

# FIRST DRAFT (v2, 09-12-2017)

## REVISED TEWKSBURY ZONING BYLAW Table of Contents

1.	PURPOSE AND AUTHORITY .....	1-1
1.1	Title .....	1-1
1.2	Purposes .....	1-1
1.3	Authority.....	1-1
1.4	Applicability.....	1-1
1.5	Amendment .....	1-1
1.6	Severability.....	1-1
2.	DEFINITIONS .....	2-1
3.	ADMINISTRATION AND ENFORCEMENT.....	3-1
3.1	Building Commissioner .....	3-1
3.2	Enforcement; Penalty .....	3-1
3.3	Appeal.....	3-2
3.4	Zoning Board of Appeals .....	3-2
3.5	Special Permits .....	3-3
3.6	Site Plan Review.....	3-4
4.	ESTABLISHMENT OF DISTRICTS .....	4-1
4.1	Districts .....	4-1
4.2	Zoning Map .....	4-2
5.	DISTRICT REGULATIONS .....	5-1
5.1	General Provisions .....	5-1
5.2	Dimensional Regulations Applicable in All Districts.....	5-1
5.3	Use Regulations Applicable in All Districts .....	5-3
5.4	Residential Districts .....	5-5
5.5	Business Districts .....	5-8
5.6	Industrial Districts.....	5-13
5.7	Other Use Districts.....	5-16
5.8	Wireless Communications Facilities Overlay District .....	5-18
5.9	Floodplain District .....	5-22
5.10	Groundwater Protection District .....	5-25
5.11	Marijuana Dispensary Overlay District.....	5-30
6.	SITE DEVELOPMENT STANDARDS .....	6-1
6.1	Off-Street Parking and Loading Area Requirements .....	6-1
6.2	Signs .....	6-12
7.	SPECIAL USE REGULATIONS .....	7-1

7.1	Family Suite .....	7-1
7.2	Home Occupation .....	7-2
7.3	Adult Use Establishments .....	7-3
7.4	Large-Scale Ground Mounted Solar Photovoltaic Facilities .....	7-6
7.5	Removal of Sand, Gravel, Quarry or Other Earth Materials.....	7-10
8.	OTHER DEVELOPMENT REGULATIONS .....	8-1
8.1	Nonconforming Uses and Structures .....	8-1
8.2	Multifamily Dwellings.....	8-3
8.3	Affordable Housing Requirements.....	8-6
8.4	Open Space Residential Development .....	8-8

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## HOW TO NAVIGATE AND REVIEW THIS DRAFT

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### Introduction

This is a *draft* revision of the Tewksbury Zoning Bylaw. The scope of the revision is primarily a reorganization and update, with some substantive changes to introduce “best practices” in zoning today. The goals are to (1) create a document that is easy for users to navigate, (2) simplify and update the language of the Bylaw wherever possible, and (3) provide a structure that is both predictable and flexible enough to accommodate amendments over time. In addition, it is important to make sure the Bylaw conforms to current legal requirements.

The draft Bylaw has a different structure, format, and layout than the existing Bylaw. The draft divides the document into four parts and uses a color scheme to communicate the division of material:

<b>BASIC REQUIREMENTS</b>	Section 1. Purposes and Authority Section 2. Definitions
<b>ADMINISTRATIVE</b>	Section 3. Administration & Enforcement
<b>DISTRICTS &amp; USES</b>	Section 4. Establishment of Districts Section 5. District Regulations
<b>STANDARDS</b>	Section 6. Site Development Regulations Section 7. Special Use Regulations Section 8. Other Development Regulations

A color strip runs the full length of the right margin on each recto page to help readers understand where they are in the document. Tables in each section adopt the same color scheme.

All of the use and dimensional regulations for Tewksbury’s zoning districts are in one part of the bylaw – the section in blue. The districts are broken into logical subgroups and for each grouping, the district purposes, dimensional regulations, and use regulations are presented as a unit. This can be seen in the Table of Contents, e.g., Sections 5.4 (Residential Districts), 5.5 (Business Districts), and 5.6 (Other Districts) all follow the same structure. This arrangement should make it a little easier for property owners to find out what they can do with their land and what kinds of changes could happen in their neighborhoods.

All of the definitions that appear in scattered places in the Zoning Bylaw will be moved to Section 2, Definitions. Section 2 will contain the existing definitions (but rewritten and updated) and definitions for several new terms. Definitions that go together, such as the

terms currently defined in the Affordable Housing bylaw, are grouped in Section 2 and visually identifiable because of color codes.

# 1. PURPOSE AND AUTHORITY

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## 1.1 TITLE

This Bylaw shall be known and may be cited as the "Zoning Bylaw of the Town of Tewksbury, Massachusetts," hereinafter referred to as "this Bylaw."

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## 1.2 PURPOSES

This Bylaw is enacted in order to promote the general welfare of the Town of Tewksbury; to protect the health and safety of its inhabitants; to support the most appropriate use of land throughout the town, and to further the goals of the Tewksbury Master Plan, and to preserve and increase the amenities of the town, all as authorized but not limited by the provisions of the Massachusetts Zoning Act, G.L. c. 40A, as amended, and Section 2A of Chapter 808 of the Acts of 1975.

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## 1.3 AUTHORITY

This Bylaw is enacted under the authority of Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts and in accordance with G.L. c 40A, as amended.

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## 1.4 APPLICABILITY

All buildings or structures erected, constructed, reconstructed, altered, enlarged, or modified, and the use of all premises in the Town, after the effective date of this Bylaw shall conform with the provisions of this Bylaw. No building, structure, or land shall be used for any purpose or in any manner other than as expressly permitted within the district in which it is located. Where this Bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Bylaw shall control.

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## 1.5 AMENDMENT

This Bylaw may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided for in G.L. c. 40A, § 5.

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## 1.6 SEVERABILITY

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision herein.



## 2. DEFINITIONS

For the purpose of this Bylaw and unless the context of usage clearly indicates another meaning, the following terms shall have the meanings indicated herein. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The words "used" or "occupied" include the words "designed," "arranged," "intended," or "offered," to be used or occupied; the words "building," "structure," "lot," "land," or "premises" shall be construed as though followed by the words "or any portion thereof"; and the words "shall" is always mandatory and not merely directory.

Terms and words not defined herein but defined in the State Building Code shall have meanings given therein unless a contrary intention clearly appears in this Bylaw. Words not defined in either place shall have the meaning given in the most recent edition of Webster's Unabridged Dictionary.

RESERVED



## **3. ADMINISTRATION AND ENFORCEMENT**

### **3.1 BUILDING COMMISSIONER**

- A. The Building Commissioner shall interpret and enforce this Bylaw.
- B. The Building Commissioner may require such plans and specifications as necessary to determine compliance with all pertinent laws of the Commonwealth and may request advisory reviews by other municipal boards and officials.
- C. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed with regard to size or shape or principal use unless in compliance with this Bylaw, and all necessary permits have been received under federal, state, or local law.
- D. No premises, and no building erected, altered, or in any way changed as to construction or use under a permit or otherwise, shall be occupied or used without a certificate of occupancy issued by the Building Commissioner. No certificate of occupancy shall be issued until the premises, structure, and its uses and accessory uses comply in all respects with this Bylaw. If applicable, a site plan certificate of completion shall be issued.

### **3.2 ENFORCEMENT; PENALTY**

- A. The Building Commissioner or his/her designee shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this Bylaw and of permits, special permits, variances, and site plan approval issued thereunder, including notification of noncompliance and request for legal action through the Board of Selectmen to Town Counsel.
- B. The penalty for violation of any provision of this Bylaw, or of any conditions under which a permit, special permit, or site plan approval decision has been issued, shall be \$300 for each offense. Each day that each violation continues shall constitute a separate offense.
- C. The provisions of this Bylaw may also be enforced by non-criminal disposition, as provided in G.L. c. 40, § 21D. The penalty for each violation shall be \$50.00 for the second offense, \$100.00 for the third offense, and \$200.00 for the fourth and each subsequent offense.

### **3.3 APPEAL**

An appeal to the Board of Appeals may be taken by any person aggrieved by reason of inability to obtain a permit or enforcement action from the Building Commissioner, as provided in G.L. c. 40A, § 8, as amended.

### **3.4 ZONING BOARD OF APPEALS**

#### **3.4.1. Establishment.**

There shall be a Zoning Board of Appeals (“Board of Appeals”) consisting of three members and two associate members appointed by the Board of Selectmen. The appointment, service, and removal or replacement of members and associate members and other actions of the Board of Appeals shall be as provided for in G.L. c. 40A.

#### **3.4.2. Powers.**

The Board of Appeals shall have the following powers:

- A. To hear and decide appeals in accordance with G.L. c. 40A, § 8, as amended.
- B. To hear and decide, in accordance with the provisions of G.L. c. 40A, § 9, applications for special permits when designated as the special permit granting authority herein.
- C. To hear and decide, in accordance with the provisions of G.L. c. 40A, § 6, requests to change, alter, or extend lawfully pre-existing non-conforming uses and structures to the extent allowed by Section 5.5.
- D. To hear and decide petitions for variances in accordance with G.L. c. 40A, § 10.
- E. To hear and decide applications for comprehensive permits for construction of low- or moderate-income housing, as set forth in G.L. c. 40B, §§ 20-23.

#### **3.4.3. Rules and Regulations**

The Board of Appeals shall adopt rules and regulations for the administration of its powers and shall file a copy of such regulations with the Town Clerk. The Board’s regulations shall include rules for hiring outside consultants in accordance with G.L. c. 44, § 53G.

#### **3.4.4. Fees**

The Board of Appeals may adopt reasonable administrative fees and fees for employing outside consultants to assist the Board with its review of special permits, variances, administrative appeals, and applications for comprehensive permits in accordance with its regulations.

## **3.5 SPECIAL PERMITS**

### **3.5.1. Special Permit Granting Authority**

In this Bylaw, the Planning Board, Board of Appeals, and Board of Selectmen shall have the power to grant special permits. Unless specifically stated otherwise, the special permit granting authority shall be the Planning Board.

### **3.5.2. Procedures**

- A. Application for a special permit and accompanying plans and documentation shall be filed in accordance with the rules and regulations of the special permit granting authority and G.L. c. 40A.
- B. Public Hearing. The special permit granting authority shall hold a public hearing within 65 days of receipt of a special permit application, and shall issue a decision no later than 90 days from the date of the public hearing. Notification requirements for a public hearing shall be in accordance with G.L. c. 40A, § 11.

### **3.5.3. Criteria**

Special permits shall be granted by the special permit granting authority only upon its written determination that the benefit to the town and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

- A. Social, economic or community needs which are served by the proposal;
- B. Traffic flow and safety, including parking and loading;
- C. Adequacy of utilities and other public services;
- D. Neighborhood character and social structures;
- E. Impacts on the natural environment; and
- F. Potential fiscal impact, including impact on town services, tax base, and employment.

### **3.5.4. Development Impact Statement**

At the discretion of the special permit granting authority, the submittal of a development impact statement (DIS) may be required at the applicant's expense of the applicant.<sup>1</sup> The special permit granting authority may deny a special permit where the DIS discloses that the proposed use does not comply with the provisions of this Bylaw. The DIS shall conform to the special permit granting authority's rules and regulations and shall be prepared by an interdisciplinary team including a Registered Landscape Architect or Architect, a Registered

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<sup>1</sup> Has this provision been used? Do you want to retain it? If the Town wants to require a DIS from time to time, the requirement is really administrative/procedural and it doesn't need to be in the ZBL.

Professional or Civil Engineer, and a Registered Surveyor, and may include information to address some or all of the following topics:

- A. Physical environment;
- B. Surface water and subsurface conditions;
- C. Circulation systems;
- D. Support systems, e.g., municipal infrastructure and services; and
- E. Phasing.

### **3.5.5. Special Permit Conditions**

Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the special permit granting authority may deem necessary to serve the purposes of this Bylaw. Recording; Lapse

- A. Special permits shall not take effect until recorded with the Middlesex North Registry of Deeds or Registry District of the Land Court, as applicable, as provided in G.L. c. 40A, § 11. Proof of recording shall be presented to the Building Commissioner.
- B. Special permits shall lapse within three years, which shall not include such time required to pursue or await the determination of an appeal under G.L. c. 40A, § 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date except for good cause.

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## **3.6 SITE PLAN REVIEW**

### **3.6.1. Purposes**

- A. The Site Plan Review procedure is intended to protect the public interest by evaluating site plans for uses and structures that are permitted in the applicable zoning district, which may have some impacts within the site and on adjacent properties and streets; on pedestrian, cyclist and vehicular traffic; public services and infrastructure; abutting properties; and similar aspects of the site and adjoining properties.

It is intended to ensure:

1. compliance with all applicable requirements of this Bylaw;
2. that development proposals are examined in a comprehensive manner while also providing an efficient review process;
3. that the design and construction of development will have limited or no impacts on the surrounding areas;
4. that development is in harmony with the neighboring area;

5. the prevention or minimization of conflicts among uses;
  6. excellence in site planning practices and desirable site and building design;
  7. consistency in application of development review regulations and guidelines; and
  8. appropriate enforcement of the provisions of this Bylaw.
- B. Conditions. The Planning Board may impose reasonable conditions and mitigation measures in order that the proposed use or development meets the purposes of this section.

### **3.6.2. Applicability**

Site Plan Review shall be used for the evaluation of uses, deemed permitted uses, in accordance with Section 5, Use Regulations. No building permit for construction, exterior alteration, relocation, or change in use except where noted, shall be granted for any development or use requiring site plan review until the requirements of this Section 3.6 have been fulfilled and approval has been granted.

- A. Site Plan Review Required. A site plan review approval shall be required for the following:
1. All uses designated as Site Plan Review (SPR) uses in this Bylaw;
  2. All developments constructed under SPR approval where the area of any new structure or extension of an existing structure is 1000 square feet or larger, excluding single- and two-family houses, and any related accessory structures; or
  3. The construction or expansion of a parking lot of 10 or more spaces or the alteration of any entrance or exit, or any internal drive aisle.
- B. Minor Site Plan Review. A minor site plan review shall be required if the proposed construction or site alteration includes any of the following:
1. Exterior alteration of 1000 square feet or less of horizontal or vertical area that is limited to doors, awnings, railings, steps, handicapped ramps, small additions, landscaping changes, or other similar minor changes.
  2. Redevelopment or alteration of less than 1000 square feet that would result in increased trips, noise, site lighting or other actions that would increase impacts on abutting properties.

### **3.6.3. Site Plan Review with a Special Permit**

Where proposed construction, use change, or site alteration requires both a site plan review and a special permit issued by the Planning Board, the applicant shall submit both applications simultaneously and the Planning Board shall conduct its review of the applications contemporaneously.

### 3.6.4. Procedure and Decision

- A. Application. An application for SPR shall be submitted in accordance with the following requirements and all applicable requirements in the Planning Board's Rules and Regulations.
1. The application shall be submitted to the Town Clerk and the Community Development Department. Submission requirements shall be in accordance with the Planning Board's Rules and Regulations.
  2. Within 10 days of receipt of the application for site plan review, the Community Development Department shall transmit copies of the application and accompanying plans to the appropriate town boards, commissions, and departments. Such boards, commissions, and departments shall have 25 days to review and report in writing their recommendations to the Planning Board. The Planning Board shall not take final action on a site plan review until it has received these reports or the 25-day period has elapsed.
  3. The Planning Board shall schedule a public hearing for all site plan review applications to be held within 45 days of the date of submittal. The public hearing shall be advertised in the local newspaper once in each of two successive weeks, posted in town hall, and notice of the hearing shall be sent to property owners within 300 feet of the subject property.
  4. Within 25 days of the close of the hearing, the Planning Board shall act on the site plan review application and file its written decision with the Town Clerk. The applicant may request and the Planning Board may agree to an extension of the time limits in this section. Such agreement shall be in writing and shall be filed with the Town Clerk.
  5. A majority vote of a quorum of the Planning Board shall be required for a decision on a SPR application. The Board's written decision shall consist of either:
    - a. Approval of the site plan based on a determination that the proposed project meets all requirements of this Section 3.6.
    - b. Denial of the site plan based on a determination that either: i) insufficient information was submitted with the application in order for the Board to adequately review the proposal, or, ii) a determination that the project does not meet the requirements of this Section 3.6 and no reasonable conditions can accomplish the goal of having the application meet those requirements.
    - c. Approval of the site plan subject to conditions, modifications, and reasonable restrictions necessary to ensure compliance with the requirements of this Section 3.6 and to minimize or eliminate impacts on adjacent properties and streets.

6. The Planning Board shall file its written decision with the Town Clerk within 10 days of making that decision.
  7. The Planning Board shall endorse appropriate copies of the approved site plan. One endorsed copy, along with the decision of the Planning Board, shall be transmitted to the Building Commissioner prior to the issuance of a building or occupancy permit.
  8. The applicant shall comply with all conditions imposed by the Planning Board on the approval prior to issuance of the occupancy permit, unless otherwise provided for in the approval.
- B. Waivers. If requested by the applicant, the Planning Board may waive one or more of the submission requirements or the review criteria for site plan review. Any such waiver shall be based on just cause and a finding by the Planning Board that such waiver or waivers will not be detrimental to the purpose of this section.
- C. Review Criteria. All applications for site plan review shall meet the following criteria unless waived by the Planning Board.
1. Adequacy of the capacity of adjacent streets to accommodate the traffic to be generated by the proposed use.
  2. Adequacy of the public infrastructure to serve the project and the area in the immediate vicinity of the site.
  3. Harmonious relationship of the proposed structures and open space to the existing buildings, natural landscapes and other community assets in the adjacent area.
  4. Within the Town Center Overlay District, the Planning Board and the Department of Community Development shall refer to the Town Center Design Guidelines in their review of the site plan review application to evaluate the design of the proposed site, building architecture, landscaping and other site and buildings aspects covered by the Design Guidelines.
  5. The proposed use shall have adequate ingress and egress to the property, adequate travel lanes within the property, and shall maximize automotive, pedestrian and bicyclist safety and convenience, off-street parking and loading, traffic flow and control, and access for fire and safety equipment. The design of the site shall minimize hazardous turning movements.
  6. Convenience and safety for people with disabilities, including provision of appropriate parking spaces, handicapped ramps, and other facilities as required by federal and state law.
  7. Protection of adjacent and nearby properties from detrimental site impacts from drainage, flooding, undue and loud sounds, odors, dust, light pollution, and diminished air quality.

8. Protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and building exterior lighting, through the use of cut-off luminaries, light shields, lowered height of light poles, screening or similar solutions. Except for architectural and interior-lit signs, all exterior site lighting shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property and to eliminate direct or reflected glare perceptible to persons on any street or abutting property. All site lighting, including architectural, sign, and parking lot lighting, shall be kept extinguished outside of those business hours established under an approved plan, except for lighting determined to be necessary for site security and the safety of employees and visitors.
  9. Adequacy of parking and loading spaces.
  10. Adequacy of the methods for disposal of waste and recycling, including adequate screening of such facilities.
  11. Provision of appropriate landscaping and other site amenities to enhance the visual quality of the property, to provide a landscaped green space parallel to the property frontage, and to provide screening as necessary of adjacent properties.
  12. Adequacy of the soil erosion plan and any plan for protection of steep slopes, both during and after construction.
  13. If there is more than one building proposed, buildings shall relate harmoniously to each other in architectural style, site location, and building exits and entrances.
  14. Minimize impacts to tenants and adjacent properties through appropriate restrictions on the hours of operation, deliveries, noise levels, removal of trash and recyclables, or by other appropriate means as determined by the planning board.
  15. Demonstrated compliance with all applicable sections of this Bylaw.
- D. Site Plan Review Lapse. A site plan review approval shall lapse within three years from its issuance if substantial use or construction has not commenced within the three-year period, except for good cause. The Planning Board may grant a one-time extension of the approval for a one-year period upon a finding of good cause, at the written request of the applicant. Such request shall be submitted to the Planning Board prior to the expiration of the site plan review approval.
- E. Consultant Fees. The Planning Board may require an applicant to pay a consultant fee upon a finding that additional information is necessary prior to making a decision and such information requires the expertise of an outside consultant. Any applicant aggrieved by the board's selection of an outside consultant may appeal such decision to the Board of Selectmen. Such appeal shall be limited to: a) a claim that the consultant has a conflict of interest, or b) the consultant either does not possess an educational degree in or related to the field at issue or does not have three or more

years of practice in or related to the field. Any unused portion of the fee shall be returned to the applicant.

- F. Bond. For the purposes of securing performance of all proposed work, the Planning Board may require the submission of any of the following: a) a performance bond; b) deposit of money; c) bank passbook; or, d) letter of credit; in an amount determined by the Planning Board to be sufficient to cover the cost of all or a portion of the required improvements.
- G. Appeal. Any person aggrieved by a decision of the Planning Board on a site plan review application may appeal such decision within 20 days of the date the decision was filed with the Town Clerk, in accordance with G.L. c. 40A, § 17.

