conventional, subdivision design would appear. Such plan shall show the basic maximum number of dwelling units that would be allowed under Ashburnham Zoning Bylaw via conventional residential subdivision.

B. Submission requirements

(1) Each OSRD application and plan shall be prepared in accordance with the requirements of the Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land as adopted from time to time by the Planning Board.

(2) Each OSRD application and plan shall provide the following additional information:

(a) The location and acreage of areas to be devoted to specific uses.

(b) The proposed location of parks, open spaces, and other public and community uses.

(c) Developments on municipal sewer systems: written approval certifying tie-in to municipal sewage from the Ashburnham Water and Sewer Commission.

(d) On-site septic development: a sanitary survey sewage feasibility report by a Registered Professional Civil Engineer licensed in Massachusetts. The purpose of the report is to evaluate the feasibility of the ground for subsurface disposal of septic tank effluents, based on soil characteristics and test borings, water table, natural drainage patterns and other observation by the engineer.

[1] The report shall take into consideration the following factors: location of deep holes, to be shown on the appropriate map; topographic and ground level conditions; natural drainage patterns; flood heights of nearby waterways; underlying soil characteristics, absorption

qualities, maximum groundwater elevations and distances to bedrock; and location and dimensions of abutting off-site sewage disposal systems if within 100 feet of property lines to be shown on an appropriate map.

[2] The report shall contain a statement by the civil engineer of why the septic system design and location is the most suitable of considered alternatives for on-site sanitary sewage disposal systems as indicated in Title V, the State Environmental Code. The Ashburnham Board of Health has final jurisdiction over all on-site septic systems.

(e) The organization the applicant proposes to own and maintain the open space land, in accordance with Section 5.13.11.

(f) Draft copies of all proposed covenants, agreements, and other restrictions the applicant proposes and is required to provide in accordance with this bylaw.

(g) Proposed gross density of entire development tract, amount of open space required in accordance with Section 5.13.10, and amount of open space retained.

(h) A Yield Plan shall also be provided showing the basic maximum number of dwelling units that could be created for residential purposes via a conventional residential subdivision.

(i) Any and all other information from the definitive subdivision regulations of the Town of Ashburnham that the Planning Board may require to assist in determining whether the proposed OSRD meets the objectives and standards as set forth in this bylaw.

C. Review and approval process

Applications under this bylaw shall be processed and reviewed in accordance with the subdivision control law including but not limited to Planning Board review of the reports and recommendations of the Conservation Commission, Board of Health and Town Engineer.

D. Fees

See Planning Board Rules Governing Fees and Fee Schedule

5.13.16 No endorsement of a plan will be made until the Conservation Commission has completed an Order of Conditions and has been registered with the Northern Worcester County Registry of Deeds and made part of the plans. Any further changes required by the Conservation Commission shall meet the approval of the Planning Board's consulting engineer prior to endorsement.

5.13.17 The OSRD Plan shall show compliance with the requirements of this by-law and shall show any other particular features of the OSRD as requested by the Planning

Board or required by the applicable Rules and Regulations to enable the Planning Board to determine compliance with this by-law.

5.13.18 Waiver of Compliance

The Planning Board may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

5.13.19 Validity

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof."
(Revision approved by ATM 5-5-12, approved by Attorney General 8-30-12)

5.14 Common Driveways

Introduction

Common driveways may be allowed by Special Permit in accordance with the provisions of this section.

5.14.1 Purpose

The purpose of allowing access to no more than three (3) lots in any zoning districts, except in an Open Space Residential Development, over a common driveway is:

5.14.1.1 to enhance public safety by reducing the number and frequency of points at which vehicles may enter upon the ways used by the public, particularly arterial streets as defined in the Rules and Regulations Governing the Subdivision of Land in Ashburnham, Massachusetts;

5.14.1.2 to preserve, protect, and enhance environmentally sensitive land, such as well discharge areas, wetlands and flood plains, by reducing the area of land that is cleared, excavated, filled and/or covered with impervious material;

5.14.1.3 to encourage the protection and preservation of significant features and vistas.

5.14.2 Applicability and Requirements

The Planning Board may grant a Special Permit for Common Driveways serving no more than three (3) lots, except as specified in Section 5.139 for Open Space

Residential Developments, each with approved frontage on a public way or a way approved by the Planning Board, upon receipt of an application and a site plan prepared by a registered engineer and showing that such Common Driveway meets the following requirements:

5.14.2.1 The common driveway shall not be in excess of five hundred (500) feet in length;

5.14.2.2 The common driveway shall not enter any roadway at a point separated by less than one hundred (100) feet from an intersection. On a state-numbered highway, the common driveway shall not enter the roadway at a point separated by less than one hundred (100) feet from any other driveway, curb cut, or intersection;

5.14.2.3 The common driveway shall not be allowed if it would serve as the primary means of access to property which is publicly controlled or which serves a public purpose;

5.14.2.4 Permanent signs indicating the street number address assigned to each lot served by the common driveway shall be installed within ten (10) feet of the intersection of the common driveway with the street, as well as within ten (10) feet of the intersection of an individual lot driveway with the common driveway.

Numbered signs shall be placed in a manner so that they will not be blocked during heavy snow pack and/or the driveway;

5.14.2.5 The common driveway shall access the property over the frontage of either or both of the lots served by the driveway;

5.14.2.6 The applicant shall provide evidence to the Planning Board that the owners of the properties to be served by the common driveway have a deeded right to the common driveway;

5.14.2.7 The common driveway shall have an easement width of not less than twenty-four (24) feet and the travel portion shall be no less than fourteen (14) feet in width and shall be treated with an all-weather surface. The width requirement shall apply only to that portion of a driveway, which is used in common by more than one (1) lot. The maximum grade shall be 10%. The minimum grade shall be 1%, with a 3% maximum grade within fifty (50) feet of its intersection with a street right of way.

5.14.2.8 No common driveway shall be accepted as a public road nor shall the town under any circumstances be held liable for construction,

reconstruction, maintenance, or snow removal on any common driveway.

5.14.2.9 A lot may be served by a common driveway only if the ownership of the lot provides mandatory membership in an owners' association responsible for annual and long term maintenance, including, but not limited to, removal of ice and snow from the common drive. The site plan shall identify all land that is to be held and administered by the mandatory owners' association. It shall bear restrictions satisfactory to the Planning Board and the Town Counsel, to run with the land, restricting the way shown to remain private property and not to be extended, and any other restrictions and easements that are required for common driveway development by these by-laws. It shall incorporate by reference the document(s), satisfactory to the Planning Board and the Town Counsel, creating the mandatory owners' association and setting forth restrictive covenants and easements binding present and future owners of all the lots served by the common driveway. Such document(s) shall include, at a minimum the following:

a. Specific standards for the maintenance of all structures designed to be requirements of a common driveway Special Permit, including, but not limited to, the travel way, drainage system, and signage;

b. Provisions for allocating responsibility for snow removal, maintenance, repair, or reconstruction of the common driveway, drainage system, and signage;

c. Text of proposed easement including the metes and bounds description;

d. A procedure for the resolution of disagreements.

Said document(s) shall be recorded along with the site plan and public utility and drainage easements in the Northern Worcester County Registry of Deeds and shall also be recited in and attached to every deed to every lot served by the common driveway.

5.14.3 Adoption of Rules and Regulations

The Planning shall adopt an application form and rules and regulations in accordance with the provisions of this by-law. Rules and regulations shall specify the application process, type and number of required plans, and general requirements in order to assist the developer in complying with the intent of this by-law.

5.14.4 Waiver of Compliance

The Planning Board, acting as the Special Permit granting authority under this section, may waive strict compliance with any requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

5.14.5 Validity

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

5.15 Major Residential Development (MRD)
(Deleted by ATM 5-5-12, approved by Attorney General 8-30-12)

5.16 Accessory Dwelling Units

5.16.1 Purpose and Intent:

The intent of permitting accessory dwelling units (ADU) is to:

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

b. Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to moderate income households who might otherwise have difficulty finding housing;

c. Develop housing units in single-family neighborhoods that are appropriate for households at a variety of stages in their life cycle;

d. Provide housing units for persons with disabilities;

e. Protect stability, property values, and the residential character of a neighborhood.

5.16.2 Procedural Requirements:

a. Review Procedure:

1. The Planning Board, acting as the Special Permit Granting Authority, (SPGA), shall grant a Special Permit for an accessory dwelling unit as provided for in this bylaw.

2. The Planning Board shall adopt an application form and rules and regulations in accordance with the special permit provisions of this section of the bylaw. Rules and regulations shall specify the application process, type and number of required plans, and general requirements in order to assist the applicant in complying with the intent of this bylaw.

