

# **Middleborough Zoning Bylaws**

**RECODIFICATION - October 1, 2012**

*Amended Through 10/5/15 Town Meeting*

## TABLE OF CONTENTS

SECTION 1.0	PURPOSE AND AUTHORITY.....	9
1.1.	PURPOSE.....	9
1.2	AUTHORITY.....	9
1.3	SCOPE.....	9
1.4	APPLICABILITY.....	9
1.4.1	Applicability; Nonconformities.....	9
1.4.2	Commencement of Construction or Operation.....	9
1.5	AMENDMENTS.....	10
1.6	SEPARABILITY.....	10
1.7	ADDITIONAL INFORMATION.....	10
SECTION 2.0	DISTRICTS.....	10
2.1	ESTABLISHMENT.....	10
2.2	OVERLAY DISTRICTS.....	10
2.3	SPECIAL RESIDENTIAL USES.....	10
2.4	ZONING MAP.....	11
SECTION 3.0	USE REGULATIONS.....	12
3.1	PRINCIPAL USES.....	12
3.1.1	Key.....	14
3.2	ACCESSORY USES AND STRUCTURES.....	15
3.2.1	Customary Home Occupation.....	15
3.2.2	Home Occupation by a Tradesperson.....	15
3.2.3	Intensive Home Occupation.....	15
3.2.4	Accessory Scientific Uses.....	16
3.3	NONCONFORMING USES AND STRUCTURES.....	16
3.3.1	Applicability.....	16
3.3.2	Nonconforming Uses.....	16
3.3.3	Nonconforming Structures.....	16
3.3.4	Variance Required.....	17
3.3.5	Nonconforming Single and Two Family Residential Structures.....	17
3.3.6	Abandonment or Non-Use.....	17
3.3.7.	Reconstruction after Catastrophe or Demolition.....	18
3.3.8	Reversion to Nonconformity.....	18
3.4	MULTI FAMILY CONVERSION OF OWNER OCCUPIED BUILDINGS.....	18
3.4.1	Conversion of Single Family Dwelling To Up To Three (3) Dwelling Units.....	18
SECTION 4.0	DIMENSIONAL REQUIREMENTS.....	19
4.1	GENERAL REQUIREMENTS.....	19
4.1.1	Table of Dimensional Requirements.....	19
4.2	RA, RB AND RR DISTRICT REQUIREMENTS.....	19
4.2.1	One Structure per Lot.....	19
4.2.2	Exemption from Front Yard Requirement.....	19
4.2.3	Shape Factor.....	19
4.2.4	Upland Building Area Requirement.....	20
4.2.5	Lot Width at Setback.....	20
4.3	BUSINESS DISTRICT REQUIREMENTS.....	20
4.3.1	General.....	20
4.3.2	Special Permit for Larger Buildings.....	20
4.3.3	Height.....	20

- 4.4 INDUSTRIAL DISTRICT REQUIREMENTS ..... 20
  - 4.4.1 Lot Size. .... 20
- 4.5 GU, GUX and GUA DISTRICT REQUIREMENTS ..... 20
  - 4.5.1 Front Yard Exemption..... 20
  - 4.5.2 Dwellings. .... 21
  - 4.5.3 Special Permit for Larger Buildings..... 21
  - 4.5.4 Rail Lines. .... 21
- 4.6 COMMERCIAL DEVELOPMENT DISTRICT REQUIREMENTS..... 21
  - 4.6.1 Setbacks..... 21
  - 4.6.2 Height..... 21
  - 4.6.3 Shape Factor..... 22
- SECTION 5.0 GENERAL REGULATIONS..... 23
  - 5.1 GENERAL ..... 23
    - 5.1.1 SPGA..... 23
    - 5.1.2 State Highway ..... 23
  - 5.2 VISION CLEARANCE ..... 23
    - 5.2.1 General. .... 23
    - 5.2.2 Exemptions..... 23
  - 5.3 OFF-STREET PARKING AND LOADING ..... 23
    - 5.3.1 General. .... 23
    - 5.3.2 Required Parking Spaces..... 23
    - 5.3.3 Notes to Parking Table ..... 25
    - 5.3.4 Common Parking..... 25
    - 5.3.5 Multiple Principal Uses ..... 25
    - 5.3.6 Same Lot. .... 25
    - 5.3.7 Other Parking. .... 25
    - 5.3.8 No Backing Out..... 25
    - 5.3.9 Right of Way. .... 25
    - 5.3.10 Dimensional Standards..... 25
    - 5.3.11 Parking Area Construction Standards – CD District. .... 27
    - 5.3.12 Off-Street Loading. .... 28
    - 5.3.13 Special Permit..... 28
  - 5.4 LANDSCAPING AND SCREENING – CD DISTRICT ..... 28
    - 5.4.1 General. .... 28
    - 5.4.2 Front Setback..... 28
    - 5.4.3 Side and Rear Setback Areas..... 28
    - 5.4.4 Plantings..... 29
    - 5.4.5 Maintenance. .... 29
    - 5.4.6 Unsightly Areas..... 29
    - 5.4.7 Parking Area Landscaping. .... 29
    - 5.4.8 Shade Trees. .... 30
    - 5.4.9 Access..... 30
  - 5.5 LANDSCAPING AND SCREENING – INDUSTRIAL DISTRICT ..... 30
    - 5.5.1 Street Setback Screening ..... 30
    - 5.5.2 Property Line Setback Buffering..... 30
  - 5.6 LANDSCAPING AND SCREENING – GU, GUX and GUA DISTRICTS..... 30
    - 5.6.1 General. .... 30
  - 5.7 SIGNS ..... 31
    - 5.7.1 General Requirements. .... 31
    - 5.7.2 Business District Signs..... 31

5.7.3	Commercial Development District Signs.....	33
5.7.4	Residence Districts.....	34
<b>SECTION 6.0 SPECIAL REGULATIONS.....</b>		<b>35</b>
6.1	CONSTRUCTION TRAILERS OR CONSTRUCTION OFFICES.....	35
6.1.1	General.....	35
6.1.2	Limitation.....	35
6.2	TRAILERS OR MOBILE HOMES.....	35
6.2.1	Special Permit Required.....	35
6.2.2	Storage.....	35
6.3	UNREGISTERED VEHICLES.....	35
6.3.1	General.....	35
6.3.2	Exemptions.....	35
6.3.3	Special Permit.....	35
6.4	SCENIC ROADS.....	35
6.5	COMMERCIAL DEVELOPMENT DISTRICT.....	36
6.5.1	Purpose.....	36
6.5.2	Special Permit Required.....	36
6.5.3	Accessory Uses; Size Limits.....	36
6.5.4	Lighting.....	36
6.5.5	Impervious Areas.....	36
6.5.6	Development Standards.....	36
6.5.7	Grading and Drainage.....	37
6.5.8	Construction.....	37
6.6	BUSINESS DISTRICT.....	39
6.6.1	Permitted Uses.....	39
6.6.2	Special Permit Required.....	39
6.6.3	Site Plan Review: Purpose.....	39
6.6.4	Site Plan Review: Applicability.....	39
6.6.5	Site Plan Review: Submission Requirements.....	39
6.6.6	Design Objectives.....	40
6.6.7	Procedures.....	41
6.6.8	Compliance.....	42
6.6.9	Lapse.....	42
6.6.10	Appeal.....	42
6.7	ADULT ENTERTAINMENT.....	42
6.7.1	Purpose.....	42
6.7.2	Special Permit Required.....	43
6.7.3	Location.....	43
6.7.4	Application.....	43
6.7.5	Limitations.....	44
6.7.6	Lapse.....	44
<b>SECTION 7.0 SPECIAL RESIDENTIAL REGULATIONS.....</b>		<b>44</b>
7.1	MULTIFAMILY DWELLINGS IN GU AND GUX DISTRICTS.....	44
7.1.1	General.....	44
7.1.2	Area.....	44
7.1.3	Coverage.....	44
7.1.4	Parking.....	45
7.1.5	Multiple Uses.....	45
7.2	DWELLING UNITS ABOVE STREET LEVEL FLOOR IN THE BUSINESS DISTRICT.....	45

7.2.1	Special Permit Required.....	45
7.2.2	Requirements and Standards.....	45
7.2.3	Decision Criteria.....	45
7.2.4	Conditions.....	45
7.3	FAMILY ACCESSORY APARTMENTS .....	46
7.3.1	Purpose.....	46
7.3.2	Special Permit Required.....	46
7.3.3	Standards and Requirements.....	46
7.4	RETREAT LOTS.....	47
7.4.1	Purpose.....	47
7.4.2	Special Permit Required.....	47
7.4.3	Requirements.....	47
7.4.4	Application.....	49
7.5	OPEN SPACE AND RESOURCE PRESERVATION DEVELOPMENT .....	49
7.5.1	Purpose.....	50
7.5.2	Special Permit Required.....	50
7.5.3	General Requirements.....	50
7.5.4	Permitted Uses.....	51
7.5.5	Dimensional Requirements.....	51
7.5.6	Development Standards.....	51
7.5.7	Common Open Space Use and Design Standards.....	53
7.5.8	Common Open Space Ownership and Management.....	55
7.5.9	Preliminary Concept Plan Review.....	55
7.5.10	Opinion on Preliminary Concept Plan and Lot Count.....	57
7.5.11	Special Permit Application.....	57
7.5.12	Definitive Subdivision Plan.....	57
7.5.13	Submittal to Other Boards.....	58
7.5.14	Hearings.....	58
7.5.15	Decision.....	58
7.5.16	Condition.....	59
7.6	ADULT MOBILE HOME PARKS .....	59
7.6.1	Exemption.....	59
7.6.2	Purpose.....	59
7.6.3	Special Permit Required.....	59
7.6.4	Age Restriction.....	59
7.6.5	Prohibition.....	59
7.6.6	Phased Development.....	59
7.6.7	Requirements and Standards.....	59
7.6.8	Code Compliance.....	60
7.6.9	Internal Roadways.....	60
7.6.10	Buffer Areas.....	60
7.6.11	Park Rules and Regulations.....	60
7.6.12	Procedures.....	61
SECTION 8.0 OVERLAY DISTRICT REGULATIONS.....		61
8.1	FLOOD PLAIN DISTRICT (FPD).....	61
8.1.1	Purpose.....	61
8.1.2	Applicability.....	62
8.1.3	Definitions.....	62
8.1.4	Base Flood Elevation and Floodway Data.....	62
8.1.5	Overlay District.....	63

8.1.6	Rule for Interpretation of District Boundaries.....	63
8.1.7.	Notification of Watercourse Alteration. ....	63
8.1.8	Compliance.....	63
8.1.9	Abrogation and Greater Restrictions.....	63
8.1.10	Warning and Disclaimer of Liability.....	64
8.1.11	Regulatory Flood Protection Elevation for Middleborough.....	64
8.1.12	Permitted Uses.....	64
8.1.13	Other Use Regulations.....	65
8.2	WATER RESOURCE PROTECTION DISTRICT (WRPD).....	65
8.2.1	Purpose.....	65
8.2.2	Overlay District.....	66
8.2.3	Special Permit Required.....	66
8.2.4	Establishment and Delineation.....	66
8.2.5	Definitions.....	66
8.2.6	WRPD Z1 Use Regulations.....	66
8.2.7	WRPD Z2 Use Regulations.....	66
8.2.8	WRPD Z3 Use Regulations.....	71
8.2.9	WRPD Z4 Use Regulations.....	76
8.2.10	Administration and Procedures.....	78
8.2.11	Decision.....	80
8.2.12	Limit of Authority.....	80
8.2.13	Exemption.....	80
8.3	DEVELOPMENT OPPORTUNITIES DISTRICT (DOD).....	80
8.3.1	Purpose.....	80
8.3.2	Overlay District.....	80
8.3.3	Special Permit Required.....	80
8.3.4	Uses.....	81
8.3.5	Uses Accessory to Special Permit Uses.....	81
8.3.6	General Regulations.....	81
8.3.7	Procedures.....	82
8.3.8	Construction.....	82
8.3.9	Rules and Regulations.....	83
8.3.10	Waiver.....	84
8.4	LARGE SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION DISTRICTS (SOLAR DISTRICTS).....	84
8.4.1	Purpose.....	84
8.4.2	Establishment of Overlay Districts.....	84
8.4.3	Special Permit for SOLAR-R District Required.....	84
8.4.4	Accessory Use.....	85
8.4.5	Definitions.....	85
8.4.6	Application.....	85
8.4.7	Operation & Maintenance Plan.....	86
8.4.8	Utility Notification.....	86
8.4.9	Setbacks and Other Dimensional Requirements.....	86
8.4.10	Buffer Zones/Visual Screening in All Districts.....	86
8.4.11	Fencing.....	87
8.4.12	Appurtenant Structures.....	87
8.4.13	Sound Levels.....	87
8.4.14	Lighting.....	87
8.4.15	Signage.....	87

8.4.16	Utility Connections.....	87
8.4.17	Emergency Services.....	88
8.4.18	As-built plans.....	88
8.4.19	Time for Completion.....	88
8.4.20	Changes in Ownership.....	88
8.4.21	Land Clearing and Soil Erosion.....	88
8.4.22	Maintenance and other Conditions.....	88
8.4.23	Modifications.....	88
8.4.24	Decommissioning; Removal Requirements.....	89
8.4.25	Abandonment.....	89
8.4.26	Financial Surety.....	89
<b>SECTION 9.0 ADMINISTRATION AND PROCEDURES .....</b>		<b>90</b>
9.1	<b>ENFORCEMENT .....</b>	<b>90</b>
9.1.1	Building Inspector.....	90
9.1.2	Permit Required.....	90
9.1.3	Fee.....	90
9.1.4	Investigation.....	90
9.1.5	Permit Issuance.....	90
9.1.6	Penalty.....	90
9.2	<b>ZONING BOARD OF APPEALS .....</b>	<b>91</b>
9.2.1	Establishment.....	91
9.2.2	Powers.....	91
9.2.3	Rules and Regulations.....	92
9.2.4	Fees.....	92
9.2.5	Submittal to Other Boards.....	92
9.3	<b>PLANNING BOARD .....</b>	<b>93</b>
9.3.1	Establishment.....	93
9.3.2	Powers.....	93
9.3.3	Rules and Regulations.....	93
9.3.4	Fees.....	93
9.3.5	Associate Member.....	93
9.3.6	Term of Associate Member.....	93
9.4	<b>SPECIAL PERMITS.....</b>	<b>93</b>
9.4.1	Special Permit Granting Authority.....	93
9.4.2	Criteria.....	93
9.4.3	Procedures.....	94
9.4.4	Conditions.....	94
9.4.5	Plans.....	94
9.4.6	Regulations.....	94
9.4.7	Fees.....	94
9.4.8	Withdrawal without Prejudice.....	94
9.4.9	Lapse.....	95
9.5	<b>[RESERVED].....</b>	<b>95</b>
9.6	<b>REPETITIVE PETITIONS.....</b>	<b>95</b>
9.6.1	General.....	95
9.6.2	Timing.....	95
<b>SECTION 10.0 DEFINITIONS .....</b>		<b>96</b>
10.1	<b>SPECIFIC DEFINITIONS.....</b>	<b>96</b>
10.1.1	Flood Plain (Overlay) District Definitions.....	96

10.1.2 Water Resource Protection District Definitions. .... 98  
10.1.3 SOLAR-R District and SOLAR –G District Definitions. .... 100  
10.2 GENERAL BYLAW DEFINITIONS..... 100



# Middleborough Zoning Bylaws

## SECTION 1.0 PURPOSE AND AUTHORITY

**1.1. PURPOSE.** These Bylaws are enacted to promote the general welfare of the Town of Middleborough, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the Town and to increase the amenities of the Town, all as authorized by, but not limited by, the provisions of the Zoning Act, Massachusetts General Laws (MGL) Chapter 40A as amended and Section 2A of 1975 Mass Acts 808.

**1.2 AUTHORITY.** These Bylaws are enacted in accordance with the provisions of MGL Chapter 40A and all amendments thereto and in accordance with Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

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

**1.4 APPLICABILITY.** All buildings or structures hereinafter erected, reconstructed, altered, enlarged or moved and the use of all premises in the Town shall be in conformity with the provisions of these Bylaws. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. Where the application of these Bylaws imposes greater restrictions than those imposed by any other regulation, permit, restriction, easement, covenant or agreement, the provisions of these Bylaws shall control. Nothing herein shall be construed to supersede the provisions of the Massachusetts State Building Code, 780 CMR 1.00, et seq.

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

**1.4.2 Commencement of Construction or Operation.** Construction or operations under a building permit or special permit shall conform to any subsequent amendments to these Bylaws, unless the use or construction is commenced within a period of not more than six (6)

months after the issuance of the Building Permit or two (2) years in the case of a Special Permit and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

**1.5 AMENDMENTS.** This Bylaw may be amended from time to time at an annual or special town meeting in accordance with the provisions of MGL Chapter 40A, as may be amended from time to time.

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

**1.7 ADDITIONAL INFORMATION.** See Section 9.0 for administration and procedures.

## **SECTION 2.0 DISTRICTS**

**2.1 ESTABLISHMENT.** For the purposes of these Bylaws, the Town of Middleborough is hereby divided into the following types of districts.

Residence A	(RA)
Residence B	(RB)
Residence Rural	(RR)
Business	(B)
Industrial	(I)
General Use	(GU)
General Use A	(GUA)
General Use X	(GUX)
Commercial Development	(CD)

**2.2 OVERLAY DISTRICTS.** In addition, the following overlay districts are also hereby established in Section 8.0:

Flood Plain District	(FPD)
Water Resource Protection District	(WRPD)
Development Opportunities District	(DOD)
SOLAR-R District	(SRD)
SOLAR-G District	(SGC)

**2.3 SPECIAL RESIDENTIAL USES.** In addition, the following special residential uses are also hereby established in Section 7.0:

Open Space and Resource Preservation Developments  
Mobile Home Parks  
Family Accessory Apartments  
Retreat Lots

**2.4 ZONING MAP.** The location and boundaries of the Zoning Districts are hereby established as shown on the Zoning Map certified by the Town Clerk of Middleborough, dated May 14, 2001 revised through October 5, 2015. This Zoning Map, as may be amended, with all explanatory matter thereon, is hereby declared to be part of this Bylaw.