### **3.6.5. Minor Site Plan Review**

- A. Administrative Review - The Department of Community Development is authorized to review and act on a Minor Site Plan review application. The Director may include reasonable conditions as part of any approval.
- B. Minor Site Plan Review Submittal Procedures. The Applicant shall submit to the Community Development Department, one electronic copy and six sets of plans showing the following:
  - 1. A written narrative explaining the proposed changes;
  - 2. Photographs of the existing site or area to be altered; and,
  - 3. A rendering, site plan, plot plan or sketch
- C. Review & Referral to Planning Board. The Department of Community Development shall submit copies of the application and plans to the appropriate town departments for their review and comments. They shall have 25 days to respond with comments. The Department of Community Development may choose to forward any minor site plan review application to the Planning Board, within 45 days of the submission of the application, for Planning Board review and decision. In the event that the Department of Community Development refers a minor site plan review application to the Planning Board, the Planning Board shall hold a public hearing with notice and issue a written decision to approve, approve with conditions, or deny the site plan within thirty (30) days of receipt from the DPCD.
- D. Decision. The Department of Community Development's decision to approve, approve with conditions, or refer the plan to the Planning Board shall be in writing, and shall be made within 45 days of receipt of a complete application for minor site plan review. The Director shall file a copy of the decision with the Town Clerk and provide the applicant a copy of the decision.
- E. Building Permit. The Minor Site Plan Review application shall not be considered complete, and a building or occupancy permit shall not be issued, until a written approval is issued by the Department of Community Development.

- F. Appeal. Any person aggrieved by a decision of the Department of Community Development on a minor site plan review application may appeal such decision to the Planning Board within 20 days of the date the decision was filed with the Town Clerk.

**3.6.6. Site Plan Review Modifications**

- A. Major Modification. Requests for major modifications to a site plan review approval shall be processed in accordance with the same procedures as an original SPR application, unless the Department of Community Development determines that the proposed modifications qualify as a Minor Modification under Section 3.6.6B.

The following changes are deemed to constitute a Major Modification:

1. any relocation or shifting of structures or parking areas;
2. any increase in the gross floor area of structures greater than 1000 square feet;
3. any increase in parking areas by 10 or more spaces
4. any changes that require additional water or sewage use or the relocation of utilities;
5. any increase of impervious area by more than 250 square feet; or
6. any substantial changes to the architecture of the structures, including changes in building materials, design, and colors.

- B. Minor Modification. Any change that is not listed under section 3.6.6A above may be considered for a Minor Modification review and approval by the Department of Community Development. In addition, a proposed change may qualify as a Minor Modification, even if it is listed under Section 3.6.6A, if it would not substantially alter the concept of the approved plan in terms of the qualities of the specific location, the proposed land use, the design of building form, the approved building materials and details, site grading, entrance and egress locations, site location and design characteristics, landscaping plans, traffic circulation, and lighting plan.<sup>2</sup>

The Department of Community Development may require that a proposal for a minor modification be required to submit a major modification request to the Planning Board for review and decision.

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<sup>2</sup> POLICY ISSUE: This paragraph needs to clarify who has authority to decide if a change qualifies for minor modification review.

## 4. ESTABLISHMENT OF DISTRICTS

### 4.1 DISTRICTS

For purposes of this Bylaw, the Town of Tewksbury is divided into the following districts:

#### 4.1.1. Use Districts

- A. Residential
  - 1. Residence 40 District (R40)
  - 2. Village Residential
  - 3. Multiple Residence District (MR)
- B. Business
  - 1. Town Center (TC)
  - 2. Village Mixed Use (VMU)
  - 3. South Business (SB)
  - 4. West Side Neighborhood (WSN)
  - 5. General Business (GB)
  - 6. Limited Business (LB)
- C. Office-Industrial
  - 1. Office-Research (OR)
  - 2. Industrial 1 (I1)
  - 3. Industrial 2 (I2)
- D. Other Districts
  - 1. Transitional (TD)
  - 2. Farming (FA)
  - 3. Municipal (M)
  - 4. Park (P)

#### 4.1.2. Overlay Districts

- A. Wireless Communications Facilities
- B. Flood Plain District

- C. Ground Water Protection District
- D. Marijuana Dispensary

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## **4.2 ZONING MAP**

Zoning districts are shown on a map entitled "Zoning Map of the Town of Tewksbury" (the Zoning Map) on file in the Office of the Town Clerk. The district boundaries shown on the Zoning Map are part of this Bylaw. Changes to the Zoning District boundaries are made the same way as amendments to the text of the Zoning Bylaw are made. The Zoning Map may include geographical features, streets, notations, and such other information to keep the map current and to facilitate orientation.

The Flood Plain District includes all special flood hazard areas within the Town of Tewksbury designated as Zone A and AE, on the Middlesex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Middlesex County FIRM that are wholly or partially within the Town of Tewksbury are panel numbers 25017C0142E, 25017C0144E, 25017C0163E, 25017C0164E, 25017C0276F, 25017C0277F, 25017C0278F, 25017C0279F, 25017C0281F and 25017C0283F dated July 6, 2016; and 25017C0256F, 25017C0257F, and 25017C0259F dated July 6, 2016 or most recent maps as approved by FEMA. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Middlesex County Flood Insurance Study (FIS) report dated July 6, 2016 or most recent maps approved by FEMA. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner, Conservation Commission and the Town Engineer.

### **4.2.1. Interpretation of District Boundaries**

The location of district boundaries shown on the Zoning Map shall be determined as follows:

- A. Where the boundary lines as shown on the map as approximately following the street lines, of public and private ways or railways, the centerlines of such ways shall be the boundary lines.
- B. Where the boundary lines are shown approximately on the location of property lot lines, and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the boundary lines.
- C. Boundary lines located outside of street lines and shown approximately parallel thereto shall be regarded as parallel to such street lines. Dimensions shown in figures on the map between boundary lines and street lines are the distance in feet them; such distances being measured at right angles to the street lines unless otherwise indicated.

- D. In all cases not covered by other provisions of this Section 4.2.1, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said map, by the use of identifications as shown on the map, or by the scale of the map.
- E. Where the district boundary line follows a stream, lake or other body of water, said boundary line shall be construed to be at the thread or channel of the stream; or at the limit of the jurisdiction of the Town of Tewksbury, unless otherwise indicated.
- F. Where a district boundary line divides any lot existing at the time the line is adopted, the regulations of any district in which the lot has frontage on a street may be extended not more than 20 feet into the other district.
- G. Where physical or cultural features existing on the ground are at variance with those shown on the official map, or in other circumstances not covered by the above subsections, the Planning Board shall interpret the district boundaries.
- H. Unless otherwise zoned, the General Business District along portions of Main Street shall be 291 feet deep along each side of Main Street, where the frontage of a lot is on Main Street.
- I. Whenever any uncertainty exists as to the exact location of a boundary line, the location of such line shall be determined by the Building Commissioner, provided, however, that any person aggrieved by his decision may appeal to the Board of Appeals.



## 5. DISTRICT REGULATIONS

### 5.1 GENERAL PROVISIONS

No building or structure shall be erected and no building or structure, or land or water area shall be used for any purpose or in any manner except in accordance with this Bylaw.

### 5.2 DIMENSIONAL REGULATIONS APPLICABLE IN ALL DISTRICTS

#### 5.2.1. Lots

- A. Except as otherwise provided in this Bylaw, not more than one principal structure may be placed on any lot.
- B. No existing conforming or nonconforming lot shall be changed in size or shape except through a public land taking or donation for road widening, drainage, or utility improvements or except where otherwise permitted herein, so as to create a nonconformity or increase the degree of nonconformity that presently exists. If land is subdivided, conveyed, or otherwise transferred in violation of this Section 5, no building or other permit shall be issued for the transferred land until the lot retained meets the requirements of this Bylaw.
- C. Lots of 10,000 square feet or less on which the existing primary residence was erected prior to March 18, 1992, may reduce the 15-ft. side and rear setback requirement to 10 feet providing proof is submitted to the Building Commissioner that the lot existed prior to March 18, 1992.
- D. Not more than 50 percent of the required minimum lot area shall be a wetland resource area subject to protection under G.L. c. 131, s. 40. Proposed structures shall be located on the upland portion of the lot.

#### 5.2.2. Interpretation of Dimensional Tables

Standards in the district dimensional and density tables in this Section 5 shall be interpreted as follows.

- A. The front yard setback shall be measured from the front building line of any structure to the street line. All structures on streets less than 40 feet wide shall be set back a minimum of 45 feet minimum from the street centerline. Side and rear yards shall be measured from any structure used for a principal use to the nearest lot line, except where the lot line is a street, i.e., a corner lot. In this case, the side setback shall be as required for front yard setback.
- B. No accessory building or structure, except a permitted sign or roadside stand, shall be located within a required front yard setback.

- C. A detached accessory building or structure shall be located on the same lot and behind the front building line of the principal building, provided that not more than 25 percent of the required yard area shall be so occupied,<sup>3</sup> and further provided that an accessory structure shall not be located nearer than 10 feet from the principal building and at least 10 feet from any side or rear lot line.
- D. An accessory building attached to its principal building or within 10 feet of it shall be considered an integral part thereof and as such shall be subject to the front, side, and rear yard requirements applicable to the principal building.
- E. In all districts, no lot shall be less than 40 feet wide in any location except in a portion of the lot where two lines meet at a point. In addition, no lot shall have more than one foot of perimeter for every "Z" square feet of lot area, where "Z" is determined by the following:<sup>4</sup>
  - 1. Lot size of one acre or larger, but less than two acres; Z = 39.6
  - 2. Lot size two acres or larger, but less than three acres; Z = 55.9
  - 3. Lot size three acres or larger, but less than four acres; Z = 68.5
  - 4. Lot size four acres or larger, but less than five acres; Z = 79.1
  - 5. Lot size five acres or larger, but less than seven acres; Z = 88.4
  - 6. Lot size seven acres or larger, but less than ten acres; Z = 104.6
  - 7. Lot size ten acres or larger; Z = 125.0

### 5.2.3. Building Height

The limitations in height in feet shall not apply to chimneys, ventilators, skylights, tanks, bulkheads, penthouses, towers, and other building features usually carried above roofs if such features are not used for living purposes; provided, however, that the Board of Appeals may grant a special permit for such features higher than 50 feet. This provision shall not apply to wireless communications facilities under the Federal Telecommunications Act or to spires or steeples associated with a religious use.

### 5.2.4. Corner Lot Clearance

On corner lots, no structures, fence, tree or shrub shall prevent vision clearance in the space between two and eight feet above ground, and such provisions shall apply to the space

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<sup>3</sup> This is in Tewksbury's existing ZBL. It's confusing, needs discussion.

<sup>4</sup> I am inclined to recommend a lot shape formula that's easier for the average person to understand, e.g., the imaginary circle rule, the purpose of which is to ensure a reasonable front yard and meaningful access through the frontage of the lot, or a Shape Factor not exceeding 35, based on this formula:  $P^2/A$ . I think the whole issue of why you have this requirement in the first place needs a little discussion because we could end up offering an alternative that doesn't really get at what you want to accomplish here.

between the corner and the line joining the two points 15 feet from the corner, measured on the lot lines.

## **5.3 USE REGULATIONS APPLICABLE IN ALL DISTRICTS**

### **5.3.1. Permitted in All Districts**

The following uses are permitted in all districts:

- A. Federal government use.
- B. State government uses to the extent that this Bylaw would prohibit the exercise of an essential government function.
- C. Uses to the extent protected or exempt pursuant to G.L. c. 40A, § 3 or other state law.
- D. Municipal parks and playgrounds.

### **5.3.2. Prohibited Uses**

- A. Any use not listed in the district use tables in Section 5 or otherwise allowable under the provisions of this Bylaw shall be deemed prohibited.
- B. All uses that pose a present or potential hazard to human health, safety, welfare, or the environment through emission of smoke, particulate matter, noise or vibration, or through fire or explosive hazard, or glare, are expressly prohibited in all districts.

### **5.3.3. Classification under More than One Use**

Where an activity may be classified as more than one of the principal uses listed in the use tables in this Section 5, the more specific classification shall determine permissibility. If equally specific, the more restrictive shall govern.

### **5.3.4. Accessory Uses; General**

- A. An accessory use shall not alter the character of the premises on which it is located or have an adverse impact on the surrounding area.
- B. Permitted accessory uses. The following accessory uses are specifically permitted as of right or by special permit in any district:
  - 1. Accessory scientific uses. Whether or not located on the same parcel as activities permitted as a matter of right, uses that are necessary in connection with scientific research or scientific development or related production may be allowed by special permit from the Planning Board provided the Board finds that the proposed use does not substantially derogate from the public good.
  - 2. Animals accessory to dwellings. Animals kept as an accessory use at a residence shall conform to the regulations of the Tewksbury Board of Health.

3. Boarders in single-family dwelling. The renting of rooms or furnishing of board to not more than two people in an owner-occupied single-family dwelling shall be a permitted accessory use.
- C. Nonresidential accessory uses.
1. Any use permitted as a principal use is also permitted as an accessory use, unless allowed elsewhere in this Bylaw, provided such use is customarily incidental to the main or principal building or use of the land. Any use authorized as a principal use by special permit may also be authorized as an accessory use by special permit provided such use is customarily incidental to the main or principal building or use of the land. Accessory uses are permitted only in accordance with lawfully existing principal uses. In all instances where site plan review is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds in Section 3.4 shall also require site plan review.
  2. The outdoor display and/or storage of goods and merchandise for sale is permitted only when such display and/or storage is wholly incidental and secondary to the primary use conducted within the permanent structure on the lot. No such display and/or storage may occur in delineated parking spaces, traffic lanes, crosswalks, sidewalks or public ways. No additional signs are permitted except as otherwise provided herein.
- D. Prohibited accessory uses. The following accessory uses are specifically prohibited.<sup>5</sup>
1. Unregistered vehicles. No more than one unregistered vehicle may be placed, parked or maintained on any property in Tewksbury in any district unless the property owner has a Class I, II, or III license in accordance with G.L. c. 140, §§ 57-69 inclusive. No unregistered motor vehicle may be stored or maintained on any premises within 50 feet from a street, public way, or way laid out on a recorded plan unless authorized by a special permit from the Board of Appeals.
  2. Mobile homes or trailers. No trailer, trailer coach, trailer coach parks, mobile home, or other closed vehicle furnished for housekeeping and designed to be pulled behind another vehicle shall cause the same to be placed upon any premises in any district in Tewksbury except when a residence destroyed by fire or natural disaster is being rebuilt in accordance with G.L. c.40A, § 3. However, nothing in this section shall prevent the Building Commissioner from granting permission to locate a mobile home or trailer home on a construction site for use as a temporary office for not more than six months. A recreational camper or mobile trailer used only for recreational purposes is a permitted accessory residential use provided that it shall not be inhabited or used as a dwelling.

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<sup>5</sup> We kept this section because we assume that deleting it is more trouble than it's worth, but you really do not need to list the prohibited uses. Unless specifically permitted, they are prohibited.

3. Where accessory to a principal residential use, the following are prohibited:
  - a. Commercial kennels;
  - b. Contractor's yard for the storage of building materials, equipment, and/or commercial vehicles over 10,000 pounds;
  - c. Commercial landscaping equipment, materials, supplies, and/or commercial vehicles over 10,000 pounds;
  - d. Commercial auto repair or service.

## **5.4 RESIDENTIAL DISTRICTS**

### **5.4.1. Districts and Purposes**

The Town has established three residential districts to accommodate a variety of single-family, two-family, and multi-family dwellings, as well as offices in some cases, in locations that are appropriate for the permitted uses and density of development. The boundaries of the districts are as shown on the Zoning Map.

- A. Farming (FA). The Farming district is the lowest-density district in Tewksbury. It includes the historic Tewksbury State Hospital property and surrounding agricultural lands near the center of town. Development in this district is limited to single-family homes on relatively large lots and some residential accessory uses.
- B. Residence 40 (R40). The R40 district is a low-density residential district intended primarily for development of single-family residential development. The Town discourages intensive land uses, uses that would detract from the single-family residential character of R40 neighborhoods, and uses that would otherwise interfere with the intent of this Bylaw.
- C. Multiple Residence (MR). The MR district occurs in nodes along Main Street and other main roads in Tewksbury. This district provides for townhouse and multifamily condominium development to ensure that Tewksbury has a variety of housing opportunities for young and senior citizens alike, including affordable housing. All principal uses except single-family and two-family dwellings require Site Plan Review with design review by the Planning Board.
- D. Village Residential (VR). The VR district is located in nodes along Main Street approaching the Town Center and around other key intersections on Route 38. It is intended to accommodate a mix of uses, primarily residential, at a higher density than the Town allows in R40 single-family neighborhoods. The higher residential density in VR is designed to encourage compact neighborhoods close to goods and services and the town center, and to encourage new, higher-value mixed-use development in these locations. To promote high-quality architectural and site design in these

compact neighborhoods, all principal uses except single-family and two-family dwellings require Site Plan Review with design review by the Planning Board.

**5.4.2. Dimensional and Density Requirements**

The dimensional and density requirements in this Section apply to principal and accessory uses and structures in the Residential districts. Where exceptions and additional requirements apply to a district or set of districts, they are placed immediately following the tables to which they relate. Refer to Sec. 5.2 for interpretive guidance.

LEGEND FOR TABLE  
 N/A Not applicable  
 sf square feet  
 ft feet  
 L length  
 H height  
 W width

DISTRICT	Minimum Lot Area	Minimum Frontage (Ft)	Minimum/Maximum Front Setback (Ft)	Minimum Side & Rear Setbacks (Ft)
FA	1.5 acres	150	50/NA	15
R-40	1.0 acre	150	25/NA	15
MR	1.0 acre 4.0 acres for MF housing	150 <sup>A</sup>	25 <sup>B</sup> NA	15
VR	7,500 sq. ft.	50	20/NA	Combined 10
DISTRICT	Maximum Height (Stories)	Maximum Height (Ft)	Minimum Open Space (% Lot Area)	Maximum Building Coverage (% Lot Area)
FA	2.5	35	N/A	20%
R-40	2.5	35	N/A	15% <sup>C</sup>
MR	3.0	45	20%	N/A
VR	2.5	35	15%	30%

NOTES:  
<sup>A</sup> May be reduced to 40 feet by special permit.  
<sup>B</sup> Does not apply to multifamily dwellings by special permit.  
<sup>C</sup> For a lawfully preexisting lot with at least 15,000 sq. ft. of land, the maximum building coverage shall be 20%.