5.16.3 Use and Dimensional Regulations:

a. The Planning Board shall issue a Special Permit authorizing the installation and use of an accessory dwelling unit within an existing or new owner-occupied, single-family dwelling when the conditions outlined in §5.16.3, a, 1-9 have been met or the Planning Board may issue a Special Permit authorizing the installation and use of an accessory dwelling unit in a detached structure on a single-family home lot only when the conditions outlined in §5.16.3, a, 1-9 have been met:

1. The unit shall be a complete, separate housekeeping unit containing both kitchen, sleeping quarters, and bath.

2. Only one accessory dwelling unit may be created within a single-family house or lot.

3. The owner(s) of the residence in which the accessory dwelling unit is created must continue to occupy at least one of the dwelling units as their primary residence, except for *bona fide* temporary absences.

4. Any new, separate, outside entrance serving an accessory dwelling unit shall be located on the side or in the rear of the building and shall not be visible from the way providing primary access to the lot.

5. The gross floor area of an accessory dwelling unit (including any additions) shall not be less than three hundred (300) square feet or more than forty percent (40%) of the gross floor area of the main structure on the date the application is filed.

6. Once an accessory dwelling unit has been added to a single-family structure or lot, the accessory dwelling unit shall never be enlarged beyond the area allowed in §5.16.3, a, 5. without approval of the Planning Board.

7. An accessory dwelling unit shall not be occupied by more than three (3) people nor have more than two bedrooms.

8. The construction of any accessory dwelling unit shall be in conformity with the State Building Code, Title V of the State Sanitary Code and other local bylaws and regulations.

9. At least one (1) off-street parking space shall be provided for the accessory dwelling unit in addition to any other off-street parking requirements in §5.32 of the Zoning Bylaw.

b. In order to encourage the development of housing units for disabled and handicapped individuals and persons with limited mobility, the SPGA may allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons.

c. Approval for an ADU requires that the owner shall occupy one of the dwelling units. The approval and the notarized letters required in §5.16.3, d & e below must be recorded in the Worcester Northern Registry of Deeds or Land Court, as appropriate,

in the chain of title to the property, with documentation of the recording provided to the Building Commissioner, prior to the occupancy of the accessory dwelling unit.

d. When a structure, which has received a Special Permit for an accessory dwelling unit, is sold, the new owner(s), if they wish to continue to exercise the Permit, must, within thirty (30) days of the sale, submit a notarized letter to the Building Commissioner stating that the owner(s) will occupy one of the dwelling units on the premises as the owner(s) primary residence, except for *bona fide* temporary absences.

e. Prior to issuance of a Special Permit, the owner(s) must send a notarized letter stating that the owner will occupy one of the dwelling units on the premises as the owner's primary residence, except for *bona fide* temporary absences.

f. Prior to issuance of a Special Permit, a floor plan must be submitted showing the proposed interior and exterior changes to the building.

5.16.4 Administration and Enforcement

a. It shall be the duty of the Building Commissioner to administer and enforce the provisions of this bylaw.

b. No building shall be constructed or changed in use or configuration, until the Planning Board has issued a Special Permit and the Building Commissioner has issued a building permit. No Special Permit shall be issued until a sewage disposal works permit, when applicable, has first been obtained from the Board of Health and the proposed building and location thereof conform with the Town's laws and bylaws. Any new building or structure shall conform to all State and Town laws, bylaws, codes and regulations. No ADU permitted under this bylaw shall be occupied until a certificate of occupancy has been issued by the Building Commissioner.

c. The Building Commissioner shall refuse to issue any permit, which would result in a violation of any provision of this section or in a violation of the conditions or terms of any Special Permit granted by the SPGA.

d. The Building Commissioner shall issue a cease and desist order on any work in progress or on the use of any premises, either of which are in violation of the provisions of §5.16.

e. Construction or use according to a Special Permit shall conform to any subsequent amendment of this chapter unless the construction or use is begun within a period of not more than six months after the issuance of a Special Permit granted under this bylaw before the effective date of the amendment.

f. The SPGA specified in this section may, upon making findings of fact supporting said waiver or modification, approve a waiver or modification to the dimensional standards of this bylaw, provided that such waiver or modification is not greater than ten (10) percent of the dimensional standards.

5.16.5 Waiver of Compliance

The Planning Board, acting as the SPGA under this bylaw, may waive strict compliance with any requirements of this bylaw, where the SPGA makes a finding

such waiver is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

5.16.6 Validity

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

5.17 Large Wind Energy Facilities

5.17.1 Purpose

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

5.17.1(A) Applicability

This section applies to all utility-scale and on-site wind facilities with capacity greater than 60Kw proposed to be constructed after the effective date of this section. It does not apply to single stand-alone turbines under 60 kilowatts of rated nameplate(s) capacity.

Any physical modifications to existing wind facilities that materially alters the type or increases the size of such facilities or other equipment shall require a special permit.

5.17.2 Definitions

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

On-Site Wind Facility: A wind project, which is located at a commercial, industrial, agricultural, institutional, or public facility that will consume more than 50% of the electricity generated by the project on-site.

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

Large Wind Energy Facilities: Any utility-scale wind facility or on-site wind facility that generates 60 kilowatts of rated nameplate(s) capacity or greater on a lot.

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

Special Permit Granting Authority: The Planning Board, acting as the Special Permit Granting Authority, (SPGA), shall grant a Special Permit for large wind energy facilities as provided for in this bylaw.

Substantial Evidence: Such evidence as a reasonable mind might accept as adequate to support a conclusion.

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

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

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

5.17.3. General Requirements

5.17.3(A) Special Permit Granting Authority

No wind facility over 60 kilowatts of rated nameplate(s) capacity shall be erected, constructed, installed or modified as provided in this section without first obtaining a permit from the special permit granting authority. The construction of a wind facility over 60 kilowatts of rated nameplate(s) capacity shall be permitted within the Large Wind Energy Facility Zoning Overlay District subject to the issuance of a Special Permit and provided that the use complies with all requirements set forth in sections 5.17, 3, 4, 5 and 6. All such wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No special permit shall be granted unless the special permit granting authority finds in writing that:

(1) the specific site is an appropriate location for such use;
(2) the use is not expected to adversely affect the neighborhood;
(3) there is not expected to be any serious hazard to pedestrians or vehicles from the use;
(4) no nuisance is expected to be created by the use; and
(5) adequate and appropriate facilities will be provided for the proper operation of the use.

Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind facility, should they occur.

Wind monitoring or meteorological towers shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure.

5.17.3(B) Large Wind Energy Facility Overlay District

The Large Wind Energy Facility Overlay District is established over all the zoning districts of the Town of Ashburnham, except the following parcels: Map 28 Parcels 1 & 2 and Map 29 Parcels 8-13. The Large Wind Energy Facility Overlay District is located and bounded as shown on a map entitled "Large Wind Energy Facility Zoning Overlay District", Ashburnham, MA prepared by the Town Planner, dated *November13, 2008*¸ and on file with the offices of the Town Clerk, Zoning Enforcement Officer and Town Planner.

5.17.3(C) Compliance with Laws, Bylaws and Regulations

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

5.17.3(D) Proof of Liability Insurance

The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.

5.17.3(E) Site Control

At the time of its application for a special permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structure for human habitation within the setback areas.

5.17.4 General Siting Standards

5.17.4(A) Freestanding Large Wind Energy Facility Height

Wind facilities shall be no higher than 400 feet above the current grade of the land, provided that wind facilities may exceed 400 feet if:

(1) the applicant demonstrates by substantial evidence that such height reflects industry standards for a similarly sited wind facility;

(2) such excess height is necessary to prevent financial hardship to the applicant, and

(3) the facility satisfies all other criteria for the granting of a special permit under the provisions of this section.

5.17.4(B) Rooftop Large Wind Energy Facility Height.

Rooftop Large Wind Energy Facilities shall not extend more than ten (10) feet above the ridgeline of the structure to which it is attached.

5.17.4(C) Setbacks

Wind turbines shall be set back a distance equal to 1 times the overall blade tip height of the wind turbine from the nearest existing abutting residential or commercial structure and 100 feet from the nearest property line and private or public way.

5.17.4(C)(1) Setback Waiver

The special permit granting authority may reduce the minimum setback distance as appropriate based on site-specific considerations, if the project satisfies all other criteria for the granting of a special permit under the provisions of this section.

5.17.5 Design Standards

5.17.5(A) Color and Finish

The special permit granting authority shall have discretion over the turbine color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged.

5.17.5(B) Lighting and Signage

5.17.5(B)(1) Lighting

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

5.17.5(B)(2) Signage

Signs on the wind facility shall comply with the requirements of the town's sign regulations, and shall be limited to:

(a) Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger.

(b) Educational signs providing information about the facility and the benefits of renewable energy.