## SECTION 3.0 USE REGULATIONS

**3.1 PRINCIPAL USES.** Except as otherwise provided herein no dwelling, building, structure, land or part thereof shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as “permitted” (Y) in the District in which such dwelling, building, structure or land is located or set forth as “permissible by special permit” (PB or ZBA) in said District and so authorized. All uses not set forth in the Table of Uses are prohibited. **See Sections 4.3.2 and 4.5.3 regarding the requirements for special permits for larger buildings in the Business and GU Districts respectively.**

<b><u>TABLE OF USES</u></b>									
<b>PRINCIPAL USE</b>	<b>RA</b>	<b>RB</b>	<b>RR</b>	<b>B</b>	<b>I</b>	<b>GU</b>	<b>GUX</b>	<b>GUA</b>	<b>CD</b>
<b>A. RESIDENTIAL USES</b>									
1. Single-family dwelling	Y	Y	Y	N	N	Y	Y	Y	N
2. Two-family dwelling	N	N	N	N	N	ZBA	ZBA	N	N
3. Trailer or mobile home	N	N	N	N	N	N	N	N	N
4. Conversion of single family to up to three dwelling units	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	N	N
5. Dwelling units above street level floor	N	N	N	ZBA	N	N	N	N	N
6. Multifamily dwelling	N	N	N	N	N	ZBA	ZBA	N	N
7. Adult mobile home park	PB	PB	PB	N	N	PB	PB	PB	N
8. Open Space Residential Preservation Development	PB	N	PB	N	N	PB	PB	N	N
9. Retreat lot	PB	PB	PB	N	N	PB	PB	N	N
<b>B. EXEMPT USES (PURSUANT TO MGL CH 40A SECTION 3)</b>									
1. Agricultural Uses, Road Side Stands and Horse stables	Y	Y	Y	Y	Y	Y	Y	Y	Y
2. Use of land or structures for religious purposes	Y	Y	Y	Y	Y	Y	Y	Y	Y
3. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or by a nonprofit educational corporation	Y	Y	Y	Y	Y	Y	Y	Y	Y
4. Child Care Center	Y	Y	Y	Y	Y	Y	Y	Y	Y
5. Municipal or governmental facilities	ZBA	ZBA	ZBA	ZBA	Y	Y	Y	Y	Y
<b>C. INSTITUTIONAL USES</b>									
1. Philanthropic, fraternal, patriotic or charitable institution	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	N
2. Library, museum or park	ZBA	ZBA	ZBA	Y	ZBA	ZBA	ZBA	ZBA	N
3. Essential Services	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	PB

<b><u>TABLE OF USES</u></b>									
<b>PRINCIPAL USE</b>	<b>RA</b>	<b>RB</b>	<b>RR</b>	<b>B</b>	<b>I</b>	<b>GU</b>	<b>GUX</b>	<b>GUA</b>	<b>CD</b>
<b>D. COMMERCIAL USES</b>									
1. Nonexempt educational use	N	N	N	Y	N	Y	Y	Y	N
2. Reserved									
3. Kennel, Commercial	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	N
4. Veterinarian's office; Animal hospital	N	N	N	ZBA	N	ZBA	ZBA	ZBA	N
5. Private club or lodge	ZBA	ZBA	ZBA	ZBA	N	Y	Y	Y	N
6. Nursing or convalescent home	ZBA	ZBA	ZBA	N	ZBA	ZBA	ZBA	ZBA	N
7. Funeral home	N	N	N	Y	N	Y	Y	Y	N
8. Motel or Hotel	N	N	N	N	N	Y	Y	Y	PB
9. Bed and Breakfast	ZBA	ZBA	ZBA	Y	N	Y	Y	Y	N
10. Retail stores and services not elsewhere set forth	N	N	N	Y	N	Y	Y	Y	PB
11. Motor vehicle sales and rental	N	N	N	ZBA	N	Y	Y	Y	N
12. Motor vehicle general and body repair	N	N	N	N	N	Y	Y	Y	N
13. Motor vehicle light service	N	N	N	N	N	Y	Y	Y	N
14. Restaurant	N	N	N	Y	N	Y	Y	Y	PB
15. Restaurant, fast food	N	N	N	Y	N	Y	Y	Y	PB
16. Aviation Use	ZBA	ZBA	ZBA	N	ZBA	ZBA	ZBA	ZBA	N
17. Business or professional office, including medical	N	N	N	Y	N	Y	Y	Y	PB
18. Medical clinic	N	N	N	Y	N	Y	Y	Y	PB
19. Bank, financial agency	N	N	N	Y	N	Y	Y	Y	PB
20. Indoor commercial recreation	N	N	N	ZBA	N	Y	Y	Y	PB
22. Outdoor commercial recreation	N	N	N	N	ZBA	Y	Y	Y	PB
23. Golf course	ZBA	ZBA	ZBA	N	ZBA	Y	Y	Y	PB
24. Personal Service Establishment	N	N	N	Y	N	Y	Y	Y	PB
25. General Service Establishment	N	N	N	ZBA	N	Y	Y	Y	PB
26. Adult Use	N	N	N	N	N	N	N	ZBA	N
27. Hospital	N	N	N	Y	N	Y	Y	Y	PB
28. Fitness Center	N	N	N	Y	N	Y	Y	Y	PB
29. Movie Theater	N	N	N	Y	N	Y	Y	Y	PB
30. Indoor Flea Market	N	N	N	Y	N	Y	Y	Y	N
31. Food processing or packaging with onsite sales	N	N	N	Y	N	Y	Y	Y	N
32. Adult Day Care	N	N	N	Y	N	Y	Y	Y	N
33. Dry Cleaners, onsite cleaning	N	N	N	Y	Y	Y	Y	Y	N
34. Medical Marijuana Dispensary	N	N	N	N	N	ZBA	ZBA	N	N
<b>E. INDUSTRIAL USES</b>									
1. Earth removal on premises owned by Town	Y	Y	Y	N	ZBA	ZBA	ZBA	ZBA	ZBA
2. Commercial earth removal	N	N	N	N	N	N	N	N	N

<b>TABLE OF USES</b>									
<b>PRINCIPAL USE</b>	<b>RA</b>	<b>RB</b>	<b>RR</b>	<b>B</b>	<b>I</b>	<b>GU</b>	<b>GUX</b>	<b>GUA</b>	<b>CD</b>
3. Light manufacturing	N	N	N	N	ZBA	Y	Y	Y	N
4. Manufacturing	N	N	N	N	ZBA	Y	Y	Y	N
5. Wholesale, warehouse, self-storage mini-warehouse or distribution facility	N	N	N	N	ZBA	Y	Y	Y	N
6. Junkyard or automobile graveyard	N	N	N	N	N	N	N	N	N
7. Contractor/ landscaper yard	N	N	N	N	Y	Y	Y	Y	N
8. Transport terminal	N	N	N	N	ZBA	Y	Y	Y	N
9. Operations involving radioactive materials	N	N	N	N	N	N	N	N	N
10. Large Scale Ground Mounted Solar Photovoltaic Installation	ZBA	ZBA	ZBA	N	Y	Y	Y	Y	N
<b>F. ACCESSORY USES</b>									
1. Up to 2 boarders with owner resident on premises	Y	Y	Y	Y	N	Y	Y	Y	N
2. Customary home occupation; or, Home trade shop	Y	Y	Y	Y	N	Y	Y	Y	N
3. Intensive home occupation	ZBA	ZBA	ZBA	N	N	ZBA	ZBA	ZBA	N
4. Accessory buildings or structures	Y	Y	Y	Y	Y	Y	Y	Y	Y
5. Family day care home, small	Y	Y	Y	Y	N	Y	Y	Y	N
6. Family day care home, large	ZBA	ZBA	ZBA	Y	N	ZBA	ZBA	ZBA	N
7. Adult day care facility	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	N
8. Light manufacturing and assembly accessory to onsite retail	N	N	N	Y	N	Y	Y	Y	PB
9. Wholesale outlet accessory to retail operation	N	N	N	ZBA	N	Y	Y	Y	PB
10. Family accessory apartment	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	N
11. Accessory use to a use allowed by special permit	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	PB
12. Kennel, Household or Private	Y	Y	Y	Y	Y	Y	Y	Y	N
13. Kennel, Hobby	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	N
14. Accessory scientific uses	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	PB
15. Accessory solar photovoltaic installation	Y	Y	Y	N	Y	Y	Y	Y	N
<b>G. OTHER USES</b>									
1. Drive-through windows	N	N	N	N	N	Y	Y	Y	PB

**3.1.1 Key.** In the Table of Uses, the following key shall apply:

- Y            Use available as of right
- N            Prohibited use
- ZBA        Special Permit - Zoning Board of Appeals
- PB          Special Permit - Planning Board
- BOS        Special Permit - Board of Selectmen

**3.2 ACCESSORY USES AND STRUCTURES.** Those accessory uses set forth in the Table of Uses are permitted either as a matter of right or by special permit as specified. The use of one or more accessory buildings or structures is allowed.

**3.2.1 Customary Home Occupation.** The use of a room or rooms in an existing dwelling unit for customary home occupations conducted by resident occupants provided all of the following apply:

1. The use is accessory to the residential use of the premises;
2. There is no display of any merchandise or materials worked upon, required for use or made for sale to the passing public or abutting properties; and,
3. The use does not have more than three (3) nonresident employees.

**3.2.2 Home Occupation by a Tradesperson.** The use of the premises or dwelling, building or structure thereon, in connection with his trade by one resident carpenter, electrician, painter, plumber or other artisan provided all of the following apply:

1. Such use is accessory to the residential use of the premises;
2. No manufacturing or business requiring substantially continuous employment may be carried out on the premises;
3. Such use is not noxious or offensive by reason of noise, odor, smoke or static;
4. Such use does not create a public nuisance or hazard; and,
5. No merchandise or materials worked upon, required for use or made for sale are visible to the passing public.

**3.2.3 Intensive Home Occupation.** The Zoning Board of Appeals may issue a special permit to authorize the use of the premises or dwelling, building or structure located thereon, in connection with an occupation, vocation or manufacture of any product or any operation of a mechanical nature, provided all of the following apply:

1. Such use is accessory to the residential use of the premises;
2. Such use or operation is not by its mechanical nature noxious or offensive by reason of noise, odor, smoke or static;
3. Such use does not create a public nuisance or hazard;
4. No use or operation may employ more than three (3) persons by the resident occupant of such business;

5. All merchandise or materials worked upon, required for use, or made for sale, including trucks, cars, trailers, or any other equipment used in the operation of the business be stored in a fully enclosed building or not be visible to the neighbors from their dwelling or the passing public from a public way; and,
6. Adequate hardtop or porous surface off-street parking spaces for such business customers, employees and residents must be provided.

**3.2.4 Accessory Scientific Uses.** The Zoning Board of Appeals may issue a special permit to authorize a use which is accessory to other activities if such other activities are permitted as a matter of right under the provisions of this Bylaw and if such other activities are necessary in connection with scientific research or scientific developments or related production. There shall be no need that the proposed accessory use and the principal activity be conducted on the same parcel of land.

### **3.3 NONCONFORMING USES AND STRUCTURES**

**3.3.1 Applicability.** This Zoning 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 MGL Chapter 40A Section 5 at which this Zoning Bylaw or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no change or alteration of the use or structure is accomplished, unless authorized hereunder.

**3.3.2 Nonconforming Uses.** The Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

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

**3.3.3 Nonconforming Structures.** The Zoning Board of Appeals may award a special permit to reconstruct, extend, alter or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure is to the neighborhood. The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:

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



substantially different manner or to a substantially greater extent.

**3.3.4 Variance Required.** Except as provided in Subsection 3.3.5 below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity or create a new nonconformity, shall require a variance; provided, however that the extension of an exterior wall at or along the same nonconforming distance within a required yard setback shall require the issuance of a special permit from the Zoning Board of Appeals.

**3.3.5 Nonconforming Single and Two Family Residential Structures.** Nonconforming single and two family residential structures may be reconstructed, extended, altered or structurally changed upon a determination by the Building Inspector that such proposed reconstruction, extension, alteration or change does not increase the size of the existing nonconforming structure by more than 15% where the lot has less than 20,000 square feet, by more than 25% where the lot has 20,000 but less than 60,000 square feet or by more than 50% where the lot is greater than 60,000 square feet and the change does not increase the nonconforming nature of said structure. The following circumstances shall not be deemed to increase the nonconforming nature of said structure:

1. Reconstruction, extension, change or alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage and building height requirements;
2. Reconstruction, extension, change or alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage and building height requirements;
3. Reconstruction, extension, change or alteration to a structure which encroaches upon one or more required yard or setback areas, where the reconstruction, extension, change or alteration will comply with all current setback, yard, building coverage and building height requirements.

In the event that the Building Inspector determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration or change, the Zoning Board of Appeals may, by special permit, allow such reconstruction, extension, alteration or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood. For each foot a lot has street frontage less than the requirements of Section 4.0 hereof, three (3") inches may be deducted from the prescribed setback from each side lot line as required in Section 4.0 hereof, but in no instance shall a dwelling, building or accessory structure be erected, placed or converted closer than six (6') feet to side lot lines.

**3.3.6 Abandonment or Non-Use.** A nonconforming use or structure, other than a residential dwelling, which has been abandoned or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Zoning Bylaw; provided, however, that by the issuance of a special permit, the Zoning Board of Appeals may reestablish

the protected nonconforming status of such use or structure. A residential dwelling which has been abandoned shall lose its protected status and be subject to all of the provisions of this Zoning Bylaw; provided, however, that by the issuance of a special permit the Zoning Board of Appeals may reestablish the protected nonconforming status of such use or structure.

**3.3.7. Reconstruction after Catastrophe or Demolition.** Except as provided in Section 3.3.5 above, any nonconforming structure may be reconstructed after a catastrophe or after demolition in accordance with the following provisions:

1. Reconstruction of said premises shall commence within two years after such catastrophe or demolition.
2. Building(s) as reconstructed shall be located on the same footprint as the original nonconforming structure and shall be only as great in volume or area as the original nonconforming structure;
3. In the event that the proposed reconstruction would (a) cause the structure to exceed the volume or area of the original nonconforming structure, (b) cause the structure to be located other than on the original footprint or (c) where reconstruction has not commenced within 2 years of such catastrophe or demolition, a special permit shall be required from the Zoning Board of Appeals prior to such demolition and reconstruction.

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

#### **3.4 MULTI FAMILY CONVERSION OF OWNER OCCUPIED BUILDINGS**

**3.4.1 Conversion of Single Family Dwelling To Up To Three (3) Dwelling Units.** A residential building in existence on or before January 1, 1978 and occupied by its owner, may be converted to a multi-family dwelling having a total of up to three (3) dwelling units, including the owner-occupied unit, provided that there is no increase in floor area. The Zoning Board of Appeals is the Special Permit Granting Authority. A condition of the special permit shall be that the owner of the building must occupy one of the dwelling units.

## SECTION 4.0 DIMENSIONAL REQUIREMENTS

### 4.1 GENERAL REQUIREMENTS

**4.1.1 Table of Dimensional Requirements.** The erection, extension, alteration or moving of a structure or the creation of a lot or change in its size or shape (except through a public taking) must meet the requirements set forth in this Section 4.0 and the Table of Dimensional Regulations, except as may be otherwise set forth herein.

1. A conforming lot may not be made nonconforming.
2. A nonconforming lot may not be made more nonconforming.

**TABLE OF DIMENSIONAL REGULATIONS**

DIMENSION	RA	RB	RR	B	I	GU*	GUA*	GUX*	CD
Min. Lot Area (s.f.)	60,000	20,000	80,000	-	-	-	-	-	43,560
Min. Lot Frontage (ft.)	175	125	200	-	-	75	75	75	150
Min. Lot Width (ft.)	157.5	112.5	180	-	-	-	-	-	120
Upland Circle (s.f.) (See Section 4.2.4)	12,000	12,000	12,000	-	-	-	-	-	
Min. Front Yard (ft.)	25	25	50	-	150	35	35	35	40
Min. Side Yard (ft.)	10	10	10	-	150	25	25	25	25
Min. Rear Yard (ft.)	10	10	10	10	150	25	25	25	25
Building Height (ft.)	-	-	-	65'	-	42'	42'	42'	42'
Impervious Cover (%)	-	-	-	-	-	60%	60%	60%	65%
Open Space (%)	-	-	-	-	-	40%	40%	40%	35%

\* GU, GUX and GUA – Dimensions shown are for commercial uses. See Section 4.5.2 for single family residential uses and Section 7.1 for multi-family uses.

### 4.2 RA, RB AND RR DISTRICT REQUIREMENTS

**4.2.1 One Structure per Lot.** Not more than one dwelling or building with accessory structures having a permitted use shall hereafter be erected, placed or converted on any lot.

**4.2.2 Exemption from Front Yard Requirement.** Open entrance platforms and steps may be erected, placed or converted on any lot within the front yard setback.

**4.2.3 Shape Factor.** No dwelling, building or structure having a permitted use in this District shall hereafter be erected, placed, altered or converted on any lot unless the lot is substantially regular in shape. Substantially regular in shape shall mean that a lot has a Shape Factor (SF) of 30.0 or less. Shape Factor shall be determined by dividing the square of the perimeter of the lot

by the area of the lot:  $SF=P^2/A$ .

1. A lot may have a Shape Factor exceeding 30.0 if a portion of the lot itself meets the minimum lot area requirement and has a Shape Factor of 30.0 or less and which portion includes minimum lot area, minimum street frontage, upland building area and minimum lot width at the street setback line, as required by this Zoning Bylaw.
2. The requirements of Section 4.2.3 are hereby declared to be area and width requirements within the meaning of MGL Chapter 40A Section 6.

**4.2.4 Upland Building Area Requirement.** No dwelling, building or structure having a permitted use in this District shall be erected, placed, altered or converted on any lot, unless the lot has an upland building area within it which encompasses a minimum 12,000 square feet of contiguous land in the shape of a circle, square or rectangle and in the use of a rectangle no side may measure less than 100 feet, within which no land is subject to protection under the Wetlands Protection Act, General Laws Chapter 131, Section 40 and within which at least 75% of the foot print of any dwelling, building or structure, not including accessory structures, shall be located.

**4.2.5 Lot Width at Setback.** The minimum width of a lot at any point between the street line and the required minimum street setback line for erection of a dwelling, building or structure on the lot shall be a distance equal to or greater than 90% of the required minimum street frontage for the lot.

### **4.3 BUSINESS DISTRICT REQUIREMENTS**

**4.3.1 General.** No lot is subject to a minimum lot size, minimum frontage or minimum setback from the street line or side lot line. See Section 4.1.1 for rear setback requirements.

**4.3.2 Special Permit for Larger Buildings.** In the Business District, no structure's footprint shall exceed 10,000 sq. ft. unless a special permit is issued by the Board of Appeals.

**4.3.3 Height.** No building or structure shall exceed three (3) floors, excluding an unfinished attic area. The maximum height of any building or structure shall be sixty five (65') feet, including the roof peak or roof top structures or equipment.

### **4.4 INDUSTRIAL DISTRICT REQUIREMENTS**

**4.4.1 Lot Size.** No building or structure having a permitted use in this District is subject to a minimum lot size.

### **4.5 GU, GUX and GUA DISTRICT REQUIREMENTS**

**4.5.1 Front Yard Exemption.** Open entrance platforms and steps may be erected, placed or converted on any lot within the front yard setback.

**4.5.2 Dwellings.** No dwelling or accessory structure shall hereafter be erected, placed or converted on any lot in this district and no single family dwelling shall be converted to any other type of dwelling in this district without complying with the requirements of Section 4.0. Single family dwellings shall comply with the dimensional regulations for the Residence A District in Section 4.1. Multi-family dwellings shall comply with the standards set forth in Section 7.1. There shall be no more than one (1) single family dwelling and one (1) commercial building or structure erected, placed or converted on a lot in the GU Districts provided that at least one (1) of these buildings shall be occupied by the lot owner as a dwelling or used by the lot owner as a place of business.

**4.5.3 Special Permit for Larger Buildings.** In all GU Districts, no structure shall exceed 20,000 sq. ft. of gross floor area unless a special permit is issued by the Zoning Board of Appeals.

**4.5.4 Rail Lines.** Either side lot line or the rear lot line requirements shall not apply to a side lot line or rear lot line which abuts a railroad line or siding.

## **4.6 COMMERCIAL DEVELOPMENT DISTRICT REQUIREMENTS**

### **4.6.1 Setbacks.**

1. Setback from common access driveways shall be no less than twenty five (25') feet.
2. Setbacks from any abutting residential district shall be no less than one hundred (100') feet and the setback area shall be landscaped, otherwise improved or maintained in its natural state as approved by the Special Permit Granting Authority (SPGA) to visually screen and mitigate the residential district from noise, light and nuisance. The SPGA may reduce the setback provided that the applicant proposes mitigation and upon the finding by the SPGA that the proposed mitigation is equal to or will exceed the mitigation that would be provided by a setback of at least one hundred (100') feet and will be sufficient to ensure that the development will not be detrimental to the established or future character of the neighborhood and Town and there will be no nuisance or hazard. In no case shall the setback from a residential district be less than fifty (50') feet. Earth berms, walls, fencing, landscaping and/or screening shall be provided to control noise, lights, dust, to provide shade and to visually screen commercial use from residential use. Earth berms where used should vary in width and height throughout their length in order to achieve topographical relief and to appear to occur naturally. Fences or walls if used shall be landscaped on both sides to be aesthetically pleasing.

**4.6.2 Height.** Height shall be measured from the finished grade at the lowest point of the building or structure or to the peak of a sloping roof. Roof-top units such as air conditioners, elevator shafts, chimneys, ventilating units, heater or water tanks and parapets or other forms of physical screening required by the SPGA are allowed on top of buildings or structures provided their addition does not cause the building to exceed fifty (50') feet in height and further provided that any roof-top unit, with the exception of chimneys, shall be set back or physically

screened by parapets or other forms of screening as approved by the SPGA so as to not be visible from abutting roadways.

**4.6.3 Shape Factor.** No building or structure having a permitted use in this District shall be erected, placed, altered or converted on any lot unless the lot has a Shape Factor (SF) of 40.0 or less. Shape Factor shall be determined by dividing the square of the perimeter of the lot by the area of the lot:  $SF=P^2/A$ . A lot may have a Shape Factor exceeding 40.0 if a portion of the lot itself meets the minimum lot area requirement and has a Shape Factor of 40.0 or less and which portion includes minimum lot area, minimum street frontage, building envelope and minimum lot width at the street setback line, as required by this Zoning Bylaw.

## **SECTION 5.0            GENERAL REGULATIONS**

### **5.1     GENERAL**

**5.1.1 SPGA.** In the GU Districts reference to SPGA means the ZBA for projects subject to Special Permit approval and the Building Inspector for projects not subject to Special Permit approval.

**5.1.2 State Highway.** In the case of a lot with street frontage on a state highway requiring access from the state highway, no building, structure or other lot improvements shall be erected or placed on the lot until the state issues a permit or license to enter the state highway for the use proposed for the lot.

### **5.2     VISION CLEARANCE**

**5.2.1 General.** To promote public safety at street intersections in all Districts, nothing, except as provided below shall be allowed to obstruct vision between a height of three (3') feet and eight (8') feet above the finished surfaces of the street within a triangular area formed by the street lines twenty (20') feet distant from their point of intersection or in the case of a rounded corner the point of intersection of such lines as projected.