**5.4.3. Use Regulations for Residential Districts**

LEGEND FOR TABLE  
 Y Permitted  
 Y/SP Permitted if conforms to all standards for the allowed use; otherwise requires a Special Permit from the Board of Appeals  
 SP Special Permit, Board of Appeals  
 PB Special Permit, Planning Board  
 BOS Special Permit, Board of Selectmen  
 N Prohibited

CLASS OF USE	FA	R-40	MR	VR
<b>CONSERVATION, RECREATION</b>				
Commercial agriculture, non-exempt, including farm stand	Y	N	N	N
Forestry management	Y	Y	N	N
Non-profit outdoor recreation, e.g., swimming, hiking, picnicking, fishing	Y	SP	N	N
Camp, day camp only, e.g., summer camp for children	Y	SP	N	N
<b>RESIDENTIAL</b>				
<b>Residential: Principal</b>				
Single-family dwelling, detached	Y	Y	Y	Y
Single-family dwelling, attached	N	N	SP	PB
Two-family dwelling	N	N	Y	Y
Multifamily dwelling, up to 8 units	N	N	PB	Y
Multifamily dwelling, 9 or more units	N	N	PB	PB
Dwelling units above the ground floor of a commercial building	N	N	N	Y
Artist loft or live/work units	N	N	PB	Y
Open Space Residential Development (OSRD)	PB	PB	PB	N
Congregate dwelling	N	N	Y	Y
Assisted living residence	PB	PB	Y	Y
Continuing care retirement community	PB	PB	PB	PB
<b>Residential: Accessory</b>				
Family suite; see Sec. X.XX	Y/SP	Y/SP	Y/SP	Y/SP
Accessory dwelling, interior	Y	SP	Y	Y
Accessory dwelling, detached	N	SP	Y	Y
Home occupation; see Sec. X.XX	Y/SP	Y/SP	Y/SP	Y/SP
Family day care, small	Y	Y	Y	Y
Family day care, large	SP	SP	SP	SP
Room and board for not more than two borders	Y	Y	Y	Y
Parking of one light commercial vehicle	Y	Y	Y	Y
Parking of two or more light commercial vehicles	SP	SP	SP	SP
<b>PUBLIC, INSTITUTIONAL, PHILANTHROPIC</b>				
Municipal facility	Y	Y	Y	Y
Cemetery, private, which may include a crematorium	SP	SP	N	N
Hospital	PB	PB	N	N
Nursing home, rest home, similar long-term residential-congregate care, which may include accessory adult day care	PB	PB	PB	N
Adult day care and/or respite care services	PB	PB	PB	PB
Function hall, community center, similar non-commercial place of assembly	PB	N	N	PB
<b>COMMERCIAL</b>				
<b>Retail</b>				
Retail store				
• Up to 1,500 sq. ft.	N	N	N	Y
• Up to 7,500 sq. ft.	N	N	N	SP
Greenhouse	N	N	N	SP

CLASS OF USE	FA	R-40	MR	VR
Gasoline service station, which may include a convenience store not exceeding 2,500 sq. ft. and/or accessory light auto service, subject to Sec .XX. <sup>6</sup>	N	Y	N	N
<b>Office, Professional Use</b>				
Personal service establishment	N	N	N	Y
Business or professional office, excluding medical office	N	N	N	Y
Bank	N	N	N	Y
<b>Hospitality, Food Service</b>				
Restaurant with drive-through service, not exceeding 4,000 sq. ft.	N	N	N	PB
Deli, ice cream shop, or similar small food service establishment, which may include walk-in/take-out service; not exceeding 1,200 sq. ft.	N	N	N	PB
Bakery, craft shop, custom manufacturing, limited to production of goods sold at retail only on the premises	N	N	N	PB
Bed & breakfast	N	SP	SP	Y
Inn	N	N	N	Y
Hotel or motel	N	N	N	PB
<b>Public Services</b>				
Sheltered bus stop	SP	SP	SP	SP
Essential services	PB	PB	PB	PB
<b>Culture, Entertainment Uses</b>				
Museum or art gallery	PB	N	N	Y
Cinema	N	N	N	PB
Theatre for live performing arts (dance, music, dramatic productions, etc.)	N	N	N	PB
<b>Commercial Recreation</b>				
Bowling, ice skating, roller skating rink	N	N	N	PB
Gym or athletic club, indoor tennis club	N	N	N	PB
Golf course	N	SP	N	N
Commercial tennis court, non-exempt riding stable	N	SP	SP	SP
Camping facility with accommodations for tents, camp trailers/recreational vehicles, travel trailers	SP	SP	SP	N
<b>Other</b>				
Veterinarian, animal hospital	SP	N	N	PB
Kennel	SP	SP	SP	SP

## 5.5 BUSINESS DISTRICTS

### 5.5.1. Districts and Purposes

The Town has established seven business districts to accommodate a variety of commercial, residential, office, and in some cases light industrial uses in settings that range from Main Street to secondary roads and transitional areas between districts. In most cases, the uses

<sup>6</sup> Limited to specified distances from major highway intersections. Can be handled through special regulations for the use. No need for the overlay.

permitted by right will require Site Plan Review by the Planning Board under Sec. 3.4 before a building permit can be issued. The boundaries of the business districts are as shown on the Zoning Map.

- A. Transition District (TD). Though classified as a Business District, the Transition District is a mixed-use district that encourages development of a variety of residential uses with or adjacent to small-scale goods and services.
- B. Mixed-Use Village (MUV). The MUV is a mixed-use business district located intermittently along Route 38 outside the Town Center. It functions as a commercial gateway and neighborhood business zone, so the intended physical form and use mix in this district are intentionally set to support and enhance, not duplicate, the historic Town Center.
- C. Town Center (TC). The Town Center is the civic, social, cultural, and governmental hub of the Town. Development here is intended to respect and enhance the historic architectural fabric of the Town Center, to provide a high quality of goods and services, particularly specialty goods, and to encourage shopping, socializing, and lingering in the district.
- D. Limited Business (LB). The Limited Business District is a small crossroads business district serving residents of South Tewksbury. It provides for a limited mix of business uses and residential uses at a lower density than the Town allows in the commercial and mixed-use districts along Route 38.
- E. Westside Neighborhood Business (WNB). The Westside Neighborhood Business district is located along the Woburn Street corridor, which services neighborhoods as well as commuter traffic using Interstate I-495 and the commuter train station nearby in the Billerica. This district is intended to promote well-designed, pedestrian-friendly small business development, attract new investment in larger sits along the corridor, and support the Town's tax base.
- F. South Village Business (SB). The South Village Business District includes a node of neighborhood commercial activity around the Shawsheen Street/Route 38 and south Street/Route 38 intersections. It is intended to support small-scale, attractive, neighborhood-focused development and business uses that do not require high traffic volume locations.
- G. General Business (GB). The General Business district includes portions of Main Street/Route 38 that are not zoned for other purposes. This district can support a variety of stores and restaurants serving local and regional customers, and it is intended to provide a significant contribution to the Town's tax base.

#### **5.5.2. Dimensional and Density Regulations**

The dimensional and density requirements in this Section apply to principal and accessory uses and structures in the Business districts. Where exceptions and additional requirements

apply to a district or set of districts, they are placed immediately following the tables to which they relate. Refer to Sec. 5.2 for interpretive guidance.

LEGEND FOR TABLE  
 N/A Not applicable  
 sf square feet  
 ft feet  
 L length  
 H height  
 W width

DISTRICT	Minimum Lot Area	Minimum Frontage (Ft)	Minimum/Maximum Front Setback (Ft)	Minimum Side & Rear Setbacks (Ft)
TD	1.0 acre	150	25/NA	15
MUV	10,000 sq. ft.	50	20/40	Combined 10
TC	N/A	50	0/25	None
LB	1.0 acre	150	25/NA	15
WN	1.0 acre	150	25/NA	15
SB	15,000	100	25/40	15
GB	1.0 acre	150	40/60	15
DISTRICT	Maximum Height (Stories)	Maximum Height (Ft)	Minimum Open Space (% Lot Area)	Maximum Building Coverage (% Lot Area)
TD	2.5	35	35%	25%
MUV	3	45	20%	20%
TC	3	40	15%	30%
LB	2.5	35	25%	20%
WN	2.5	35	30%	25%
SB	3	40	30%	25%
GB	2.5	35	15%	30%

**5.5.3. Use Regulations for Business Districts**

CLASS OF USE	TD	MUV	TC	LB	WNB	SB	GC
<b>CONSERVATION, RECREATION</b>							
Commercial agriculture, non-exempt, including farm stand	SP	N	N	SP	SP	Y	SP
Municipal park, playground, playing field	Y	Y	Y	Y	Y	Y	Y
Game court	Y	PB	PB	Y	N	PB	Y
<b>RESIDENTIAL</b>							
Single-family dwelling, detached	Y	Y	Y	Y	PB	Y	N
Single-family dwelling, attached	PB	PB	Y	N	N	N	N
Two-family dwelling	PB	N	N	N	N	Y	N
Multifamily dwelling, up to 8 units	PB	PB	Y	PB	N	PB	PB
Multifamily dwelling, 9 or more units	PB	PB	PB	N	N	N	PB
Dwelling units above the ground floor of a commercial building	Y	Y	Y	Y	Y	Y	Y
Artist loft or live/work units	Y	Y	Y	PB	PB	Y	PB
Congregate dwelling	Y	PB	PB	N	PB	PB	N
Assisted living residence	PB	N	PB	N	N	PB	N
Continuing care retirement community	N	Y	N	N	N	N	N
<b>Residential Accessory Uses</b>							

<b>CLASS OF USE</b>	<b>TD</b>	<b>MUV</b>	<b>TC</b>	<b>LB</b>	<b>WNB</b>	<b>SB</b>	<b>GC</b>
Family suite	Y/SP	N	N	N	N	N	N
Accessory dwelling, interior	Y	Y	SP	N	PB	SP	N
Accessory dwelling, detached	SP	SP	SP	N	N	SP	N
Accessory home occupation; see Sec. X.XX	Y/SP	Y/SP	Y/SP	N	N	Y/SP	N
Accessory parking of one light commercial vehicle	Y	Y	Y	Y	Y	Y	Y
Accessory parking of two or more light commercial vehicles	SP	SP	SP	SP	SP	SP	SP
<b>INSTITUTIONAL, PHILANTHROPIC, EXEMPT</b>							
Municipal facility	Y	Y	Y	Y	Y	Y	Y
Hospital	N	N	N	N	N	N	PB
Nursing home, rest home, similar long-term residential-congregate care, which may include accessory adult day care	N	N	PB	N	N	PB	PB
Adult day care and/or respite care services	PB	N	PB	N	PB	PB	PB
Function hall, community center, similar non-commercial place of assembly	PB	PB	PB	N	N	PB	PB
<b>COMMERCIAL</b>							
<b>Retail</b>							
Retail store, up to 1,500 sq. ft.	Y	Y	Y	N	PB	Y	Y
Retail store, up to 7,500 sq. ft.	N	Y	Y	N	PB	Y	Y
Retail store, up to 15,000 sq. ft.	N	N	PB	N	N	Y	Y
Retail store, Over 15,000 sq. ft.	N	N	N	N	N	PB	PB
Shopping center	N	N	N	N	PB	PB	PB
Greenhouse	SP	SP	N	N	N	SP	SP
Automotive sales, leasing, and service, including sale of automotive supplies	N	PB	N	N	N	PB	PB
Gasoline service station, which may include a convenience store not exceeding 2,500 sq. ft. and/or accessory light auto service, subject to Sec. .XX. <sup>7</sup>	N	N	N	N	N	PB	PB
Car wash	N	N	N	N	N	PB	PB
Commercial parking lot or parking garage	N	N	PB	N	N	N	PB
Taxi or limousine service	N	SP	N	SP	N	SP	SP
<b>Office, Professional Use</b>							
Personal service establishment	Y	Y	Y	Y	PB	Y	Y
Business or professional office, excluding medical office	PB	Y	Y	Y	PB	Y	Y
Bank	PB	Y	Y	PB	PB	Y	Y
Medical, dental or other health service provider office, or outpatient health clinic	PB	PB	PB	PB	PB	PB	Y

<sup>7</sup> Limited to specified distances from major highway intersections. Can be handled through special regulations for the use. No need for the overlay.

CLASS OF USE	TD	MUV	TC	LB	WNB	SB	GC
<b>Hospitality, Food Service</b>							
Restaurant, which may include outdoor seating on an adjacent patio; no drive-through service	N	Y	Y	Y	PB	Y	Y
Restaurant with drive-through service, not exceeding 4,000 sq. ft.	N	PB	N	N	N	N	Y
Deli, ice cream shop, or similar small food service establishment, which may include walk-in/take-out service; not exceeding 1,200 sq. ft.	Y	Y	Y	Y	Y	Y	Y
Bakery, craft shop, or custom manufacturing limited to production of goods sold at retail only on the premises	Y	Y	Y	N	Y	Y	Y
Bed & breakfast	Y	Y	Y	Y	SP	Y	Y
Inn	N	Y	Y	PB	N	P	Y
Hotel or motel	N	PB	PB	N	N	N	PB
<b>Public Services</b>							
Postal service	PB	PB	Y	PB	N	Y	Y
Fraternal or membership organization; professional or trade organization	PB	Y	Y	PB	PB	Y	Y
Funeral home	N	PB	PB	N	N	PB	PB
Non-exempt educational use	N	PB	N	PB	PB	P	Y
Sheltered bus stop	SP	Y	Y	SP	SP	Y	Y
Essential services	PB	PB	PB	PB	PB	PB	PB
<b>Culture, Entertainment Uses</b>							
Museum or art gallery	Y	Y	Y	Y	Y	Y	Y
Cinema	N	PB	PB	N	N	PB	Y
Theatre for live performing arts (dance, music, dramatic productions, etc.)	PB	PB	PB	N	N	PB	Y
<b>Commercial Recreation</b>							
Bowling, ice skating, roller skating rink	N	PB	N	N	N	Y	Y
Gym or athletic club, indoor tennis club	PB	PB	N	PB	PB	Y	Y
Golf course	N	N	N	N	N	N	N
Commercial tennis court, non-exempt riding stable	N	SP	N	N	N	Y	Y
Miniature golf	N	N	N	N	N	N	PB
Camping facility with accommodations for tents, camp trailers/recreational vehicles, travel trailers	N	N	N	N	N	N	N
<b>Other</b>							
Veterinarian, animal hospital	PB	PB	PB	PB	PB	Y	Y
Kennel	N	N	N	N	N	N	SP
Adult use	N	N	N	N	N	N	N
Doggie day care	PB	N	N	PB	Y	PB	Y
<b>INDUSTRIAL</b>							
Warehouse/distribution facility	N	N	N	N	N	N	PB
Plant, storage, substations for public utilities, or storage and sale of heating fuel	N	N	N	N	N	N	PB
Retail showroom and sale of products manufactured on the premises	N	N	N	N	N	N	PB

CLASS OF USE	TD	MUV	TC	LB	WNB	SB	GC
Sale of lumber, farm supplies, similar products, including outdoor storage and sales	N	N	N	N	N	N	PB
Accessory dwelling for use as watchperson's quarters only	N	N	N	N	N	N	PB

## 5.6 INDUSTRIAL DISTRICTS

### 5.6.1. Districts and Purposes

The Town has established three districts for office and industrial development. The boundaries of the industrial districts are as shown on the Zoning Map.

- A. Office-Research (OR). The Office-Research District is intended for office park or technology park development. It generally encourages office, research and development, high tech, or bioscience uses, especially in "campus" style office and research parks that also offer amenities for employees. The Town discourages uses that would detract from and potentially conflict with the high-value development sought for this district.
- B. Industrial 1 (I1). The Industrial 1 district is a traditional industrial zone for a variety of office, manufacturing, warehouse and distribution, and related uses. Its main purposes are to encourage industries to locate and remain in Tewksbury. Uses that could create a high risk of conflict with industrial operations – mainly but not only residential uses – are prohibited.
- C. Industrial 2 (I2). The Industrial 2 district is a small district with use regulations very similar to those for I1 with a few exceptions, mainly that motor vehicle body repair facilities are allowed in I2 but not in I1. It is an industrial district and as such, it supports job creation and retention and is intended to enhance the Town's tax base. Uses that could create a high risk of conflict with industrial operations – mainly but not only residential uses – are prohibited.

### 5.6.2. Dimensional and Density Regulations

The dimensional and density requirements in this Section apply to principal and accessory uses and structures in the Business districts. Where exceptions and additional requirements apply to a district or set of districts, they are placed immediately following the tables to which they relate. Refer to Sec. 5.2 for interpretive guidance.

#### LEGEND FOR TABLE

N/A	Not applicable
ft	feet
L	length
H	height
W	width

DISTRICT	Minimum Lot Area	Minimum Frontage (Ft)	Minimum/Maximum Front Setback (Ft)	Minimum Side & Rear Setbacks (Ft)
OR	1.0 acre	150	50	50
I1	1.0 acre	150	50	50
I2	1.0 acre	150	50	50
DISTRICT	Maximum Height (Stories)	Maximum Height (Ft)	Minimum Open Space (% Lot Area)	Maximum Building Coverage (% Lot Area)
OR	5	60	25	40
I1	3	40	20	35
I2	3	40	20	35

**5.6.3. Use Regulations for Industrial/OR Districts**

CLASS OF USE	I1	I2	O/R
<b>CONSERVATION, RECREATION</b>			
Forestry management	SP	N	N
Municipal park, playground, playing field	Y	Y	Y
Game court	SP	SP	SP
<b>RESIDENTIAL</b>			
Multifamily dwelling, 9 or more units	N	N	PB
Assisted living residence	N	N	PB
Accessory parking of one light commercial vehicle	Y	Y	Y
Accessory parking of two or more light commercial vehicles	SP	SP	SP
<b>INSTITUTIONAL, PHILANTHROPIC, EXEMPT</b>			
Municipal facility	Y	Y	Y
Cemetery, private, which may include a crematorium	SP	SP	N
Hospital	PB	PB	PB
<b>COMMERCIAL</b>			
<b>Retail</b>			
Retail store, up to 15,000 sq. ft.	PB	PB	N
Retail store, Over 15,000 sq. ft.	PB	PB	N
Retail sale of alcoholic beverages	Y	PB	N
Greenhouse	PB	N	N
Gasoline service station, which may include a convenience store not exceeding 2,500 sq. ft. and/or accessory light auto service	PB	N	N
Auto body shop, auto repair facility	PB	N	N
Commercial parking lot or parking garage	Y	PB	Y
Taxi or limousine service	SP	SP	N
Office park or industrial support services and facilities; see Sec. X.XX <sup>8</sup>	N	N	Y

<sup>8</sup> Includes walk-in food services (ice cream, sandwich shop, coffee shop); restaurant under up to 4,000 sq. ft., no drive-through; personal services – up to an overall floor area cap, which needs discussion. This use would be limited to office/R&D park developments because several components are already listed as permitted uses in the industrial districts. The point is to provide for them in R&D while controlling the amount of non-R&D floor space.

<b>CLASS OF USE</b>	<b>I1</b>	<b>I2</b>	<b>O/R</b>
<b>Office, Professional Use</b>			
Business or professional office, excluding medical office	Y	Y	Y
Bank	Y	Y	Y
Medical, dental or other health service provider office, or outpatient health clinic	Y	Y	Y
<b>Hospitality, Food Service</b>			
Restaurant, which may include outdoor seating on an adjacent patio; no drive-through service	PB	PB	PB
Hotel or motel, with or without conference facilities	PB	PB	PB
<b>Public Services</b>			
Postal service	PB	PB	PB
Fraternal or membership organization; professional or trade organization	SP	SP	N
Funeral home	PB	PB	N
Non-exempt educational use	PB	PB	PB
Sheltered bus stop	Y	Y	Y
Essential services	PB	PB	PB
<b>Culture, Entertainment Uses</b>			
Museum or art gallery	Y	PB	Y
Cinema	Y	N	PB
Theatre for live performing arts (dance, music, dramatic productions, etc.)	Y	N	PB
<b>Commercial Recreation</b>			
Bowling, ice skating, roller skating rink	PB	PB	N
Gym or athletic club, indoor tennis club	Y	Y	PB
Commercial tennis court	PB	PB	PB
<b>Other</b>			
Adult use	PB	PB	N
Veterinarian, animal hospital	PB	PB	PB
Doggie day care	Y	PB	PB
<b>INDUSTRIAL</b>			
Research & development, laboratory, which may include accessory manufacturing of products in testing and development	Y	Y	Y
High-tech/biotech manufacturing	PB	PB	Y
Manufacturing	Y	N	N
Industrial campus master plan; See Sec. X.XX	PB	PB	PB
Machine, welding shop	Y	Y	N
Warehouse/distribution facility	Y	Y	N
Transportation terminal	PB	PB	N
Mining, extraction uses	PB	N	N
Plant, storage, substations for public utilities, or storage and sale of heating fuel	PB	PB	N
Retail showroom and sale of products manufactured on the premises	Y	Y	N
Contractor's yard	PB	N	N
Stone or monument works	PB	N	N
Sale of lumber, farm supplies, similar products, including outdoor storage and sales	PB	PB	N
Accessory dwelling for use as watchperson's quarters only	PB	PB	PB

## 5.7 OTHER USE DISTRICTS

The Town has established three other districts to serve specific purposes and meet specific community needs. These districts include the Transitional, Municipal, and Park districts, the boundaries of which are shown on the Zoning Map.

- A. Transitional (TD). The Transitional District is a small district comprised of about 15 on Route 38 south of the Town Center. It functions as a residential-limited neighborhood services area. The Town discourages uses that generate high traffic volumes or the level of activity normally associated with commercial areas.
- B. Municipal (M). The Municipal District is what its name implies: a zone intended primarily for government facilities and services. A limited number of other land uses are allowed by special permit.
- C. Park (P). The Park District, though similar to the Municipal District, is a somewhat more restrictive zone, intended primarily for parks and other types of public outdoor spaces.

### 5.7.2. Dimensional and Density Regulations

The dimensional and density requirements in this Section apply to principal and accessory uses and structures in the TD, M, and P districts. Where exceptions and additional requirements apply to a district or set of districts, they are placed immediately following the table. Refer to Sec. 5.2 for interpretive guidance.