5.17.5(B)(3) Advertising

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

5.17.5(B)(4) Utility Connections

Reasonable efforts shall be made to locate utility connections from the wind facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

5.17.5(C) Appurtenant Structures

All appurtenant structures to such wind facilities shall be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever reasonable, structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

5.17.5(D) Support Towers

Monopole towers are the only type of support for the Wind Facilities that shall be approved.

5.17.6 Safety, Aesthetic and Environmental Standards

5.17.6(A) Emergency Services

The applicant shall provide a copy of the project summary and site plan to the local emergency services entity, as designated by the special permit granting authority. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan.

5.17.6(A)(1) Unauthorized Access

Wind turbines or other structures part of a wind facility shall be designed to prevent unauthorized access.

5.17.6(B) Shadow/Flicker

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

5.17.6(C) Noise

The wind facility and associated equipment shall conform with the provisions of the Department of Environmental Protection's, (DEP) Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the Special Permit Granting Authority agree that those provisions shall not be applicable. A source of sound will be considered to be violating these regulations if the source:

(a) Increases the broadband sound level by more than 10 dB(A) above ambient, or
(b) Produces a "pure tone" condition – when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest inhabited residence. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards.

The special permit granting authority, in consultation with the DEP, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

5.17.6(D) Land Clearing, Soil Erosion and Habitat Impacts

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

5.17.6(E) Rooftop Wind Energy Facilities Installation

Wind facilities sited on top of, attached to and extending above the ridge line of, an existing structure shall comply with all applicable provisions of the latest version of

the Uniform Building Code. Certification by an Engineer Licensed by the State of Massachusetts shall be required.

5.17.7 Monitoring and Maintenance

5.17.7(A) Facility Conditions

The applicant shall maintain the wind facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the wind facility and any access road, unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.

5.17.7(B) Modifications

All material modifications to a wind facility made after issuance of the special permit shall require approval by the special permit granting authority as provided in this section.

5.17.8 Abandonment or Decommissioning

5.17.8(A) Removal Requirements

Any wind facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind facility is scheduled to be decommissioned, the applicant shall notify the town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored to the state it was in before the facility was constructed or any other legally authorized use. More specifically, decommissioning shall consist of:

(1) Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.

(2) Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations.

(3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The special permit granting authority may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

5.17.8(B) Abandonment

Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the special permit granting authority. The special permit granting authority shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the applicant fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town shall have the authority to enter the property and physically remove the facility.

5.17.8(C) Financial Surety

The special permit granting authority may require the applicant for utility scale wind facilities to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the facility, of an amount and form determined to be reasonable by the special permit granting authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment. The Planning Board may require an Annual Report on the working and operating condition of the wind energy facility(ies).

5.17.9 Term of Special Permit

A special permit issued for a wind facility shall be valid for 25 years, unless extended or renewed. The time period may be extended or the permit renewed by the special permit granting authority upon satisfactory operation of the facility. Request for renewal must be submitted at least 180 days prior to expiration of the special permit. Submitting a renewal request shall allow for continued operation of the facility until the special permit granting authority acts. At the end of that period (including extensions and renewals), the wind facility shall be removed as required by this section.

The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

5.17.10 Application Process & Requirements

5.17.10(A) Application Procedures

5.17.10(A)(1) General

The Planning Board shall adopt an application form, fee schedule and rules and regulations in accordance with the provisions of this bylaw. Rules and regulations

shall specify the application process, type and number of required plans, and general requirements in order to assist the developer in complying with the intent of this bylaw.

5.17.10(A)(2) Application

Each application for a special permit shall be filed by the applicant with the Town Clerk pursuant to section 9 of chapter 40A of the Massachusetts General Laws.

5.17.10(B) Required Documents

5.17.10(B)(1) General

The applicant shall provide the special permit granting authority with 17 copies of the application, plans and documents. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. Included in the application shall be:

5.17.10(B)(2)

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

5.17.10(B)(3)

The name, contact information and signature of any agents representing the applicant.

5.17.10(B)(4)

Documentation of the legal right to use the wind facility site, including the requirements set forth in 5.17.10(C)(2) of this section.

5.17.10(C) Siting and Design

The applicant shall provide the special permit granting authority with a description of the property which shall include:

5.17.10(C)(1) Location Map

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

5.17.10(C)(2) Site Plan

A one-inch equals 200 feet (1”=200’) plan of the proposed wind facility site, with contour intervals of no more than 10 feet, showing the following:

(A) Property lines for the site parcel and adjacent parcels within 300 feet.

(B) Outline of all existing buildings, including purpose (e.g. residence, garage, etc.) on site parcel and all adjacent parcels within 500 feet. Include distances from the wind facility to each building shown.

(C) Location of all roads, public and private on the site parcel and adjacent parcels within 300 feet, and proposed roads or driveways, either temporary or permanent.

(D) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within 300 feet.

(E) Proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc.

(F) Location of viewpoints referenced below in 5.17.10(C)(3) of this section.

5.17.10(C)(3) Visualizations

The special permit granting authority shall select between three and six sight lines, including from the nearest building with a view of the wind facility, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the wind facility. View representations shall have the following characteristics:

(A) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the wind facility (e.g. superimpositions of the wind facility onto photographs of existing views).

(B) All view representations will include existing, or proposed, buildings or tree coverage.

(C) Include description of the technical procedures followed in producing the visualization (distances, angles, lens, etc…).

5.17.10(D) Landscape Plan

A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures.

Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.

5.17.10(E) Operation & Maintenance Plan

The applicant shall submit a plan for maintenance of access roads and storm water controls, as well as general procedures for operational maintenance of the wind facility. The Applicant shall attempt to implement Low Impact Development Techniques to manage stormwater, in accordance with the Low Impact Development General Bylaw.

5.17.10(F) Compliance Documents

If required under previous sections of this bylaw, the applicant will provide with the application:

(1) a description of financial surety that satisfies 5.17.8(C) of this section,

(2) proof of liability insurance that satisfies Section 5.17.3(B) of this section,

(3) certification of height approval from the FAA,

(4) a statement that satisfies Section 5.17.6(C), listing existing and maximum projected noise levels from the wind facility.

5.17.10(G) Independent Consultants

Upon submission of an application for a special permit, the special permit granting authority will be authorized to hire outside consultants, pursuant to section 53G of chapter 44 of the Massachusetts General Laws.

5.17.11 Waiver of Compliance

The Planning Board, acting as the Special Permit Granting Authority under this section, may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

5.17.12 Validity

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

(Approved by Attorney General March 11, 2009)

5.18 Small Wind Energy Systems

5.18.1 Purpose

The purpose of this Bylaw is to provide criteria which will help the Town of Ashburnham evaluate a small wind project. The criteria will be utilized by Building Inspectors charged with issuing building permits for small wind energy systems. Any proposed non-conforming small wind energy systems will be addressed through a special permit process under the review of the special permit granting authority.

The small wind energy systems bylaw should provide cities and towns with a streamlined and efficient administrative permitting process to allow for responsibly sited small wind systems.

5.18.1(A) Applicability

This section applies to small wind systems no greater than 60 kilowatts in total to the lot of rated nameplate(s) capacity proposed to be constructed after the effective date of this section.

5.18.2 Definitions

Building Inspector: The inspector of buildings, building commissioner or local inspector, or, if there are none in a town, the Board of Selectmen, or person or board designated by local ordinance or bylaw charged with the enforcement of the Zoning Bylaw.

Building Permit: A building permit is a required approval of a project by the building inspector which is consistent with the local, state and federal building codes. In addition, the permit must meet the criteria set forth under the local zoning bylaws regarding small wind energy systems.

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

Special Permit: A permit provided by the special permitting authority for nonconforming small wind systems (e.g. a small wind system that does not meet the criteria for small wind systems set forth by the Building Inspector).

Special Permit Granting Authority: The Special Permit Granting Authority shall be the Planning Board, by this section for the issuance of special permits to construct and operate small wind energy systems.

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

Small Wind Energy System: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, which has a rated nameplate capacity of 60 kW or less.

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

5.18.3 General Requirements

5.18.3(A) Building Inspector Issued Permit

No small wind energy system shall be erected, constructed, installed or modified as provided in this section without first obtaining a building permit from a licensed building inspector from the Town of Ashburnham. All such wind energy systems shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts.

Such permits may also impose safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the small wind energy system, should they occur.

5.18.3(B) Special Permit Granting Authority

If the proposed small wind energy system does not satisfy the criteria of the building permit set forth under the adopted bylaws then the applicant must seek review and petition the Special Permit Granting Authority for a Special Permit. The Special Permit will provide for a variance from the prescribed bylaw requirements. This variance from the building permit criteria will only be applicable to that specific non-conforming project.