**5.2.2 Exemptions.** The following are exempt:

1. A utility pole, municipal sign or light pole is permitted within the vision clearance area.
2. A single supporting column is permitted in the Business District only within the vision clearance area.

### **5.3     OFF-STREET PARKING AND LOADING**

**5.3.1 General.** All buildings or structures shall be provided with sufficient off-street parking space to meet the needs of persons employed at or making use of such buildings or structures; to reduce hazards and nuisance to pedestrians and abutters; to reduce congestion in the street and contribute to traffic safety. Nonresidential uses shall comply with these standards.

**5.3.2 Required Parking Spaces.** Off-street parking facilities, including but not limited to those in the General Use and Commercial Development Districts shall be provided for each type of use in accordance with the following Table. See Section 6.6 for requirements in the Business District and Section 8.3 for requirements in the Development Opportunities District. Off-street parking facilities shall comply with applicable State Laws for handicap parking.

**PARKING TABLE**

<b>Principal Use</b>	<b>Minimum Number of Parking Spaces #</b>
Hotel or Motel	1 per unit, PLUS 1 per two (2) employees (also add spaces for full service restaurant or assembly use from this Table)
Child Care Center	1 per four (4) occupants PLUS 1 per each employee
Clubs, Lodges, Social and Community Center Buildings	1 per 250 sq. ft. of gross floor area; PLUS 1 per two employees
Recreation Facility	1 per four (4) occupants or, in the case of a non-structural facility 1 per four (4) persons the facility is intended to accommodate
Restaurants, Bars, Theaters, Conference Center and other similar places of assembly	1 per three (3) occupants; PLUS 1 per two (2) employees**
Fast Food Order Food Establishment including Drive-in Food Service Establishment	1 per two occupants PLUS 1 per two (2) employees**
Church or similar place of assembly	1 per three (3) occupants; PLUS 1 per two (2) employees
Offices of a Physician, Dentist, Chiropractor or Similar Medical Practitioner; or Clinic	1 per 200 sq. ft. of gross floor area; OR 3 per medical practitioner, whichever is greater
Professional or Business (non-medical) Offices	1 per 300 sq. ft. of gross floor area, OR 1 per two (2) employees whichever is greater
Bank	1 per 300 sq. ft. of gross floor area
Barber Shop, Beauty Parlor or Health Spa	4 per operator's station
Personal Fitness Center	0.75 per occupant PLUS one per two (2) employees
Personal, Consumer and Retail Services	1 per 300 Sq. ft. of gross floor area; PLUS 1 per employee
Retail Sales	1 per 300 sq. ft. of gross floor area
Convenience Store	1 per 250 sq. ft. of gross floor area
Other Business, Institutional or Professional Uses Not Specified	1 per 300 sq. ft. of gross floor area: OR 1 per two (2) employees/occupants whichever is greater
Light Manufacturing or Manufacturing	1 per 600 sq. ft. of gross floor area
Warehouse or Distribution Facility	1 per 1,000 sq. ft. of gross floor area
Automotive Repair or other repair	3 per bay or 150 s.f. floor area and 1 per employee
Walk-up Ice Cream or Food Service Establishment without eat-in capacity	15 for 1 <sup>st</sup> window and 10 per additional windows**
Self Storage Facility	1 per 10,000 s.f.; minimum of 3



### 5.3.3 Notes to Parking Table

1. \*\* Such establishments which do not provide indoor seating for at least 20 customers shall be required to have a minimum of 10 parking spaces, plus at least one space for each two employees.
2. # When used to calculate the number of parking spaces required, “occupants” means design occupancy load as determined by the Massachusetts State Building Code and the number of employees shall be construed as the normal maximum number of persons employed on the premises at any one time.

**5.3.4 Common Parking.** Common Parking Areas may be approved by the SPGA and be used for two or more uses, if the total space provided is not less than the sum of the spaces required for each use individually. The SPGA may reduce the number of spaces required to be built in a common parking facility up to one-half such sum, if it can be demonstrated to the satisfaction of the SPGA that the hours or days of peak parking needed for the uses are so different that a lower total will provide adequately for all uses served by the facility. However the land area necessary to allow the construction of the remainder of the required parking spaces shall be reserved on each lot as open space; provided that reserved area shall not be used for purposes of calculating a lot’s compliance with the minimum open space requirements set forth herein and provided further that the reserved area if built as a parking area would fully comply with the requirements of this Bylaw. Change in use, major alteration or change in characteristics of existing use which in the opinion of the Zoning Enforcement Officer will result in material change in the conditions for common parking originally approved by the SPGA shall require a Special Permit. The SPGA may then require construction of all or a portion of the reserved parking spaces.

**5.3.5 Multiple Principal Uses.** In the event of multiple uses, the number of spaces required shall be based on the sum total number required for each use combined.

**5.3.6 Same Lot.** Required off-street parking facilities shall be provided on the same lot or premises as the principal use that they are intended to serve, unless a common parking area is allowed by the SPGA.

**5.3.7 Other Parking.** Parking areas for vans, buses or other vehicles shall be provided if necessary in connection with a proposed use. Said parking spaces for vans, buses or other vehicles shall not be included in the minimum number or parking spaces.

**5.3.8 No Backing Out.** Parking areas shall be designed to prevent the necessity of any vehicles backing into a common access drive or street.

**5.3.9 Right of Way.** No parking area stalls or aisles shall be laid out on land that is reserved as any type of vehicular right of way, including right of way for multiple businesses.

**5.3.10 Dimensional Standards.** Parking Areas shall comply with the following dimensional standards:

1. Each parking space shall have a useable area of at least two hundred (200) square feet and be served by access and maneuvering areas of sufficient size to permit safe and convenient movement of vehicles. The minimum aisle width shall be twenty four (24') feet. Each parking space shall be a minimum of ten (10') feet wide by twenty (20') feet long.
2. No parking area shall be located less than twenty-five (25') feet from an existing or proposed street line nor less than twenty feet (20') feet from a side or rear lot line fifteen (15') feet in the GU Districts). In addition, no parking area in the CD District shall be located less than twenty-five (25') feet from a common access drive line.
3. CD District Parking areas which abut residential districts/uses.
  - a. CD District parking areas abutting the RA, RB or RR districts shall be set back no less than one hundred (100') feet and the setback shall be landscaped or otherwise improved or maintained in its natural state as approved by the SPGA to visually screen and mitigate the residential district from noise, lights and nuisance.
  - b. The SPGA may reduce the setback provided that the applicant proposes mitigation and upon the finding by the SPGA that the proposed mitigation is equal to or will exceed the mitigation that would be provided by a setback of 100 feet and will be sufficient to ensure that the non-residential use will not be detrimental to the established or future character of the neighborhood and Town and there will be no nuisance or hazard. In no case shall the setback from a Residential District be less than thirty (30') feet.
  - c. Earth berms, walls, fencing, landscaping and/or screening shall be provided within setback areas abutting residential districts to control noise, lights and dust, to provide shade and to screen commercial use from residential use. Earth berms where used should be landscaped with trees and shrubs to provide a thick screen of vegetation and should vary in width and height throughout their length in order to achieve topographical relief and to appear to occur naturally.
4. No parking space shall be located within five (5') feet of a building line except within an enclosed structure. No access aisles, entrance driveways, exit driveways or fire lanes shall be located within five (5') feet of a building. However, where a drive-through facility is provided in connection with a building, the access aisle servicing such facility may be located within one (1') foot of the building. Adequate sight distance for pedestrians shall be provided.
5. No portion of an entrance or exit driveway at the street line shall be closer than fifty five (55') feet from a point of curvature of the intersecting right of way or point of intersection of the intersecting street, whichever is closer.

6. Not more than one driveway for two-way use or two driveways for one way use, shall be allowed for each one hundred fifty (150') feet of frontage of a lot.
7. For purposes of reducing congestion and traffic hazards, the SPGA may require the off-street parking areas and driving lanes on adjacent lots to be connected to one another so that vehicles may travel from one lot to adjacent lots without having to enter onto the street or common access drive.
8. Large parking areas are discouraged in the front of buildings. Large parking areas are encouraged to be located at the side or rear of buildings.
9. Pedestrian facilities shall be designed in all parking areas to facilitate pedestrian movement between lots and buildings.
10. No portion of a driveway at the street line shall be closer than ten (10') feet from a side lot line. The maximum width of driveways at the street line or common access drive shall be thirty (30') feet and with a minimum width of twenty (20') feet. The minimum curb radius shall be fifteen (15') feet.
11. In order to facilitate fire trucks and other emergency vehicles, there shall be a clear and unimpeded fire lane located around all buildings when required by the Fire Department.
12. Any building erected, placed or converted for business, manufacturing or industrial use in the Industrial District shall be provided with an off-street parking area adequate to meet the needs of its use.

### **5.3.11 Parking Area Construction Standards – CD District.**

1. All parking areas, entrances and driveways shall be paved. Construction shall be a minimum of:
  - a. 12" gravel base with 95% compaction;
  - b. Pavement shall be Massachusetts Department of Transportation (MADOT) Type I-1 compacted to 95% laboratory density; and,
  - c. Pavement shall consist of three inches (3") of asphalt installed in two (2) courses: two inches (2") minimum binder followed by a one (1") minimum top course.
2. Parking Spaces shall be clearly marked through the use of durable paint intended for such use.
3. Curbing shall be installed at the edge of all pavement including the parking areas and driveways to protect landscaped areas including landscaped islands and medians and to

prevent parking within the required set back areas. Curbing shall be vertical granite or vertical cast in place or precast concrete with a minimum five (5") inches reveal as approved by the SPGA.

4. Entrance and exit driveways shall be clearly defined by curb cuts, signs and striping as approved by the SPGA.

#### **5.3.12 Off-Street Loading.**

1. All loading shall take place on-site in a specified area designed for this purpose. Loading shall not block streets, access ways, driveways, parking or pedestrian areas.

2. Off-street loading facilities shall be provided. The SPGA shall determine the adequacy of loading facilities based on the nature of the use. Off-street loading facilities shall be screened from public use areas.

**5.3.13 Special Permit.** The SPGA may adjust any of the requirements of this section by special permit where it finds that such adjustment will not be substantially detrimental to safety. The SPGA may require the establishment of a reserve area where a reduction in the number of spaces is authorized.

### **5.4 LANDSCAPING AND SCREENING – CD DISTRICT**

**5.4.1 General.** Landscaping of the lots shall be attractive and shall provide definite spatial separation between lots, parking areas and buildings. Landscaping shall also be designed to ornament and accent the individual buildings with plants sized in scale with the buildings at time of planting.

1. Parking area trees shall be used to provide shade for the parking area.

2. Landscaped areas shall be located in such a manner which provides unobstructed lines of sight for vehicles entering and exiting the premises.

3. For landscaping and screening regulations in the Development Opportunities District, see Section 8.3; for landscaping of parking areas which abut a residential use or district in the CD District see Section 5.3.10.

**5.4.2 Front Setback.** Landscaping within the twenty five (25') foot front setback shall include a soil berm a minimum two (2') feet and maximum three (3') feet in height to be sufficiently planted as to visually screen parked cars. Along all streets and common access drives, the front yard setback shall contain at least four (4) trees for each one hundred fifty (150') feet of frontage of a lot.

**5.4.3 Side and Rear Setback Areas.** Areas between lots including all side and rear setbacks shall be attractively landscaped with a mixture of evergreen trees, shrubs, flowering ornamental trees and shade trees. Natural (existing) vegetation may be retained to buffer and landscape

these areas with the approval of the SPGA if the natural vegetation is of a quality to provide for an attractive buffer or planting area equal in quality to nursery grown stock.

**5.4.4 Plantings.** Landscaped areas of the lots shall be planted with grass as a base rather than large islands of mulch. Mulched planting beds should be used minimally and only in conjunction with flowers, shrubs or similar plant material. Areas of steep slopes shall be planted with meadow grass or other stabilizing ground cover as approved by the SPGA so that no soil erosion will occur. Plant material shall be in conformance with the “American Standard for Nursery Stock” ANSI Z60.1 latest edition and be of adequate height or size upon planting to achieve the required landscaping, buffering or screening effect at time of planting. Shade trees shall be a minimum 2.5” caliper (measured at six (6”) inch height) and have a minimum branching height of six (6’) feet. Planting shall be in accordance with MADOT Standard Specifications. No pavement shall be placed within a four (4’) foot radius of the trunk.

**5.4.5 Maintenance.** All areas not under impervious cover must be maintained with either natural or cultivated, living plant material. However, up to five (5%) percent of gross landscaped area may be permeable, non-organic cover, such as gravel, that may be considered open space in the impervious area calculation; this area shall not be used for vehicle or equipment parking.

**5.4.6 Unsightly Areas.** All outdoor areas used for the storage of wastes, salvage materials, unregistered or disabled motor vehicles, construction equipment or bulk materials that are not for sale, shall be screened in a manner which restricts the view of such areas from public streets and adjacent structures. Such screening shall consist of durable evergreen vegetation or solid fencing of a type suitable to the area.

**5.4.7 Parking Area Landscaping.** For all parking areas the following shall apply:

1. *Landscaping as % of Parking Area.* At least 10% of the area within parking facilities in the CD District shall be landscaped islands or landscaped strips containing at least one (1) tree, that are surrounded on all sides or at least on three (3) sides by parking areas, access aisles and entrance and exit driveways. Landscaped islands and landscaped medians shall be physically separate and visually distinct from perimeter landscaped open space. Landscaped islands and landscaped medians may be counted as pervious in the impervious calculation.

2. *Landscape Islands.* Landscaped islands shall be located at the end of all rows of parking stalls that adjoin access aisles or drives and shall also be located between every fifteen (15) parking stalls. Landscaped islands shall be at least eight (8’) feet in width. One (1) shade tree shall be planted in each island up to twenty (20’) feet in length and two (2) trees shall be planted in each island up to forty (40’) feet in length. The SPGA may reduce or eliminate the requirement for landscape islands if the total number of parking spaces required for a lot is less than ten (10).

3. *Landscape Medians.* A continuous eight (8’) foot wide landscaped median, running parallel to the rows of parking, shall be provided for every two (2) bays of parking. The

landscaped medians shall be located between every three (3) bays of parking. One (1) shade tree shall be planted in the landscaped median every forty (40') feet.

4. *Shrubs.* Landscaped islands and landscaped medians in parking facilities shall also be planted with low growing shrubs that will grow no taller than two (2) feet. Said shrubs shall be spaced to provide effective ground cover in the opinion of the SPGA.

**5.4.8 Shade Trees.** In addition to trees required within landscaped islands and landscaped medians shade trees shall also be provided every forty (40') feet along the perimeter of all parking areas and driveways for the purpose of providing shade.

**5.4.9 Access.** Driveways and walks are permissible in the front setback area to provide necessary and reasonable access to the site for vehicles and pedestrians.

## **5.5 LANDSCAPING AND SCREENING – INDUSTRIAL DISTRICT**

**5.5.1 Street Setback Screening.** Screening consisting of natural vegetation or planted landscape materials consisting of a combination of trees, shrubs and grasses to visually screen the proposed use, shall be provided to a depth of not less than one hundred fifty (150') feet from the street line to cover the entire street frontage of the lot. Driveways and walkways are permissible for convenience of use.

**5.5.2 Property Line Setback Buffering.** Earth berms, walls and/or fencing combined with landscaping may be required by the SPGA within the 150' front, side and rear setback areas to control noise, lights and dust and to buffer and screen industrial and manufacturing uses and other incompatible uses from any nearby residential properties and to protect the visual character and natural resources of the town. Earth berms, where used, should vary in width and height throughout their length in order to achieve topographical relief and to appear to occur naturally.

## **5.6 LANDSCAPING AND SCREENING – GU, GUX and GUA DISTRICTS**

**5.6.1 General.** The following shall apply:

1. A landscaped buffer zone shall be provided not less than twenty (25') feet in depth along the street line and not less than fifteen (15') feet in depth along a side or rear lot line. Where commercial property abuts residential property, adequate screening will be provided in the side and rear landscaped buffer zones.
2. Earth berms, landscaping or screening shall be provided to control noise and dust, to prevent soil erosion, to provide shade, to screen from public view areas for waste disposal or outdoor storage and to protect the visual character and natural resources of the town. Earth berms where used should vary in width and height throughout their length in order to achieve topographical relief and to appear to occur naturally.
3. All land located between the street line and parking areas as required by Section

4.1.1 of this Bylaw shall be provided with attractive and durable landscaped areas consisting of natural vegetation, shrubs, mulches, evergreens and such other vegetation. Such landscaped areas shall be located in a manner which provides unobstructed lines of sight for vehicles entering and exiting the premises, consistent with Section 5.2 of this Bylaw.

4. All outdoor areas used for the storage of wastes, salvage materials, unregistered or disabled motor vehicles, construction equipment or bulk materials that are not for sale, shall be screened in a manner which restricts the view of such areas from public streets and adjacent structures. Such screening shall consist of durable evergreen vegetation or solid fencing of a type suitable to the area.
5. Parking areas shall be subdivided by medians containing trees and of the landscaping material. One (1) ten (10') foot wide median shall be required for every two (2') bays of parking.
6. All plant material is to be at least five (5) years old.

## **5.7 SIGNS**

**5.7.1 General Requirements.** See Section 8.3 for sign regulations in the Development Opportunities District.

**5.7.2 Business District Signs.** The purpose of this section is to provide standards for the installation of signs affixed to buildings or structures or placed on building grounds so as to preserve the aesthetic and historic appearance of the Business District, promote economic development, protect property values and reduce traffic safety hazards. Signs should be of the type traditionally used in a typical New England Downtown. The Site Plan Approval Authority (SPAA) shall assure that signs are appropriate for the district. The following rules shall apply in the Business District.

1. **Applicability.** The SPAA shall approve all permanent signs and endorse Sign Plans. No sign(s) shall be attached, erected or otherwise installed on the lot or the exterior of any building or structure in the Business District without first obtaining sign plan approval from the SPAA. No building permit shall be issued by the Building Inspector for the sign installation subject to this section and no sign installation shall commence, until the SPAA has endorsed its approval on the Sign Plan and a copy of the approved sign has been submitted to the Building Inspector. Existing signs are allowed to remain and are not subject to these requirements unless said sign is removed and replaced with a different sign or different type of attached brackets. Existing signs may be removed for maintenance, re-lettering or name change, without requiring approval under this section.
2. **Submission Requirements.** A Sign Plan shall be submitted by the applicant showing all permanent signs in detail and as they are proposed to be installed on the building or structure. Plans shall include color, materials, lettering, lighting and proposed mounting

details.

3. General Requirements: Sign Plan Approval may be granted only in accordance with the following requirements:

- a. Signs, including brackets and mounting appurtenances shall be consistent with building design.
- b. No sign shall extend above the roof line or façade, whichever is higher; roof signs shall not be permitted.
- c. No signs shall be flashing, shimmering or consist of rotating lights.
- d. Moving or rotating signs shall not be permitted with the exception of barber poles.
- e. No sign shall be placed which prevents the driver of a vehicle from having a clear and unobstructed view of approaching or merging traffic.
- f. Multiple signs on a building should be coordinated for shape, materials, colors, typefaces and graphics. Multiple signs on a building should be aligned with each other and with adjacent buildings.
- g. Signs should not hide architectural detailing.
- h. Individual letters may be mounted on the building.
- i. Signs may be applied to cloth or awnings which conform to the requirements of this section. Lettering may be painted on windows.
- j. Where Site Plan Approval is required for the proposed work, approval of a Sign Plan shall be consolidated with the Site Plan Approval procedures and the SPAA shall determine that the Site Plan Approval complies with all of the requirements and provisions of the Sign Plan Review as part of the Site Plan Approval Proceeding.

4. Temporary signs, including those which are mounted on trailers and/or have blinking lights and large letters used to advertise grand openings, anniversaries or other events or matters may be used if they are restricted to being located on the lot to which they relate and are not used more than once per calendar year for a period not to exceed 30 days. A permit for such temporary sign shall be received from the Building Department prior to installation. This provision does not include political signs.

5. Sign Dimensions.

- a. The display of one (1) free standing sign placed on the lot pertaining to the use or uses of the premises with a total area of not more than twelve (12) square feet in



surface area per side. Said free standing sign shall be limited to two (2) sides and total sign height shall not exceed fifteen (15) feet.

- b. A wall mounted sign with up to one (1) square foot of sign per running foot of a front building wall. The length of the sign shall not exceed 60% of the front building wall length.
- c. Signs which are permitted to overhang a public way or project from the front face of a building or structure shall not exceed nine (9) square feet in surface area per side. Such signs shall not project more than three feet six inches (3' 6") from the front face of the building or structure wall including the space between the sign and the wall and shall be at least eight (8) feet above the ground.
- d. Buildings containing a second public entrance on a wall other than a front building wall or a street side wall in addition to a front building wall, may cause to be installed one (1) additional sign at either said entrance or on said street side wall. If two signs are to be installed, one on the front building wall and one on either a street side wall or a wall containing a second public entrance, one sign may be full sized based on 60% of the length of the wall upon which it is installed and the second sign shall be no more than 30% of the length of the second wall.