DISTRICT	Minimum Lot Area	Minimum Frontage (Feet)	Minimum/Maximum Front Setback (Feet)	Minimum Side & Rear Setbacks (Feet)
TD	1.0 acre	150	25	15
M	1.0 acre	150	25	15
P	1.0 acre	150	50	15
DISTRICT	Maximum Height (Stories)	Maximum Height (Feet)	Minimum Open Space (% Lot Area)	Maximum Building Coverage (% Lot Area)
TD	2.5	35	20	15
M	---	35	----	----
P	2.5	35	----	----

### 5.7.3. Use Regulations for the TD, M, and P Districts

CLASS OF USE	TD	M	P
<b>CONSERVATION, RECREATION</b>			
Commercial agriculture, non-exempt, including farm stand	Y	Y	Y
Forestry management	Y	Y	Y
Non-profit outdoor recreation, e.g., swimming, hiking, picnicking, fishing	Y	Y	Y
Camp, day camp only, e.g., summer camp for children	Y	Y	Y

CLASS OF USE	TD	M	P
<b>RESIDENTIAL</b>			
<b>Residential: Principal</b>			
Single-family dwelling, detached	Y	N	N
Assisted living residence	N	PB	N
Continuing care retirement community	N	PB	N
<b>Residential: Accessory</b>			
Family suite; see Sec. X.XX	Y/SP	N	N
Home occupation; see Sec. X.XX	Y/SP	N	N
Family day care, small	Y	N	N
Parking of one light commercial vehicle	Y	Y	Y
Parking of two or more light commercial vehicles	SP	N	NP
<b>PUBLIC, INSTITUTIONAL, PHILANTHROPIC</b>			
Municipal facility	Y	Y	Y
Hospital	N	PB	N
Nursing home, rest home, similar long-term residential-congregate care, which may include accessory adult day care	PB	PB	PB
Adult day care and/or respite care services	PB	PB	PB
Function hall, community center, similar non-commercial place of assembly	PB	N	N
<b>COMMERCIAL</b>			
<b>Retail</b>			
Retail store			
• Up to 1,500 sq. ft.	PB	N	N
<b>Office, Professional Use</b>			
Personal service establishment	PB	N	N
Business or professional office, excluding medical office	Y	N	N
Bank	N	N	N
<b>Hospitality, Food Service</b>			
Restaurant with drive-through service, not exceeding 4,000 sq. ft.	N	N	N
Deli, ice cream shop, or similar small food service establishment, which may include walk-in/take-out service; not exceeding 1,200 sq. ft.	PB	N	N
Bakery, craft shop, custom manufacturing, limited to production of goods sold at retail only on the premises	PB	N	N
Bed & breakfast	Y	N	N
Inn	N	N	N
Hotel or motel	N	N	N
<b>Public Services</b>			
Non-exempt educational use	PB	N	PB
Sheltered bus stop	SP	SP	SP
Essential services	PB	PB	PB
<b>Culture, Entertainment Uses</b>			
Museum or art gallery	N	PB	N
Theatre for live performing arts (dance, music, dramatic productions, etc.)	N	PB	N
<b>Commercial Recreation</b>			
Golf course	N	PB	PB

CLASS OF USE	TD	M	P
Commercial tennis court, non-exempt riding stable	N	N	N
Camping facility with accommodations for tents, camp trailers/recreational vehicles, travel trailers	N	SP	SP

## 5.8 WIRELESS COMMUNICATIONS FACILITIES OVERLAY DISTRICT

### 5.8.1. Purpose

The purpose of this Section 5.8 is to provide for a special permit process for the siting of wireless communications facilities while minimizing adverse visual impacts on adjacent properties, residential neighborhoods, and areas of high scenic and artistic value; to limit the overall number and height of such facilities to what is essential to serve the public convenience and necessity; and to promote shared use of facilities to reduce the need for new facilities.

### 5.8.2. Applicability

- A. Towers and structures for Wireless Communication Facilities including a base station for a Distributed Antenna System (DAS) may be allowed only in:
  1. Municipal Districts, and additional Municipal land only as shown on the Wireless Communications Facilities Overlay District Map;
  2. Land within 200 feet of Interstate Routes 93 and 495 in Industrial Districts and the Office Research District, as shown on the Wireless Communications Facilities Overlay District Map;
  3. Electric power transmission line easements or lands where there are electric transmission lines on existing structures or poles with a height of at least 50 feet in Industrial Districts and the Office Research District, only as shown on the Wireless Communications Facilities Overlay District Map;
  4. Golf Courses, only as shown on the Wireless Communications Facilities Overlay District Map;
  5. Churches, temples, synagogues, and like buildings as determined by the Planning Board;
  6. Utility-pole-mounted DAS antennas are permissible on public and private ways according to the criteria in this Bylaw.
- B. Wireless Communication Facilities, including a DAS installation, shall be subject to the grant of a Wireless Communications Facilities Special Permit by the Planning Board. Nothing in this Section 5.8 shall be construed to regulate or prohibit amateur radio towers used solely by a federally licensed amateur radio operator or wireless communications structures and devices used expressly and exclusively for television

reception. Nothing in this Section 5.8 shall be construed to regulate or prohibit a wireless communication facility based on environmental effects of radio frequency radiation (RFR) emissions.

- C. Special Permit Waiver of Applicability by the Planning Board. To encourage wireless communications providers to deliver their services in an unobtrusive manner and produce the best coverage solution for the areas of the town, wireless communication facilities may be allowed in areas other than those listed in Section 5.8.2(A) only by a grant of a waiver by the Planning Board. This waiver shall be subject to all other requirements of Section 5.8 and shall only be granted upon findings that the benefit of the waiver provides a substantially better solution in aesthetics and coverage than could be achieved in the available areas listed in Section 5.8.2(A). The waiver shall include the use of those wireless facility options as are available, such as but not limited to towers, stealth designs, rooftops, water tanks, existing structures, and DAS facilities. The Planning Board encourages applicants for a Special Permit Waiver of Applicability to have a preliminary discussion with the Board prior to a formal application submittal.
- D. Special Permit Granting Authority. The special permit granting authority under this Section 5.8. shall be the Planning Board.

### **5.8.3. Priority Location of Wireless Communication Facilities**

- A. Wireless communications facilities. Towers may be allowed provided that they comply with the priority requirements for the location of towers as set forth below.
  1. The first priority shall be given to the Municipal District and additional land only as shown on the Wireless Communications Facilities Overlay District Map.
  2. The second priority shall be given to the concealment of antennas within Churches and like buildings, such as in spires, steeples, belfries, and the like.
  3. The third priority shall be given to remaining areas of allowed use as stated in Section 5.8.2(A).
- B. Wireless Communications Facilities that do not have wireless communications antennas on site (except small antennas for GPS and geo-location services not exceeding 18 inches in height), such as DAS base station facilities, may be installed on any parcel without regard for the priority hierarchy in this section. Such facilities remain subject to all other applicable criteria under this Bylaw.
- C. Applicant must provide documentation to the satisfaction of the Planning Board that alternatives in the higher priority locations are not feasible if a lower priority location is proposed.

**5.8.4. Siting and Height Requirements.**

- A. Wherever feasible, Wireless Communications Devices shall be located on existing Towers or other existing structures and be subjected to Stealth Treatment appropriate for the context of the facility.
- B. Wireless communications facilities may be located on the same lot as other structures or uses lawfully in existence, subject to the provisions of Section 5.8.
- C. The minimum distance from the base of a Tower, including Towers with Stealth Treatment to any property line, road, right-of-way, power line easement or railroad right-of-way shall be at least equal to the height of the Tower. The Planning Board may waive this requirement up to the district set-back upon findings that the waiver will result in a design more compatible with the surrounding area.
- D. A Tower shall be setback a minimum distance of 400 feet from abutting Residential and Multifamily Districts, except that this distance may be reduced for Towers if the Planning Board finds that reduction in the setback distance would produce a better result (aesthetically) to the neighborhood than alternative proposals, but in no event shall the setback minimum distance be less than 100 feet from Residential and Multifamily Districts. This Requirement shall supersede Subsection C above, where applicable. This requirement may be waived subject to a grant of the Special Permit Waiver.
- E. The maximum allowed height of a tower shall not exceed 100 feet unless the applicant demonstrates that a greater height is required to allow for provision of the wireless communications services and the Planning Board finds that a height over 100 feet is desirable based on a balanced review of aesthetics and wireless coverage for the area.

**5.8.5. Design Requirements**

- A. Wherever feasible and appropriate, wireless communications facilities, including their constituent devices and towers, shall be subjected to stealth treatment appropriate for the context of the facility.
- B. All building-mounted wireless communications devices that are visible from the ground or another property shall be designed and located so as to appear to be an integral part of the existing architecture of the building and shall be of colors that are compatible with those of the building or landscape.
- C. The wireless communications facility may be fenced to control access, as determined by the Planning Board. Fencing shall be compatible with and of similar materials and character of surrounding buildings, structures and neighborhood.
- D. There shall be no signs or advertisements at any wireless communications facility, except for no trespassing signs and a required sign giving a phone number where the responsible party can be reached on a 24-hour basis.

- E. If a building is needed for the equipment associated with the use of the device, said building shall be of similar style and materials as the other buildings on the site, or nearby site, as determined by the Planning Board.

#### **5.8.6. Application Process**

- A. The Planning Board encourages applicants for a Special Permit under this Section 5.8 to have a preliminary discussion with the Board before submitting a formal application. Applications for a special permit for siting wireless communications facilities shall be filed in accordance with Section 3.5 Special Permits, and shall further include the following:
  - 1. To site a wireless communications facility at an existing tower or nonresidential structure, the applicant shall be required to comply with Sections 5.8.5 herein above, except that the Planning Board may waive some of the requirements if it finds that they are not applicable or not reasonably necessary to evaluating the proposal.
  - 2. It is encouraged that applicants for collocation have a preliminary discussion with the Planning Board.
- B. The special permit shall be submitted in accordance with Section 3.5 and the Planning Board's Rules and Regulations, and additionally to the Board of Selectmen and the Town Manager.

#### **5.8.7. Approval**

- A. The Planning Board may grant a special permit for a wireless communications facility only upon making the findings required by G.L. c. 40A, § 9 and the following:
  - 1. That the applicant has demonstrated to the satisfaction of the Planning Board that the requirements of this Section 5.8 have been met.
  - 2. That the size and height of the structure are the minimum necessary, taking into account the applicant's objectives and any proposed collocation.
  - 3. That adverse impact on adjacent properties, residential neighborhoods, historic and artistic structures or scenic views is minimized to the extent practical.
  - 4. That there will be no nuisance or serious hazard associated with the use.
  - 5. That any reasonable alternatives identified in the pre-application meeting have been determined not to be preferable or feasible.
- B. When suitable and appropriate as determined by the Planning Board, collocation is encouraged. As a condition of the special permit for a wireless communication facility, the Planning Board may require that the structure and/ or facility be designed and built so that it is able to accommodate future wireless communications devices operated by another carrier with little or no modification, provided that such collocation does not materially interfere with the transmission or reception of

communications signals to or from the existing facility, and provided that there are no structural or other physical limitations that make it impractical to accommodate the proposed additional wireless communications device. At the request of Town officials, the Planning Board may require the applicant to provide reasonable access to the facility for municipal communications.

- C. Any expansion or extension of wireless communications facilities or construction of new or replacement towers or facilities shall require an amendment to the special permit. An increase in the number of antennas or the size of the antennas beyond that applied for and approved in the special permit, if such antennas are visible or if it changes the character of the stealth treatment, also requires amendment to the special permit.
- D. Any special permit granted under this section shall automatically lapse within three years<sup>9</sup> of the date of the grant, not including the time required to pursue or await the termination of an appeal, if construction has not commenced, except if the applicant applies to the Planning Board and it determines good cause to grant an extension.

#### **5.8.8. Conditions of Use**

- A. The applicant shall be required to maintain and keep in good repair all facilities, devices and towers.
- B. Based on the nature of the facility, the Planning Board may require the applicant to post a bond for the removal of wireless communication antenna support structures in the event of non-operation. The amount of the surety shall be established by a consultant for the Town, such as an engineer, architect, or other qualified professional registered to practice in the Commonwealth of Massachusetts.

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## **5.9 FLOODPLAIN DISTRICT<sup>10</sup>**

### **5.9.1. Purposes**

The purposes of the Floodplain District are to:

- A. Ensure public safety through reducing the threats to life and personal injury.
- B. Eliminate new hazards to emergency response officials;
- C. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;

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<sup>9</sup> The ZBL currently says one year here, but it should have been two years, and now with recent amendments to Chapter 40A, it should be three years.

<sup>10</sup> We have made only a few minor tweaks to this section. It is substantially what the Town has today.

- D. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
- E. Eliminate costs associated with the response and cleanup of flooding conditions;
- F. Reduce damage to public and private property resulting from flooding waters.

#### **5.9.2. Floodplain District Boundaries**

The Floodplain District is herein established as an overlay district and consists of all areas shown on the Zoning Map under Section 4.2.

#### **5.9.3. Base Flood Elevation and Floodway Data**

- A. Floodway data. In Zone A and AE along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- B. Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lessor, within unnumbered A zones.

#### **5.9.4. Notification of Watercourse Alteration**

Notify, in a riverine situation, the following of any alteration or relocation of a watercourse:

- A. Adjacent Communities,
- B. NFIP State Coordinator-Massachusetts Department of Conservation and Recreation
- C. NFIP Program Specialist- FEMA Region 1

#### **5.9.5. Use Regulations**

- A. Permitted Uses. The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:
  1. Agricultural uses such as farming, grazing, truck farming, horticultural, etc.
  2. Forestry and nursery uses.
  3. Outdoor recreational uses, including fishing, boating, play areas, etc.
  4. Conservation of water, plants, wildlife.
  5. Wildlife management areas, foot, bicycle, and/or horse paths.

6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
  7. Buildings lawfully existing prior to the adoption of these provisions.
- B. All development in the Floodplain District, including structural and non-structural activities, whether permitted by right or by special permit, must comply with G.L. c. 131, § 40 and the following:
1. 780 CMR (Massachusetts State Building Code);
  2. 310 CMR (Commonwealth of Massachusetts Regulations), Department of Environmental Protection, Wetlands Protection Regulations (currently Section 10.00);
  3. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5).

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

#### **5.9.6. Other Use Regulations**

- A. In Zone AE, along watercourses that have a regulatory floodway within the Town of Tewksbury as designated on the Middlesex County Flood Insurance Rate Maps, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- B. Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
- C. The Applicant shall be required to submit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Town Engineer, and Building Commissioner for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.
- D. All subdivisions proposals must be designed to assure that:
  1. such proposals minimize flood damage;
  2. all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
  3. adequate drainage is provided to reduce exposure to flood hazards.

#### **5.9.7. Administration**

To administer the Floodplain District, the Building Commissioner shall:

- A. Review proposed development to ensure that all necessary permits have been obtained from those governmental agencies from which approval is required by federal or state law.
- B. Obtain and maintain records of:
  - 1. The elevation to which any structure has been floodproofed;
  - 2. The floodproofing certificates required under the Floodplain District;
  - 3. Whether the structure has a basement.

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## **5.10 GROUNDWATER PROTECTION DISTRICT**

### **5.10.1. Purpose**

The purpose of this Groundwater Protection District is to promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Tewksbury; preserve and protect existing and potential sources of drinking water supplies; conserve the natural resources of the town; and prevent temporary and permanent contamination of the environment.

### **5.10.2. Scope of Authority**

- A. **Overlay.** The Groundwater Protection District is an overlay district superimposed on the zoning districts. This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities or uses in a portion of one of the underlying zoning districts which fall within the Groundwater Protection District must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Groundwater Protection District.
- B. **Location.** The Groundwater Protection District shall be defined as all lands within the Town of Tewksbury that are delineated as Zone II on the map titled "Town of Tewksbury Zone II Delineation" and dated September 2001, which map(s), as amended from time to time, shall be kept on file with the Town Clerk, the Planning Board, the Building Commissioner, the Board of Health, and the Town Engineer.
- C. If the location of the District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the Planning Board. Any application for a special permit for this purpose shall be accompanied by adequate documentation as determined by the Planning Board.

The burden of proof shall be upon the owner(s) of the land to show where the bounds should be located. At the request of the owner(s), the Town may engage a professional engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and

may charge the owner(s) for the cost of the investigation. Any changes to the Zone II or Zone III delineation via this process must occur in conformance with the criteria set forth in 310 CMR 22.00 and must be approved by the Massachusetts Department of Environmental Protection.

### **5.10.3. Development Regulations**

In the Groundwater Protection District, the following regulations shall apply.

- A. Permitted Uses. The following uses are permitted within the Groundwater Protection District, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:
1. conservation of soil, water, plants, and wildlife;
  2. outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;
  3. foot, bicycle and/or horse paths, and bridges;
  4. normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
  5. maintenance, repair, and enlargement of any existing structure, subject to Section B (prohibited uses) and Section C (special permitted uses);
  6. residential development, subject to Section B (prohibited uses) and Section C (special permitted uses);
  7. farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Section B (prohibited uses) and Section C (special permitted uses);
  8. construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels.
  9. Underground storage tanks related to these activities are not categorically permitted.
- B. Prohibited Uses. The following uses are prohibited:
1. Landfills and open dumps as defined in 310 CMR 19.006;
  2. Automobile graveyards and junkyards, as defined in G.L. c. 140B, §1;
  3. Landfills receiving only wastewater and/or septage residuals including those approved by the Department pursuant to G.L. c. 21, §26 through 53; G.L. c. 111, §17; G.L. c. 83, §6 and 7, and regulations promulgated thereunder;
  4. Facilities that generate, treat, store, or dispose of hazardous waste that are subject to G.L. c. 21C and 310 CMR 30.00, except for the following:

- a. very small quantity generators as defined under 310 CMR 30.000;
  - b. household hazardous waste centers and events under 310 CMR 30.390;
  - c. waste oil retention facilities required by G.L. c. 21, § 52A; and
  - d. water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters.
5. Petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under North American Industry Classification System (NAICS) Code 454310. NAICS Codes are established by the U.S. Office of Management and Budget (OMB) and may be determined by referring to the most recent edition of the *NAICS Manual*, available from the U.S. Census Bureau;
  6. Storage of liquid hazardous materials, as defined in G.L. c. 21E, or liquid petroleum products unless:
    - a. Such storage is:
    - b. 310 CMR allows for the replacement of existing tanks/systems for the keeping, storage or dispensing of gasoline; and
    - c. 310 CMR exempts above-ground home heating oil systems from the containment requirement, and indoor tanks on impervious surfaces such as a basement floor, are allowed.
  7. Storage of sludge and septage, unless such storage complies with 310 CMR 32.30 and 310 CMR 32.31;
  8. Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
  9. Storage of animal manure unless covered or contained in accordance with the specifications of the Natural Resource Conservation Service;
  10. Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) to within four feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works;
  11. Discharge to the ground of non-sanitary wastewater including industrial and commercial process waste water, except:
    - a. the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;

- b. treatment works approved by the Department of Environmental Protection designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13);
    - c. publicly owned treatment works;
  12. Stockpiling and disposal of snow and ice containing deicing chemicals brought in from outside the district;
  13. Storage of commercial fertilizers, as defined in G.L. c. 128, § 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
  14. The rendering impervious of greater than 15 percent or 2,500 square feet of any lot, whichever is greater, except under the special permit provisions of Subsection C below.
- C. Uses and Activities Requiring a Special Permit. The following uses and activities are permitted only upon the issuance of a special permit by the Planning Board under such conditions as they may require:
  1. Enlargement or alteration of existing uses that do not conform to the Groundwater Protection District;
  2. Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning (except as prohibited under Subsection B above). These activities shall require a special permit to prevent contamination of groundwater;
  3. A system of storm water management and artificial recharge of precipitation must be designed, and approved by the Planning Board to: prevent untreated discharges to wetland and surface water; preserve hydrologic conditions that closely resemble pre-development conditions; reduce or prevent flooding by managing peak discharges and volumes of runoff; minimize erosion and sedimentation; not result in significant degradation of groundwater; reduce suspended solids and other pollutants to improve water quality and provide increased protection of sensitive natural resources. These standards may be met using the following or similar best management practices:
    - a. For lots occupied, or proposed to be occupied, by single- or two-family residences, recharge shall be attained through site design that incorporates natural drainage patterns and vegetation in order to maintain pre-development stormwater patterns and water quality to the greatest extent possible. Stormwater runoff from rooftops, driveways and other impervious surfaces shall be routed through grassed water-quality swales, as sheet flow over lawn areas, or into constructed stormwater wetlands, sand filters, organic filters and/or similar systems capable of removing nitrogen from stormwater;

- b. For lots occupied, or proposed to be occupied by other uses, a stormwater management plan shall be developed which provides for the artificial recharge of precipitation to groundwater through site design that incorporates natural drainage patterns and vegetation, and through the use of constructed (stormwater) wetlands, wet (detention) ponds, water quality swales, sand filters, organic filters, or similar site-appropriate best management practices capable of removing nitrogen and other contaminants from stormwater. The stormwater management plan shall meet the Stormwater Management Standards and technical guidance contained in the most recent version of the Massachusetts Department of Environmental Protection's Stormwater Management Handbook, for the type of use proposed, and the soil types present on the site. Such runoff shall not be discharged directly to rivers, streams, and other surface water bodies, wetlands, or vernal pools. Dry wells shall be prohibited;
- c. Except when used for roof runoff from non-galvanized roofs, all infiltration facilities (including wetlands, ponds, and swales) shall be preceded by oil, grease and sediment traps or other best management practices to facilitate control of hazardous materials spills and removal of contamination, and to avoid sedimentation of treatment and leaching facilities;
- d. All artificial recharge systems shall be maintained in full working order by the owner(s), under the provisions of an operations and maintenance plan approved by the Planning Board to ensure that systems function as designed. Artificial recharge systems shall be located at least 100 feet from drinking water wells. Any infiltration basins or trenches shall be constructed with a minimum separation of three feet between the bottom of the structure and maximum groundwater elevation. The Planning Board may allow for a reduction of this separation based upon the submittal of sufficient information so long as it would not exceed the requirements of the Department of Environmental Protection's Stormwater Management Policy in effect at the time of the application.