5.18.3(C) Compliance with Laws, Bylaws and Regulations

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

5.18.3(D) Utility Notification

No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

5.18.3(E) Temporary Meteorological Towers (Met Towers)

Met towers shall be permitted under the same standards as a small wind system, except that the requirements apply to a temporary structure. A permit for a temporary met tower shall be valid for a maximum of 3 years after which an extension may be granted.

Wind monitoring shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure.

5.18.4 General Siting Standards

5.18.4(A) Freestanding Small Wind Energy System Height

Small Wind Energy Facilities shall be no higher than 160 feet, provided that such wind energy facilities may exceed 160 feet if granted a Special Permit from the Planning Board based on:

(1) the applicant demonstrating by substantial evidence that such height reflects industry standards for a similar sited wind facility.

(2) demonstration that such excess height is necessary to prevent financial hardship to the applicant, and

(3) the facility satisfies all other criteria for the granting of a Building Permit, or for a Special Permit, if required.

5.18.4(B) Rooftop Small Wind Energy System Height

Rooftop Small Wind Energy Facilities shall not extend more than ten (10) feet above the ridgeline of the structure to which it is attached.

5.18.4(C) Setbacks

Wind turbines shall be set back a distance equal to the total height of the wind turbine from all abutting inhabited structures, overhead utility lines, public road or right of way and at least 5 feet from property boundaries.

5.18.4(C)(1) Setback Waiver
The Building Inspector may reduce the minimum setback distance if written permission is granted by the entity with care and control over the affected asset.

5.18.5 Design Standards

5.18.5(A) Appearance, Color and Finish

The wind generator and tower shall remain painted or finished the non-reflective color or finish that was originally applied by the manufacturer, unless approved in the building permit.

5.18.5(B) Lighting and Signage

5.18.5(B)(1) Lighting

Wind turbines shall be lighted only if required by the Federal Aviation Administration.

Lighting of other parts of the small wind energy system, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

5.18.5(B)(2) Signage and Advertising

Signs and advertising shall be restricted to reasonable identification of the manufacturer or operator of the small wind energy facility and shall defer to the requirements of the Town of Ashburnham sign regulations.

5.18.6 Safety, Aesthetic and Environmental Standards

5.18.6(A) Unauthorized Access

Wind turbines or other structures part of a small wind energy system shall be designed to prevent unauthorized access.

5.18.6(B) Noise

The small wind energy system and associated equipment shall conform to the provisions of the Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the Permit Granting Authority agree that those provisions shall not be applicable.

5.18.6(C) Land Clearing, Soil Erosion and Habitat Impacts

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

5.18.6(D) Rooftop Wind Energy Facilities Installation.

Wind facilities sited on top of, attached to and extending above the ridge line of, an existing structure shall comply with all applicable provisions of the latest version of

the Uniform Building Code. Certification by an Engineer Licensed by the State of Massachusetts shall be required.

5.18.7 Monitoring and Maintenance

5.18.7(A) System Conditions

The applicant shall maintain the small wind energy system in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.

5.18.8 Abandonment or Decommissioning

5.18.8(A) Removal Requirements

Any small wind energy system which has reached the end of its useful life or has been abandoned shall be removed.

A small wind energy system shall be considered abandoned when it fails to operate for one year. Upon a Notice of Abandonment issued by the Building Inspector, the small wind energy system owner will have 30 days to provide sufficient evidence that the system has not been abandoned or the Town of Ashburnham shall have the authority to enter the owner's property and remove the system at the owner's expense.

5.18.9 Permit Process, Requirements & Enforcement

5.18.9(A) Permit Requirements

5.18.9(A)(1) Documents

The building permit application shall be accompanied by deliverables including the following:

5.18.9(A)(1)(a) A plot plan showing:

(i) Property lines and physical dimensions of the subject property within 2 times the total height from the tower location.

(ii) Location, dimensions, and types of existing major structures on the property

(iii) Location of the proposed wind system tower, foundations, guy anchors and associated equipment.

(iv) The right-of-way of any public road that is contiguous with the property;

(v) Any overhead utility lines;

5.18.9(A)(1)(b)

Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed)

5.18.9(A)(1)(c)

Tower foundation blueprints or drawings signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.

5.18.9(A)(1)(d)

Tower blueprint or drawing signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.

5.18.9(A)(2) Fees

The application for a building permit for a small wind energy system must be accompanied by the fee required by the Building Commissioner.

5.18.9(A)(3) Expiration

A permit issued pursuant to this bylaw shall expire if:

(a) The small wind energy system is not installed and functioning within 24-months from the date the permit is issued; or,

(b) The small wind energy system is abandoned.

5.18.9(B) Violations

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this bylaw or with any condition contained in a building permit issued pursuant to this bylaw. Small wind energy systems installed prior to the adoption of this bylaw are exempt.

5.18.9(C) Administration and Enforcement

(a) This bylaw shall be administered and enforced by the Building Commissioner, or his/her designee.

(b) The Building Commissioner may enter any property for which a building permit has been issued under this bylaw to conduct an inspection to determine whether the conditions stated in the permit have been met.

5.18.9(D) Penalties

Any person who fails to comply with any provision of this bylaw or a building permit issued pursuant to this bylaw shall be subject to enforcement and penalties as allowed by applicable law.

5.18.10 Waiver of Compliance

The Planning Board, when acting as the Special Permit Granting Authority under this section, may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

5.18.11 Severability

The provisions of this bylaw are severable, and the invalidity of any section, subdivision, paragraph, or other part of this bylaw shall not affect the validity or effectiveness of the remainder of the bylaw.

(Approved by Attorney General March 11, 2009)

5.19 Planned Unit Development

5.19.1 Purpose and Intent/Introduction

The purpose and intent of the Planned Unit Development (PUD) provision is to allow via Special Permit an alternative use and pattern of land development for large tracts and for redevelopment of smaller parcels in built-up areas by allowing single-family and multi-family clustered residential development along with a mix of nonresidential uses as permitted in this Section, while encouraging the conservation of open space within the PUD**.**

The PUD is a flexible zoning tool designed to meet the following objectives:

A. Encourage innovation in commercial and residential development so that the growing demand for more and varied housing may be met by a greater variety in type and design of living units;
B. Encourage a less sprawling form of community development which makes more efficient use of land, requires shorter networks of streets and utilities and which fosters more economical development and less consumption of developable land;
C. The permanent preservation of open space, agricultural lands, forest lands, and other natural resources;
D. Maintain the traditional New England rural character and land use pattern in which small villages contrast with open space and farm land;
E. Respect for the natural features of the land, including wetlands, watercourses, forests, prime agricultural land, steep slopes, plants, wildlife, historic sites, scenic areas, and rural character;
F. Encourage historic preservation, infill development and adaptive re-use of historic structures in applicable zoning districts;
G. Provide opportunities to allow greater density and intensity of residential development than would normally be allowed provided that the land usage can be shown to be in the public good;
H. Provide wildlife corridors connecting open spaces, needed by wildlife to ensure their survival;

I. To protect and enhance the value of real property;

5.19.2 Definitions

Developable Land: All land located within the PUD exclusive of wetlands as said terms are defined in the Wetlands Protection Act (Chapter 131, Section 40 of Massachusetts General Laws).

Floor Area Ratio: As used in this Section, the floor area ratio is the ratio of the gross floor area of all buildings within a PUD to the area of developable land within the PUD provided, however, that the gross floor area of garages and attics, which are not designed to be used or occupied as living areas, shall be excluded.

5.19.3 Applicability

Any development under the PUD provisions of this Section of the Ashburnham Zoning Bylaw requires a Special Permit approval from the Ashburnham Planning Board.

Planned Unit Developments (PUDs) shall be allowed within parcels included in the Planned Unit Development (PUD) Overlay District subject to the issuance of a Special Permit and provided that the use complies with all requirements set forth in this Section. The minimum size of any PUD shall be a parcel or contiguous parcels of land having an area of at least four (4) acres within the PUD Overlay District. The Planning Board may allow a PUD on a parcel or contiguous parcels of land smaller than 4 acres upon a finding that the proposed development is consistent with the objectives of this section and Section 1.1 of the Zoning Bylaw.

The PUD Overlay District is established over all the zoning districts of the Town of Ashburnham, except the following parcels: Map 28 Parcels 1 & 2 and Map 29 Parcels 8-13. The PUD Zoning Overlay District is located and bounded as shown on a map entitled "Planned Unit Development Zoning Overlay District", Ashburnham, MA prepared by the Montachusett Regional Planning Commission, dated May 5, 2012¸ and on file with the offices of the Town Clerk, Zoning Enforcement Officer and Planning Board.