#### 6. Compliance.

- a. Applications for Sign Approval shall be submitted to the Town Clerk on behalf of the SPAA.
- b. Copies of submissions for Sign Approval shall be submitted by the applicant to the Historical Commission, Planning Board and Building Inspector at the time of application to the SPAA.
- c. The SPAA shall take final action on the request for Sign Approval within thirty (30) days of receipt of the application or such further time as may be agreed upon at the written request of the owner.
- d. No deviation from an approved Sign Plan shall be allowed without modification thereof by the SPAA.

#### **5.7.3 Commercial Development District Signs.** The following rules shall apply in the Commercial Development Districts.

- 1. All signs shall be firmly affixed to a foundation or building, excluding real estate "for sale" or "for lease" signs. No flashing light or moving parts are permitted.
- 2. One (1) freestanding sign is allowed for frontage up to 300 feet plus one for each additional full three hundred (300) feet of frontage. Total display area of all freestanding signs shall not exceed one square foot per side for each two linear feet of

frontage.

3. Other signs may be attached to a building provided that the total area of such signs not exceed ten (10%) percent of the gross unglazed wall area of the face of the building where the sign will be located and not extend above or beyond the edge of wall.
4. Other signs may be attached inside windows or a building provided that the total area of such signs not exceed ten (10%) percent of the gross glazed area of the face of the building where the sign will be located.
5. Free-standing display signs may not exceed thirty-five (35) feet in height and no part of any sign may be less than five (5) feet from any property line.
6. In addition to these standards, two (2) directional signs not to exceed two (2) square feet each, may be placed at each entrance or egress to a lot.
7. One site identification sign of up to thirty-two (32) square feet in area may be temporarily erected while the lot is under construction. The temporary sign shall be removed upon the issuance of a certificate of occupancy and shall not be allowed as permanent signage.
8. Banners and other temporary signs, including signs mounted on trailers and movable stands, may be allowed by the SPGA for temporary uses only and for a specifically limited time.

**5.7.4 Residence Districts.** The following rules shall apply in the Residence Districts. Signs are permitted for:

1. Advertising the sale or rental of the property on which it is located. The sign shall not exceed six (6) square feet in area.
2. Advertising activities with a permitted use and those uses allowed by special permit or variance. There shall be only one (1) sign and it shall not exceed six (6) square feet in area and shall be on the premises where such activities are carried on.

## **SECTION 6.0 SPECIAL REGULATIONS**

### **6.1 CONSTRUCTION TRAILERS OR CONSTRUCTION OFFICES**

**6.1.1 General.** Construction trailers, construction offices or other similar temporary structures may be erected, placed or converted on any lot in the Town provided that such structures shall be used exclusively in connection with the construction of a dwelling, building, structure or other improvement.

**6.1.2 Limitation.** The use of such structures shall be limited to the duration of such construction and the structures shall be removed from the lot within thirty (30) days of the completion of construction.

### **6.2 TRAILERS OR MOBILE HOMES**

**6.2.1 Special Permit Required.** A house trailer or mobile home may be used for temporary residence in any district during the building of a permanent home when authorized by a special permit by the Zoning Board of Appeals. Such approval shall be for a period of not more than one year.

**6.2.2 Storage.** The storage of an unoccupied house trailer or mobile home may be permitted by the Selectmen. The application for such permit shall be in writing and shall indicate the location of the trailer during such storage. Mobile camping units, however, shall not be required to obtain a permit here under.

### **6.3 UNREGISTERED VEHICLES**

**6.3.1 General.** No person shall keep more than one (1) unregistered vehicle on or about a lot owned or under the control of that person.

**6.3.2 Exemptions.** The following are exempt:

1. Farm vehicles;
2. Vehicles kept wholly within a garage or other similar enclosed structures;
3. Vehicles stored on premises licensed under MGL Chapter 140.

**6.3.3 Special Permit.** The Board of Appeals may grant a special permit to exempt other types of unregistered vehicles if it shall find that the use involved will not be a substantial detriment to the established or future character of the neighborhood and Town. The Board of Appeals may impose appropriate conditions or safeguards in connection with any special permit granted hereunder.

**6.4 SCENIC ROADS.** The following described roads are scenic roads pursuant to MGL

Chapter 40 Section 15C and subject to the regulations appearing therein. Starting at the intersection of Plymouth Street with the southerly line of Massachusetts Highway 44; thence northerly on and along Plymouth Street or its intersection with Summer Street; thence northerly on and along Summer Street to its intersection with Murdock Street. The parts of Plymouth Street and Summer Street set forth above shall include all of the land within official road layouts which established the parts of said streets as public ways. It should be noted that there are other Scenic Roads pursuant to MGL Chapter 40 Section 15C that are on file with the Town Clerk.

## **6.5 COMMERCIAL DEVELOPMENT DISTRICT**

**6.5.1 Purpose.** The purpose of the Commercial Development District is to encourage commercial uses that provide employment opportunities and offer needed goods and services, while not creating undue congestion, overburdening Town infrastructure, causing environmental harm or creating nuisance or hazard to neighboring residential uses.

**6.5.2 Special Permit Required.** The Planning Board shall be the Special Permit Granting Authority (SPGA).

### **6.5.3 Accessory Uses; Size Limits.**

1. Light manufacturing and assembly, including food processing/packaging, is allowed as an accessory use to an onsite retail operation of which such light manufacturing and assembly accessory use does not exceed fifteen (15%) percent of the total floor area of the retail operation, with a maximum accessory use area not to exceed fifteen thousand (15,000) square feet.
2. Wholesale sales outlets are allowed as an accessory use to a retail sales outlet, of which such wholesale sales outlet use does not exceed fifteen (15%) percent of the total floor area of the retail sales outlet, with a maximum accessory use area not to exceed fifteen thousand (15,000) square feet.

**6.5.4 Lighting.** Light standards shall not exceed thirty five (35') feet in height. Interior and exterior lights, including lighted signs, must not be directed toward public streets in such a way as to create glare, distraction or confusion with traffic signals or signs. All artificial lighting shall be arranged and shielded so as to prevent direct glare from the light source onto any public way or any other property. Lighting shall be designed and constructed so as to be downward facing and reduce ambient reflection to the maximum extent practicable.

**6.5.5 Impervious Areas.** Impervious areas shall include areas covered by buildings, paving, walks, canopies or other non-permeable improvements. Open space shall include permeable areas covered by natural or cultivated living plant material.

### **6.5.6 Development Standards.**

1. Multiple buildings are allowed on each lot and more than one use may be allowed in

each building, provided all uses are permitted within the district.

2. All water, sewer, gas, electric and other utility services on a lot shall be underground.
3. Waste materials shall be stored in closed containers. Waste containers, compactors or other material which cannot be safely stored within a building shall be screened on all sides by an opaque fence or wall six (6') feet high. Uses with on-site litter disposal, such as fast food restaurants, shall be fenced as necessary to prevent litter blowing from property.
4. Maximum height of fences or walls shall be six (6') feet unless approved by the SPGA.
5. All outside storage, including storage and display of building materials, plant materials and equipment for sale, must be contained within the buildable area of the lot and shall not project into or be in setback or open space areas.
6. Parking and drainage facilities, signs and required screening and landscaping shall be continuously maintained in good condition and appearance and shall be repaired or replaced as necessary.

#### **6.5.7 Grading and Drainage.**

1. Pre-development runoff from a lot shall not exceed post-development runoff for storms up to and including the 100-year storm for both rate and volume of runoff. Recharge shall be provided pursuant to the MADEP Stormwater Management Standards as may be amended from time to time.
2. Drainage systems shall be designed for 10-year storm event.
3. All parking areas shall be equipped with oil, grease and sediment traps or other suitable stormwater best management practices (BMPs) and shall include deep sump catch basins equipped with hoods to facilitate removal of contamination and these devices shall precede any infiltration structures or drainage outfalls. Stormwater from parking areas required to be recharged shall be via infiltration basins or similar systems covered with natural vegetation. Drywells/leaching structures shall be used only where other methods are infeasible.
4. The owner shall maintain any and all recharge areas in full working order during construction and at all times thereafter.

**6.5.8 Construction.** Streets and utilities to be constructed pursuant to a special permit shall be designed and installed in accordance with the Rules and Regulations Governing the Subdivision of Land of the Planning Board in effect at the time of the filing of an application for a special permit or revision authorization as the case may be. All utilities shall be constructed underground.



## **6.6 BUSINESS DISTRICT**

**6.6.1 Permitted Uses.** All permitted uses shall be subject to Site Plan Review as set forth in Section 6.6.3 and the Sign Standards as set forth in Section 5.7.2.

**6.6.2 Special Permit Required.** The Zoning Board of Appeals shall be the Special Permit Granting Authority (SPGA). In addition, the SPGA shall also determine that the proposed use shall comply with all of the provisions of Site Plan review and the Sign Standards. There shall not be a separate Site Plan Review procedure when a Special Permit is required, but the SPGA shall determine that the proposed use complies with all of the requirements and provisions of Site Plan Review as part of the Special Permit proceeding.

**6.6.3 Site Plan Review: Purpose.** The Business District Site Plan Review Process and the issuance of Site Plan Approval endorsement is intended to protect the aesthetic and historic appearance of the Business District, promote economic development, protect property values and reduce traffic safety hazards and assure the proper design and construction of drainage facilities, parking areas, lighting, loading, waste removal, points of vehicle access and egress, pedestrian access, landscaping and screening. No building permit shall be issued in any case where site plan review is required and no area for parking, loading or vehicular service (including driveways giving access thereto) shall be established or substantially changed except in conformity with a site plan bearing an endorsement of approval of the Site Plan Approval Authority (SPAA). The Zoning Board of Appeals shall be the SPAA. The Zoning Board of Appeals may adopt rules relative to the issuance of a Site Plan Approval endorsement.

**6.6.4 Site Plan Review: Applicability.** Uses which require the issuance of a Site Plan Approval endorsement are:

1. Construction of a new building;
2. Addition of upper floors to an existing building;
3. Expansion or exterior renovation of an existing building requiring a building permit, by an area greater than 20% of any exterior wall, other than the street side wall or greater than 10% of the area of the street side wall of the building.

**6.6.5. Site Plan Review: Submission Requirements.** Applications for site plan approval shall be filed with the Town Clerk. Site Plans shall include drainage calculations, existing and projected traffic volumes from the site and effect on local roads (where deemed necessary by the SPAA) and other information deemed by the SPAA to be necessary to determine compliance with the provisions of this Bylaw. Submission shall also include four (4) separate plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the SPAA. All plans shall include a Site Plan Approval endorsement block. The four plans are as follows:

1. Site Layout Plan – showing boundaries of the lot, proposed structure, setbacks from property lines, driveways, parking areas, fences, walls, pedestrian walkways, lighting and loading facilities. The Site Layout Plan shall show the relation to existing areas, buildings and roads for a distance of one hundred (100) feet from the project boundaries or such other distances as may be approved or required by the SPAA.
2. Topography, Drainage and Utility Plan – showing the existing and proposed topography at one (1') foot contour intervals with spot grades provided where necessary, proposed drainage system including onsite structures and offsite discharge point, roof leaders, etc., facilities for refuse disposal or storage of wastes and the location of water and sewer mains, service connections and hydrants.
3. Architectural Plan – to include the ground floor plan, dimensions including height, materials and architectural elevations of all sides of the proposed building with full color rendering. Rooftop units and structures shall be shown to scale.
4. Landscape Plan – showing the limits of work, existing tree line and trees with a diameter greater than four (4") inches and all proposed landscape features and improvements including planting areas with spacing, size and type of stock for each shrub or tree and surface treatment for all planting beds.

**6.6.6 Design Objectives.** The following objectives, in addition to any standards prescribed elsewhere in this Bylaw, shall be utilized by the SPAA in considering all site plans. These objectives are intended to provide specific guidelines for the applicant in the development of site plans:

1. *Landscape* – The landscaping shall be designed to enhance the aesthetic relationship between the building and the surrounding parking area, neighborhood and streetscape. Existing mature trees and vegetation shall be integrated into the landscape plan where possible. A variety of plant materials shall be used to create visual depth in plant massing by layering plants of various sizes. Trees and vegetation near buildings shall be used to reduce the perceived scale of the building and to set them into the landscape. Street trees shall be used where possible along the streetscape. Where commercial property abuts residential property screening shall be provided.
2. *Circulation* – Site plans shall provide clearly marked, safe and attractive circulation patterns for both vehicles and pedestrians. Parking areas shall be designed to prevent the necessity of any vehicles from backing into a public way. Special attention shall be given to location, width and number of access points to public streets. Curb cuts should be located on secondary streets where possible. Curb cuts should be twenty four (24') feet wide for two way traffic or sixteen (16') feet for one way traffic. Adequate sight distance shall be provided where driveways intersect streets that provide access and egress.
3. *Surface Water Drainage* – The removal of surface water shall not adversely affect adjoining properties, streets or storm drainage systems; nor, obstruct circulation of



vehicles and pedestrians. For parking areas and roof leaders serving new buildings or expansions to existing parking areas or buildings, the performance of surface drainage shall be based on standards for a 10 year storm event as set forth in the Subdivision Rules and Regulations.

4. *Building Location* – Proposed buildings and structures shall be integrated with existing building locations, setbacks from the street, landscaping and terrain.

5. *Building Design* – The design of proposed buildings, structures and additions shall be harmonious with and reflective of the 19<sup>th</sup> and the early 20<sup>th</sup> century buildings in a typical New England Downtown of that period. The building or structure design shall complement the general setback, roof line and pitch, architectural style, arrangement of openings, color, exterior materials, proportion and scale of existing buildings in the vicinity. All rooftop equipment and structures shall be screened from all directions by faux facades built to the height of the rooftop equipment or structure.

6. *Special Features* – Exposed machinery, utility structures and loading, storage and disposal facilities shall be screened from adjoining properties and streets whenever feasible.

7. *Parking* – Any parking areas shall be located to the rear of buildings. Parking may be allowed on the side of buildings with SPAA approval. Any parking areas and walkways shall be adequately lighted and have appropriate signage. Any parking areas shall be designed as attractive landscapes with shade trees provided where possible.

8. *Safety* – All buildings shall be designed to facilitate building evacuation and maximize accessibility by fire, police and other emergency personnel and equipment.

9. *Lighting* – No areas shall be floodlit. Drives and parking areas shall not be illuminated by lighting fixtures higher than twenty (20) feet. Sidewalks shall not be illuminated by lighting fixtures higher than fifteen (15) feet. All lighting fixtures shall be downward facing except when specifically approved by the SPAA as accent lighting of landscaping or architectural features. Lights shall be shielded to have a total cutoff of all lights at less than ninety (90) degrees and building or wall packs shall have a total cutoff of forty-five (45) degrees. The total cutoff of all light shall occur within the property lines of the parcel to be developed.

10. *Signs* – Signs shall be in compliance with Section 5.7.2.

#### **6.6.7 Procedures.**

1. Applications for Site Plan Approval shall be filed with the Town Clerk.

2. Copies of submissions for Site Plan Approval shall be submitted by the applicant to the Historical Commission, Planning Board and Building Inspector at the time of application to the SPAA. Said board or agencies shall make such recommendations as

they deem appropriate. Copies of such recommendations shall be sent to the SPAA and to the applicant, provided however, that failure of any such boards or agency to make recommendations within twenty one (21) days by such boards or agency of the petition shall be deemed lack of opposition thereto.

3. The SPAA shall take final action on the request for Site Plan Approval within thirty (30) days of the Town Clerk's receipt of the application or such further time as may be agreed upon at the written request of the owner. Copies of the endorsed site plan shall be filed with the Town Clerk and the Building Inspector.

4. The SPAA may, upon written request of the owner, waive any of the submission requirements for Site Plan review within this section where the development involves relatively simple plans or constitutes a minor site plan. A minor site plan is defined as exterior building renovations only that do not involve a change or expansion of use. Submission requirements for a minor site plan will be limited to relevant architectural plans.

5. An as-built plan, certified by a registered Professional Land Surveyor or Engineer shall be submitted to the SPAA and Building Inspector before the issuance of a permanent occupancy permit, the as-built plan indicating landscaping, buildings, drainage flow, number of parking stalls and limits of parking areas and drives where applicable.

6. No deviation from an approved site plan shall be permitted without modification thereof by the SPAA including any subsequent division of the land.

7. Where a Special Permit is required for the proposed work, Site Plan Approval shall be consolidated with the Special Permit procedures and the SPGA shall determine that the Special Permit use complies with all of the requirements and provisions of Site Plan Review as part of the Special Permit proceeding.

**6.6.8 Compliance.** No building permit shall be issued by the Building Inspector for any development subject to this section and no construction or site preparation shall be started, until the SPAA has endorsed its approval on the site plan and a copy of the approved site plan has been submitted to the Building Inspector.

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

**6.6.10 Appeal.** Any decision of the Board pursuant to this Section shall be appealed in accordance with MGL Chapter 40A Section 17 to a court of competent jurisdiction.

## **6.7 ADULT ENTERTAINMENT**

**6.7.1 Purpose.** The purpose of this Adult Entertainment Section is to address and mitigate

the secondary effects of the adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties and adverse impacts on the quality of life in the Town. All of said secondary impacts are adverse to the health, safety and general welfare of the inhabitants of the Town.

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

**6.7.2 Special Permit Required.** The Zoning Board of Appeals shall act as the Special Permit Granting Authority (SPGA) and may grant a special permit for any of the following uses ( hereinafter “Adult Uses”):

1. Adult Book Stores.
2. Adult Motion Picture Theaters.
3. Adult Paraphernalia.
4. Adult Video Stores.
5. Nude Dancing Establishments.

**6.7.3 Location.** Adult Uses are allowed by special permit in the GUA District only. Within the GUA District, such Adult Uses may not be located within one thousand (1,000’) feet of each other and five hundred (500’) feet of the nearest lot lines of:

1. Any Zoning District which allows residential use.
2. Any establishment licensed under the provision of Section 12 of Chapter 138 of the Massachusetts General Law.
3. Adult Uses and all advertising signs for same, shall not be located within one hundred fifty (150’) feet of a public or private way and shall be set back a minimum of one hundred fifty (150’) feet from all property lines.

**6.7.4 Application.** The application for a special permit must include the following

information:

1. Names and address of the legal owner of the Adult Use.
2. Name and address of all persons having a fee, equity and/or security interest in such Adult Use, in the event a corporation, partnership, trust or other entity is listed, the name and address of every person who has an ownership interest and/or beneficial interest in the entity must be listed in order that the SPGA will know who are the persons who actually own and control the store or theater.
3. Name and address of the manager.
4. The number of employees or proposed number of employees, as the case may be.
5. Proposed security precautions.
6. The physical layout of the premises.

**6.7.5 Limitations.** Special permits for Adult Uses shall not be granted to any person convicted of violating the provisions of MGL Chapter 119 Section 63 nor MGL Chapter 272 Section 28. Any persons listed in Section 6.7.4.2 are subject to this prohibition.

**6.7.6 Lapse.** A Special Permit granted herein shall lapse if substantial use thereof or construction there under has not begun, except for good cause, within twelve (12) months following the filing of the special permit approval with the Town Clerk (plus such time required to pursue or await the determination of an appeal referred to in MGL Chapter 40A Section 17 from the grant thereof).

## **SECTION 7.0 SPECIAL RESIDENTIAL REGULATIONS**

### **7.1 MULTIFAMILY DWELLINGS IN GU AND GUX DISTRICTS**

**7.1.1 General.** Notwithstanding any other provisions of Section 4.0, the following shall apply.

**7.1.2 Area.** Except as provided with regard to conversion of a single family dwelling to not more than three dwelling units, no multifamily dwelling shall hereafter be erected, placed, altered or converted in the General Use District on any lot having an area of less than thirty thousand (30,000) square feet per dwelling unit and continuous street frontage of less than two hundred (200') feet and no multifamily dwelling shall hereafter be erected, placed, altered or converted in the General Use X District on any lot having an area of less than forty thousand (40,000) square feet per dwelling unit and continuous street frontage of less than two hundred (200') feet.

**7.1.3 Coverage.** No multifamily dwelling shall occupy more than 25% of the lot.

**7.1.4 Parking.** No multifamily dwelling shall have less than two (2) 10' x 20' parking stalls for each dwelling unit in the remaining 75% of the lot.

**7.1.5 Multiple Uses.** No multifamily dwelling shall be located on a lot that also contains a commercial use or single family dwelling.

**7.2 DWELLING UNITS ABOVE STREET LEVEL FLOOR IN THE BUSINESS DISTRICT**

**7.2.1 Special Permit Required.** Dwelling units situated above the street level floors are allowed by special permit provided that the SPGA finds that the proposed dwelling units will not overburden available automobile parking within the general area in which the building is located. Said requirements shall be presumed to be met if the building, which has a dwelling unit, is located within one quarter mile of an off-street public parking lot where overnight parking of motor vehicles is allowed. Otherwise, there shall be a minimum of one and one half (1 ½) – 10' x 20' parking spaces for each dwelling unit, provided on the same parcel of land where the dwelling units are located.