#### **5.10.4. Administrative Procedures**

- A. The special permit granting authority under this Section 5.10 shall be the Planning Board. Submission requirements shall be in accordance with the Planning Board's Rules and Regulations and Section 3.5 of this Bylaw.
- B. Upon receipt of the special permit application, the Planning Board shall transmit one copy each to the Board of Health, the Conservation Commission, Fire Department, Police Department, Building Commissioner, Town Manager, Planning Board and Town Department of Public Works for their written recommendations. Each agency listed shall, within 35 days after the plan is filed, report to the Planning Board, in writing, their approval or disapproval of the subject application. In the event of disapproval,

the agencies shall make specific findings and reasons therefore, and, where possible, shall make recommendations for the adjustment thereof.

- C. The Planning Board may grant a special permit if it determines, in conjunction with the Board of Health, the Conservation Commission, and the Department of Public Works, that the requirements of this Section 5.10 are met, provided that the Board finds that the proposed use meets the following standards, those specified in Section 5.10.3, and any regulations or guidelines adopted by the Board. The proposed use must:
  - 1. In no way, during construction or thereafter, adversely affect the existing or potential quality of quantity of water that is available in the Groundwater Protection District; and
  - 2. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- D. The Planning Board shall not grant a special permit under this Section 5.10 unless the petitioner's application materials include, in the Board's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The Planning Board shall document the basis for any departures from the recommendations of the other town boards or agencies in its decision.

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## **5.11 MARIJUANA DISPENSARY OVERLAY DISTRICT<sup>11</sup>**

### **5.11.1. Purpose**

- A. To provide for the establishment of Registered Marijuana Dispensaries in appropriate places and under strict conditions in accordance with the passage of Chapter 369 of the Acts of 2012, An Act for the Humanitarian Medical Use of Marijuana.
- B. To minimize the adverse impacts of Registered Marijuana Dispensaries on adjacent properties, residential neighborhoods, schools, and other places where children congregate, and other potentially incompatible land uses.
- C. To regulate the siting, design, placement, security, safety, monitoring, modification, and removal of Registered Marijuana Dispensaries.

### **5.11.2. District Boundaries**

The boundaries of the Marijuana Dispensary Overlay District shall be as shown on the Zoning Map under Section 4.2.

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<sup>11</sup> We do not have a boundary file (GIS) for this district. It has to be on the Zoning Map.

**5.11.3. Applicability**

- A. Unless exempt as an agricultural use under G.L. c. 40A, § 3, the cultivation, production, processing, assembly, packaging, retail or wholesale sale trade, distribution, or dispensing of marijuana for medical use is prohibited unless authorized under a Special Permit from the Planning Board under this Section 6.11.
- B. Nothing in this Bylaw shall be construed to supersede federal and state laws governing the sale and distribution of narcotic drugs.

**5.11.4. General Requirements and Conditions for all Registered Marijuana Dispensaries.**

- A. Only one non-exempt Registered Marijuana Dispensary shall be allowed in Town of Tewksbury and it shall be contained within a building or structure.
- B. No Registered Marijuana Dispensary shall be located within 1,200 feet of any school, church, child care center, or other location where children generally congregate, provided these facilities existed in their current location prior to the effective date of this Bylaw.
- C. No Registered Marijuana Dispensary shall have a gross floor area in excess of 5,000 square feet.
- D. A Registered Marijuana Dispensary may not be located in buildings that contain any medical doctor's office or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.
- E. The hour of operation of Registered Marijuana Dispensaries shall be set by the Planning Board, but in no event shall they be open or operating between the hours of 8:00 PM and 8:00 AM.
- F. No smoking, burning, or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of a Registered Marijuana Dispensary.
- G. No Registered Marijuana Dispensary shall be located inside a building containing residential units, including transient housing such as motels, hotels and dormitories, or inside a movable or mobile vehicle such as a van or truck.
- H. Signage for the Registered Marijuana Dispensary shall include the following language: "Registration card issued by the Massachusetts Department of Public Health required." The required text shall be a minimum of two inches in height.
- I. Registered Marijuana Dispensaries shall provide the Tewksbury Police Department, Building Commissioner, and the Planning Board with the names, phone numbers and email addresses of all management staff and keyholders to whom one can provide notice if there are operating problems associated with the dispensary.

### 5.11.5. Special Permit Requirements

- A. A Registered Marijuana Dispensary may only be allowed by special permit from the Planning Board acting in accordance with Section 3.5 of this Bylaw and G.L. c. 40A, § 9, subject to the following statements, regulations, requirements, conditions and limitations.
- B. A special permit for a Registered Marijuana Dispensary shall be limited to one or more of the following uses that shall be prescribed by the Planning Board:
  - 1. cultivation of Marijuana for Medical Use (horticulture) [special permit not required for sites meeting agricultural exemption standards found in G.L. c. 40A, § 3];
  - 2. processing and packaging of Marijuana for Medical Use, including Marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments, and other products;
  - 3. retail sale or distribution of Marijuana for Medical Use to Qualifying Patients;
  - 4. wholesale sale of Marijuana for Medical Use to other Registered Marijuana Dispensaries located in Town or in another municipality in Massachusetts.
- C. In addition to the application requirements normally required for a special permit under Section 3.5, a special permit application for a Registered Marijuana Dispensary shall include the following:
  - 1. the name and address of each owner of the dispensary;
  - 2. copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the dispensary;
  - 3. evidence of the Applicant's right to use the site for the dispensary, such as a deed, or lease;
  - 4. if the Applicant is a business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals;
  - 5. a certified list of all parties in interest entitled to notice of the hearing for the special permit application, taken from the most recent tax list of the town and certified by the Town Assessor;
  - 6. Proposed security measures for the Registered Marijuana Dispensary, including lighting, fencing, gates and alarms, etc., to ensure the safety of persons and to protect the premises from theft. These security measures shall be reviewed and approved by the Police Chief and Fire Chief or their designees.

- D. **Mandatory Findings.** The Planning Board shall not issue a special permit for a Registered Marijuana Dispensary unless it finds that:
1. the dispensary is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. c. 40A, §11;
  2. the dispensary is fully permitted by all applicable agencies of the Commonwealth of Massachusetts and is in compliance with all applicable state laws and regulations; and
  3. the applicant has satisfied all of the conditions and requirements of this Section 6.11.

#### **5.11.6. Annual Reporting**

Each Registered Marijuana Dispensary permitted under this Bylaw shall as a condition of its special permit file an annual report to and appear before the Planning Board and the Town Clerk no later than January 31st, providing a copy of all current applicable state licenses required under 105 CMR 725.000 for the dispensary and/or its owners and demonstrate continued compliance with the conditions of the Special Permit.

#### **5.11.7. Duration of Special Permit**

- A. A special permit granted under this Section shall have a term limited to the duration of the applicant's ownership of Registered Marijuana Dispensary at the premises. A special permit may be transferred only with the approval of the Planning Board in the form of an amendment to the special permit with all information required in this Section 6.11.
- B. Any violation of this Section 6.11 or any other state regulations or state laws shall be grounds for revocation of a special permit issued under this Section.

#### **5.11.8. Abandonment or Discontinuance of Use**

- A. A special permit shall lapse if not exercised within one year of grant of special permit.
- B. A Registered Marijuana Dispensary shall be required to remove all material, plants equipment and other paraphernalia:
1. prior to surrendering its state issued licenses or permits; or
  2. within six months of ceasing operations; whichever comes first.
- C. In the event the property ceases to be actively used as a Registered Marijuana Dispensary and/or any other allowed use under this bylaw, any and all signs identifying or promoting the property for such uses shall be immediately removed. This shall include exterior and interior signs visible to the public. Should said signage fail to be removed within thirty (30) calendar days, the Town, or its designee shall have the right to enter upon the property and takes such actions as are necessary to remove, cover, or otherwise render any such signage non-visible to the public. The

Town shall not be responsible for any damage cause to the property in association with carrying said actions. Any costs incurred by the Town for such actions shall be the responsibility of the property owner.

## 6. SITE DEVELOPMENT STANDARDS

### 6.1 OFF-STREET PARKING AND LOADING AREA REQUIREMENTS

#### 6.1.1. Purposes

The purposes of this Section 6.1 are to:

- A. Provide for safe and convenient vehicular parking areas and delivery areas; and
- B. Promote safety for pedestrians, bicyclists, motor vehicle occupants, and property and business owners.

#### 6.1.2. Applicability

- A. Required Parking. No building or structure shall be located upon any lot and no activity shall be conducted upon any lot unless the required parking facilities are provided on site in accordance with this section.
- B. Change of use. The use of any land or structure shall not be changed from a use described in one section of the Schedule of Uses to a use described in another section of the Schedule nor shall any net floor area of the building be increased in any manner unless the number of parking spaces for the new use are provided.
- C. Undetermined uses. In the case where the use of the building(s) has not been determined at the time of application for a building permit or special permit, the parking requirements applicable to the most intensive use allowed in the zoning district where the undetermined use is to be located such undetermined use is to be located, shall apply.

#### 6.1.3. Off-Street Parking Requirements

- A. Minimum Number of Spaces. The minimum number of off-street parking spaces shall be provided in accordance with the Table of Parking Requirements below, except where determined otherwise by the bylaw.
- B. Parking for Unspecified Uses. Off-street parking requirements for a use not specifically listed below shall be as determined by the Building Commissioner based on a listed use of similar characteristics of parking demand generation.
- C. Parking a Greater Distance Than 500 Feet. Parking spaces located more than 500 feet from the building entrances they serve shall not be counted toward meeting the parking requirements unless the Planning Board determines that circumstances justify the inclusion of this parking in meeting the minimum parking requirements

### TABLE OF PARKING REQUIREMENTS

PRINCIPAL USE	REQUIRED SPACES
<b>A. RESIDENTIAL USES</b>	
1. Single-family dwelling	Three (3) spaces for each dwelling unit, one (1) of which may be covered
2. Two-family dwelling	Three (3) spaces for each dwelling unit, one (1) of which may be covered
3. Multi-family dwelling, including 55 + dwellings	Two (2) spaces for each dwelling unit
4. Assisted living facility, long-term care facility	1 space/employee on the largest shift; plus 1 space/visiting staff person; plus 1 space/number of residents the facility is licensed to serve divided by 2
5. Continuing care retirement	As set forth in Section 7400 <sup>12</sup>
6. Independent living facility	As set forth in Section 7400 <sup>13</sup>
7. Cluster Development	Two (2) spaces for each dwelling unit
<b>B. EXEMPT AND INSTITUTIONAL USES</b>	
1. Religious Institutions	One (1) space for every three (3) seats
2. Educational uses on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	One (1) space for each staff position, plus one (1) space for each five (5) persons of rated capacity of the largest auditorium, plus one (1) space for each student vehicle which can be expected at any time on the premises
3. Child care facility in a new or an existing building	One (1) space for every four (4) children plus one (1) space for every employee on the largest shift
4. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Not applicable <sup>14</sup>
5. Facilities for the sale of produce, and wine and dairy products on exempt agricultural sites	One (1) space for each two hundred (200') feet of gross floor area if customers are served in a structure
6. Cemeteries, private	As determined by the Planning Board
7. Municipal parks and playgrounds	As determined by the Planning Board
8. Other municipal facilities	As determined by the Planning Board

<sup>12</sup> There are no requirements listed in Sec. 7400.

<sup>13</sup> No requirements listed in Section 7400 and it refers back to Section 5100 which also has no requirements and refers to Section 7400.

<sup>14</sup> Why have uses listed that don't have a parking requirement? See 13-15 in Commercial as well.

PRINCIPAL USE	REQUIRED SPACES
9. Hospitals	As determined by the Planning Board
<b>C. COMMERCIAL USES</b>	
1. Nonexempt farm stand for wholesale or retail sale of products	Up to ten (10), as may be determined by the Planning Board
2. Nonexempt educational use	One (1) space for each staff position, plus one (1) space for each five (5) persons of rated capacity of the largest auditorium, plus one (1) space for each student vehicle which can be expected at any time on the premises
3. Animal clinic or hospital; kennel	One (1) space for each two hundred (200') feet of gross floor area
4. Personal service establishment	One (1) space for each two hundred (200') feet of gross floor area
5. Funeral home	One (1) space for every three (3) seats plus one (1) space for every employee on the largest shift
6. Hotel/motel	One (1) space for each sleeping unit, plus one (1) space for each employee on the largest shift
7. Bed and Breakfast	One (1) space for each sleeping unit, plus two (2) spaces for the dwelling unit
8. Retail sales	5 spaces/1000 square feet for the first 10,000 sq. ft. of gross floor area; plus 2.5 spaces/1000 square feet of gross floor area between 10,001 sq. ft. and 25,000 sq. ft.; plus 2 spaces/1000 sq. ft. of gross floor area over 25,000 sq. ft.0
9. Motor vehicle, motorcycle, trailer, snowmobile, or boat sales and rental	One (1) space for each two hundred (200') feet of gross floor area
10. Motor vehicle general and body repair services	Three (3) spaces for each service bay, plus one (1) space for each employee on the largest shift
12. Motor vehicle light service supplying fuel, oil, lubrications, washing and minor repair.	Three (3) spaces for each service bay, plus one (1) space for each employee on the largest shift
13. Car wash	Not applicable <sup>15</sup>
14. Garage for automotive storage	Not applicable <sup>16</sup>
15. Limousine or Taxicab business	Not applicable <sup>17</sup>

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<sup>15</sup> Why include this?

<sup>16</sup> Ditto

<sup>17</sup> Ditto

PRINCIPAL USE	REQUIRED SPACES
16. Automotive stereo system installations	One (1) space for each two hundred (200') feet of gross floor area
17. Restaurant	One (1) space for every two and one half (2½) seats plus one (1) space for every employee on the largest shift
18. Restaurant, fast-food or drive-in	One (1) space for each two hundred (200') feet of gross floor area
19. Business or professional office	A minimum of One (1) space for each three hundred (300') feet of gross floor area
20. Freestanding ATM or kiosk for public use	Not applicable <sup>18</sup>
21. Adult day care	One (1) space for every four (4) adults plus one (1) space for every employee on the largest shift <sup>19</sup>
22. Indoor commercial recreation	One (1) space for each two hundred (200') feet of gross floor area
23. Outdoor commercial recreation	As determined by the Planning Board
24. Membership club, civic, social, professional or fraternal organization	One (1) space for every three (3) seats plus one (1) space for every employee on the largest shift
25. Adult use establishment	One (1) space for every three (3) seats plus one (1) space for every employee on the largest shift
26. Wireless Communications Facility	One (1) space
27. Airport, airfield or airstrip	Not applicable
28. Mobile parked food service	Not applicable
29. Itinerant roadside vending	Not applicable
30. Nursing or convalescent home	One (1) space for each two (2) beds, plus one (1) space for each employee on the largest shift
<b>D. INDUSTRIAL USES</b>	
1. Removal of loam, sand or gravel	Not applicable
2. Research laboratories, manufacture of equipment, electronics industry, assembling of electrical appliances	One (1) space for each two thousand (2,000) square feet of gross floor area for the first twenty thousand (20,000) square feet plus, one (1) space for each additional ten thousand

<sup>18</sup> Ditto

<sup>19</sup> This requirement is in conflict with the parking requirement for Adult Day Care found in Section 7400. Which requirement does the Town want to use?

PRINCIPAL USE	REQUIRED SPACES
	(10,000) square feet of gross floor area and one (1) space per employee on the largest shift
3. Manufacturing, including but not limited to, welding shops, machine shops, stone or monument works and ceramic products manufactured kilns wholesale, warehouse, self-storage, mini-warehouse, or distribution facility.	One (1) space for each two thousand (2,000) square feet of gross floor area for the first twenty thousand (20,000) square feet plus, one (1) space for each additional ten thousand (10,000) square feet of gross floor area and one (1) space per employee on the largest shift
4. Sale of products at retail manufactured on the premises	One (1) space for each two hundred (200') feet of gross floor area devoted to retail
5. Heating fuel storage and sales	As determined by the Planning Board
6. Contractor's yard	As determined by the Planning Board
7. Junkyard or automobile salvage yard	Not applicable
8. Transportation or freight terminal	As determined by the Planning Board
9. Truck stop	Not applicable

#### 6.1.4. Mixed Use Requirements

In the case of mixed uses, the requirements shall be the sum of the requirement calculated separately for each area of use, so that adequate space shall be provided to accommodate the cars of all persons on the premises at any one time. Parking spaces for one use shall not be considered as providing the required spaces for any other use, except when it can be clearly demonstrated that the need for parking occurs at different times in accordance with Section 6.1.6.B.

#### 6.1.5. Parking Requirement Relief

An applicant may request relief from the parking requirements of this Section from the Planning Board. The Board, by special permit, may authorize a decrease in the number of parking spaces required to be constructed provided that:

- A. The decrease in the number of parking spaces is no more than 30% of the total number of spaces required. The number of parking spaces approved for a decrease shall be set aside and shall not be required to be immediately construction. Such spaces shall be labeled as "Reserve Parking" on the site plan.
- B. Any such decrease in the number of required parking spaces shall be based upon documentation of a special nature of a use or building.
- C. The parking spaces labeled "Reserve Parking" on the site plan shall be properly designed as an integral part of the overall parking layout, located on land suitable for parking development and in no case located within an area counted as buffer, parking setback or open space.

- D. The decrease in the number of required spaces will not create undue congestion or traffic hazards and that relief may be granted without substantial detriment to the neighborhood and without derogating from the intent and purpose of this Bylaw.
- E. If, at any time after the Certificate of Occupancy is issued for the building or use, the Building Commissioner determines that additional parking spaces are needed, the Commissioner shall notify the Planning Board, in writing, of that finding and the Planning Board may require that all or any portion of the spaces shown on the approved site plan as "Reserve Parking" be constructed.

#### **6.1.6. Remote or Shared Parking**

The Planning Board may grant a special permit for either nonresidential remote parking or nonresidential shared parking based on the following criteria:

- A. Remote Parking
  - 1. The property to be used for remote parking shall be owned or leased by the owner of the use being served by the remote parking, or the owner shall have a written agreement allowing for the remote parking to be used for the use served. Any written agreement shall be subject to approval by the Planning Board.
  - 2. Except where valet parking or other transportation between the subject use and the remote parking is provided, the maximum distance between the site of the use and the remote parking shall be 600 feet.
  - 3. The remote parking area and access from the remote parking area to the site of the use shall have reasonable and safe access at all hours the remote parking area is in use.
  - 4. The remote parking area shall be located on non-residentially zoned property.
- B. Shared Parking
  - 1. Shared spaces shall be available to jointly serve two or more uses on the same site that are not normally open or used during the same time or uses that do not have overlapping peak parking demands. The applicant shall show that peak parking demand, operating hours, and other similar factors for the uses justify the approval of shared space.
  - 2. Not more than 50 percent of the parking spaces serving the use or facility shall be counted as shared spaces.

3. A written agreement executed by all parties who are subject to the use of joint parking and that defines all aspects and responsibilities of the joint parking arrangement shall be approved by the Planning Board.<sup>20</sup>

#### 6.1.7. Parking Dimensions

Off-street parking facilities shall be laid out and striped in compliance with the following minimum provisions:

ANGLE OF PARKING (degrees)	WIDTH OF PARKING STALL (ft.)	PARKING STALL LENGTH OF LINE (ft.)	WIDTH OF MANEUVERING AISLE (ft.)
90 (two-way)	9.5	18.5	24
60 (one-way)	10.4	22.0	18
45 (one-way)	12.7	25.0	14
Parallel (one-way)	8.0	22.0	14
Parallel (two-way)	8.0	22.0	18

#### 6.1.8. General Design Requirements for Parking Facilities

- A. Backing Out. Parking facilities shall not be designed in a manner that requires backing out into a public way.
- B. Pavement. All parking spaces and driveways except for those serving single-family dwellings shall be paved. The Planning Board may approve a special permit to waive this requirement where circumstances justify a waiver and where the unpaved surfaces will not cause dust, erosion, a hazard, and unsightly conditions.
- C. Dead End Aisles. Dead end aisles shall not serve more than 5 parking spaces on either side of the aisle.
- D. Curbing. Continuous curbing shall be provided around the edges of a parking lot and around landscaped islands within the parking lot to control access and drainage. The Planning Board may approve a special permit to waive this requirement where circumstances justify a waiver and where the lack of curbing will not result in a safety hazard.
- E. ADA & AAB Compliance. Curb stops, planting strips, or other similar means shall be provided to maintain a minimum usable sidewalk width of four feet or the minimum width required by the Americans with Disabilities Act. All parking facilities shall meet

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<sup>20</sup> In most communities I've worked in, where shared parking or shared access is allowed, the written agreement is recorded with the Registry of Deeds.

the requirements of the ADA and the Massachusetts Architectural Access Board Regulations at 521 CMR 23:00.