5.19.4 Permitted Uses

A. Any use allowed by-right (Y) or by special permit (SP) in at least one of the underlying zoning districts within which the PUD is located, shall also be allowed by-right or allowable by special permit, as the case may be, in any location within that PUD, including within underlying districts where such use is not otherwise allowed, with the following exceptions:

i. Dwelling units are allowed by right within all PUDs without limitation on form of tenure or structure type, including single-family, two-family, multi-family, Assisted Elderly, or Supportive Housing. A maximum of twenty (20) dwelling units shall be allowed in any one building.

ii. Retail operations with more than ten thousand (10,000) square feet of gross floor area on any individual floor shall be prohibited within any PUD.

iii. Hotel, motel or inn, and commercial indoor amusement or recreational place or place of assembly, are allowed uses within all PUDs.

B. Residential uses shall comprise not less than 25% and not more than 75% of the gross floor area planned within any PUD.

5.19.5 Dimensional and Area Regulations

A. Applicability

The dimensional and area regulations set forth in this Section shall apply to the total area of developable land within the PUD and shall not regulate individual lots therein.

B. Maximum Allowable Density

i. The Planning Board shall have the discretion to reduce or suspend the minimum requirements otherwise applicable under Section 4 (Dimensional Regulations) of the Zoning Bylaw for a Planned Unit Development, provided that the Planning Board finds that the conditions present on the site are adequate to support the proposed development, protect the surrounding neighborhood, and meet the purposes and objectives of this section, and further provided to meet the following requirements:

(a) There shall be at least 10,000 square feet of developable land for each bedroom created in a PUD.

(b) Meet the Floor Area Ratio, Ground Coverage and Setback requirements as specified within this section.

(c) Residential uses are limited to the overall gross floor area limitations specified in Section 4(B) of this Bylaw.

ii. Increases in Permissible Density.

The Planning Board may award a density bonus to increase the number of dwelling units beyond the base density of dwelling units based on subsection (i) above. The density bonus for the PUD shall not, in the aggregate, exceed thirty percent (30%) of the Basic Maximum Number. Computations shall be rounded down to the next whole number. A density bonus may be awarded in the following circumstances:

(a) For each additional five percent (5%) of the site (over and above the required 25%) set aside as common open space, a bonus of one

(1) additional dwelling unit beyond the base density may be awarded.

(b) For every two (2) dwelling units restricted in perpetuity to occupancy by persons or families that qualify as income eligible households, one (1) dwelling unit may be added as a density bonus beyond the base number. Affordable housing units may be used toward density bonuses only if they can be counted toward the Town's affordable housing inventory as determined by the Massachusetts Department of Housing and Community Development. The applicant shall provide documentation demonstrating that the unit(s) shall count toward the community's affordable housing inventory to the satisfaction of the Planning Board.

Additional housing units allowed under this subsection will become buildable as additional dwelling unit(s) upon completion and sale of said deed-restricted home, or rental of such affordable housing unit, or upon donation of, and recording of a deed to, the lot set aside for such deed-restricted home to the Town or to a public or non-profit housing agency or trust.

iii. Developments on municipal sewer systems: written approval certifying tie-in to municipal sewage from the Ashburnham Water and Sewer Commission indicating that the proposed density is feasible.

iv. On-site septic development: a sanitary survey sewage feasibility Report by a Registered Professional Civil Engineer licensed in Massachusetts, indicating that the proposed density is feasible. The purpose of the report is to evaluate the feasibility of the ground for subsurface disposal of septic tank effluents, based on soil characteristics and test borings, water table, natural drainage patterns and other observation by the engineer.

[1] The report shall take into consideration the following factors: location of deep holes, to be shown on the appropriate map; topographic and ground level conditions; natural drainage patterns; flood heights of nearby waterways; underlying soil characteristics, absorption qualities, maximum groundwater elevations and distances to bedrock; and location and dimensions of abutting off-site sewage disposal systems if within 100 feet of property lines to be shown on an appropriate map.
[2] The report shall contain a statement by the civil engineer of why the septic system design and location is the most suitable of considered alternatives for on-site sanitary sewage disposal systems as indicated in Title V, the State Environmental Code. The Ashburnham Board of Health has final jurisdiction over all on-site septic systems.

C. Floor Area Ratio Requirement

The ratio of the gross floor area of all buildings, residential and commercial, within the PUD, to the total area of developable land within the PUD shall not exceed 32% (0.32).

D. Ground Coverage Requirement

The ground coverage of all residential and commercial buildings, and parking lots and impervious landscaping within the PUD shall not exceed 40% of the total area of developable land within the PUD. The ground coverage of all roadway areas and associated sidewalks shall be excluded from this requirement.

E. Setback Requirements

Setbacks within a PUD shall conform to the following requirements; provided however that the Planning Board may reduce the setback requirements or may require greater setbacks to provide additional buffers to residences abutting the PUD or to enhance the aesthetic appearance or planning objectives of this Bylaw.

i. Perimeter Setbacks

All structures within a PUD shall have a minimum setback requirement of 50 feet from the PUD boundary line.

ii. Front Setback Requirements

All structures within a PUD shall have a minimum setback from any lot line or any street line of 20 feet.

iii. Separation of Buildings

All buildings within the PUD shall have a setback of at least 20 feet from any other building therein.

F. Maximum Height Requirement

No buildings in the PUD shall exceed the height allowed by the underlying zoning district.

G. Solar Orientation of Buildings.

Spacing of buildings and landscaping, wherever possible and practical, shall be oriented to optimize solar exposure for buildings located within the PUD.

H. Flexible Design and Orientation of Buildings.

More than one principle building shall be allowed on any lot located in the Planned Unit Development, subject to issuance of the PUD Special Permit by the Planning Board, along with a finding that such buildings would be in keeping with the purpose of the Village Center Zoning District(s), per Section 2.1 of the Zoning Bylaw, and the additional findings:

i. No principal building shall be located in relation to another principal building on the same lot, or on adjacent lot, so as to cause danger from fire;

ii. All principal buildings on the lot shall be served by access ways suitable for fire, police, and emergency vehicles;

iii. All of the multiple principal buildings on the same lot shall be accessible via pedestrian walkways connected to the required parking for the premises, and to each principal building.

5.19.6 Open Land/Open Space

A**.** Basic Requirement

Open space shall be provided within a PUD in accordance with the requirements of this section.

B. Public Open Space

Significant areas of land within the PUD which are not developable and are classified as wetlands in accordance with the Mass. Wetlands Protection Act (M.G.L. Ch. 131 Section 40) and the DEP Regulations promulgated thereunder, including the wildlife protection regulations, shall be designated as "Public Open Space." Said areas shall be preserved as open space in perpetuity and either conveyed to the Town of Ashburnham Conservation Commission, or to a nonprofit organization, the principal purpose of which is the conservation of open space, or shall be protected as a means of a conservation restriction imposed on the land pursuant to M.G.L. Ch. 184, Section 31.

C. Common Open Space

A minimum of 25% of the total developable land within the PUD, exclusive of the land set aside for streets, shall be designated "Common Open Space." Common Open Space shall include all developable land not dedicated to roads, parking areas, buildings and structures. At least 50% of the required common open space maybe used for recreational facilities; and for passive open space and buffer areas. Common open space shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by residents of the PUD; and, where possible, be located such that significant areas of continuous open space are distributed throughout the

PUD. There shall also be significant areas of common open space near areas containing high concentrations of housing units.

The approximate location of major areas of Public Open Space and Common Open Space shall be identified as part of the Preliminary Development Plan. The granting of a Special Permit shall include as a condition that the large areas of open space identified on the Preliminary Development Plan be preserved approximately as shown, with the understanding that the precise definition of such open space might be altered with the submittal and approval of Definitive Development Plans.

D. Ownership of Common Open Space, Restrictions Thereon

The required open land shall be conveyed to a non-profit corporation or trust comprising a condominium or homeowner's association. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Northern Worcester District Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

i. Mandatory membership in an established association, as a requirement of ownership of any condominium unit, rental unit, building or lot in the tract.

ii. Provisions for maintenance, assessments of the owners of all condominium units, rental units, buildings or lots in order to ensure that the open land is maintained in a condition suitable for the users approved by the homeowner's association. Failure to pay assessment shall create a lien on the property assessed, enforceable by the association.

iii. Provisions which, so far as possible under the existing law, will ensure that the restrictions place on the use of the open land will not terminate by operations of law.

iv. Provisions for limited easements to significant areas of open space and natural resources for recreational use by residents of the Town, and to provide linkages to open space of abutting properties.

The developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the association is capable of assuming such responsibility.

5.19.7 Design Standards, Off-street Parking and Loading Requirements

A. Basic Requirements

The PUD shall be designed and constructed in accordance with the Design Standards and Specifications set forth in Section 5 of the Town of Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land.