**7.2.2 Requirements and Standards.** Dwelling units situated above the street level floors of buildings are subject to the following conditions:

1. No floor of the building dedicated to residential use shall exceed the total square footage of the street level commercial floor.
2. Dwelling units shall not occupy the street level floor of any building.

**7.2.3 Decision Criteria.** In addition to the findings required under Section 9.4 the following affirmative findings shall be made:

1. The condition and uses of adjacent structures and the nature of the general area in which the proposed dwelling units are to be located will not result in undue congestion or overcrowding with the addition of the proposed dwelling units.
2. The property on which the proposed dwelling units are to be located provides an attractive appearance for the general area in which it is located.
3. The property to be used for dwelling units shall have adequate access to a street.
4. The dwelling units are compatible with existing uses on properties in the general area of the property, within and outside of the district, so that such proposed dwelling unit use is not detrimental to the area.
5. The project is in compliance with the site plan requirements of Section 6.5.3 and 6.5.10.

**7.2.4 Conditions.** Conditions, limitations and safeguards may be imposed to effect

compliance with this section and may include but not be limited to limitations on the number of dwelling units and bedrooms therein.

### **7.3 FAMILY ACCESSORY APARTMENTS**

**7.3.1 Purpose.** The purpose of this Section is to:

1. Provide older homeowners with a means of obtaining rental income or to live more economically; enjoy companionship, security and services from nearby family members thereby enabling them to live more comfortably in a home and in neighborhoods they might otherwise be forced to leave.
2. Make housing units available to low and moderate-income households which might otherwise have difficulty finding homes within the town.
3. Protect property values and the residential character of a neighborhood by ensuring that family accessory apartments are installed only in owner occupied houses and under such additional conditions as may be appropriate to further the purpose of this Bylaw.

**7.3.2 Special Permit Required.** The Zoning Board of Appeals shall be the Special Permit Granting Authority. Family accessory apartments may be permitted in all districts by special permit in accordance with the requirements specified herein.

**7.3.3 Standards and Requirements.** The SPGA may authorize a special permit provided that the following standards and requirements are met:

1. A family accessory apartment may be part of a new single family dwelling, part of an existing single family dwelling or an addition to an existing single family dwelling. A family accessory apartment shall have not more than two bedrooms. It shall be contained within a new or existing single-family dwelling or if added to the exterior of a single family dwelling it may have a separate entrance located on the side or rear of the building. A family accessory apartment shall be less than fifty (50%) of the floor area of the single-family dwelling.
2. Only one family accessory apartment may be located as part of or within a single family dwelling.
3. Any addition to a single-family dwelling must meet the minimum setback requirements in the district in which the property is located.
4. At least one of the record owners of the property, which contains a family accessory apartment, shall occupy one of the dwelling units in the single family dwelling as a primary residence. Only one or more members of the immediate family of a record owner of the property which contains a family accessory apartment shall occupy the accessory apartment. "Immediate family" shall mean parents, grandparents, children, grandchildren and siblings of a record of owner.

5. All stairways to second and third stories shall be enclosed within the exterior walls of the dwelling, to the extent feasible.
6. An addition to the original building may be permitted, provided that the addition increases the floor area of the original buildings by less than fifty (50) percent and the addition, in the opinion of the SPGA, will not alter the residential character of the building.
7. At least two off street vehicle parking spaces shall be available for use by the residential occupants of the principal dwelling unit and at least two off street vehicle parking spaces shall be available for use by the residential occupants of the family accessory apartment.
8. The Health Officer shall certify that the means of water supply and sanitary disposal shall be adequate to support both dwelling units.
9. The construction of any family accessory apartment must be in conformity with State Building Code requirements.
10. In order to provide for the development of housing units for disabled and handicapped individuals, the SPGA may allow reasonable deviation from the requirements of this Section where necessary to install features that facilitate access and mobility for disabled persons.
11. The special permit shall reference the immediate family member(s) by name who will occupy the family accessory apartment. The Building Inspector shall be notified of any change from one family member to another.

## **7.4 RETREAT LOTS**

**7.4.1 Purpose.** The Purpose of this Section shall be to assist in maintaining the Town's rural character and lifestyle by encouraging retention of large parcels of contiguous usable land for agricultural and residential uses.

**7.4.2 Special Permit Required.** The Planning Board shall be the Special Permit Granting Authority (SPGA). Notwithstanding the street frontage requirement in Section 4.0, the SPGA may grant a special permit to allow a Retreat Lot in the Residence A, Residence B, Residence Rural, General Use and General Use X Districts.

**7.4.3 Requirements.** The issuance of a special permit for a Retreat Lot shall be subject to the following requirements:

1. The use of a Retreat Lot shall conform to the requirements of Section 3.0 with respect to uses allowed as of right and by special permit.

2. Minimum lot size shall be five (5) times the minimum lot area in which the Retreat Lot is located.
3. The Retreat Lot shall have a minimum of forty (40') feet of continuous frontage on a street.
4. Fifty percent (50%) of the minimum lot area shall be upland. Upland shall be an area of the Retreat Lot in which no land, with the exception of the riverfront area, is subject to the protection of the Wetlands Protections Act, G. L. CHAPTER 131, s. 40.
5. The land extending from the street to a point where the lot width is at least one hundred (100') feet wide is considered the access area which shall be a minimum forty (40') feet wide throughout its length and must be included as part of the Retreat Lot. No access area shall be less than fifty (50') feet in length measured from the street line. The access area land shall not be counted toward the minimum lot area or percent upland area calculations unless said access area exceeds one hundred (100') feet wide throughout. The access area must be designed as straight as possible and in such a way that a maximum of two (2) straight lines connected by a single angle change can be drawn from the street frontage to the upland building area, wholly within the lot.
6. Any area of the lot which is less than one hundred (100') feet wide shall not be counted toward the minimum lot area or percent (%) upland area calculations.
7. Shape factor shall be the square of the perimeter of the lot in feet divided by the lot area shall be less than or equal to 60.0. Shape factor calculation shall not include the access area unless the access area is greater than one hundred (100') feet wide throughout its length. A lot may have a shape factor exceeding 60.0, if a portion of the lot, itself, meets all of the requirements of this section and has a shape factor of 60.0 or less.
8. The Retreat Lot must be capable of containing an "upland building area" of 40,000 square feet of contiguous land, in the shape of a circle, square or rectangle and in the use of a rectangle no side may measure less than one hundred eighty (180') feet, within which no land, with the exception of the riverfront area, is subject to the protection of the Wetlands Protection Act, MGL Chapter 131 Section 40. The upland building area shall be included in the lot area used to calculate the lot's shape factor.
9. Not less than seventy-five percent (75%) of the footprint of any dwelling shall be located within the upland building area.
10. No Retreat Lot access area shall abut another Retreat Lot access area and must be separated by a parcel of land having at least one hundred fifty (150') feet of frontage and an area of seventy five hundred (7,500) square feet.
11. A Retreat Lot and its access area shall serve as access to the Retreat Lot and no



other lot.

12. Access to a dwelling on a Retreat Lot shall be exclusively within the Retreat Lot including through the access area of the Retreat Lot.

13. The maximum driveway length from the street to the dwelling shall not exceed 2000 feet unless otherwise allowed by the Planning Board.

14. No driveway shall be placed within ten (10') feet of any lot line unless a finding is made by the Planning Board that this distance may be reduced but not eliminated and the Retreat Lot may be subject to appropriate conditions or safeguards if deemed necessary by the Planning Board.

15. Not more than one single family dwelling shall exist on a single Retreat Lot.

16. No dwelling, building or structure shall be erected, placed or converted closer than fifty (50') feet from the street lines, side lot lines and rear lot lines. The requirements set forth in the previous sentence shall not apply to dwellings, buildings or structures erected, placed or converted on a lot before the filing of an application for a Retreat Lot special permit.

17. The Retreat Lot shall not be further subdivided. It shall be a condition of the special permit that there is a prohibition against further subdivision. A deed restriction preventing further subdivision (enforceable by the Town of Middleborough or any citizen of the Town) shall also be recorded with the plan.

18. The following notes shall be placed on the plan: "The Retreat Lot shown on this plan shall not be further subdivided" and "No building permit shall be issued for the Retreat Lot on this plan until a copy of the recorded deed restriction and special permit is delivered to the Planning Board."

19. No Retreat Lot shall be approved by the Planning Board if vehicular egress from the lot results in a hazard due to grade, visibility or other natural or artificial limitations than would be normal for standard lot in the same vicinity.

20. Existing drainage patterns shall not be disrupted by the construction of a driveway on the Retreat Lot. A grading plan showing existing and proposed conditions may be subject to appropriate conditions or safeguards if deemed necessary by the Planning Board.

**7.4.4 Application.** An application for a Retreat Lot shall include a plan prepared by a Registered Land Surveyor and if necessary, a Professional Engineer, depicting the Retreat Lot and showing that it is in compliance with all of the requirements of this Section.

## **7.5 OPEN SPACE AND RESOURCE PRESERVATION DEVELOPMENT**

**7.5.1 Purpose.** This Section presents an alternative to a conventional subdivision. Its purposes are as follows:

1. To provide for the public interest by the preservation of open space and natural resource features in perpetuity; and,
2. To promote variety in single-family residential housing patterns by encouraging development which is designed to accommodate a site's physical characteristics such as: topography, vegetation, water bodies, wetlands, open spaces such as farmlands and meadows, major scenic views, wildlife habitats, archaeological and significant historic resources.

It is not the intent of this Bylaw to make undevelopable land developable or to permit an increase in the number of building lots that would otherwise be possible on a conventional plan, but rather to encourage the preservation of important site features.

**7.5.2 Special Permit Required.** The Planning Board shall be the Special Permit Granting Authority (SPGA). The Planning Board shall adopt rules and regulations for the issuance of the special permits applicable to this section.

**7.5.3 General Requirements.** It is the general policy of the Town to encourage the development of interior land parcels when appropriate as Open Space and Resource Preservation Developments and to discourage the development of land along existing road frontage, thereby retaining and enhancing the visual quality of the Town and maintaining the safety and efficiency of public ways. To implement this policy, the following requirements shall be complied with:

1. Any parcel of land located within a zone permitting Open Space and Resource Preservation Development containing five (5) acres or more and which may be developed as a conventional grid subdivision may be considered for an Open Space and Resource Preservation Development subject to a special permit issued by the Planning Board.
2. After an Open Space and Resource Preservation Development application has been submitted no tree removal, utility installation, ditching, grading or construction of roads, grading of land or lots, excavation except for purposes of soil testing with the approval of the Planning Board, dredging or filling or construction of buildings or structures shall be done on any part of the development site until the application has been reviewed and received final action pursuant to this Bylaw.
3. No Open Space and Resource Preservation Development will be approved within an established single-family residential neighborhood if the Planning Board determines that such land use would have a detrimental effect to the established or future character of the neighborhood and/or Town.
4. It shall be the responsibility of an applicant for an Open Space and Resource

Preservation Development Special Permit to demonstrate to the Planning Board that this form of development will be as or more appropriate than traditional development patterns for the proposed site.

**7.5.4 Permitted Uses.**

1. Detached single-family dwellings, including all accessory uses as permitted in the Zoning Bylaw for the district in which the land is located.
2. Uses permitted within the Common Open Space as described in this Bylaw.
3. Recreational facilities consistent with this Bylaw.

**7.5.5 Dimensional Requirements.**

1. Size: The total area of the tract proposed for Open Space and Resource Preservation Development shall be at least five (5) acres.
2. Density: The number of building lots on the tract proposed for Open Space and Resource Preservation Development may not exceed the number of lots that could be constructed with a conventional grid subdivision that complies with all applicable regulations, including zoning, subdivision control, Board of Health and wetlands regulations.
3. Area Regulations: The Planning Board may grant a variation of all area regulations as set forth in Section 4.0 for all portions of an Open Space and Resource Preservation Development if the Planning Board finds that such reduction will result in better design, improved protection of natural and scenic resources and will otherwise comply with this Bylaw, provided that in no instance shall any lot deviate from the following Table of Minimum Lot Requirements.

**Table of Minimum Lot Requirements**

Minimum Area	30,000 square feet
Minimum Frontage	100 feet
Lot Width at Building Line	100 feet
Minimum Front Yard Setback	40 feet
Minimum Side Yard Setback	15 feet
Minimum Rear Yard Setback	20 feet
Minimum Upland Requirement	20,000 square feet
Minimum Shape Factor	(Perimeter of the lot – must be no greater than 30.0)

**7.5.6 Development Standards.** Prior to the issuance of a special permit for an Open Space and Resource Preservation Development, the applicant shall submit the information necessary to demonstrate that the following development standards have been met. These standards are

in addition to the requirements of the Subdivision Rules and Regulations and are in no way intended to replace any portion of those regulations.

1. It is a policy of the Town to limit the number of curb cuts on public ways. Within an Open Space and Resource Preservation Development, normally only two (2) curb cuts will be allowed, although the Planning Board may approve additional curb cuts if the applicant can demonstrate that they are necessary for the site and will not result in traffic hazards or congestion. In all instances, it will be the responsibility of the applicant to demonstrate that the location, number and design of curb cuts are both necessary and the most appropriate for the site.
2. The development will not cause unreasonable traffic congestion or unsafe traffic conditions both within and outside of the Open space Development.
3. The development will provide for and maintain convenient and safe emergency vehicle access to all buildings and structures at all times.
4. The site design shall preserve and where possible, enhance the natural features of the property, including scenic views, by adapting the location and placement of structures and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties.
5. The site design shall identify and ensure preservation of significant and special natural features.
6. The nature of the soils and subsoils shall be suited for the intended purposes based upon the Soil Conservation Guidelines. This determination shall focus upon, but shall not be limited to the locations, design and construction of roadways, buildings, septic systems and surface water drainage systems. Soil borings or test pits may be made to provide information in soil texture, color, percolation rates and depth to the ground water table at its maximum elevation.
7. Post-development runoff from the site shall not exceed pre-development runoff from the site for up to the one hundred (100') year storm event. The applicant shall submit formal drainage calculation prepared by a registered Professional Engineer for this purpose.
8. All drainage structures, swales, retention and/or detention ponds shall be placed on separate lots and not located on lots where a dwelling shall be placed, unless waived by the Planning Board.
9. Proper care shall be taken to prevent soil erosion and sedimentation control measures to prevent sedimentation and siltation of existing surface water bodies and wetlands. In areas where the land slopes downward toward any surface water body or fresh water wetland, proposed filling, cutting, clearing or grading shall be minimized and all such development activities shall be carried out in such a way as to retain the natural

vegetation and topography wherever possible. The Planning Board may require that an erosion and sedimentation control plan be submitted if significant erosion is anticipated in slope areas.

10. The development shall comply with all other provisions of the Subdivision Rules and Regulations and any other land use regulations of the Town in effect at the time of application, insofar as they are applicable. In accordance with MGL Chapter 41 Section 81R, the applicant may request a waiver from the Subdivision Rules and Regulations if such action is in the public interest and consistent with the intent and purposes of this Bylaw and the Subdivision Control Law.

#### **7.5.7 Common Open Space Use and Design Standards.**

1. Within an Open Space and Resource Preservation Development, no less than forty (40%) percent of the land area shall be devoted to common open space. The common open space shall not include land set aside for roads and/or parking uses. No more than fifty (50) % of the common open space shall contain wetlands as defined by MGL Chapter 131 Section 40.

2. The common open space shall be designed and maintained in accordance with the following standards:

a. Areas to remain as naturally-existing woods, fields, meadows and wetlands shall be maintained and may be improved in accordance with good conservation practices.

b. Common open space shall be planned as large, contiguous units wherever possible. Strips of narrow parcels of common open space shall be permitted only when necessary for access or as vegetated buffers along site's perimeter.

c. Common open space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses.

d. No more than fifteen (15%) percent of the common open space shall be covered by man-made impervious surfaces.

e. Common open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary for approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents. Access ways, parking, underground utilities and structures necessary for and accessory to uses permitted within this paragraph are allowable uses within the common open space. Use of common open space as provided for within this paragraph shall in all instances require approval by the Planning Board and all structural improvements and impervious surfaces must be shown on the definitive Open Space and Resource Preservation

## Development Plan.

f. If detention and/or retention ponds are necessary for the construction of the improvements shown in the subdivision plan, such detention and/or retention ponds shall not be located within the common space shown on such plan. The Planning Board may waive this requirement if the Board finds that the integrity and significance of the open space and the benefit of the open space to the Town are not compromised and that the open space created conforms with the intent and purpose of the Bylaw. In no case, however, shall permanent clearing for drainage improvements or utilities, including detention and/or retention ponds, exceed ten (10%) percent of any common open space parcel.

g. In cases where the common open space has been environmentally damaged prior to the completion of the development as a result of soil removal, harvesting of trees or other natural features, refuse disposal or other activity deemed inappropriate with the proposed uses of the common open space, the Planning Board may require the posting of a bond or other appropriate form of performance guarantee to ensure such restoration or improvement.

3. There shall be a buffer at the perimeter of the development consisting of trees, shrubs, vegetation and topographic features sufficient to separate and/or screen the development from abutting properties. This buffer shall be no less than one hundred (100') feet in width, except where the subdivision roadway and associated infrastructure intersect with the "street" as defined in Section 10.0 of this Bylaw. The buffer shall be considered common open space. Upon finding by the Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the development from adjacent property, the buffer may be reduced. If, however, the perimeter of the site abuts a General Use (GU), General Use X (GUX), Business (B) or Industrial (I) Zoning District, the Planning Board may require the buffer area abutting a GU, B or I District to be greater than one hundred (100') feet in order to ensure adequate separation and/or screening from the abutting commercial zoning districts.

4. The Board may require no-cut easements, conservation restrictions or the like, where the buffer requirement has been reduced. These easements and restrictions shall be on private property located within the subdivision, shall not be considered a "buffer" and shall not be included in common open space calculations.

5. Drainage structures, swales, retention and/or detention ponds may not be located within the buffer area. The Planning Board may waive this requirement if the Board finds that the integrity and significance of the buffer and the benefit of the buffer to the abutting parcels are not compromised.

6. Buffers shall remain in their current natural state. If in the opinion of the Planning Board the current natural state is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs and/or plantings shall be required.

### **7.5.8 Common Open Space Ownership and Management.**

1. Common open space in any Open Space and Resource Preservation Development shall be conveyed by the owner(s) to: 1) the Town and may be accepted by it for park or open space use; 2) a nonprofit corporation, the principal purpose of which is the conservation of open space; or, 3) a corporation or trust owned or to be owned by all the owners of lots within the development. If a corporation or trust owned by all the owners of lots is utilized, ownership thereof shall pass with the conveyances of the lots. In any case, where such land is not conveyed to the Town, a perpetual restriction of the type described in MGL Chapter 184 Sections 31-34 (including future amendments thereto and corresponding provisions of future laws) or some alternative legal instrument, recorded in the Registry of Deeds and providing permanent restrictions made running to or enforceable by the Town, providing that such land shall be kept in an open or natural state and shall not be built upon for residential use or developed for accessory uses such as parking or roadway.

2. If the common open space is not to be conveyed to the Town, then the applicant shall include as part of the subdivision covenant, a provision that the common open space shall be deeded as approved by the Planning Board. In addition, the subdivision covenant shall not be released until proof of compliance with the ownership requirements set forth herein has been provided to the Planning Board.

3. If the common open space is not to be conveyed to the Town, the applicant for an Open Space and Resource Preservation Development special permit must include a program describing how the common open space will be maintained in perpetuity to standards satisfactory to the Planning Board. The applicant shall also provide as part of the common open space proposal an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence providing that, if the Town is required to perform any maintenance work, the owners of lots within the Open Space and Resource Preservation Development shall pay any costs incurred by the Town to maintain said common open space and shall constitute a lien upon their properties until said cost has been paid.

4. The Planning Board may require that all such part of the common open space as the Planning Board deems appropriate shall be clearly identified and marked on the ground prior to the commencement of any construction activity.