- F. Lighting. All lighting fixtures designed to illuminate the parking facility shall use cutoffs or directional lighting or similar in a manner designed to preclude direct light impacts on the adjoining streets and adjoining properties.

**6.1.9. Residential Parking Facilities & Driveway Requirements.**

- A. Tandem Spaces. One parking space may be provided directly behind another for each dwelling unit, provided that each stall shall meet the width and depth requirement of Section 6.1. Parking stalls more than two deep shall not consider the spaces that are in addition to the two spaces in computing the required parking.
- B. Driveways. Each driveway shall service not more than one lot. Subject to the granting of a special permit from the Planning Board, a driveway may be shared by not more than two lots. Each shared driveway shall be governed by a maintenance agreement running in perpetuity with the land. The frontage and area of such common driveway shall be in addition to the minimum frontage and area required under Section 5 of the bylaw.

**6.1.10. Nonresidential Driveway Requirements**

- A. Access Driveway. Each lot may have one access driveway which shall be at least 24 feet wide at its narrowest point but not more than the required width for safe vehicle movements onto the adjacent roadway, without entering into the opposing lane. Each lot may have one additional access driveway for each 200 feet of frontage provided all access driveway(s) shall be at least 200 feet apart on the lot measured from the centerline of each access driveway. The minimum width of a one-way only access driveway may be reduced to 14 feet at its narrowest point.
- B. Access Driveway Location. For parking facilities of 20 or more spaces, the entrance or exit driveway center lines shall not fall within 50 feet of an intersection of street sidelines or within 150 feet of the centerline of any other parking area entrance or exit driveways on the same side of the street, whether on the same parcel or not, if that parking area is also serving 20 or more spaces.
- C. Uses shall arrange for shared egress if necessary to meet these requirements, unless the Planning Board determines that circumstances justify otherwise.
- D. Common Private Access Ways in the Business or Industrial Districts. To the extent feasible, lots and parking areas shall be served by common private access ways in order to minimize the number of curb cuts in these districts. Common access ways shall be in conformance with the standards of the Department of Public Works. Proposed documentation (in the form of easements, covenants, or contracts) shall be submitted with the site plan demonstrating that proper maintenance, repair, and apportionment of liability for the common access way and any shared parking areas has been agreed upon by all lot owners proposing to use the common access way.

- E. Common private access ways may serve any number of adjacent parcels deemed appropriate by the Planning Board. Common private access ways shall not be wider than 24 feet at any point where it crosses required open space or any required parking setback area.
- F. Interior Driveways. Interior driveways may be reduced to no less than 20 feet for two-way traffic and 14 feet for one-way traffic upon approval of a special permit by the Planning Board.
- G. Industrial District. In the I District, each lot shall have access only at designated driveways. Each lot may have not more than 1 access driveway and one 1 additional driveway for each 200 feet of street frontage above the minimum required. Driveways shall conform to this Section 6.1w.
- H. Driveways on State Highways. For proposed access driveways on state highways, refer to Part 11 of the Massachusetts Amendments to the Manual on Uniform Traffic Control Devices.

**6.1.11. Requirements for Business, Industrial, or Other Nonresidential Parking Facilities.**

- A. Exemptions. The provisions of the section shall not apply to municipal uses.
- B. Construction. Required parking spaces, loading areas, and driveways shall be constructed and maintained with suitable grading, adequate drainage, and paved services.
- C. ,Buffers. Unless otherwise provided for in this Section 6.1, no parking space or other paved surface, other than access driveway(s) or walkways, shall be located within 10 feet of any lot line, or within 20 feet of a property line abutting a street right-of-way, and no parking space or other paved surface, other than access driveway(s) or walkways, shall be located within the limits of a landscape buffer area required by Section 6.1.
- D. Sidewalks. Sidewalks are required within the site where necessary for safe pedestrian access and circulation. There shall be a marked pedestrian aisle at each entrance to the building served by the parking lot. Sidewalks are required along all public ways to which the site abuts and must be connected to the sidewalks and pedestrian aisles within the site to provide safe access to entrance(s) to the building from the public way(s). Sidewalks shall be constructed in accordance with the Planning Board's Subdivision Rules and Regulations.
- E. Parking Distance Limitation. Parking spaces more than 500 feet from the building entrance they serve may not be counted toward fulfillment of parking requirements unless the Planning Board determines that circumstances justify this greater separation of parking from the use and approves the distance under Section 6.1.6 A.
- F. Snow Storage. Parking facilities with 20 or more spaces shall designate a separate snow storage area exclusive of required landscaping and paved parking areas. For lots

greater than 100 spaces, snow storage is required at 5,000 square feet of area per 43,560 square feet (1 acre) of parking lot shown on a plan. The Planning Board may allow for a reduction of the required snow storage area based on approval of a snow removal plan. .

#### **6.1.12. Landscape Requirements**

- A. General Standards. All parking lots and loading facilities shall be suitably landscaped to minimize their visual impact on the lot and upon adjacent property by the use of existing vegetation where appropriate and by the use of new trees, shrubs, walls, fences or other landscape elements.

Any parking lot with more than 40 parking spaces shall include a landscaped area(s) not less than 5 percent of the total area of the parking lot. Landscaped area(s) shall be provided with a minimum width of at least 10 feet, curbing and shade trees of at least 12 feet in height or such other landscaping as may be required by the Planning Board.

- B. Planted Area Requirements. Areas shall be planted with native plant species and shall contain an appropriate mix of flowers, shrubs, hedges and trees. Plant species shall be appropriate to proposed use, siting, soils, and other environmental conditions. Where the Planning Board determines that the planting of trees is impractical, the permit applicant may substitute shrubbery for trees.
- C. Shrubs and Hedges. Shrubs and hedges shall be at least 2 feet in height at the time of planting, and have a spread of at least 18 inches.
- D. Grass. Grass is preferable to mulch where practical.
- E. Tree Preservation. Existing trees with a caliper of 6 inches or more shall be preserved wherever feasible.
- F. Tree Requirements. Deciduous trees shall be at least 2 inches in caliper as measured six inches above the root ball at time of planting. Deciduous trees shall be expected to reach a height of 20 feet within ten years after planting. Evergreens shall be a minimum of eight feet in height at the time of planting.
- G. Buffers. The following buffer requirements shall also be required.
- H. Commercial and R40 Districts.<sup>21</sup> Where a business or industrial use abuts a residentially zoned district, a landscape buffer of a minimum of 20 feet in depth may be required by the Planning Board. This landscaped buffer shall be planted to mitigate the impact of the business or industrial use on the abutting residential districts. This provision may be construed to include lots in the R40 zone located across a public way from the business or industrial use.

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<sup>21</sup> This is in the existing ZBL. Why is the R40 District listed here – and should it be?

- I. Industrial District. Where a business or industrial use abuts a residentially zoned district, a landscape buffer of a minimum of 30 feet shall be required by the Planning Board. This landscaped buffer shall be planted to mitigate the impact of the business or industrial use on the abutting residential districts. This provision may be construed to include lots in the R40 zone located across a public way from the business or industrial use.
- J. Industrial District and Multiple Family District.<sup>22</sup> In the Industrial and Multiple Family Districts: a. The required front yard setback shall be suitably landscaped and shall not be used for parking, storage or other purposes inconsistent with the landscaped effect; b. A buffer strip not less than 30 feet wide in all side and rear yards where adjacent to any R40 zone shall be suitably landscaped and not used for parking or any use prohibited in such an adjacent district.
- K. Maintenance of Landscaped Areas. The owner, or owner agent, of the property used for nonresidential purposes shall be responsible for the maintenance, repair and replacement of all landscaping materials installed in accordance with this section. All plant materials required by this chapter shall be maintained in a healthy condition. Dead limbs, refuse and debris shall be promptly removed. Dead plantings shall be replaced with new live plantings at the earliest appropriate season. Bark mulch and non-plant ground surface materials shall be maintained so as to control weed growth.

#### **6.1.13. Bicycle Parking**

- A. Bicycle parking spaces shall be provided for any development or any use requiring eight or more vehicle parking spaces under Section 6.1.3. The bicycle parking requirement shall be determined based on the number of vehicle parking spaces which have been required by the Planning Board.
- B. The requirements of this section may be modified by the Board if it finds that for the use and location, a modification is appropriate and in the best interest of the Town.
- C. When bicycle parking is required, there shall be one bicycle parking space per 15 motor vehicle spaces under Section 6.1.3. The computed number of bicycle parking spaces will be rounded up to the nearest whole number of bicycle spaces. Bicycle parking spaces shall be provided in addition to motor vehicle parking spaces.
- D. When bicycle parking is required, a minimum of two spaces shall be provided, and not more than 25 bicycle spaces will be required at a single site.
- E. A bicycle rack or bicycle storage fixture or structure shall be provided to accommodate bicycles. Bicycle racks or storage fixtures must be secured against theft by attachment to a permanent surface. Bicycle parking apparatus shall be installed in a manner that will not obstruct pedestrians or motor vehicle traffic.

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<sup>22</sup> Similarly, why is the MFD listed here – and should it be?

- F. To the extent feasible, bicycle parking shall be separated from motor vehicle parking to minimize the possibility of bicycle/vehicle conflicts.
- G. The following uses are exempt from bicycle parking requirements: place of worship, cemetery, funeral home, automotive repair shop, car wash, or gas station.

#### **6.1.14. Loading Areas**

One or more off-street loading areas shall be provided for any business that may be regularly served by tractor trailer trucks or other similar delivery vehicles, so that adequate areas shall be provided to accommodate all delivery vehicles expected at the premises at any one time. Loading areas shall be located at either the side or rear of each building and shall be designed to avoid traffic conflicts with vehicles using the site or vehicles using adjacent sites.

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## **6.2 SIGNS**

### **6.2.1. Purpose**

The purpose of this sign bylaw is to protect the public's health, safety, welfare, and convenience; to protect and enhance the visual environment of the Town for a well maintained and attractive community; and to provide for reasonable identification, communication, and advertising. This bylaw is hereby declared to be remedial and protective and is to be so construed as to secure the beneficial interests and purposes thereof. This bylaw is adopted pursuant to Chapter 93, 40A and 43B of the General Laws of Massachusetts.

### **6.2.2. Administration**

- A. **Sign Officer.** The Building Commissioner is designated as the Sign Officer and is charged with the enforcement of this Bylaw. The Sign Officer and his duly authorized agents shall, if permitted by the owner or otherwise lawfully authorized, and at reasonable times and upon presentation of credentials, enter upon the premises on which any sign is erected or maintained in order to inspect the sign.
- B. **Permit Required.** No sign shall be erected, refaced, or enlarged until a permit is issued by the Sign Officer, except as otherwise provided in Section 6.2. herein. An application for a permit shall be made on forms furnished by the Sign Officer containing such information, including photographs, plans and scale drawings, as the Sign Officer may require. The sign permit shall be issued only if the Sign Officer determines that the sign complies or will comply with all applicable provisions of this Section 6.2. A schedule of fees for sign permits shall be as determined by the Board of Selectmen.
- C. **Sign Waivers.** The Planning Board, acting as special permit granting authority, may approve, approve with conditions, or disapprove requests to waive the requirements of this Section 6.2.

### 6.2.3. Exemptions

The following signs are exempt from the provisions of Section 6.2, unless otherwise noted.<sup>23</sup>

- A. Signs that are not visible from a public way, a public park, and public open space. These signs shall comply with the Building Code regulations.
- B. Traffic control signs and safety signs, including disability access signs.
- C. Signs painted or placed on the inside of a window provided that the aggregate area of the all signs in the window shall not exceed 30 per cent of the window area.
- D. Signs or markers required or erected by local, state or federal government.
- E. Public utility identification markings.
- F. Directional signs not exceeding one (1) square foot, such as arrows or entrance and exit signs. See Section 6.2.8.C. for Transitional District requirements.
- G. Any sign limited solely to directing traffic or providing direction or setting out restrictions on the use of parking areas and not exceeding four 4 square feet in area.

### 6.2.4. Sign Standards

All signs shall conform to the following standards.

- A. Movement. No sign shall contain any moving, flashing, or animated lights or visible moving parts. A sign consisting solely of indicators of time or temperature or of an automatically changing message shall be permitted only upon the issuance of a special permit by the Planning Board.
- B. Illumination. No sign shall be illuminated between the hours of 12 A.M. and 6 A.M. unless the premises on which it is located is open for business.

Signs may be illuminated only by the following means:

1. By a white steady stationary light of reasonable intensity shielded and directed solely at the sign.
2. By an interior light of reasonable intensity or by neon gas-filled tubes.
3. Neon lights are prohibited on free-standing signs.
4. Signs containing Electronic Message Boards, which shall mean a digital sign that exhibits changing or moving illumination effects, or a sign with moving letters, symbols or changing messages which are displayed via light emitting diodes (LED), liquid crystal display (LCD), plasma, or similar display technologies, shall not be

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<sup>23</sup> This section needs further legal review under *Reed v. Gilbert*.

allowed except by Special Permit from the Planning Board based upon findings that:

- a. The business(es) utilizing the electronic message board are located on a site of over 10 acres of land.
  - b. The buildings and public entrances to the businesses are located at least 125 feet from the street.
  - c. There will be no interference with traffic patterns, traffic lights or public safety.
  - d. The dimensions of the message board area shall not exceed 41" H x 63" W.
  - e. Electronic message boards shall not be allowed in the Town Center District.
  - f. There shall be no scrolling, flashing or movement of messages or other displays.
  - g. The electronic message board letters will be amber color only, with a black background.
  - h. Any message must be displayed for a set period of time as determined by the Planning Board.
  - i. The Planning Board may set further conditions based upon circumstances of specific site conditions.
  - j. The Planning Board may waive items a) through g) above upon findings of special circumstances as determined solely by the Planning Board.
- C. Sign Electrical Permit. No sign permit shall be issued for an electrically operated sign until the local wiring inspector has issued a permit therefor. The permit shall be issued only if the proposed sign complies with all requirements and recommendations of the National Electrical Code and Massachusetts Electric Code.
- D. Color. No sign shall contain red or green lights if those colors would, in the opinion of the Police Chief, constitute a safety hazard.

**6.2.5. Prohibited Signs.**

The following signs are prohibited.

- A. Tethered floating or inflated devices of any kind.
- B. Sandwich board or A-frame signs.
- C. Banners where they are intended to serve as a sign.
- D. Signs on parked motor vehicles with the primary purpose of providing signage not otherwise allowed by Section 6.2.

### **6.2.6. Temporary Signs.**

Temporary signs which comply with this Section 6.2 shall be permitted.

- A. Temporary signs which do not comply with Section 6.2 may be authorized by a special permit by the Board of Selectmen.
- B. Temporary signs which are specific in nature, including but not limited to real estate signs, construction signs, yard sale signs, and election signs and other similar signs shall be permitted as a matter of right. The signs shall meet the following requirements.
  - 1. The signs shall not exceed six sq. ft. in size and shall not be more than four feet in height from ground level.
  - 2. There shall not be more than four signs per lot.
  - 3. The signs shall be located on private property and a minimum of 10 feet from the edge of pavement.
  - 4. The signs shall not obstruct traffic sight lines or pedestrian traffic.
  - 5. The signs shall not be illuminated.
  - 6. The signs shall be removed within four days of the conclusion of the event.

### **6.2.7. Residence District Requirements**

Signs located in the R-40, VR, and MR Districts shall meet the following requirements.

- A. Residential Uses. A permitted residential use located within these zoning districts is allowed a sign or signs not to exceed a total of eight square feet in the aggregate. This sign allowance includes, but is not limited to: address signs; home occupations signs; lawn signs; real estate signs; contractor signs; and political signs.

Signs may be freestanding, in which case they may not exceed four feet in height and shall be located at least 15 feet from any property boundary, and/or mounted on the building façade, no higher than eight feet from the base level of the building.

- B. Nonresidential Uses. A permitted nonresidential use located within these zoning districts is allowed a sign or signs not to exceed 30 square feet in size in the aggregate.

Signs may be freestanding, in which case they may not exceed six feet in height and shall be located at least 15 feet from any property boundary, or mounted on the building façade no higher than 12 feet from the base level of the building.

### **6.2.8. Transitional District Requirements**

Signs located in the Transitional Districts shall meet the following requirements.

- A. Accessory Signs. Accessory signs that are permitted in the R40 District may be erected in accordance with Section 6.2.7.

- B. Attached Signs. Attached signs may be erected in compliance with Section 6.2.9.B. Attached signs shall not contain more than three colors. The sign shall not be illuminated from within. Sign lighting shall be extinguished during non-business hours.

One attached sign per permitted use not exceeding 15 square feet in size shall be allowed.

- C. Freestanding Signs. Signs identifying entrance and exit points may be erected. These signs shall not exceed six square feet in size. No other freestanding signs shall be permitted.

### **6.2.9. Business, Commercial and Industrial District Requirements**

The following requirements pertain to all districts except the R40, VR, MR, and MFD Districts:

- A. Accessory signs which are permitted in the R40 District may be erected in accordance with the provisions of Section 6.2.
- B. Attached Signs. Attached signs may be erected according to the following requirements.<sup>24</sup>
  1. The sign shall be firmly affixed to the building.
  2. The sign shall not project beyond the face of any other wall of the building or above the highest point of the eave.
  3. The sign shall not project more than 12 inches from the face of the wall to which it is attached.
  4. The height of the sign shall not exceed three feet.
  5. The aggregate length of these signs shall not exceed the full width of the store wall. If the store occupies the entire first floor of a detached building, the aggregate length may not exceed three-quarters of the width of the wall.
  6. Stores occupying other than the first floor of a building shall not have signs exceeding three feet in length.
  7. 7. If a store has a direct entrance in a wall other than the store front, there may be secondary signs affixed to that wall, the aggregate length of which shall not exceed 50 percent of the maximum permissible length of the signs on the store front.
- C. Freestanding Signs. Freestanding signs may be erected in accordance with the following requirements.

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<sup>24</sup> There isn't any maximum size limitation for attached signs. Is the Town okay with no size limitation?

1. Freestanding signs may not be erected within 15 feet of any street lot line or 10 feet of any side lot line.
2. Freestanding signs are limited to a height of 20 feet from the nearest pavement grade to the top of the sign structure.
3. Freestanding signs may be double faced; however, the permitted area will be measured on one side only.
4. A freestanding sign shall not exceed 60 square feet in sign area.
5. A wholesale operation shall be limited to one freestanding sign with a maximum of 24 square feet.
6. A professional building shall be limited to one freestanding sign with a maximum size of 20 square feet.
7. Shopping centers shall be limited to one freestanding sign at each entrance, but there shall not be more than two freestanding signs. Each sign may be a maximum of 60 square feet.

D. Additional Sign Requirements

1. Awnings. Awnings used as signs shall not project more than 36 inches from the face of the wall to which they are attached. The signage on the awning must comply with the size requirements of this Section 6.2.8.B.
2. Multiple Signs. When more than one sign is permitted for a principal use, a combination of not more than two of the following types of signs shall be permitted per principal use; attached sign, awning sign, and freestanding sign.

**6.2.10. Other Requirements**

- A. Billboards and Non-accessory Signs. All billboards and non-accessory signs erected prior to June 1, 1965 shall be permitted provided no substantial changes are made in location, size, or design of the structure.
- B. Nonconforming Accessory Signs. Accessory signs legally erected before the adoption of this bylaw which do not conform to the provisions of this Section 6.2 may continue to be maintained, provided, however, that no nonconforming accessory sign shall be permitted if it is, after the adoption of this bylaw, enlarged, refaced, or redesigned, except to conform to the requirements of this bylaw.
- C. Unsafe or Unlawful Signs. When any sign becomes unsecured, in danger of falling or otherwise unsafe or if any sign shall be unlawfully installed, erected, or maintained in violation of any of the provisions of law, the sign owner or the person or firm maintaining the sign shall, upon written notice of the Building Commissioner, immediately in the case of immediate danger, and in any other case within not more than 10 days make the sign conform to the provisions of this Section 6.2 or shall

remove it. If within 10 days the order is not complied with, the Building Commissioner may remove the sign at the expense of the owner or lessee.