B. Off-Street Parking

Off-street parking facilities for structures and uses within a PUD shall conform to all regulations and design standards as set forth in Section 5.3 of the Zoning Bylaw. However, the Planning Board is given flexibility for provision of off-street parking facilities as provided for under Section 5.34 of the Ashburnham Zoning Bylaw

Off-street parking areas within any PUD shall meet the screening standards as specified within Section 5.107.2 of the Zoning Bylaw.

C. Off-Street Loading

Off-street loading facilities for structures and uses within a PUD shall conform to all regulations and design standards as set forth in Section 5.33 of the Zoning Bylaw.

D. Garages

The construction of individual garages attached to or within housing units is encouraged where feasible, taking into consideration the topography, layout, type, architectural design and price of the unit. The location of such garages is encouraged where feasible to be located to the rear of townhome and/or apartment units.

5.19.8 Contents and Scope of Application and Review Procedure

A. Pre-Application Conference

Prior to investing in extensive professional design efforts for a Planned Unit Development, it will often prove useful to review the proposed development/use of land with the Planning Board, in order that general approaches and potential problems can be freely explored. The Planning Board encourages Applicants to meet with the Planning Board Chairman to review their development proposals and/or Applicants are invited to submit a Pre- Application Sketch of the proposed project to the Planning Board at the Public Comment period at a regular meeting of the Planning Board. Sketches, which need not be professionally prepared, will assist the discussion and might show some but not all of the information required to be shown on a site plan.

B. Preliminary Plan

The Applicant may file a preliminary plan accompanied by the form “Form B Preliminary Subdivision Application” and the “Form B Preliminary Subdivision Application Check List” to the Planning Board. The Applicant shall include any required filing fee as established in the Planning Board Rules Governing Fees and Fee Schedule. The Planning Board shall upon receipt of the complete preliminary plan application and supporting documents follow the requirements of Section 4.2 of the Planning Board

Rules and Regulations Governing the Subdivision of Land related to the review and decision of such Preliminary Plan.

The Planning Board may suggest modifications and changes to the preliminary plan in anticipation of filing of the final plan. If the Planning Board fails to act within 45 days of receipt of a complete preliminary plan and application, the applicant may proceed to file a final plan.

C. Final Plan Application:

i. The application for Planned Unit Development (PUD) Special Permit shall be made in accordance with Section 5.105 of the Ashburnham Zoning Bylaw.

ii. Coordination with Other Boards. Upon receipt of the PUD Final Plan application, the Planning Board shall transmit a copy of the Application and Plan to the Selectmen, Fire Department, Water and Sewer Commission, Board of Health, Highway Department, Conservation Commission, Building Inspector, Historical Commission, Police Department, Light Department and the Planning Board's Consulting Engineer for their written recommendation. Failure to respond to the Planning Board within 30 days shall indicate approval by said agencies. The Planning Board decision shall address any departure from the recommendations of the other town agencies.

iii. The Applicant shall provide a narrative Development Impact Statement detailing the impact of the proposed use on municipal services and the environment. Such statement shall conform to Section 4.3.6, Development Impact Statements, of the Town of Ashburnham Planning Board Subdivision Rules and Regulations.

iv. Public Hearing: The Planning Board shall hold a public hearing on any properly completed application within 65 days after filing of a complete application, shall properly serve notice of such hearing, and shall render its decision within 90 days of the close of said hearing. The hearing and notice requirements set forth herein shall comply with the requirements of G.L. c. 40A, Sections 9 and 11.

v. Review of applications for any use-related special permits may be consolidated into the Planned Unit Development Special Permit process, while being voted on separately.

D. The Planning Board shall grant the Special Permit only if it finds the application satisfies the objectives of a PUD as defined in Section 1.

E. A PUD Special Permit granted pursuant to this Section shall establish and regulate the following as conditions of approval:

i. Location of all primary streets and ways within the development, including access to existing public ways, with the layout, design, construction and other relevant standards for such streets and ways to confirm to the *Town of Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land*.

ii. Locations of significant areas of public open space and common open space.

iii. Boundaries of lots to be created within the development, if any.

iv. Overall project density, including the distribution of housing units to avoid undue concentration of development, as well as maximum number of housing units that may be built within the development, including maximum number of building permits that may be issued within any twelve month period.

v. Location and boundaries of each development phase.

vi. Location of non-residential establishments.

vii. Development timetable.

viii. Off-site traffic improvements and environmental mitigation measures, if any to be performed by the Applicant, including timetables and procedures for implementation of the same.

ix. Requirements for instruments to be executed by the owners of the land and recorded with the Registry of Deeds waiving all rights to previously issued permits and approvals for residential or non-residential buildings and uses for the land, if any, and to future uses of the land which would otherwise be otherwise permitted by the zoning district in which it is located, except as specifically allowed under this PUD Special Permit.

x. Such other terms, conditions or restrictions as the Planning Board may deem appropriate.

5.19.9 Relation to Subdivision Control Law

In the event the Applicant seeks subdivision approval for streets and lots within the PUD pursuant to the Subdivision Control Law M.G.L. Chapter 41, Section 81, the Applicant shall file an "Application for a Definitive Plan" pursuant to Section 4.3 of the *Town of Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land.* In order to facilitate the processing the Planning Board shall consider said application simultaneously with the application for a PUD Special Permit, and may adopt regulations establishing procedures for the simultaneous submission and consideration of the

applications; provided however, that nothing contained herein shall be deemed to require approval of streets and ways within a PUD under the Subdivision Control Law. Any subdivision of land within the PUD shall in no way diminish the effect of any conditions, agreements or covenants imposed or made as part of the grant of the PUD Special Permit.

5.19.10 Administration

A. The Planning Board may adopt, and from time to time amend, Rules and Regulations relating to the administration of this Planned Unit Development Zoning provision consistent with the provisions of this bylaw and G.L. c. 40A and other provisions of the General Laws, including Rules and Regulations Governing the Subdivision of Land, and shall file a copy of said Rules and Regulations with the Town Clerk.

B. Fees – See Town of Ashburnham Planning Board Rules Governing Fees and Fee Schedule.

C. Waiver of Compliance

The Planning Board may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

D. Separability

The invalidity of one or more provisions or clauses of this Section shall not invalidate or impair the Section as a whole or any other part hereof.

(Adopted by ATM 5/5/2012)

5.20 Temporary Moratorium on Medical Marijuana Treatment Centers

5.20.1 Purpose

By vote at the State election on November 6, 2012, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for medical purposes. The law provides that it is effective on January 1, 2013 and the State Department of Public Health is required to issue regulations regarding implementation within 120 days of the law's effective date. Currently under the Zoning Bylaw, a Medical Marijuana Treatment Center is not a permitted use in the Town and any regulations promulgated by the State Department of Public Health are expected to provide guidance to the Town in regulating medical marijuana, including Medical Marijuana Treatment Centers. The regulation of medical marijuana raises novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Medical Marijuana Treatment Centers and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Medical Marijuana

Treatment Centers and other uses related to the regulation of medical marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Medical Marijuana Treatment Centers so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

5.20.2 Definition

"Medical Marijuana Treatment Center" shall mean a "not-for-profit entity, as defined by Massachusetts law only, registered by the Department of Public Health, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils or ointments), transfers, transports, sells distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers."

5.20.3 Temporary Moratorium

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Medical Marijuana Treatment Center. The moratorium shall be in effect through June 30, 2014. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of medical marijuana in the Town, consider the Department of Public Health regulations regarding Medical Marijuana Treatment Centers and related uses, and shall consider adopting new Zoning Bylaws to address the impact and operation of Medical Marijuana Treatment Centers and related uses**.**

(Adopted by STM 10/29/2013)

SECTION 6. ADMINISTRATION

6.1 Enforcement

This By-Law shall be enforced by the Board of Selectmen or by a Building Inspector appointed by them.

6.2 Building or Use Permit

No building permit for any lot shall be issued except to the owner of record thereof, or an authorized agent, until the construction or alteration of a building or structure, as proposed, shall comply in all respects with the provisions of this By-Law or with a decision rendered by the Board of Appeals. Any application for such a permit shall be accompanied by a plan, accurately drawn, showing the actual shape and dimensions of the lot to be built upon , the exact location and size of all buildings or structures already on the lot, the location of new buildings to be constructed, together with the

lines within which all buildings or structures are to be erected, the existing and intended use of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this By-Law. Applications for permits with their accompanying plans and building permits shall be maintained as a permanent record by the Board of Selectmen or a Building Inspector appointed by them.