**7.5.9 Preliminary Concept Plan Review.** Applicants shall submit a Preliminary Concept Plan to the Planning Board, Board of Health, Conservation Commission and Historical Commission and obtain the opinion of the Planning Board as set forth herein prior to filing a formal special permit application, in order to obtain a consensus regarding the suitability of the site for an Open Space and Resource Preservation Development; and, to determine the allowable density by confirming the number of lots that could be built through the development of a “conventional” subdivision constructed in accordance with the underlying zoning district, the Subdivision Rules and Regulations and any other applicable laws or regulations of the

Town of Middleborough and Commonwealth of Massachusetts in force at the time of submission. Preliminary materials to be submitted shall include:

1. A preliminary layout of a conventional grid subdivision showing the allowable number of lots in accordance with the underlying zoning district. The burden of proof shall be upon the applicant in determining the allowable number of lots including but not limited to drainage ability and septic capacity. Said plan shall comply with the requirements of a Preliminary Plan as specified in the Subdivision Rules and Regulations and in addition shall show the following information:

- a. Existing landscape features such as steep topography a delineation of areas with slopes over 25%, wetlands, rare and endangered species and habitat, springs, lakes and ponds, streams, rock outcrops, boulder fields, stone walls, cliffs, forest glades, drumlins, high points, hill tops, ridges, archaeological and significant historic sites;
- b. Existing open areas such as forests, farm fields, meadows and major long views;
- c. Wetlands shall have been delineated and formally certified by the Middleborough Conservation Commission;
- d. Location of the one hundred (100) year flood plain shall be designated;
- e. Two (2') foot contours shall be used to indicate the topography;
- f. The location and dimensions of all building lots and extent of all ways and easements, existing and proposed drainage areas, preliminary design of drainage structures and such other improvements as may be proposed; and,
- g. Test pit, soil, drainage, sewer and water information as the Planning Board may request.

2. A Preliminary Concept Plan showing the proposed Open Space and Resource Preservation Development based on the number of lots that would be supported by a conventional subdivision plan. Said Preliminary Concept Plan shall comply with the requirements of a Preliminary Plan as specified in the Subdivision Rules and Regulations. In addition, the plan shall include all of the information outlined in Sections 7.5.9.1 (a) through (g) and the following information:

- a. The location and dimensions and extent of the common open space, the location and use of any common facilities or structures and such other improvements as may be proposed.
- b. In the event the parcel includes previously disturbed land, the applicant shall include a reclamation plan.



3. Supporting documents describing the proposed uses of the common open space and proposing the preferred form of ownership and maintenance thereof and a description of any facilities to be owned in common.

4. Documentation establishing that the proposed Open Space and Resource Preservation Development is as appropriate to the site than a traditional, conventional subdivision plan, including matters relating to the layout of ways and open space in relationship to the surrounding property and the site; the degree to which the plan provides for protection of important natural features including wetlands, steep slopes and agricultural land; and, the extent to which the plan provides for development of those areas best suited for building purposes.

**7.5.10 Opinion on Preliminary Concept Plan and Lot Count.** Within sixty (60) days after the receipt of preliminary materials as specified herein, the Planning Board shall give its opinion as to the number of lots that the site would support if constructed as a conventional subdivision in compliance with the underlying zoning district, the Subdivision Rules and Regulations; and, any other applicable laws or regulations of the Town and Commonwealth of Massachusetts. The Planning Board's opinion shall also include a determination of the suitability of the site for an Open Space and Resource Preservation Development. The Planning Board shall always compare the impact of an Open Space and Resource Preservation Development with the impact of a conventional development on the same site to insure that the Open Space and Resource Development is not more adverse, would not have a detrimental effect on the established or future character of the neighborhood and is in the public interest. The Planning Board's opinion on the preliminary concept plan and lot count may be made with or without recommendations. The Planning Board shall provide its Opinion on Preliminary Concept Plan and Lot Count to the Town Clerk and Applicant in writing.

**7.5.11 Special Permit Application.** The application for an Open Space and Resource Preservation Development Special Permit shall be accompanied by all documentation, specifications and plans necessary to allow the Board to fully understand the intent of said use, construction and development. The applicant shall submit engineering and site plans for the entire property prepared by the appropriate registered professional showing, but not limited to, anticipated location of the building(s) on the lot with proposed setbacks, lot dimensions, adjacent public ways, location of off-street parking, lighting, utility systems, location and nature of common open spaces with proposed improvements and amenities, specific notations as to project landscaping, locus plans and other details deemed necessary by the Planning Board.

**7.5.12 Definitive Subdivision Plan.** Applicants for a Special Permit for Open Space and Resource Preservation Development shall, at the time of filing the application, submit a Definitive Subdivision Plan in conformity with the Subdivision Rules and Regulations of the Planning Board and Subdivision Control Law MGL Chapter 41 Section 81, which plan shall be derived from the overall development shown on the Preliminary Concept Plan and the Opinion on Preliminary Concept Plan and Lot Count issued by the Planning Board pursuant to 7.5.10 above. In addition to the materials required for submission of a definitive subdivision plan, the

following documents and information shall be provided:

1. The Definitive Subdivision Plan shall accurately show the proposed layout of all lots, ways and common areas and structures in relation to the common open space. In addition, the following note shall appear on the plan to the effect that “No lot, including the common open space as shown in these plans may be further subdivided”.
2. Re-grading and erosion plans, where required.
3. Information as to the degree to which the proposed plan departs from the requirements of the underlying zoning and the reasons why such departures are deemed to be in the public interest.
4. Drafts of proposed deeds, management plans for all common areas and structures and the proposed open space restrictions, if any.

**7.5.13 Submittal to Other Boards.** The applicant shall submit the Special Permit and Definitive Subdivision applications and accompanying plans to the Conservation Commission, Health Department, Department of Public Works, Historical Commission, Board of Selectmen, Town Manager, Police Department, Fire Department, Department of Public Works, Historical Commission, Board of Selectmen, Building Inspector, Planning Board’s Review Engineer and the Middleborough Gas and Electric Department for their review and comment.

**7.5.14 Hearings.** Upon receipt of an Open Space and Resource Preservation Development application, the Planning Board shall proceed as with applications for the Special Permits under MGL Chapter 40A. Hearings on applications under this section may be held simultaneously with the Definitive Subdivision Plan hearings in accordance with MGL Chapter 41 Section 81T.

**7.5.15 Decision.** The Planning Board shall base its review on the requirements for granting a Special Permit and the Development Standards set forth in Section 7.5.6 and no such permit shall be granted unless the applicant demonstrates compliance therewith. All other improvements shall comply with the Subdivision Rules and Regulations, so far as applicable, unless a waiver is granted by the Planning Board pursuant to MGL Chapter 41 Section 81R. The Special Permit shall be granted only if the Planning Board finds each of the following in addition to the criteria set forth in Section 9.4 Special Permits:

1. The development meets the purpose of an Open Space and Resource Preservation Development as described herein;
2. All standards contained in this Section have been met or waived;
3. The common open space is designed in accordance with the Open Space Use and Design Standards set forth in Section 7.5.7;
4. The parcel could be developed as a conventional subdivision with the same number

of lots under existing local, state and federal laws and land use regulations;

4. The Open Space and Resource Preservation Development provides for efficient use and delivery of municipal and other services and infrastructure; and,

5. The Open Space and Resource Preservation Development is not more adverse than a conventional subdivision, would not have a detrimental effect on the established or future character of the neighborhood and is in the public interest.

**7.5.16 Condition.** Ownership of all open space shall be transferred to the parties required by the Special Permit in compliance with Section 7.5.8 herein prior to the issuance of the Form J Lot Release in the case of a subdivision or the issuance of a Building Permit for a non-subdivision lot.

## **7.6 ADULT MOBILE HOME PARKS**

**7.6.1 Exemption.** Mobile home parks in operation on January 1, 1986, shall be a permitted use and may be expanded, provided that the total area of any such mobile home park shall not exceed at any time ten acres and a density of ninety-five (95) mobile home units, and provided further that occupancy in such mobile home parks shall be limited to persons fifty-five (55) years of age or older.

**7.6.2 Purpose.** It is the intent of this Section to provide a healthy and attractive residential environment for mobile homes which meets the unique needs of residents fifty-five (55) and older.

**7.6.3 Special Permit Required.** The Planning Board shall be the Special Permit Granting Authority (SPGA).

**7.6.4 Age Restriction.** Residents in a mobile home in an adult mobile home park shall be restricted to not more than two (2) persons who are fifty-five (55) years of age; provided, however, that a younger person may also reside in the mobile home, when such person is either the spouse of an occupant of the mobile home who is at least fifty-five (55) years of age or a person who is providing medically prescribed nursing care to an occupant of the mobile home who is at least fifty-five (55) years of age.

**7.6.5 Prohibition.** No mobile home shall be erected on a site for living purposes except in an approved Adult Mobile Home Park.

**7.6.6 Phased Development.** Development shall be phased in according to a schedule determined by the SPGA so as to insure completion of amenities and proper development of the park.

### **7.6.7 Requirements and Standards.**

1. No Adult Mobile Home Park shall be less than twenty (20) acres in size inclusive of

roads and areas provided for recreation services and other permanent installations within the park.

2. The gross density shall not exceed two (2) dwelling units per acre.
3. Each mobile home site shall be a minimum of 10,000 square feet in size plus there shall be an additional 10,000 square feet of common area per mobile home site.
4. No mobile home shall be placed within twenty (20) feet of its lot lines.
5. Each site shall be serviced with water and sanitary drainage for a suitable permanent connection.
6. Adequate off street parking shall be provided at a ratio of 2.5 spaces per site.
7. Each unit shall have a perimeter of not less than one hundred twenty (120) linear feet.

**7.6.8 Code Compliance.** Mobile home dwelling units shall be installed subject to all local and state building and health codes.

**7.6.9 Internal Roadways.** Such roadways shall be constructed and maintained by the owner of the Park in such a way as to be adequate for vehicular traffic and public safety. The minimum width of street rights-of-way within an Adult Mobile Home Park shall be forty (40) feet. All roadways shall be brought to a finished grade as shown on the profiles of the definitive plan with at least twelve (12) inches of well compacted binding gravel and three (3) inches of Class I Bituminous Concrete Type I, 1, Massachusetts Department of Public Works specifications, to width of at least twenty (20) feet. In addition, general roadway design, drainage, utilities and street lighting shall conform to Subdivision Regulations in effect at the time of the application for a special permit.

**7.6.10 Buffer Areas.** There shall be a one hundred (100') foot buffer zone along all property lines. Buffer zones shall include the existing natural vegetation supplemented by walls, plantings or additional natural vegetation shall be provided around all Adult Mobile Home Parks in order to protect residential areas from possible adverse effects of such parks and to protect park residents from the potential undesirable effects of commercial or industrial areas. Buffers may be included in required allotments of common land and shall be designed as an integral part of such common land; buffers shall not be included as part of any mobile home site.

1. The Special Permit Granting Authority may, under appropriate circumstances, permit the construction of access roads within the buffer area when, in the judgment of the Special Permit Granting Authority, such construction is necessary to prevent the filling of wetland areas to accommodate such access.

**7.6.11 Park Rules and Regulations.** The owner of any Adult Mobile Home Park shall

establish rules and regulations relative to the maintenance of each individual mobile home and premises. The owner shall be responsible for the maintenance of all areas located within the Adult Mobile Home Park in a clean and sanitary condition and free from garbage, rubbish and other refuse.

**7.6.12 Procedures.** Applications for an Adult Mobile Home Park special permit shall be in accordance with the Regulations of the Planning Board as Special Permit Granting Authority. The applicant for a special permit shall submit a site plan prepared by a Professional Engineer and a Registered Land Surveyor, oriented to true north, and showing:

1. Boundaries of the district and of the lots in question;
2. Names of abutting owners;
3. Natural and man-made features, including any wetlands and flood plain;
4. The location of existing and proposed structures; and
5. The proposed means of access, roadways, parking areas, buffer strips, landscaped areas and such other requirements as set forth in the Planning Board's Rules and Regulations.

## **SECTION 8.0 OVERLAY DISTRICT REGULATIONS**

### **8.1 FLOOD PLAIN DISTRICT (FPD)**

**8.1.1 Purpose.** It is the purpose of this Section to promote the public health, safety and general welfare and to minimize losses by provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety or property due to water or erosion hazards or which cause damaging increases in erosion, erosion hazards, flooding or flood velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Discourage individuals from buying lands which are unsuited for intended purposes because of flood hazard;
4. Control filling, grading and mineral extraction which may increase flood damage;
5. Regulate the construction of levees, jetties and other works which may increase flood damage to lands which may be subject to flooding;
6. Ensure public safety through reducing the threats to life and personal injury;

7. Eliminate new hazards to emergency response officials;
8. Prevent the occurrence of public emergencies resulting from water quality, contamination and pollution due to flooding;
9. Avoid the loss of utility service which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
10. Eliminate costs associated with the response and cleanup of flooding conditions; and,
11. Reduce damage to public and private property resulting from flooding waters.

**8.1.2 Applicability.** The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Middleborough designated as Zone A and AE on the Plymouth County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). The map panels of the Plymouth County FIRM that are wholly or partially within the Town of Middleborough are panel numbers 25023C0314J, 25023C0317J, 25023C0328J, 25023C0329J, 25023C0336J, 25023C0337J, 25023C0338J, 25023C0339J, 25023C0343J, 25023C0442J, 25023C0451J, 25023C0452J, 25023C0453J, 25023C0454J, 25023C0456J, 25023C0458J, 25023C0459J, 25023C0461J, 25023C0462J, 25023C0466J, and 25023C0467J dated July 17, 2012; and panel numbers 25023C0303K, 25023C0304K, 25023C0308K, 25023C0309K, 25023C0311K, 25023C0312K, 25023C0313K, 25023C0316K, 25023C0318K, 25023C0319K, 25023C0431K, 25023C0432K, 25023C0433K, 25023C0434K dated July 16, 2015. 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 Plymouth County Flood Insurance Study (FIS) report dated July 16, 2015. The FIRM and FIS report are incorporated herein by reference and are on file with the Planning Board.

**8.1.3 Definitions.** For definitions applicable to Floodplain District, see Section 10.0.

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

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

**8.1.5 Overlay District.** The Flood Plain District is hereby established as an overlay district. All development in the District, including structural and non-structural activities, whether permitted by right or by special permit shall be in compliance with the Wetlands Protection Act, Chapter 131 Section 40 of the Massachusetts General Laws and with the following:

1. The section of the Massachusetts' State Building Code which addresses floodplain areas (currently 780 CMR);
2. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
3. Inlands Wetlands Restriction, DEP (currently 310 CMR 13.00); and,
4. Minimum Requirements for Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15.00, Title 5)

**8.1.6 Rule for Interpretation of District Boundaries.** The boundaries of the Flood Plain District shall be determined by scaling distances in the said Maps except where elevations are provided in Zone AE. Where there appears to be a conflict between a mapped boundary and actual field conditions FEMA should be consulted for formal review and map revision. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

**8.1.7. Notification of Watercourse Alteration.** In a riverine situation, the Town Planner shall notify the following of any alteration or relocation of a watercourse:

1. Adjacent Communities
2. NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, MA 02114-2104
3. NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6<sup>th</sup> Floor  
Boston, MA 02110

**8.1.8 Compliance.** No structure or land shall be used and no structure shall be located extended, converted or structurally altered without full compliance with the terms of this Section, the Massachusetts State Building Code and other applicable regulations.

**8.1.9 Abrogation and Greater Restrictions.** It is not intended by this Section to repeal, abrogate or impair any existing easement, covenants or deed restrictions. However, where this Section imposes greater restrictions, the provision of this Section shall prevail.

**8.1.10 Warning and Disclaimer of Liability.** The degree of flood and erosion protection required by this Section is considered reasonable for regulatory purposes and is based on scientific methods of study. Larger floods may occur. This Section does not imply that areas outside the Flood Hazard District boundaries or land uses permitted within such districts will be free from flooding or flood damages. This Section shall not create liability on the part of the Town of Middleborough or any officer or employee thereof for any flood damages that result from reliance on this Section or any administrative decision lawfully made hereunder.

**8.1.11 Regulatory Flood Protection Elevation for Middleborough.** Within Zone A where the base flood elevation is not provided for on documents referred to in Subsection 8.1.2, the applicant shall produce any already existing, reasonable base flood elevation data and such data shall be submitted to the Building Inspector for development criteria.

**8.1.12 Permitted Uses.** The following uses which have low flood damage points and do not threaten other lands during times of flood are encouraged within the Special Hazard Areas (Zones A and AE), provided they are not prohibited by any other zoning regulations or other Bylaws and do not require storage of materials, structures, flood control works or substantial filling or grading. But no use shall be permitted which adversely affects the capacity of the channels of floodways of streams, drainage ditches or any other drainage facility or system. (See FEMA List)

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
2. Forestry and nursery uses.
3. Conservation of water, plants and wildlife.
4. Wildlife management area, foot, bicycle and/or horse paths.
5. Temporary non-residential structures used in connection with fishing, growing harvesting, storage or sale of crops raised on the premises.
6. Buildings lawfully existing prior to the adoption of these provisions.
7. Municipal uses such as water works, pumping stations and other essential services.
8. Outdoor recreational uses including fishing, boating, play areas, beaches, beach cabanas not suitable for dwellings, boardwalks and steps to permit access across swamps or marshes, pavilions and other similar small platforms, lifeguard stations, golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails, temporary structures for sale of food and refreshments, arts and crafts.



9. Residential uses such as lawns, gardens, parking areas and structures for storage, not designed for human habitation.

### **8.1.13 Other Use Regulations**

1. Within Zones AH and AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
2. In Zone AE, along watercourses within the Town of Middleborough, that have a regulatory floodway designated on the Plymouth County FIRM 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.
3. All subdivision proposals must be designed to assure that:
  - a. Such proposals minimize flood damage;
  - b. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and,
  - c. Adequate drainage is provided to reduce exposure to flood hazards.
4. Existing and proposed contours of site and elevations of existing and proposed structures must be included on plan proposal.
5. There shall be established a routing procedure which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health and Building Inspector for comments which will be considered by the appropriate permitting Board prior to issuing applicable permits.

## **8.2 WATER RESOURCE PROTECTION DISTRICT (WRPD)**

**8.2.1 Purpose.** The purpose of the Water Resource Protection Districts (WRPD) is to:

1. 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 Middleborough;
2. Preserve and protect existing and potential sources of drinking water supplies;
3. Prevent temporary and permanent contamination of the environment; and,
4. Protect, preserve, conserve and maintain the water and natural resources of the Town

and to prevent their pollution.

**8.2.2 Overlay District.** The Water Resource Protection Districts shall be considered as overlying other zoning districts. Any use prohibited under existing Zoning Bylaws applicable to the portions of the district so overlaid shall continue to be prohibited under this WRPD Bylaw.

**8.2.3 Special Permit Required.** The Board of Selectmen shall be the Special Permit Granting Authority.

**8.2.4 Establishment and Delineation.** For the purposes of this Section, there are hereby established within the Town Water Protection Districts, Z1, Z2, Z3 and Z4 which are delineated on Middleborough's Zoning Map as set forth in Section 2.4.

**8.2.5 Definitions.** For definitions applicable in the WRPD, see Section 10.1.2.

**8.2.6 WRPD Z1 Use Regulations.**

1. Public water supply uses are permitted in WRPD Z1 as defined in 310 Code of Massachusetts Regulations (CMR) 22.00. No other uses are allowed in this Zone.

**8.2.7 WRPD Z2 Use Regulations.**

1. WRPD Z2 – Permitted Uses: The following uses are permitted within WRPD Z2, provided that all necessary permits, orders or approvals required by local, state or federal law are also obtained:

- a. Conservation of soil, water, plants and wildlife.
- b. Foot, bicycle and/or horse paths and bridges.
- c. Outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted.
- d. Normal operation and maintenance of existing water bodies and dams, splash boards and other water control, supply and conservation devices.
- e. Maintenance, repair and reconstruction of any existing structure, except uses subject to Section 8.2.7.2 (Prohibited uses) or Section 8.2.7.3 (Special Permit Uses).
- f. Residential development except uses subject to Section 8.2.7.2 (Prohibited uses) or Section 8.2.7.3 (Special Permit Uses).
- g. Farming, gardening, nursery, conservation, forestry, harvesting and grazing, except uses subject to Section 8.2.7.2 (Prohibited uses) or Section

### 8.2.7.3 (Special Permit Uses).

h. Construction, maintenance, repair and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, clear wells and tunnels. Underground storage tanks related to these activities are not permitted with the exception of propane storage tanks.

i. Storage of petroleum products within a freestanding container or storage tank either of which must be on an impervious surface within buildings it will heat.

## 2. WRPD Z2 – Prohibited Uses – the following uses are prohibited in WRPD Z2:

a. Landfills and open dumps as defined in 310 CMR 19.006 Solid Waste Management and disposal of solid wastes as defined herein.

b. Landfills receiving wastewater residuals and/or septage (wastewater residuals “monofills”) pursuant to MGL Chapter 21 Sections 26-53 Hazardous Waste; MGL Chapter 111 Section 17 - Public Health; and, MGL Chapter 83 Sections 6-7 - Sewers, Drains and Sidewalks and regulations promulgated there under.

c. The removal of soil, loam, sand, gravel or any other mineral substance within four (4) feet of historical, high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey or by Title V Soil Evaluation, defined by 310 CMR 15.00, witnessed by the Middleborough Health Department, except for excavations necessary for building foundations or utility works.

d. Facilities that generate, treat, store or dispose of hazardous waste subject to MGL Chapter 21C and 310 CMR 30.000 - Hazardous Waste Regulations as amended, except for

i. Very small quantity generators as defined under 310 CMR 30.000 - Hazardous Waste Regulations;

ii. Household hazardous waste centers and events under 310 CMR 30.390 - Hazardous Waste Regulations;

iii. Waste oil retention facilities required by MGL Chapter 21 Section 52A - Hazardous Waste; or,

iv. Water remediation treatment works approved by DEP in accordance with 314 CMR 5.00 - Ground Water Discharge Permits for treatment of contaminated ground or surface waters.