- D. Derelict Signs. Signs which become unsightly, dilapidated, illegible, or dangerous to the public safety, shall be condemned and removed by the Sign Officer. Costs may be recovered for such removal from the owner or lessor in the District Court.

## 7. SPECIAL USE REGULATIONS

### 7.1 FAMILY SUITE

A Family Suite is allowed as an accessory use in a single-family dwelling in R40, FA, TD, and LB districts in accordance with the following requirements. Except as noted, these requirements are not subject to relief through a variance.

- A. A family suite that contains not more than 800 sq. ft. of floor area nor more than one bedroom may be allowed as of right, or, at the option of the Owner, may be allowed by special permit from the Planning Board.<sup>25</sup>
- B. In the case of a family suite unit as of right, subordination agreements (as required) and restriction agreements shall be completed by the applicant, submitted to the Building Commissioner, then approved and recorded with the Middlesex North Registry of Deeds by Town Counsel. These procedures shall not apply to a family suite authorized by special permit.
- C. A family suite may be enlarged to a maximum floor area not to exceed 1000 feet upon the issuance of a special permit by the Planning Board.
- D. Common entries and open decks shall not be included in the square footage calculation of the family suite.
- E. A family suite shall not contain more than one bedroom unless a special permit for a second bedroom is issued by the Planning Board prior to occupancy. In no case shall a family suite have more than two bedrooms.<sup>26</sup>
- F. The family suite shall be contiguous with the single-family dwelling with direct access or connected with a common closed entry.
- G. The family suite shall not have its own front door, however, but it may have a side or rear exit with an open deck and egress.
- H. Any structural addition of a family suite must meet all front, side, and rear setbacks and lot coverage requirements for the district unless variances are granted by the Board of Appeals in accordance with G.L. c. 40A, § 10.
- I. No more than three related persons shall occupy the family suite.
- J. A minimum of one additional off-street parking space shall be provided, but a separate driveway is not permitted.

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<sup>25</sup> This is a very odd construction.

<sup>26</sup> Does the Town have reasonable accommodation procedures to handle requests for a second bedroom so a person with a disability can have a live-in attendant?

- K. Annual certification by notarized affidavit shall be provided to the Building Commissioner that the owner of the property, except for bona fide temporary absence, occupies one of the two dwelling units as a primary residence. In the case of a family suite unit approved by special permit, failure to provide a certified affidavit on an annual basis shall represent sufficient cause for the Planning Board to revoke any special permit approved by it. In the case of a family suite unit approved as of right, failure to provide a certified affidavit on an annual basis shall represent sufficient cause for the Building Commissioner to issue a Notice of Zoning Violation to the owner and to undertake such remedial action as the Building Commissioner may, in his discretion, determine.
- L. The property with a family suite must comply with Title V of the State Environmental Code. Hook-up to town sewer shall be required if the service is available and, if not, as soon as town sewer becomes available.
- M. Only one family suite may be constructed in any dwelling.
- N. In the case of a family suite approved by special permit, the Planning Board may impose any conditions it deems appropriate to satisfy the Town's interest in limiting the number and degree of persons who may occupy a family suite at any one time, together with such other conditions as it may deem appropriate, if any, including but limited to, provisions calling for the termination of the special permit and all rights granted thereunder in the event of a foreclosure sale of the premises for which the special permit has been granted by a mortgagee or any lien holder of record with priority over the special permit.
- O. Nothing herein shall be construed as to require a family suite to be under its own roof.
- P. Notwithstanding anything else contained in the Zoning Bylaw to the contrary, if the owner or a child of the owner has a disability and requires assistance with Activities of Daily Living (ADLs), the other dwelling unit<sup>27</sup> may be occupied by a personal care attendant who need not be related to the owner. In such case, a letter from a licensed physician, verifying the disability and the need for assistance with ADLs is to be submitted to the Building Commissioner.
- Q. The Planning Board may impose such special conditions, safeguards and limitations on time and use as it deems appropriate.

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## 7.2 HOME OCCUPATION

- A. In any Residential district, a home occupation is permitted if all of the following conditions are met:

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<sup>27</sup> What other dwelling unit? Does this mean the "family suite" unit, the main dwelling unit, or the second bedroom in a family suite if one is allowed by special permit?

1. No nonresident shall be employed therein.
  2. Not more than 25 percent of the existing gross floor area of the dwelling unit in the principal building, not to exceed 600 square feet, is devoted to such use. In connection with such use, there is to be kept no stock in trade, commodities or products which occupy space beyond these limits.
  3. There shall be no display of goods or wares visible from the street.
  4. All advertising devices visible from off the lot are specifically prohibited.
  5. The buildings or premises occupied shall not have a detrimental impact on the neighborhood due to exterior appearance, emission of odor, gas, smoke, dust, noise, electrical disturbance, or in any other way. In a structure containing more than one dwelling unit, the use shall not become objectionable or detrimental to any residential use within the structure.
  6. Any such building shall include no feature of design not customary in buildings for residential use.
- B. Where permitted or allowed by special permit in the use regulations, a physician may operate an office from her residence with up to one nonresident employee.

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## **7.3 ADULT USE ESTABLISHMENTS**

### **7.3.1. Purpose**

The purpose of this section is to regulate the location of the adult use establishments; to prevent the associated secondary effects of these establishments; and to protect and promote the general welfare, health and safety of the residents of Tewksbury.

### **7.3.2. Special Permit Required**

The operation of an adult use establishment shall require a special permit from the Planning Board. The Planning Board may impose such conditions, safeguards and limitations as it deems appropriate to protect the neighborhood or the Town including, but not limited to:

- A. Screening of parking areas or other parts of the premises from adjoining premises or from the street by specified walls, fences, plantings or other devices;
- B. Modification of the exterior features or appearances of the structure(s);
- C. Limitation of size, number of occupants, method and time of operation and extent of facilities;
- D. Regulation of number, design and location of access drives, drive-up windows and other traffic features;
- E. Requirement for performance bonds or other security; and

- F. Installation and certification of mechanical or other devices to limit present or potential hazard to human health, safety, welfare or the environment resulting from smoke, odor, particulate matter, toxic matter, glare, noise, vibration or any other objectionable impact generated by the use of land.

### **7.3.3. Conditions**

Development or operation of adult use establishments shall meet the following conditions:

- A. Adult use establishments shall be restricted to operation within the heavy industry district or the office research district only.
- B. There shall be no more than
  1. one (1) adult bookstore permit, adult video permit or adult paraphernalia permit granted for each 15,000 residents of the Town as listed in the last state census; prior to a second adult bookstore permit being issued there shall be 30,000 residents of the Town as listed in the last state census; or
  2. one adult motion picture theater permit granted for each 24,000 residents of the Town as listed in the last federal census; or
  3. one adult cabaret permit for each 24,000 residents of the Town as listed in the last federal census.
- C. No adult use establishment permit shall be allowed to display for advertisements or other purpose any signs, placards other like materials to the general public on the exterior of the building or on the interior, through glass or other like transparent.
- D. No adult use establishment permit shall be granted if such proposed location is within 1320 feet of another presently existing or permitted adult use establishment.
- E. No adult use establishment permit shall be granted if such proposed location is within 1320 feet of an establishment licensed under G.L. c. 138, §12; a public school or playground; a municipal building or use; a cemetery; a commercial amusement center or park a hospital or nursing home; a private or religious, sectarian or denominational school, building or use including churches, parish houses and rectories.
- F. No permit shall be granted for an adult use establishment in an area otherwise properly zoned if the specific location is within 1000 foot radius of an interstate highway ramp where said ramp intersects with a town or state owned roadway.
- G. No permit shall be granted for an adult use establishment in an area otherwise properly zoned if the specific location is within a 1320 foot radius of an R40 or MFD District unless the use is physically separated from the residential districts by an interstate right of way, with no direct access from the right of way to the residential, heavy industrial and office research district.
- H. No special permit for an adult use establishment shall be granted to any person convicted of violating the provisions of G.L. c. 119, § 63 or G.L. c. 272, § 28.

- I. The hours in which adult use establishments are open to the public shall be limited as follows: adult bookstore, adult paraphernalia store, adult video store or similar adult use establishment between the hours of 9:00 A.M. and 9:00 P.M., adult motion picture theater, adult cabaret club similar adult use establishment between the hours of 4:00 P.M. and 12:00 Midnight.
- J. Design Standards. Development or operation of adult use establishments shall meet the following design standards:
  1. The yard space, building height and any other provisions of the Zoning Bylaws applicable to the Commercial districts shall apply to lots within the Adult Entertainment District unless contrary to the provisions contained in this section.
  2. A landscaped buffer which shall be a minimum of 60 feet in depth designed to mitigate the impact of the adult use establishment on abutting properties shall be required by the Planning Board between the use and the adjacent properties.
  3. No adult use establishment may have any flashing lights visible from outside the establishment or theater.

#### **7.3.4. Signs<sup>28</sup>**

- A. No adult use establishment shall be eligible to apply for a special permit requesting a freestanding accessory sign.
- B. Adult use advertisement signs may only be located on a building in which there is operating an adult use establishment pursuant to a special permit issue by the Planning Board.
- C. The highest point on any adult use advertisement sign may be no higher than twenty-four feet above ground level.
- D. No adult use advertisement sign may contain any moving, flashing or animated lights, or visible moving or movable parts.

#### **7.3.5. Mandatory Findings by the Planning Board**

The Planning Board shall not issue a special permit unless, without exception, it finds that:

- A. The proposed use is in harmony with the purpose and intent of this Bylaw.
- B. The proposed use complies with all applicable requirements of this Bylaw.
- C. The proposed use will not prove injurious to the safety or general welfare of the neighborhood into which it proposes to locate nor will the proposed use prove destructive of property values.

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<sup>28</sup> This section, along with draft Section 6.2, need further legal review.

### **7.3.6. Regulations and Fees**

The Planning Board shall adopt and, from time to time, amend regulations, not inconsistent with the provisions of this Bylaw or G.L. c. 40A or other applicable provision of the General Laws, and shall file a copy of said regulations with the Town Clerk. Such regulations shall prescribe as a minimum the size, form, contents, style, and number of copies of plans and specification, the town boards or agencies from which the Planning Board shall request permits. The Planning Board may adopt, and from time to time, amend fees sufficient to cover reasonable costs incurred by the town in the review and administration of the Special Permit.

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## **7.4 LARGE-SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC FACILITIES**

### **7.4.1. Purpose**

The purpose of this Section 7.5 is to regulate the creation of new large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning and removal of such installations. The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

### **7.4.2. Applicability**

This section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment. A Large-scale Ground Mounted Solar Photovoltaic Facility shall be defined as a Solar Photovoltaic system that is structurally mounted on the ground and is not roof-mounted and has a minimum nameplate capacity of 250 kW DC. There shall be no ground mounted Solar Photovoltaic system allowed unless as permitted in this Bylaw.

### **7.4.3. General Requirements for All Large-Scale Solar Power Generation Installation**

The following requirements are common to all solar photovoltaic installations to be sited in specific designated locations.

- A. Compliance with laws, bylaws and regulations. The construction and operation of all large-scale solar photovoltaic installations shall be consistent with, and insofar as pertinent, compliant with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code in force and applicable at any relevant time.

- B. Building permit and building inspection. No large-scale ground-mounted solar photovoltaic installation shall be constructed, installed, or modified as provided in this section, nor shall construction or installation be commenced without first obtaining the necessary or appropriate permits.
- C. Special Permit. All large-scale ground-mounted solar photovoltaic installations shall require a special permit from the Planning Board prior to the issuance of a building permit.
- D. General. All applications for a large-scale ground-mounted solar photovoltaic installation shall be submitted in accordance with the Planning Board's rules and regulations governing site plans as may be amended from time to time. All substantive plans or other technical documents submitted in support of the application shall have been prepared by engineers or surveyors licensed to practice in Massachusetts.

#### **7.4.4. Additional Information**

An addition to the information required for a site plan application, the following additional information shall be submitted for each large-scale ground-mounted solar photovoltaic installation:

- A. Drawings of the solar photovoltaic installation showing the proposed layout of the system and any potential shading from nearby structures.
- B. One or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices.
- C. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter.
- D. Name, address, and contact information for proposed system installer.
- E. The name, contact information and signature of any agents representing the applicant in connection with the special permit application process, or general project oversight following the issuance of any special permit.
- F. Documentation of actual or prospective access and control of the project site.
- G. An operation and maintenance plan.
- H. Description of financial surety.
- I. Vegetated buffer plan showing size, type and amount of trees/shrubs to be installed to protect street(s) and residential homes from view of site, which buffer as approved within the reasonable discretion of the Planning Board, is hereby required for any installation pursuant to this section.
- J. Site Control. The applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the

proposed solar photovoltaic installation. Fencing, if installed, shall be compatible with the scenic character of the Town and satisfactory to the Planning Board, and shall not consist of barbed wire or razor wire.

- K. Operations and Maintenance Plan. The applicant shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation as well as general procedures for operational maintenance of the installation and emergency shutdown of the site if needed.
- L. Utility Notification. No large-scale ground-mounted solar photovoltaic installation shall be approved by the Planning Board until satisfactory evidence has been submitted to the Planning Board that the electric utility has been informed of the applicant's intent to install an interconnected customer-owned generator.

#### **7.4.5. Dimension and Density Requirements**

For large-scale ground-mounted solar photovoltaic installations, the following dimensional requirements shall apply.

- A. The minimum lot or parcel size for any installation shall be 20 acres.
- B. Setbacks: 50 feet front and 20 feet side and rear yard setbacks, provided that such setbacks shall be 200 feet to any adjoining residential lot line unless waived by the Planning Board based upon findings of sufficient buffering and screening and a determination that the waiver is in the best interest of the Town.
- C. Height: The height of any or all structures comprising the large-scale ground-mounted solar photovoltaic facility shall not exceed 20 feet above the pre-existing natural grade underlying each particular structure unless waived by the Planning Board based upon findings of sufficient buffering and screening and a determination that the waiver is in the best interest of the Town.

#### **7.4.6. Appurtenant Structures**

All structures appurtenant to large-scale ground-mounted solar photovoltaic installations shall be subject to the dimensional requirements of the zoning district in which they are located. All such appurtenant structures, including, but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible and harmonious with each other. Whenever feasible, in the reasonable opinion of the Planning Board, structures should be sheltered from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

#### **7.4.7. Design Standards**

The following standards shall apply to all large-scale ground-mounted solar photovoltaic installations in addition to those contained in the Rules and Regulations Governing Site Plans.

- A. Signage. Signs on large-scale ground-mounted solar photovoltaic installations shall comply with all provisions of this Zoning Bylaw relative to signs. A sign consistent with said provisions shall be required to identify the owner of the premises, as well as the operator of the solar photovoltaic installation, if different from the owner, and provide a twenty-four-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.
- B. Utility connections. Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the electric utility. If an existing above ground connection solution already exists, however, this can be used if it meets the requirements of the electric utility. Electrical transformers for utility interconnections may be aboveground if required by the electric utility concerned with the project.
- C. Glare. The plan shall show how the abutting properties and local traffic will be protected from glare or reflected light from the installation.

#### **7.4.8. Safety and Environmental Standards**

Emergency services. The large-scale solar photovoltaic installation applicant shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief and concerned electric utility. Upon request, the applicant shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The applicant shall identify a responsible person for public inquiries throughout the life of the installation.

- A. Solar photovoltaic installation conditions. The large-scale ground-mounted solar photovoltaic installation applicant shall maintain the 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 applicant shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

#### **7.4.9. Abandonment or Decommissioning**

Any large-scale ground-mounted solar photovoltaic installation that has reached the end of its useful life or has been abandoned consistent with Subsection 6613 of this section shall be removed. The applicant shall physically remove the installation no more than 150 days after the date of discontinued operations. The applicant shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- A. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
- B. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- C. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to existing vegetation. All disturbed areas shall be covered with a minimum of six inches of good quality top soil before seeding.

#### **7.4.10. Abandonment**

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances deemed reasonable by the written acknowledgment of the Planning Board, which shall not be unreasonably refused, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. The failure to operate shall be conclusively determined based on the records showing the power supplied by the installation to the grid. If the applicant of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation.

#### **7.4.11. Financial Surety**

As a condition of the Site Plan Special Permit, the Planning Board shall require the applicant to provide surety in an amount approved by the Planning Board to be necessary to ensure the proper removal of the installation. The form of the surety shall be through an escrow account, surety bond, or other means of like character acceptable to the Planning Board. The amount of the surety shall be based on a fully inclusive estimate of the costs associated with removal and site restoration, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation or the increased market rate cost of the equipment and services necessary to achieve the removal and site restoration. In no case shall the amount of the surety exceed 125% of the cost of removal and compliance with the additional requirements set forth herein. Such surety will not be required for municipally or state-owned facilities.

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### **7.5 REMOVAL OF SAND, GRAVEL, QUARRY OR OTHER EARTH MATERIALS**

No sod, loam, sand, gravel or quarry stone shall be removed for sale (except when incidental to and in conformity with the construction of a building for which a permit has been issued in accordance with the Building Laws), except by special permit from the Board of Appeals.

## 8. OTHER DEVELOPMENT REGULATIONS

### 8.1 NONCONFORMING USES AND STRUCTURES

#### 8.1.1. Applicability

- A. This Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, § 5 at which this Zoning Bylaw, or any relevant part thereof, was adopted. Lawfully pre-existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished unless authorized under this Section 8.1.
- B. **Nonconforming Uses.** The Board of Appeals may issue a special permit to extend a nonconforming use in only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The Board of Appeals shall not allow an existing nonconforming use to be changed to another nonconforming use.
- C. **Nonconforming Structures.** The Board of Appeals may issue a special permit to reconstruct, extend, alter, or change a nonconforming structure only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.
- D. **Variance Required.** The reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals; provided, however, that this provision shall not apply to nonconforming single and two family residential structures, which shall be governed by Section 8.1.2 below.

#### 8.1.2. Pre-Existing Nonconforming Single and Two Family Residential Structures

- A. Pre-Existing Nonconforming single-family and two-family residential structures may be reconstructed, extended, altered, or structurally changed upon the issuance of a building permit if the Building Commissioner determines that the proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of the structure. The following five conditions shall not be deemed to increase the nonconforming nature of a single-family or two-family residential structure and shall be used in the Building Commissioner's determination.
  - 1. Any reconstruction, extension, alteration, or change to a structure which complies with all current setback, yard, building coverage, and building height

requirements<sup>29</sup> but is located on a lot with insufficient area, where the reconstruction, extension, or alteration or change will also comply with all of said current requirements.

2. Any reconstruction, extension, alteration, or change to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient frontage, where the reconstruction, extension, or alteration or change will also comply with all current requirements.
  3. Any reconstruction, extension, alteration, or change to a structure which encroaches upon one or more required yard or setback areas, where the reconstruction, extension or alteration or change will comply with all current setback, yard, building coverage and building height requirements; the provisions of this subsection shall apply regardless of whether the lot complies with current area and frontage requirements.
  4. Any extension, alteration, or change to the side or face of a structure which encroaches upon a required yard or setback area, where the extension or alteration or change will not encroach upon such area to a distance greater than the existing structure; the provisions of this subsection shall apply regardless of whether the lot complies with current area and frontage requirements. The setbacks for this provision shall not be less than 25 feet on the front and 10 feet on the side and rear.
  5. Any extension, alteration, or change to a nonconforming structure which will not increase the footprint of the existing structure provided that existing height restrictions shall not be exceeded. The setbacks for this provision shall not be less than 25 feet on the front and 10 feet on the side and rear.
- B. If the Building Commissioner determines that the nonconforming nature of the structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may allow the proposed reconstruction, extension, alteration, or change if it finds that the proposed modification will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

#### **8.1.3. Abandonment or Non-Use**

A nonconforming use or structure which has been abandoned or not used for a period of two years, shall lose its protected status and be subject to all provisions of this Zoning Bylaw.

#### **8.1.4. Reconstruction after Catastrophe or Demolition**

A nonconforming structure may be reconstructed after a catastrophe or after demolition, provided that the owner shall apply for a building permit and start

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<sup>29</sup> Do you want to maintain this policy? Needs discussion.

operations for reconstruction on said premises within two years after such catastrophe or demolition, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure or provided that the building meets all applicable requirements for yards, setback, and height. In the event that the proposed reconstruction would cause the structure to exceed the volume or area of the original nonconforming structure or exceed applicable requirements for yards, setback, and/or height, a special permit shall be required from the Board of Appeals.

#### **8.1.5. Reversion to Nonconformity**

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

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## **8.2 MULTIFAMILY DWELLINGS**

### **8.2.1. Purpose**

The purpose of this Section 8.2 is to regulate the development of multifamily dwellings by establishing eligibility requirements and reasonable conditions for construction. This section is not intended to supersede, modify, or conflict with the powers and duties delegated to the Planning Board pursuant to the Subdivision Control Law, G.L. c. 41, §§ 81K - 81GG.