6.3 Certificate of Occupancy

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

A certificate of occupancy shall be conditional on the maintenance of full compliance with the provisions of this By-Law in effect at the time of issuance or with restrictions imposed in a decision of the Board of Appeals, and shall lapse if such compliance fails. A copy of each certificate of occupancy shall be maintained as a permanent record by the Board of Selectmen or a Building Inspector appointed by them.

6.4 Board of Appeals

There is hereby established a Board of Appeals which shall be the Special Permit Granting Authority under this By-Law, and which shall consist of five (5) members and two (2) associate members to be appointed by the Board of Selectmen as provided in chapter 40A, General Laws. The Board shall annually elect a chairman and a clerk from its own membership. A member can only be removed for cause by the appointing authority and only after written charges have been filed and a public hearing has been held. Vacancies shall be filled in the same manner as appointments. The Board of Appeals shall establish written procedures consistent with the provisions of this By-Law and with the provisions of Chapter 40A or other applicable provisions of the General Laws, and shall file a copy thereof with the Town Clerk. The issuance of special permits and the granting of variances shall require a public hearing with due notice given in accordance with the General Laws. The Board of Appeals shall have the following powers and duties.

6.41 Appeals – to hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit from the Building Inspector or Board of Selectmen under the provisions of Chapter 40A, General Laws, or by any officer or board of the Town of Ashburnham or by any person aggrieved by any order or decision of the Building Inspector or Board of Selectmen in violation of any provision of Chapter 40A, General Laws, or of this By-Law.

6.42 Special Permits – To hear and decide applications for special permits for exceptions as provided in this By-Law, subject to any general or specific rules therein contained and subject to any appropriate conditions and safeguards imposed by the Board.

a. A special permit shall be issued only after a public hearing which must be held within sixty-five days after the effective date of filing of a special permit application. The effective date of filing is the date the application is filed with the Town Clerk. Upon receipt of such application, the Town Clerk shall forthwith transmit the same to the Board of Appeals.

b. A special permit shall lapse at the end of two years from the date of issue, unless substantial use thereof has been commenced, except for good cause, or if the permit is for construction, if construction has not begun by such date, except for good cause.

c. Construction or operations under a building or special permit shall conform to any subsequent amendment to these By-Laws unless the use or construction is commenced within a period of one year after the issuance of the permit, and in cases involving construction, unless such construction is carried through to completion as continuously and expeditiously as possible.

6.43 Variances – To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this By-Law where, owing to conditions especially affecting such parcel or such building but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise, to the appellant and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this By-Law, but not otherwise.

a. The Board of Appeals is authorized to grant a variance for use not otherwise permitted in the district in which the land or structure is located.

b. If the rights authorized by a variance are not exercised within one year from the date of grant of such variance, they shall lapse and may be re-established only after notice and a new hearing.

6.5 Repetitive Petitions

No proposed changes in this By-Law which has been unfavorably acted upon by the Town Meeting shall be considered on its merits by the Town Meeting within two (2) years after the date of such unfavorable action unless adoption of the proposed change is recommended in the final report of the Planning Board. No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals shall be acted favorably upon within two years after the date of final unfavorable action unless the Board of Appeals, finds, by a vote of not less than four members, specific and material changes in the conditions upon which the previous unfavorable action was based, and described such changes in the record of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to the parties in interest of the time and place of the proceedings when the question of such consent will be considered.

6.6 Amendment

This By-Law may be amended from time to time in accordance with the provision of Chapter 40A, Section 5, General Laws. A proposal to amend this By-Law may be made by the Board of Selectmen or by one of the following by submitting the proposed amendment to the Board of Selectmen.

a. The Planning Board

b. The Zoning Board of Appeals

c. An individual owning land to be affected by the amendment.

d. The registered voters of the Town pursuant to the provisions of Massachusetts General Laws, Chapter 39, Section 10.

The Board of Selectmen shall submit a proposed amendment within fourteen (14) days of its receipt to the Planning Board for review, public hearing, and report with recommendations to the Town Meeting.

6.7 Penalty

Any person, firm or corporation violating any section or provisions of this By-Law shall be fined not more than fifty ($50) dollars for each offense. Each day that willful violation continues shall constitute a separate offense.

6.8 Validity

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

6.9 Planning Board Associate Member

The Planning Board and the Board of Selectmen jointly may appoint an associate member as provided for under MG.L. c. 40A, §9. The Planning Board chairperson may designate an associate member to sit on the board for the purposes of acting on special permit applications in the case of absence on the part of any Planning Board member, or in the event of vacancy on the board. The term of an associate member shall be three years. Associate members may be removed for cause by the Planning Board upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments.

6.10 Effective Date

The effective date of these By-Laws and amendments thereto shall be the date of their adoption or amendment by a town meeting, subject to the requirement of publication set forth in Chapter 40, Section 32 of the General Laws.

Chapter 808 Zoning Amendments added in August 1, 1979

TABLE 1

4.2 SCHEDULE OF DIMENSIONAL REGULATIONS

	Minimum Lot Dimension		Minimum Yard Dimensions (3) (feet)			Maximum Building Height		Maximum Lot Coverage
(4) District	Area (sq. ft.)	Frontage (feet)	Front	Side	Rear	(stories)	(feet)	(%)
* R-A	*45,000	*150	20	10	10	2 ½	35	25
**R-B	**60,000	*200	40	25	25	2½	35	20
G-B	60,000	200	40	25	25	2½	40	20
LI-A	60,000	150	40	25	25	3	40	40
LI-B	60,000	150	40	25	25	3	40	40
*B	*25,000	*125	20	10	10	3	40	40
VC-C	0	20	0 (5)	0	0	3	40	50

VC-R	10,000	75	20	10	10	2 1/2	35	50
I	60,000	150	40	25	25	3	40	30
W	(1)	(2)		(2)			(2)	(2)
**WSP	**90,000							

(1) The portion of any lot in the Wetland and Watershed Protection District may be used to meet the area and yard requirements for the Residential District in which the remainder of the lot is situated provided not less than twenty thousand (20,000) square feet of said lot is outside the Wetland and Watershed Protection District. Land in the Wetland and Watershed Protection District may not be used to meet area requirements in the Business and Industrial Districts.

(2) Not applicable.

(3) The yards defined herein shall, except for customary walks and driveways, be kept open and/or landscaped and shall not be used for the parking or storage of automobiles, trucks, recreational vehicles, trailers and boats.

(4) Includes accessory buildings.

(5) In the Village Center Commercial District (VC-C), the following additional front yard provisions shall apply:

(a) The maximum front yard setback permitted shall be twenty (20) feet.
(b) The Planning Board may, by Special Permit increase the required size of a front yard setback in the Village Center Commercial (VC-C) and Village Center Residential (VC-R) Districts.

*EFFECTIVE DATE Minimum Lot Dimensions July 19, 1973
Boston, Massachusetts

The foregoing amendment to Zoning By-Laws adopted under Article 10 is hereby approved.
Robert H. Quinn, Attorney General

** Minimum Lot Dimensions Amended – July 1, 1986, - Francis X. Bellotti, Attorney General

Ashburnham, MA: Zoning Map

RINDGE, NH

NEW IPSWICH, NH

WINCHENDON

ASHBY

FITCHBURG

GARDNER

WESTMINSTER

Wallace Pond

Lake Watatic

Watatic Pond

Sunset Lake

Mud Pond

Ward Pond

Marble Pond

Lower Naukeag Lake

Lincoln Pond

Stodge Meadow Pond

Winnekeag Lake

Upper Naukeag Lake

Cheshire Pond

Factory Village Pond

Lake Wompanoag

DATA SOURCES: MassGIS, MassDOT, the Town of Ashburnham and the MRPC. DISCLAIMER: The information depicted on this map is for planning purposes only. All data are representational and are not adequate for boundary definition, regulatory interpretation, or parcel-based analysis.