- e. Automobile graveyards, junkyards and salvage yards, as defined in MGL Chapter 140B Section 1 - Control of Certain Junkyards.
- f. Stockpiling and disposal of snow or ice removed from highways and streets outside of WRPD Z2 that contain sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
- g. Individual sewage disposal systems that are designed in accordance with 310 CMR 15.00 to receive more than one hundred ten (110) gallons of sewage per ten thousand (10,000) square feet of lot area per day, except the replacement or repair of an existing system that will not result in an increase in design capacity above the original design.
- h. Petroleum, fuel oil and heating oil bulk stations and terminals such as gas stations, including but not limited to those listed under Standard Industrial Codes 5171 and 5983.
- i. All lots in WRPD Z2 not connected to the Town's sewer system, having an area less than 60,000 square feet.
- j. Notwithstanding the provisions of subsections (g.) and (i.) above, any development that is the subject of an Open Space and Resource Preservation Development District Special Permit issued pursuant to Section 8.2 of this Zoning Bylaw, may use the "aggregate lot size" to meet the conditions of (g.) and (i.) above for each lot. The term "aggregate lot size" shall be defined as the total square footage of the Open Space and Resource Preservation Development divided by the number of building lots allowed by the Planning Board.

3. WRPD Z2 Special Permit Uses – Except as specified in Section 8.2.7.1 – Permitted Uses or Section 8.2.7.2 – Prohibited Uses, those principal and accessory uses authorized in the underlying district are permitted in WRPD Z2 only upon issuance of Special Permit by the Special Permit Granting Authority (SPGA) in conformance with the requirements stated below. The following uses and activities are prohibited and may only be allowed upon the issuance of a Special Permit by the SPGA if the use or activity is in conformance with the specific requirements stated below and under such other conditions as the SPGA may require:

- a. Enlargement or alteration of existing uses and structures that do not conform to the Water Resource Protection District are prohibited, but may be allowed by Special Permit provided that the enlargement or alteration of all uses and structures with the exception of single and two-family uses and structures does not increase the non-conformity or create a new non-conformity. Enlargement of existing structures shall not be permitted by a Special Permit if a variance from Title 5 of the State Sanitary Code is necessary.
- b. Storage of sludge and septage, as defined by 310 CMR 32.05-Land

Application of Sludge and Sewage is prohibited, but may be allowed by Special Permit, when such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.

c. Storage of deicing chemicals is prohibited, but may be allowed by Special Permit when such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

d. Storage of animal manure is prohibited, but may be allowed by Special Permit, when such storage is covered or contained in accordance with the specifications of the Natural Resource Conservation Service.

e. Storage of commercial fertilizers, as defined in MGL Chapter 128 Section 64 - Agriculture is prohibited, but may be allowed by Special Permit, when such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate.

f. Storage of liquid hazardous materials, as defined in MGL Chapter 21E or storage of liquid petroleum products except that specified in 8.2.7.1.f above is prohibited, but may be allowed by Special Permit, only when such storage is above ground level and on an impervious surface; and,

i. In a free standing container or above ground tank(s) within a building;

ii. Outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers or 110% of the largest container's storage capacity, whichever is greater; or,

iii Within a vehicle which is used to transport and store bulk amount of liquid hazardous material or liquid petroleum products within a building or if outdoors, in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of the truck(s) or 110% of the largest truck's storage capacity, whichever is greater.

g. Treatment or disposal works subject to 314 CMR 5.00 Ground Water Discharge Permits for wastewater other than sanitary sewage are prohibited, including, but not limited to, treatment or disposal works related to activities under Standard Industrial Classification (SIC), Codes set forth in 310 CMR 15.004(6) (Title V) but may be allowed by Special Permit for the following uses only:

- i. The replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);
  - ii. Treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated groundwater or surface water and operated in compliance with 314 CMR 5.05(3) or 5.05(13);
  - iii. Publicly owned treatment works.
- h. Automobile service and repair shops including those accessory to new and used car dealerships are prohibited, but may be allowed by Special Permit.
- i. Any building, structure, excavation or other land disturbing activities within one hundred (100') feet of a "fresh water wetland" as defined by MGL Chapter 131 Section 40 Massachusetts Wetlands Protection Act or a "wetland" as defined by 33 CFR 328.3 and 40 CFR 230.3, the regulations promulgated under Section 404 of the Federal Clean Water Act, as of the effective date of this Bylaw are prohibited, but may be allowed by Special Permit if said buildings, structures, excavation or other land disturbing activities are necessary for:
  - i. Limited projects as defined by 310 CMR 10.53 (3);
  - ii. Creation of wetland replacement or flood storage mitigation;
  - iii. Installation of drainage structures such as detention/retention basins, berms, water quality swales, where no practical alternative is available and disturbs less than 15% of the one hundred (100') foot area;
  - iv. Maintenance and construction of trails, creation of public parks or resource improvements projects such as the cleaning of streams;
- v. A primary use or use necessary but incidental thereto, provided that the majority of the disturbed area is located outside the one hundred (100') foot area and there are no reasonable alternatives, disturbs less than 15% of the one hundred (100') foot area within that portion of any lot and does not involve any building, structure or land disturbing activity within twenty-five (25') feet of a freshwater wetland except for those activities necessary for (i) through (iv) above with the issuance of a Special Permit. No part of a subsurface sewerage disposal system shall be located within one hundred (100') feet of any fresh water wetland.

The SPGA shall consider the report and recommendations of the Board of

Health, Planning Board and Conservation Commission. Such Special Permit may be conditional upon safeguards and requirements to protect water resources, health, safety and welfare and shall be in compliance with the provisions of Section 8.2.11 below. A lot shall be deemed to be that lot described by deed to shown on a plan duly recorded at Plymouth County Registry of Deeds at the time that any such land disturbing activity shall first occur after May 1, 1992. The SPGA shall determine to its satisfaction that any land disturbing activity or activities shall be in compliance with this provision and to that end may reasonably require any of the following:

- a. Determination of Applicability by the Conservation Commission;
- b. A plan certified by a Registered Land Surveyor which shows the location of all wetlands as set forth above, the area which is within twenty-five (25) feet of the wetland, the total area and location of that portion of any lot within one hundred (100) feet of any wetland and the land disturbing activity or activities proposed within the one hundred (100) and twenty-five (25) foot zones.

j. Any use that will render any lot more than 25% impervious is prohibited. Alterations resulting in more than 15% but less than 25% impervious area may be allowed by Special Permit provided that a system for groundwater recharge is provided to recharge the amount of water that was naturally recharged prior to development from the land area made impervious greater than 15% and which does not degrade groundwater quality. Pre-development run-off rates from a lot shall not exceed post-development runoff rates for storms up to and including the one hundred (100) year storm. Except for single or two (2) family residential uses, all parking areas shall be impervious and be equipped with oil, grease and sediment traps to facilitate removal of contamination and these devices shall precede any infiltration structure or drainage outfalls. Stormwater from parking areas if recharged, shall be via infiltration basins or similar above ground vegetated systems and dry wells/leaching structures shall be used only where other methods are infeasible. The owner shall permanently maintain any and all recharge areas in full working order. Not less than 50% of any lot area shall be maintained as a Natural Vegetation Area.

### **8.2.8 WRPD Z3 Use Regulations.**

1. WRPD Z3 - Permitted Uses: Except as specified in 8.2.8.2 Prohibited Uses and 8.2.8.3 Special Permitted Uses below, those principal and accessory uses authorized in the underlying district are permitted in WRPD Z3.
2. WRPD Z3 - Prohibited Uses - The following uses are prohibited in WRPD Z3:
  - a. Landfills and open dumps as defined in 310 CMR 19.006—Solid Waste Management and disposal of solid wastes as defined herein.

- b. Landfills receiving wastewater residuals and/or septage (wastewater residuals "monofills") pursuant to MGL Chapter 21 Sections 26-53 - Hazardous Waste; MGL Chapter 111 Section 17 - Public Health; and, MGL Chapter 83 Section 6-7 - Sewers Drains and Sidewalks and regulations promulgated there under.
- c. The removal of soil, loam, sand, gravel or any other mineral substances to within two (2') feet of historical high groundwater as detailed from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey or by Title 5 Soil Evaluation, defined by 310 CMR 15.00, witnessed by the Middleborough Health Department, except for excavations necessary for building foundations, utility works, agricultural uses or repairs allowed under Title 5, 310 CMR 15.00.
- d. Facilities that generate, treat, store or dispose of hazardous waste subject to MGL Chapter 21C and 310 CMR 30.000 – Hazardous Waster Regulations as amended, except for:
  - i. Very small quantity generators as defined under 310 CMR 30.000- Hazardous Waste Regulations;
  - ii. Household hazardous waste centers and events under 310 CMR 30.390-Hazardous Waste Regulations;
  - iii. Waste oil retention, facilities required by MGL Chapter 21 Section 52A - Hazardous Waste; or
  - iv. Water remediation treatment works approved by DEP in accordance with 314 CMR 5.00 - Ground Water Discharge Permits for treatment of contaminated ground or surface waters.
- e. Automobile graveyards, junkyards and salvage yards, as defined in MGL Chapter 140B Section 1 - Control of Certain Junkyards.
- f. Individual sewage disposal systems that are designed in accordance with 310 CMR 15.00 to receive more than 440 gallons of sewage per 20,000 square feet under one ownership per day, except the replacement or repair of an existing system that will not result in an increase in design capacity above the original design.
- g. Stockpiling and disposal of snow or ice removed from highways and streets outside of WRPD Z3 that contains sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
- h. All lots in WRPD Z3 not connected to the Town's sewer system having



an area less than 20,000 square feet.

i. Notwithstanding the provisions of (f ) and (h) above any development that is the subject of an Open Space and Resource Preservation Development District Special Permit issued pursuant to Section 8.2 of this Zoning Bylaw, may use the “aggregate lot size” to meet the conditions of (f) and (h) above for each lot. The term “aggregate lot size” shall be defined as the total square footage of the Open Space and Resource Preservation Development divided by the number of building lots allowed by the Planning Board.

3. WRPD Z3 – Special Permit Uses –The following uses and activities are prohibited and may only be allowed upon the issuance of a Special Permit by the SPGA if the use or activity is in conformance with the specific requirements stated below and under such other conditions as the SPGA may require:

a. Enlargement or alteration of existing uses and structures that do not conform to the Water Resource Protection District are prohibited, but may be allowed by Special Permit provided the enlargement or alteration does not increase the existing non-conformity or create a new non-conformity with the exception of single and two-family uses and structures. Enlargement of existing structure shall not be permitted by Special Permit if a variance from Title V of the State of Sanitary Code is necessary.

b. Storage of sludge and septage, as defined by 310 CMR 32.05-Land Application of Sludge and Sewage is prohibited, but may be allowed by Special Permit, when such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.

c. Storage of deicing chemicals is prohibited, but may be allowed by Special Permit when such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

d. Storage of commercial fertilizers, as defined in MGL Chapter 128 Section 64 - Agriculture is prohibited, but may be allowed by Special Permit, when such storage is within a structure designated to prevent the generation and escape of contaminated or leachate.

e. Automobile service and repair shops include those accessory to new and used car dealerships are prohibited, but may be allowed by Special Permit.

f. Petroleum, fuel oil and heating oil bulk stations and terminals such as gas stations, including but not limited to those listed under Standard Industrial Codes 5171 and 5983 are prohibited, but may be allowed by Special Permit.

g. Storage of liquid hazardous materials, as defined in MGL Chapter 21E or

storage of liquid petroleum products, except that specified in Section 8.2.8.3.f above is prohibited, but may be allowed by Special Permit, only when such storage is above ground level and on an impervious surface; and,

i. In a free standing container or above ground tank(s) within a building;

ii. Outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers or 110% of the largest container's storage capacity, whichever is greater; or,

iii. Within a vehicle which is used to transport and store bulk amounts of liquid hazardous material or liquid petroleum products within a building or if outdoors, in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of the truck(s) or 110% of the largest truck's storage capacity, whichever is greater.

This provision shall not apply to storage of petroleum products within a freestanding container or storage tank on an impervious surface within buildings it will heat.

h. Treatment or disposal works subject to 314 CMR 5.00 Ground Water Discharge Permits for wastewater other than sanitary sewage are prohibited, including, but not limited to, treatment or disposal works related to activities under Standard Industrial Classification (SIC) Codes set forth in 314 CMR 15.004(6) (Title 5) but may be allowed by Special Permit for the following uses only:

i. The replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);

ii. Treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated groundwater or surface water and operated in compliance with 314 CMR 5.05(3) or 5.05(13); or,

iii. Publicly owned treatment works.

i. Any building, structure, excavation or other land disturbing activities within twenty-five (25) feet of a "fresh water wetland" as defined by MGL Chapter 131 Section 40 – Massachusetts Wetlands Protection Act or a "wetland" as defined by 33 CFR 328.3 and 40 CFR 230.3 the regulations under Section

404 of the Federal Clean Water Act, as of the effective date of this Bylaw are prohibited, but may be allowed by Special Permit if said buildings, structures, excavation or other land disturbing activities are necessary for:

- i. Limited projects as defined by 310 CMR 10.53(3);
- ii. Creation of wetland replacement or flood storage mitigation;
- iii. Installation of drainage outfalls or outlet swales where no alternative is feasible due to elevation or hydraulic connection but not including primary drainage structures such as detention/retention basins, berms, water quality swales, etc; or,
- iv. Maintenance and construction of trails, creation of public parks or resource improvement projects such as the cleaning of streams.

The SPGA shall consider the report and recommendations of the Board of Health, Planning Board and Conservation Commission. Such Special Permit may be conditioned upon safeguards and requirements to protect water resources, health, safety and welfare and shall be in compliance with the provisions of Section 8.2.11 below. The SPGA shall determine to its satisfaction that any land disturbing activity or activities shall be in compliance with this provision and to that end may reasonably require any of the following:

- a. Determination of Applicability by the Conservation Commission;
  - b. A plan certified by a Registered Land Surveyor which shows the location of all wetlands as set forth above and the area which is within twenty-five (25) feet of the wetland.
- j. Any use that will render any lot more than 40% impervious is prohibited. Alterations resulting in more than 25% but less than 40% impervious area may be allowed by Special Permit provided that post-development runoff rates from a lot shall not exceed pre-development runoff rates for storms up to and including the one hundred (100) year storm. Except for single or two family residential uses, all parking areas shall be impervious and equipped with oil, grease and sediment traps to facilitate removal of contamination and these devices shall precede any infiltration structure or drainage outfalls. Stormwater from parking areas, if recharged, shall be via infiltration basins or similar above ground vegetated systems and dry wells/leaching structures shall be used only where other methods are infeasible. The owner shall permanently maintain any and all recharge areas in full working order. Not less than 35% of any lot area shall be maintained as a Natural Vegetation Area. This provision does not apply to lots within the Business District.

### **8.2.9 WRPD Z4 Use Regulations.**

1. WRPD Z4 – Permitted Uses: Except as specified in 8.2.9.2 Prohibited Uses and 8.2.9.3 Special Permitted Uses below, those principal and accessory uses authorized in the underlying district are permitted in WRPD Z4.
2. WRPD Z4 – Prohibited Uses: The following are prohibited in WRPD Z4:
  - a. Facilities that treat, store or dispose of hazardous waste subject to MGL Chapter 21C and 310 CMR 30.000 - Hazardous Waste Regulations as amended but do not generate said hazardous waste are prohibited, except for:
    - i. Very small quantity generators as defined under 310 CMR 30.000 Hazardous Waste Regulations;
    - ii. Household hazardous waste centers and events under 310 CMR 30.390 Hazardous Waste Regulations;
    - iii. Waste oil retention facilities required by MGL Chapter 21 Section 52A - Hazardous Waste; or,
    - iv. Water remediation treatment works approved by DEP for treatment of contaminated ground or surface water.
  - b. Landfills and open dumps as defined in 310 CMR 19.006- Solid Waste Management are prohibited except as provided in Section 8.2.9.3.c below.
3. WRPD Z4 – Special Permit uses – The following uses and activities are prohibited and may only be allowed upon the issuance of a Special Permit by the SPGA if the use or activity is in conformance with the specific requirements stated below and under such conditions as the SPGA may require:
  - a. Landfilling of sludge or septage as defined in 310 CMR 32.05 - Land Application of Sludge and Sewage is prohibited but may be allowed by Special Permit when such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31- Land Application of Sludge and Sewage.
  - b. Storage of sludge and septage is prohibited but may be allowed by Special Permit, when such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31- Land Application of Sludge and Sewage.
  - c. Municipal Sanitary Landfill is prohibited but may be allowed by Special Permit.
  - d. Any building, structure, excavation or other land disturbing activities within twenty-five (25) feet of a fresh water wetland” as defined by MGL

Chapter 131 Section 40 – Massachusetts Wetlands Protection Act or a “wetland” as defined by 33 CFR 328.3 and 40 CFR 230.3, the regulations promulgated under Section 404 of the Federal Clean Water Act as of the effective date of this Bylaw are prohibited, but may be allowed by Special Permit if said buildings, structures, excavation or other land disturbing activities are necessary for:

- i. Limited projects as defined by 310 CMR 10.53(3);
- ii. Creation of wetland replacement or flood storage mitigation;
- iii. Installation of drainage outfalls or outlet swales where no alternative is feasible due to elevation and hydraulic connection but not including primary drainage structures such as detention/retention basins, berms, water quality swales, etc; or,
- iv. Maintenance and construction of trails, creation of public parks or resource improvement projects such as the cleaning of streams.

The SPGA shall consider the report and recommendations of the Board of Health, Planning Board and Conservation Commission. Such Special Permit may be conditional upon safeguards and requirements to protect water resources, health, safety and welfare and shall be in compliance with the provisions of Section 8.2.11 below. The SPGA shall determine to its satisfaction that any land disturbing activity or activities shall be in compliance with this provision and may reasonably require any of the following:

- a. Determination of Applicability by the Conservation Commission; and,
- b. A plan certified by a Registered Land Surveyor which shows the location of all wetlands as set forth above and the area which is within twenty-five (25) feet of the wetland.
- e. Facilities that generate and also treat, store or dispose of hazardous waste subject to MGL Chapter 21C and 310 CMR 30.000 - Hazardous Waste Regulations as amended are prohibited, but may be allowed by Special Permit.
- f. Automobile service and repair shops including those accessory to new and used car dealerships are prohibited, but may be allowed by Special Permit.
- g. Automobile graveyards, junkyards and salvage yards, as defined in MGL Chapter 140B, Section 1 - Control of Certain Junkyards are prohibited, but may be allowed by Special Permit.
- h. Storage of liquid hazardous materials, as defined in MGL Chapter 21E or storage of liquid petroleum products, except that specified in Section 8.2.9.3.j

below is prohibited, but may be allowed by Special Permit, only when such storage is above ground level and on an impervious surface and:

i. In a free standing container or above ground tank(s) within a building;

ii. Outdoors in covered containers or above ground tanks within a building or has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers or 110% of the largest container's storage capacity, whichever is greater; or,

iii. Within a vehicle which is used to transport and store bulk amounts of liquid hazardous material or liquid petroleum products within a building or if outdoors, in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of the truck(s) or 110% of the largest truck's storage capacity, whichever is greater.

This provision shall not apply to the storage of petroleum products within a freestanding container or storage tank on an impervious surface within buildings it will heat.

i. Non-sanitary treatment works which discharge to the ground and that are subject to 314 CMR 5.00 – Ground Water Discharge Permits are prohibited, but may be allowed by Special Permit.

j. Petroleum, fuel oil and heating oil bulk stations and terminals such as gas station, including but not limited to those listed under Standard Industrial Codes 5171 and 5983 are prohibited, but may be allowed by Special Permit.

#### **8.2.10 Administration and Procedures.**

1. The SPGA shall adopt rules and regulations relative to the issuance of special permits.

2. Upon receipt of the application, including plans, related information and calculations, the SPGA shall transmit one copy of all submitted materials to the Planning Board, Health Department, Building Department, Conservation Commission and Department of Public Works for their written recommendations. Boards, Commissions and Departments shall have thirty (30) days to comment to the SPGA.