### **8.2.2. Applicability**

This section applies to the construction of multifamily dwellings in any district in which they are allowed as of right or by special permit from the Planning Board in accordance with Section 5 of this Bylaw.

### **8.2.3. Submission Requirements and Procedures**

Application for a special permit under this Section 8.2 shall be in accordance with the Planning Board's rules and regulations and Section 3.5 of this Bylaw. Where multifamily dwellings are a permitted use, approval shall be subject to Site Plan Review by the Planning Board under Section 3.6.

### **8.2.4. Design Standards for Multifamily Dwellings by Special Permit**

In any district where multifamily dwellings are allowed subject to a special permit from the Planning Board, they shall meet the following standards:

- A. Any site proposed for multifamily dwellings shall have a minimum lot area of four acres and a minimum frontage of 150 feet on a public or private way that is open for public use. However, the Planning Board may waive the minimum lot frontage to not less than 40 feet on a public way provided that a suitable private access road into the site area can be constructed with the reduced frontage.

- B. Maximum density shall be seven units per acre nor more than 14 bedrooms per acre. This will allow for flexibility in the number of bedrooms per unit to vary from one to three bedrooms. The ratio of three-bedroom market rate units to three-bedroom affordable units (as required under Section 8.3) shall be 1 to 1. No more than 5 percent of the total site area within the wetlands and/or flood plain shall be used in calculating maximum density for the site. If more than 5 percent of the site is in wetlands or flood plains, the portion that exceeds 5 percent shall be deleted from the area used to determine maximum density.
- C. The maximum coverage of the site available for use by all buildings, including garages, and carports shall not exceed 30 percent of the site area.
- D. Maximum building height shall be 45 feet unless waived by the Planning Board.
- E. No building within the development shall be constructed within 50 feet of any perimeter of site.
- F. All lighting shall be directed away from adjoining property.
- G. Services.
  - 1. All utilities shall be installed underground using standards established by the Planning, Health, Building, and Public Works Departments of the Town of Tewksbury. Sewage shall be disposed of by means of adequate connections as required by state and local Departments and Board of Health.
  - 2. If curbside pick-up of trash and recycling materials is not viable, there shall be shared waste disposal facilities (such as dumpsters for household trash and dumpsters for recycling) adequately sized for the development as determined by the Board of Health.
- H. The distance between the buildings that are structurally connected by roofing, fencing, or other means but not enclosed or heated shall be determined by the Planning Board. Distance parameters will be determined on the aesthetics, created by the design, practicality of design, and the effect on the development by the design. The Planning Board shall determine any distance parameters between buildings not covered under this Zoning Bylaw.
- I. Any roadway or access drive located i within 50 feet of a property line shall be shielded from the property line by a buffer of shielding-type trees satisfactory to the Planning Board between the roadway and property line for the entire length of the roadway within the 50-foot area. This planting shall be in addition to any existing vegetation between the property line and the proposed roadway<sup>30</sup> and shall be placed a maximum of 10 feet apart.

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<sup>30</sup> If the existing vegetation provides enough buffer, why require additional plantings? Needs discussion.

- J. Walkways, tables, benches, or flowering bushes or trees may be allowed in 50- to 100-foot buffer areas at the discretion of the Planning Board to improve the aesthetics of the site and views from surrounding areas.
- K. Television, radio, and communications services shall be supplied by a central system with underground connections.
- L. Not less than 60 percent of the upland area of the site available for use shall be set aside as open space. The open space shall remain free from structures, parking and drives, and such area shall be left either in its natural state, attractively landscaped, or developed for outdoor recreational facilities. Unless waived by the Planning Board, suitable recreational facilities shall be provided within the required open space. The owner or owners shall be responsible for the maintenance of common areas, including but not limited to snow plowing within the site limits and rubbish disposal. No outside burning of rubbish or inside incineration shall be permitted.
- M. Any application for a Multifamily Dwelling special permit shall comply with Section 8.3 of this Bylaw.

#### **8.2.5. Design Standards for Permitted Multifamily Dwellings in the TC, VR Districts**

In the TC and VR districts, multifamily dwellings with not more than eight units per building are permitted as of right, subject to Site Plan Review by the Planning Board under Section 3.6, provided comply with the following design standards:

- A. The proposed site shall have a minimum lot area of one acre and a minimum lot frontage of 150 feet on Main Street.
- B. Maximum density shall be 12 units per acre. No more than 5 percent of any wetlands or flood plain on the site shall be used in calculating maximum density.
- C. The maximum coverage of the site available for use by all buildings, including garages, and carports shall not exceed 35 percent of the site area.
- D. Maximum building height shall be 45 feet unless waived by the Planning Board.
- E. No building within the development shall be constructed within 50 feet of the lot line of an abutting single-family dwelling.
- F. All other design standards in Section 8.2.5 shall apply.

#### **8.2.6. Off-Street Parking**

- A. Provision shall be made for not less than two parking spaces per unit, one of which shall be completely enclosed. Detached parking garages will be permitted and designed so as to complement the building design and site layout, but shall not be constructed within setback areas.

- B. Enclosed parking spaces shall be 10 feet wide and 20 feet long and unenclosed parking spaces shall be not less than 9 feet wide and 18.5 feet long unless waived by the Planning Board.
- C. Additional enclosed or unenclosed parking spaces shall be provided for guests and recreational areas as indicated below:
  - 1. Guest: 1 parking space per two dwelling units
  - 2. Tennis Court: 2 parking spaces per court
  - 3. Recreation buildings/swimming pools: 1 parking space per 10 dwelling units, but not less than 10 parking spaces

#### **8.2.7. Criteria for Waivers**

Where the Planning Board is specifically authorized to waive a requirement in this Section 8.2, the Board shall base its decision upon findings that the waivers will provide for improved aesthetics created by the design, and practicality of design to lessen environmental, neighborhood, and public service impacts.

#### **8.2.8. Design Guidelines**

Whether proposed by special permit or through site plan review, multifamily dwellings shall comply with design guidelines, if any, adopted by the Planning Board and kept on file with the Town Clerk and Department of Community Development.

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### **8.3 AFFORDABLE HOUSING REQUIREMENTS**

#### **8.3.1. Purposes**

The purpose of this Section 8.3 is to provide affordable housing choices throughout the Town, and to provide for a diverse, balanced and inclusive community, with housing for people of all income levels as a matter of basic fairness and social responsibility.

#### **8.3.2. Applicability**

Any special permit application to the Planning Board for construction of dwelling units on one or more contiguous parcels in the Multiple Family District or for an Open Space Residential Design special permit under Section 8.4 shall be subject to the provisions of this Section 8.3.<sup>31</sup> In the Multiple Family District, the Planning Board shall deny a special permit application if, in its opinion, the land or parcels of land held in common ownership were subdivided or

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<sup>31</sup> I assume the Town will want multifamily dwellings in the TC and VR districts to include affordable units, too, but we need direction. This needs discussion from the committee.

otherwise modified in a manner that results in a reduction of the potential number of Affordable Housing Units.<sup>32</sup>

### 8.3.3. Basic Requirements

- A. An application for a Multiple Unit Development special permit shall require that at least 15 percent of the total dwelling units in the development be established as affordable housing as defined in Section 2. The calculation of the number of designated affordable units shall be rounded to the next whole number for units equal to 0.5 or greater.
- B. An application for an Open Space Residential Design special permit shall require that at least 10 percent of the total dwelling units shall be established in perpetuity as affordable housing. For purposes of this provision, “total dwelling units” shall mean the Basic Maximum Number from the Determination of Yield under Section XX. Dwelling units in addition to this number achieved through other density bonus provisions of this Bylaw shall not be subject to this Section 8.3. The calculation of the number of affordable units shall be rounded to the next whole number for units equal to 0.5 or greater.
- C. The Planning Board may waive the construction of affordable housing in a proposed development for an equivalent fee-in-lieu-of units payment made Tewksbury Affordable Housing Trust Fund, subject to the provisions and policies of the Tewksbury Local Housing Partnership for the creation of affordable housing.<sup>33</sup> A fee in lieu of affordable units shall be allowed only for creation of homeownership units.
- D. Timing of construction, provision or payments of fees-in-lieu of affordable units. Where feasible, affordable units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below.

Market-rate Unit %	Affordable Housing Unit %
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%

<sup>32</sup> I've tried to revise the Applicability section to reflect the fact that under 8.2.3, you require affordable units in OSRDs in addition to multiple family projects. It looks as though OSRD was added to this section at some point but the Applicability paragraph wasn't changed. Have you had any issues with the highlighted language? Needs discussion.

<sup>33</sup> How is the fee calculated? That information really should be here in the Zoning Bylaw so applicants can anticipate what the Town will require them to pay. Otherwise, an applicant could be held up in a dispute over fees with a committee that is not the SPGA ... potentially problematic.

Up to 90%

100%

Fractions of units shall not be counted.

#### **8.3.4. Location of Affordable Housing Units**

All affordable units constructed or rehabilitated under this Bylaw shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units. Affordable units within market-rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units. Interior features of affordable units shall comply in all respects to the minimum design and construction standards of the Department of Housing and Community Development for the Local Initiative Program.

#### **8.3.5. Marketing Plan for Affordable Units**

Affordable units shall be rented or sold in accordance with an affirmative fair housing marketing plan approved by the Department of Housing and Community Development.

#### **8.3.6. Preservation of Affordability; Restrictions on Resale**

No building permit shall be issued until the applicant executes an enforceable agreement with the Town, in a form acceptable to Town Counsel, and provides evidence acceptable to the Department of Community Development that the agreement has been recorded at the Middlesex North Registry of Deeds. The agreement shall provide for long-term affordability of the affordable units in the development and for compliance with the requirements of the Local Initiative Program for units eligible for the Subsidized Housing Inventory.

For an affordable homeownership unit, no certificate of occupancy shall be issued until the applicant submits documentation acceptable to the Department of Community Development that an affordable housing deed rider in a form acceptable to Town Counsel and the Department of Housing and Community Development has been signed by the homebuyer and recorded at the Middlesex North Registry of Deeds.

#### **8.3.7. Planning Board Regulations**

The Planning Board shall adopt rules and regulations to administer this Section 8.2, including submission requirements, procedures, and fees, and may also adopt guidance documents to assist in the implementation of this Section.

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## **8.4 OPEN SPACE RESIDENTIAL DEVELOPMENT**

### **8.4.1. Purpose**

The Purposes of OSRD are to:

- A. Further the goals and policies of the Town of Tewksbury's Master Plan;

- B. Allow for greater flexibility and creativity in the design of residential subdivision developments;
- C. Encourage preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies and wetlands, and historical resources in a manner that is consistent with Tewksbury's Master Plan;
- D. Encourage a more creative and thoughtful approach to land development that decreases burden on municipal economy, minimizes disturbance and loss of undeveloped open space and utilizes and incorporates existing topography and natural features of the land to achieve a more environmentally sound design than with a conventional subdivision approach;
- E. Control suburban sprawl and maintain the character of the Town by conserving open space, scenic areas, views, streams, increasing recreational opportunities and other community assets;
- F. Promote efficiency and economy of street and utility layout; lessening storm run-off, erosion and sedimentation; retain natural drainage courses and wetlands; and in general promoting the health, safety, convenience and welfare of residential areas and of the Town of Tewksbury as a whole;
- G. Encourage development in harmony with the natural area, and promote alternative construction methods to typical strip residential developments lining roadsides in the Town.

#### **8.4.2. Eligibility**

To be eligible for consideration as an OSRD, the proposed tract of land shall consist of at least three acres in the R40 or Farming district.

#### **8.4.3. Housing Types**

Housing Units shall be single family detached units. No common wall or multi-family structures shall be allowed.

#### **8.4.4. Special Permit Required**

The Planning Board may authorize an OSRD pursuant to the grant of a Special Permit. Such special permits shall be acted upon in accordance with the following provisions:

#### **8.4.5. Pre-Application Process**

The applicant is strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed OSRD, seek preliminary feedback from the Planning Board or its technical experts, and set a timetable for submittal of a formal application.

#### 8.4.6. Design Process

At the time of the application for a Special Permit for OSRD, the applicant must demonstrate to the Planning Board that the following design process was performed by a registered landscape architect and considered in determining the layout of proposed streets, house lots, and open space.

- A. Step One: Identify Areas of Concern.
  - 1. Protected Land Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law); environmentally sensitive land areas including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats; and culturally significant features such as historic and archeological sites and scenic views shall be identified and delineated as determined by the Conservation Commission, the Planning Board or the Department of Environmental Protection.
  - 2. The Potentially Developable Area will be identified and delineated. To the maximum extent feasible, the Potentially Developable Area shall consist of land outside identified as environmentally sensitive areas.
- B. Step Two: Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and areas of shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.
- C. Step Three: Aligning the Streets. Align streets and driveways in order to access the house sites. Common Driveways may be allowed subject to the requirements of the Planning Board's Rules and Regulations.
- D. Step Four: Lot Lines. Establish lot lines for each of the individual parcels and open space.

#### 8.4.7. Site Specific Design Standards

- A. Basic Maximum Number of Units shall be determined by one of the following methods:
  - 1. Determination of Yield Formula. The Basic Maximum Number shall be derived from the following calculation to determine the total number of lots (or dwelling units):

$$\text{Total Number of Lots} = \frac{\text{TA} - (0.5 \times \text{WA}) - (0.1 \times \text{TA})}{\text{Existing minimum lot area (1 acre)}}$$

TA = Total Area of Parcel (Acres)

WA = Wetlands and Riverfront Areas of Parcel (Acres)

The calculation of the number of Basic Maximum Number of Housing Units shall be rounded to the next whole number for units equal to 0.5 or greater.

OR:

2. Determination of Yield Plan. The Basic Maximum Number shall be derived from a Yield Plan. The Yield Plan shall show the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional subdivision. The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots (or dwelling units) resulting from the design and engineering specifications shown on the Yield Plan.

B. Dimensional Requirements. Lots sizes may be reduced in area from the minimum requirements of the Zoning Bylaw according to the following schedule:

R40 and Farming Districts, 43,560 sq. ft. (one acre) to 10,000 sq. ft.

The Planning Board may waive lot size requirements when significant benefit relating to the Purpose and Intent of the OSRD Special Permit are found as determined by the Planning Board.

c. Flexible Frontage

1. The combined frontage of the lots of an Open Space Residential Design shall equal or exceed 50 feet for each lot created. [For example, in an R40 development, to create a six-lot development, the combined frontage of the parcels must be a minimum of 300 feet, not to include frontage on existing public ways.)

2. Provided that all other requirements of this bylaw are met, the minimum frontage required for individual lots within an Open Space Residential Design shall be 40 feet with the exception described in 7544.d.3.below. Each lot shall have adequate access on a public or private way which meets the standards in this Section.

3. To the extent feasible, protected open space shall be located adjacent to public ways. Any building lot which fronts on an existing public or private road shall have the frontage normally required in the zoning district.

C. Groups of house lots and location of open space shall be as determined by the Planning Board.

D. Open Space Requirement.

1. A minimum of 50 percent of the proposed tract of land shall be Open Space.

2. No more than 5 percent of the designated open space may be comprised of wetlands or land having an average grade greater than 25 percent.

3. Wastewater and stormwater management systems serving the OSRD may be located within the open space.

4. Open Space Ownership. At the applicant's request and approval of the Planning Board, the open space may be owned by:

- a. A private owner for agricultural, horticultural, forestry or any other purpose not inconsistent with a prepared conservation restriction;
- b. A non-profit organization or agency of the Commonwealth, with their consent, whose principal purpose is the conservation of open space for any of the purposes set forth herein;
- c. The Tewksbury Conservation Commission; or
- d. A homeowners association (HOA) with documentation that is provided by the applicant and reviewed and approved by Town Counsel and the Planning Board.

Selection of ownership option (a), (b) or (d) requires:

- The conveyance of a conservation restriction as outlined herein; and
  - The granting of an access easement over such land sufficient to ensure its perpetual maintenance as agricultural, conservation, or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town of Tewksbury may after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town of Tewksbury shall be assessed against the properties within the development and/or to the owner of the open space. Pursuant to G.L. c. 40 § 58 the Town of Tewksbury may file a lien against the lot or lots to ensure payment for such maintenance. Pursuant to G.L. c. 40 § 57 the Town of Tewksbury may also deny any application for, or revoke or suspend a building permit or any local license or permit, due to neglect or refusal by any property owner to pay any maintenance assessments levied.
5. Open Space Recording. In order to ensure that the corporation, non-profit organization, or trust will properly maintain the unsubdivided land or open space, an instrument(s) shall be recorded with the Middlesex North Registry of Deeds which shall provide as a minimum the following requirements:
- a. A legal description of the unsubdivided land or open space;
  - b. A statement of the purposes for which the unsubdivided land or open space is intended to be used and the restrictions on its use and alienation;
  - c. The type and name of the corporation, non-profit organization, or trust which will own, manage and maintain the unsubdivided land or open space;
  - d. Provision for the management, maintenance, operation improvement and repair of the unsubdivided land or open space and facilities therein, including provisions for obtaining and maintaining adequate insurance and levying and

collecting from the dwelling owners common charges to pay for expenses associated with the subdivided land or open space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling owners in proportion to their ownership or beneficial interests in the corporation, non-profit organization or trust, and that each dwelling owner's share of the common charge shall be a lien against his real estate in the cluster development, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record;

The method by which such instrument(s) may be amended.

#### **8.4.8. Special Permit Procedures and Decision**

- A. Application. Submission requirements and procedures for an OSRD special permit shall conform to the Planning Board's rules and regulations and Section 3.5 of this Bylaw, and shall include a Sketch Plan. The Planning Board shall adopt rules and regulations relative to the size, form, number and contents of the Sketch Plan.
- B. Relationship Between the OSRD Special Permit and OSRD Definitive Subdivision Plan.
  - 1. The issuance of an OSRD Special Permit allows the applicant to submit an Open Space Definitive Subdivision Plan to the Planning Board for approval under the Subdivision Control Law. Any OSRD Special Permit issued by the Planning Board shall specifically state that the Open Space Definitive Subdivision Plan shall substantially comply with the OSRD Special Permit.
  - 2. An Open Space Definitive Subdivision Plan will be considered not to substantially comply with the OSRD Special Permit if the Planning Board determines that any of the following conditions exist:
    - a. an increase in the number of building lots;
    - b. a significant decrease in the open space acreage;
    - c. a significant change in the lot layout;
    - d. a significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
    - e. significant changes to the storm water management facilities; and/or,
    - f. significant changes in the wastewater management systems.
    - g. significant change or receipt of information which deviates from the information used as a basis for the approval of the OSRD Special Permit issued by the Planning Board.
  - 3. If the Planning Board determines that the Open Space Definitive Subdivision Plan does not substantially comply with the OSRD Special Permit, the Board may disapprove the OSRD Definitive Subdivision Plan.

4. The Planning Board may conditionally approve an Open Space Definitive Subdivision Plan that does not substantially comply with the OSRD Special Permit. However, such conditional approval must identify where the plan does not substantially comply with the OSRD Special Permit and shall require that the OSRD Special Permit be amended to be in compliance with the significant changes identified by the Planning Board. The Planning Board shall also require that the applicant file an application to amend the OSRD Special Permit within a specified time period.
  5. The public hearing on the application to amend the OSRD Special Permit shall be limited to the significant changes identified by the Planning Board in their conditional approval of the Open Space Definitive Subdivision Plan.
- C. Other Information. The submittals and permits of this Section 8.4 shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for an application for a Special Permit for a OSRD with the public hearing required for approval of a Definitive Subdivision Plan.
- D. Decision. The Planning Board may grant a special permit for an OSRD that complies in all respects with this Section 8.4 if the Board determines that the proposed OSRD will have a less detrimental impact on the tract than a conventional development proposed for the tract, after considering the following factors:
1. whether the OSRD furthers the goals and policies of the open space/master plan.
  2. whether the OSRD achieves greater flexibility and creativity in the design of residential developments than a conventional subdivision plan;
  3. whether the OSRD promotes permanent preservation of open space, agricultural land forestry land, other natural resources including waterbodies and wetlands, and historical and archeological resources;
  4. whether the OSRD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
  5. whether the OSRD reduces the total amount of disturbance on the site;
  6. whether the OSRD facilitates the construction and maintenance of streets, utilities, and public service in a more economical and efficient manner.
  7. whether the OSRD and its supporting narrative documentation complies with all sections of this zoning bylaw.
  8. whether the OSRD complies with the recommendations of the Department of Public Works, the Board of Health and the Conservation Commission.

9. whether it appears that because of soil characteristics, drainage, traffic or other conditions, the granting of such a permit would be detrimental to the health, safety or welfare of the neighborhood or Town or inconsistent with the intent of the OSRD bylaw.