PREPARED BY:
Montachusett Regional Planning Commission
GIS Department, March 2011
R1427 Water Street
Fitchburg, MA 01420
Phone: 978-345-7376
E-mail: mrpc@mrpc.org

0 0.5 1 2 Miles

Legend

- Community Boundaries

Roadways
- US & State Routes
- Other Roads

RailLines
- Active RailLines

Water
- Streams & Rivers
- Intermittent Stream
- Lakes, Ponds & Reservoirs

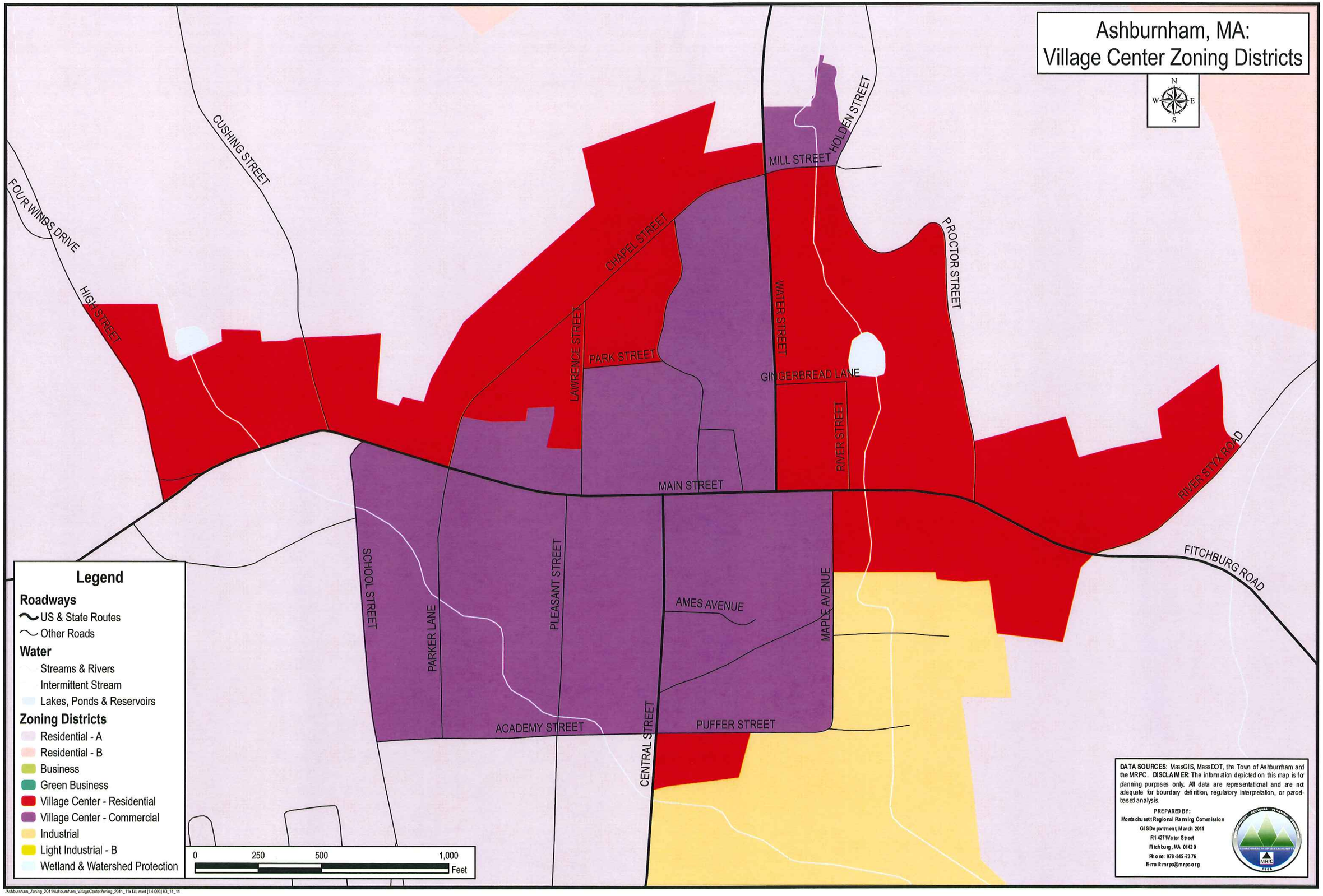
Zoning Districts
- Residential - A
- Residential - B
- Business
- Green Business
- Village Center - Residential
- Village Center - Commercial
- Industrial
- Light Industrial - B
- Wetland & Watershed Protection

Zoning Overlay Districts
- Wind Energy Facilities
- Light Industrial - A
- Adult Entertainment
- Water Supply Protection

HOLDEN STREET
MILL STREET
CUSHING STREET
PROCTOR STREET
MAIN STREET
FITCHBURG ROAD
SCHOOL STREET
PARKER LANE
PLEASANT STREET
AMES AVENUE
WATER AVENUE
ACADEMY STREET
PUFFER STREET
CENTRAL STREET
OLD NASHOBA ROAD

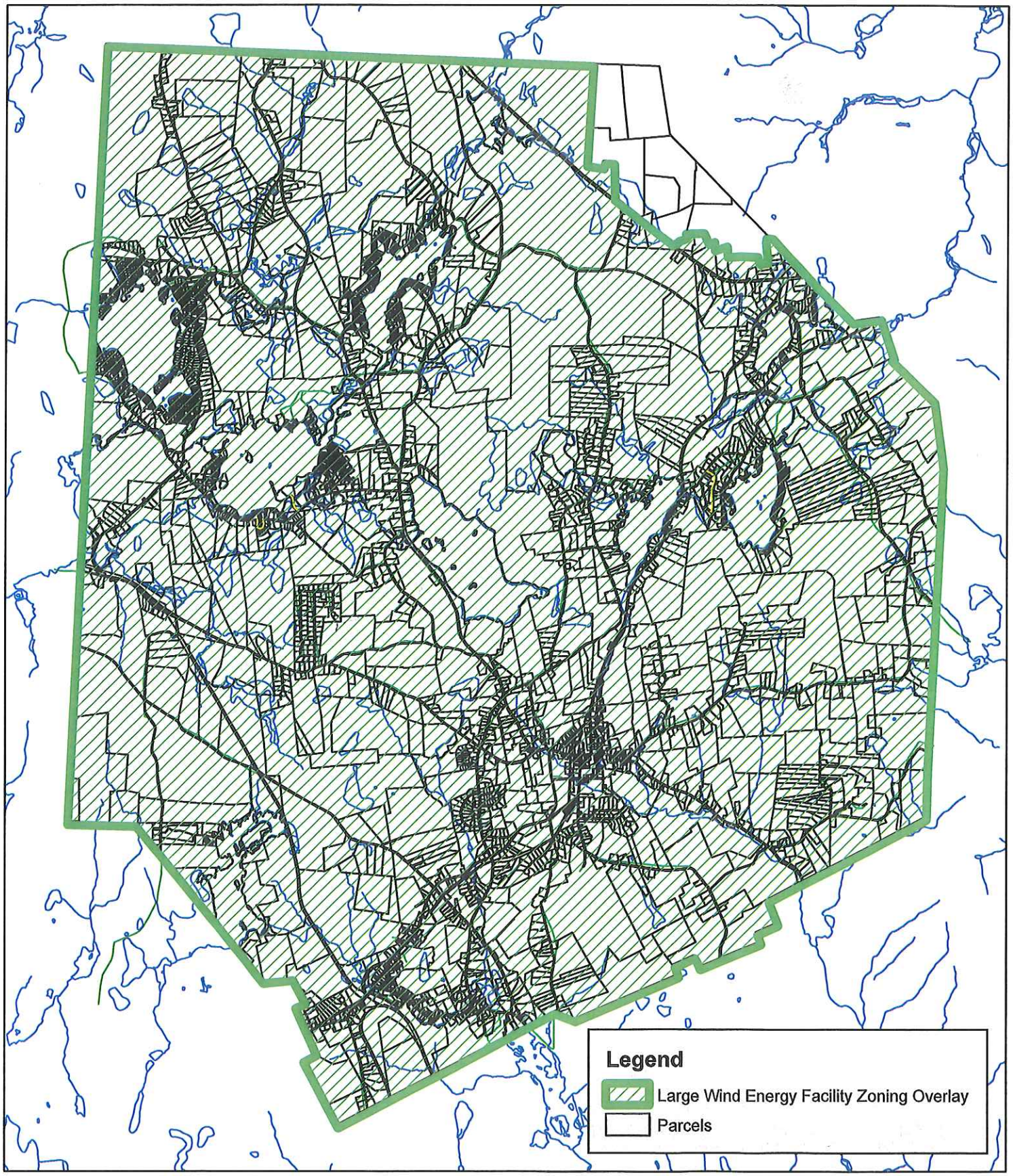
/Ashburnham_Zoning_2011/Ashburnham_Zoning_2011_30x40P.mxd [1:17,000] 03_11_11

Ashburnham, MA: Village Center Zoning Districts



/Ashburnham_Zoning_2011/Ashburnham_VillageCenterZoning_2011_11x17L.mxd [1:4,000] 03_11_11

Large Wind Energy Facility Zoning Overlay District



Prepared by Eric R. Smith, Ashburnham Town Planner
Sources: Parcels prepared by the
UMass Amherst Office of Geographic Information and Analysis, 2007; To be used for Planning purposes only.

0 2,500 5,000 10,000 15,000 20,000 Feet

Large Wind Energy Facilities Zoning Overlay District, established under Section 5.17.3(B) of the Ashburnham Zoning Bylaw, as approved by Ashburnham Fall 2008 Special Town Meeting, November 13, 2008