3. Where applicable the following information shall be submitted with every application for Special Permit:

a. Site plan prepared specifically for a WRPD Special Permit stamped by both a

Registered Land Surveyor and Professional Engineer including but not limited to: existing and proposed topography, the extent of impervious areas, extent and area of natural vegetated areas, existing and proposed drainage facilities, layout and design of sewage disposal facilities.

- b. Pre and post development drainage characteristics for surface run off and groundwater recharge, including calculations for all drainage designs;
- c. Location of and distance to the public supply wells affected by the subject site;
- d. Soil characteristics underlying the site and within the area between the site and the public supply wells;
- e. Provisions and conditions designed to prevent and correct conditions detrimental to public and private water supply, health, safety and welfare;
- f. A stormwater management plan as outlined by DEP Stormwater Management Standards and any additional requirements of the Town of Middleborough;
- g. A plan with calculations for any spill containment structures required herein;
- h. Evidence adequate to demonstrate that the project in no way, during construction or thereafter, will adversely affect the existing or potential quality or quantity of water that is available in the Water Resource Protection Districts or otherwise impact the water resources of the Town;
- i. Evidence that the project has been designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site;
- j. Methods to prevent against loss of recharge including but not limited to preservation of ground cover, infiltration of runoff, alternative drainage designs, minimization of lawn areas, and preservation and creation of natural vegetation areas; and,
- k. The SPGA may require additional information including but not limited to calculations, on-site testing, groundwater monitoring, groundwater modeling etc. necessary evaluate impacts from the proposed project.

The SPGA shall not grant a Special Permit under this section unless the application materials include, in the SPGA opinion, sufficiently detailed, definite and credible information to show compliance with the requirements, purpose and intent of this Bylaw and information to support positive findings in relation to the standards set forth

in this section.

**8.2.11 Decision.** After notice and public hearings and after due consideration of the reports and recommendations from the town boards/departments, the SPGA may grant a Special Permit provided that the proposed use meets the standards specified in this Bylaw and any regulations or guidelines adopted by the SPGA and provided that the SPGA finds that the proposed use:

1. Is in harmony with the purpose and intent of the WRPD Bylaw and will promote the purposes of the Water Resource Protection Districts;
2. Is appropriate to the natural topography, soils and other characteristics of the site to be developed;
3. Will not, during construction or thereafter, have an adverse environmental impact on the aquifer, recharge areas or water resources of the Town; and,
4. Will not adversely affect existing or potential water supply.

The SPGA shall document the basis for any departures from the recommendations of the town boards or agencies in its decision.

**8.2.12 Limit of Authority.** This Section does not limit the existing authority of the Conservation Commission pursuant to MGL Chapter 131 Section 40.

**8.2.13 Exemption.** Middleborough's Business District shall be exempt from the provisions of Section 8.2.7.3.j.

### **8.3 DEVELOPMENT OPPORTUNITIES DISTRICT (DOD)**

**8.3.1 Purpose.** The purpose of the Development Opportunities (DO) District is to authorize the innovative use of certain portions of a defined overlay district for activities appropriate to large land areas by the issuance of a special permit with safeguards and conditions to prevent detrimental effects and impact upon neighboring properties and upon the Town of Middleborough as a whole. The intent of the DO District is to provide opportunities for economic development expansion in a planned multi-use district.

**8.3.2 Overlay District.** The Development Opportunities District is an overlay district superimposed over underlying districts as shown on the Zoning Map of the Town of Middleborough. The provisions of the underlying district remain in full force and effect; provided, however, exercise of rights set forth in the underlying district after the issuance of a DOD special permit shall conform to Section 8.3.6.3, below.

**8.3.3 Special Permit Required.** The Planning Board shall be the Special Permit Granting Authority (SPGA).



**8.3.4 Uses.** The following uses shall be permitted by special permit in the DO District:

1. Manufacturing and industrial uses including processing, fabrication and assembly;
2. High technology activities;
3. Warehouses, wholesale distribution centers;
4. Municipal and public service facilities;
5. Transportation terminal;
6. Hotel or motel;
7. Office building;
8. Medical center;
9. Trade of professional school;
10. Country club;
11. Two or more of the aforesaid uses.

**8.3.5 Uses Accessory to Special Permit Uses.** Uses deemed by the SPGA to be accessory to uses allowed by special permit may be authorized as conditions to special permit. Accessory uses may include retail sales facilities, which are directly related but subordinate to one of the above listed uses, allowed by special permit. The accessory uses must be subordinate in use and importance to the primary use. Any retail sales facility may only sell the same product line that is either stored or produced in regard to the primary use, except that wholesale food distributor may also sell alcoholic beverages in a retail sales facility provided that the sales of such alcoholic beverages do not generate revenues in excess of fifteen (15%) percent of the total gross revenues generated by the entire retail sales facility and provided further that the area where the alcoholic beverages are displayed in the retail sales facility does not exceed ten percent (10%) of the total floor area of the retail sales facilities.

**8.3.6 General Regulations.**

1. The Planning Board may grant a special permit for any uses(s) allowed by special permit in the DO District.
2. No special permit shall be granted unless the total land area including streets which is the subject of a proposed special permit consists of ten or more acres.
3. Any of the following matters shall require authorization to revise a special permit from the Planning Board. The procedure, standards and requirements to obtain revision

of authorization shall be the same as that for issuance of a special permit:

- a. Any change in the exterior boundaries of the land or the size of the area which is the subject of a special permit;
- b. Any change in the boundary or boundaries of any lot within the land area which is the subject of a special permit;
- c. Relocation or grade alteration of a street;
- d. Construction of a building or structure or any addition to, alteration of or change in the exterior of any building or structure;
- e. Any change in use(s) allowed by the special permit or commencement of a use which is permitted as of right or by special permit in the underlying district.

4. Subsection 3, above, shall not be construed to require revision authorization in the event all or a part of the land which is the subject of a special permit is sold or conveyed unless such sale or conveyance creates a new lot boundary or boundaries within the area which is the subject of a special permit different from a boundary or boundaries existing prior to such sale or conveyance.

**8.3.7 Procedures.** The SPGA for this District shall be subject to the provisions of Section 9.4 applicable to the granting of special permits, including without limitation the requirement to make the affirmative findings of Section 9.4.2. The SPGA shall also make the following affirmative findings:

1. That water and sewerage facilities will be adequate to service the activities without a detrimental effect upon municipal services in any other area of the town.
2. That the activities are consistent with the comprehensive plans of the Planning Board for the general development of the Town of Middleborough as a whole as well as for the DO District.
3. That the activities are compatible with or separated by sufficient space or topographical features from adjacent areas.
4. That resources of open space, surface and groundwater are protected and preserved.
5. That public health and safety are secured.

**8.3.8 Construction.** Streets and utilities to be constructed pursuant to a special permit shall be designed and installed in accordance with the Rules and Regulations Governing the Subdivision of Land of the Planning Board in effect at the time of the filing of an application for a special permit or revision authorization as the case may be.

**8.3.9 Rules and Regulations.** The SPGA shall adopt rules and regulations relative to the procedures to be followed, and the criteria and performance standards for the evaluation of special permit applications and may provide for informal pre-application hearings for the consideration of preliminary plans. All special permits shall be exercised in conformity with such rules and regulations. Within fourteen (14) days of the receipt of an application, the SPGA shall refer applications and information, date and testing results to the Board of Selectmen, the Board of Health, the Town Manager, the Water and Sewer Commissioners, the Chiefs of Police and Fire Departments, the Conservation Commission, the Industrial Development Commission and to other Municipal Boards and Officials as the SPGA shall deem appropriate. Such regulations may include, but need not be limited to the following provisions:

1. *Site Plans:* The applicant for a special permit shall submit a site plan prepared by a registered Professional Engineer in the quantities and scale required, oriented to true north and showing boundaries of the district, of the lots in question, names of abutting owners, natural and manmade features, including any wetlands and the boundaries of a wetlands district and the location of existing and proposed structures and means of access, roadways, parking areas, buffer strips, landscaped areas and such other requirements as the SPGA shall adopt in its rules and regulations.

2. *Potential Hazardous Uses:* The SPGA may adopt criteria in its regulations to be used to evaluate dangerous or objectionable elements at the point of origin or at any point beyond for fire and explosion hazard, radioactivity, electrical disturbance, smoke, fly ash, fumes, other sources of air pollution and liquid and solid wastes; and, to evaluate noise and vibration at the lot lines and at specified points, both for daytime and nighttime use.

3. *Traffic Impact Study:* To assist the SPGA in the evaluation of the effect of a proposed activity requiring a special permit, the SPGA may require the applicant for a special permit to furnish information relative to proposed access routes and the relation to existing public ways; an analysis of existing traffic conditions using data relative to road widths and capacities, traffic volumes and conditions at critical intersections. Traffic counts will include average daily volumes and the peak hour AM and PM volumes. Projected future traffic information shall include volume and distribution estimates, critical hour turning patterns at the intersection of access ways with public ways and pertinent information on traffic volume and distribution related to major land development and within two miles of the proposed site. The SPGA may require the applicant to provide a traffic impact analysis of the operating levels of roadways and intersections both before and after the proposed development and including the associated cost to the town necessary to meet the impact of development related traffic; and, also an analysis of the impact of heavy trucking upon roadways and bridges on proposed access routes, together with recommendations for improvements to cope with anticipated traffic impact.

4. *Phased Development:* The SPGA may require that development under a special permit may be authorized in phases, that certain uses shall be commenced within twelve

months after the grant of the special permit and that other uses shall be commenced only when a specified proportion of the initial phases have been substantially completed.

5. *Dimensional Provisions:* The SPGA may adopt regulations relative to densities of land use, the bulk and height of structures, yard sizes, lot areas, setbacks, open spaces, parking, use of signs and other dimensional criteria.

6. The SPGA may require an applicant to pay reasonable fees to meet the cost of hearings, notices, publication and other costs of administration.

**8.3.10 Waiver.** The SPGA may waive strict compliance with its regulations when in the judgment of the SPGA such action is in the public interest and consistent with the intent and purposes of the Zoning Bylaws.

## **8.4 LARGE SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION DISTRICTS (SOLAR DISTRICTS)**

**8.4.1 Purpose.** The purpose of the SOLAR Districts is: to promote 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 through the issuance of a Special Permit or by right with safeguards and conditions as prescribed in this Bylaw that address public safety, prevent detrimental effects upon neighboring residential and commercial properties, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning 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.

**8.4.2 Establishment of Overlay Districts.** There shall be two (2) SOLAR Districts. The SOLAR-R District shall overlay the

- Residence A
- Residence B
- Residence Rural

Districts, and the SOLAR-G district shall overlay the

- Industrial
- General Use
- General Use A
- General Use X

Districts, as delineated on Middleborough's Zoning Map as set forth in Section 2.4.

**8.4.3 Special Permit for SOLAR-R District Required.** A Special Permit is required for a large scale ground mounted solar photovoltaic installation in the SOLAR-R District. The

Zoning Board of Appeals shall be the Special Permit Granting Authority (SPGA) and may grant a Special Permit for a large scale ground mounted solar photovoltaic installation in said district. Large scale ground mounted solar photovoltaic installations in the SOLAR-G District are permitted as-of-right.

**8.4.4 Accessory Use.** A solar photovoltaic installation/system with a nameplate capacity of less than 50kw, whether ground mounted or roof mounted, shall be an allowed accessory use/structure in the SOLAR Districts, provided that at least 65% of the electricity generated by the installation/system is used by the principal residential or commercial/industrial use on the lot where the installation/system is located.

**8.4.5 Definitions.** For definitions applicable in the SOLAR Districts, see Section 10.1.3.

**8.4.6 Application.** The application for a Special Permit in the SOLAR-R District or application for a building permit in the SOLAR-G District shall include the following documents:

1. Site Plan showing:
  - a. Property lines and existing physical features, including roads, topography in 2' contour intervals, limit of vegetative clearing, location and height of abutting homes, and location of wetlands or Priority or Estimated Habitat Areas, as defined by the Natural Heritage and Endangered Species Program (NHESP) located on or adjacent to the property;
  - b. Proposed changes to the landscape of the site including but not limited to proposed grading, limits of vegetation clearing, storm water management structures , exterior lighting, vegetative planting, berms and screening , fencing and solar photovoltaic installation, building, roadway and other structure locations;
  - c. Zoning district designation for the parcel(s) of land comprising the project site and all setbacks required by the Zoning Bylaw.
  - d. Site plan to be prepared and stamped by a Professional Civil Engineer and Registered Land Surveyor; Landscape plan shall be prepared by a Registered Landscape Architect.
2. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
3. 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;
4. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
5. Name, address, and contact information for proposed system installer;
6. Name, address, phone number and signature of the owner/operator, as well as all co-owner/operators and property owners;
7. The name, contact information and signature of any agents representing the project's owner/operator;

8. Documentation of actual or prospective access and control of the project site by the owner/operator;
9. Noise Study performed by an Acoustical Engineer for large scale solar photovoltaic installation greater than 500 KW, documenting increase in noise levels from transformers or other components of facility and proposed mitigation.
10. An operation and maintenance plan (see also Section 8.4.7);
11. A list of any hazardous materials proposed to be located on the site, during construction or operation, in excess of household quantities, and a plan to prevent their release to the environment. This list should include the material safety data sheets (MSDS) for any listed materials.
12. Proof of owner/operator liability insurance;
13. Plan for decommissioning and cost estimate for system removal; and,
14. Description of financial surety that satisfies Section 8.4.26.

**8.4.7 Operation & Maintenance Plan.** The owner/operator 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, storm water controls, vegetation and ground cover maintenance as well as general procedures for operational maintenance and upkeep of the installation.

**8.4.8 Utility Notification.** No large scale ground mounted solar photovoltaic installation shall be constructed until evidence has been given to the Building Commissioner that the photovoltaic installation owner/operator has executed an Interconnection Agreement for the installation with the utility company that operates the electrical grid where the installation is to be located. Off-grid systems shall be exempt from this requirement.

**8.4.9 Setbacks and Other Dimensional Requirements.**

For large scale ground mounted solar photovoltaic installations and all appurtenant structures, front, side and rear setbacks (front, side and rear yards) shall be at least 50 feet. The minimum lot frontage for large scale ground mounted solar photovoltaic installations shall be 50'. Other dimensional requirements not set forth in Section 8.4 effecting solar photovoltaic installations and all appurtenant structures shall be in compliance with the underlying Zoning District in which the large scale ground mounted solar photovoltaic installation is located.

**8.4.10 Buffer Zones/Visual Screening in All Districts.** The 50' setback area around the perimeter of the project shall have a vegetated buffer; the vegetated buffer shall screen the view of the large scale ground mounted solar photovoltaic installation and all appurtenant structures from abutters and streets. The buffer shall provide attractive landscaping but shall be sufficiently dense and with vegetation of a size to effectively block the view of the project from any abutting property or the passing public at the time of planting. Submittals shall include a project landscaping plan prepared and stamped by a Registered Landscape Architect that includes visual screening using a combination of vegetation and earth berms, as well as security fencing appropriate to the project. Earth berms shall vary in width and height throughout their length in order to achieve topographical relief and to appear to be naturally occurring. Landscaping plan shall include the location of plantings, size, spacing and species.

**8.4.11 Fencing.** The perimeter of the project shall be protected with an appropriate fence of at least 6 feet in height, with a locked gate and be placed 6” above the ground to allow small animal migration. It is not the intent of this Bylaw that fencing extend to the property boundary, but only to ensure that the power generating equipment is enclosed.

**8.4.12 Appurtenant Structures.** All appurtenant structures, which includes but is not limited to equipment, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be screened from view by vegetation, berms and/or joined or clustered to avoid adverse visual impacts.

**8.4.13 Sound Levels.** Any large scale ground mounted solar photovoltaic installation, including but not limited to appurtenant structures such as transformers, inverters, switching gear, etc. within the SOLAR-R District; or, in the SOLAR\_G District abutting a residential property, shall not increase noise levels greater than 10 dB above the existing ambient levels as described in Massachusetts Department of Environmental Protection ( DEP) Regulation 310 CMR 7.10. An Acoustical Study performed by a certified acoustical engineer, shall be submitted with the application for Special Permit or building permits for solar photovoltaic installations greater than 500 KW, as applicable, accompanied by a plan for noise mitigation addressing impacts to nearby properties.

For all other large scale ground mounted solar photovoltaic installations in the SOLAR-G District greater than 500 KW, an acoustic study shall demonstrate that sound levels at the property boundary of the facility including any appurtenant structures comply with the National Noise Control Act of 1972.

**8.4.14 Lighting.** Lighting of solar photovoltaic installations shall be consistent with local, state and federal law and shall be limited to that required for safety and operational purposes. All lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution and spread to adjacent properties.

**8.4.15 Signage.** Signs on large- scale ground-mounted solar photovoltaic installations shall comply with the sign regulations for the underlying zoning district. A sign consistent with the sign regulations for the underlying zoning district shall be required to identify the owner/operator and provide a 24-hour emergency contact phone number.

Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or owner/operator of the solar photovoltaic installation.

**8.4.16 Utility Connections.** Reasonable efforts, as determined by the SPGA and/or Building Commissioner, 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 utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

**8.4.17 Emergency Services.** The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. The owner/operator shall develop an emergency response plan satisfactory to the Town's Emergency Management Director (Fire Chief). All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner/operator shall identify a responsible person for public inquiries throughout the life of the installation and be consistent with individual identified under Section 8.4.15.

**8.4.18 As-built plans.** Professional Engineer and/or Registered Land Surveyor stamped as-built plans shall be submitted to the Building Commissioner before a certificate of completion or occupancy may be issued.

**8.4.19 Time for Completion.** Construction of a large scale ground mounted solar photovoltaic installation shall be completed within 1 year of issuance of a building permit. An extension may be granted by the Building Commissioner, if alternative financial surety is provided as set forth in Section 8.4.26.

**8.4.20. Changes in Ownership.**

The Building Commissioner shall be notified at least 30 days in advance of any proposed change in the owner/operator of a large scale ground mounted solar photovoltaic installation, which notice shall include the contact information of the proposed new owner/operator.

**8.4.21 Land Clearing and Soil Erosion** Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large scale ground mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws. Soil erosion and sedimentation shall be prevented through the use of erosion control techniques and devices in conformance with federal, state and local standards. The project shall comply with the National Pollutant Discharge Elimination System (NPDES) standards including but not limited to the filing of all required applications and receipt of permits and maintenance of a Surface Water Pollution Prevention Plan (SWPPP). The project, including but not limited to land clearing and vegetation removal, shall not commence until a Special Permit has been issued by the SPGA in the SOLAR-R District or Building Permit in the SOLAR-G District and has become effective and all other required Federal, State and Local permits have been received..

**8.4.22 Maintenance and other Conditions.** The large scale ground mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, debris and trash removal, vegetation maintenance, storm water system maintenance and sediment removal and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

**8.4.23 Modifications.** All material modifications to a solar photovoltaic installation made



after issuance of the required building permit shall require approval by the SPGA in the SOLAR-R District or Building Commissioner in the SOLAR-G District.

**8.4.24 Decommissioning; Removal Requirements.** Any large scale ground mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with Section 8.4.25 of this bylaw shall be removed. The owner/operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner/operator shall notify the SPGA for an installation in the SOLAR-R District or Building Commissioner for an installation in the SOLAR-G District by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

Physical removal of all large scale ground mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.  
Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations. Stabilization or re-vegetation of the site as necessary to minimize erosion. The SPGA or Building Commissioner, in conformance with the applicable District may allow the owner or operator to leave existing landscaping or specifically designated below-grade foundations in place in order to minimize erosion and disruption to vegetation.

**8.4.25 Abandonment.** Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the SPGA or Building Commissioner, dependent on the applicable District. If the owner/operator of the large scale ground mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of Section 8.4.24 within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

**8.4.26 Financial Surety.** The owner/operator of large scale ground mounted solar photovoltaic projects shall provide to the Town of Middleborough, a form of surety, either through interest bearing escrow account, bond or otherwise, to cover the cost of removal in the event the installation is not removed as required under Section 8.4.24, in an amount and form determined satisfactory to Building Commissioner prior to building permit issuance, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein. Such surety may be divided into two phases; one to cover the one (1) year construction period, and permanent surety to replace it. The form of surety may be varied from time to time with the approval of the Building Commissioner. The owner/operator shall submit a fully inclusive estimate of the costs associated with removal by the Town, prepared by a qualified engineer. The amount may include a mechanism for calculating increased removal costs due to inflation. Surety will not be required for municipally- or state-owned facilities.

## **SECTION 9.0 ADMINISTRATION AND PROCEDURES**

### **9.1 ENFORCEMENT**

**9.1.1 Building Inspector.** This Bylaw shall be enforced by the Building Inspector or if there should be a void in said office, by the Board of Selectmen.

**9.1.2 Permit Required.** Before any dwelling, building or structure is erected, placed or converted on any lot in any district, the applicant shall file a petition for a permit with the Building Inspector stating his address and the address of the lot and with a plot plan drawn substantially to scale which shall show:

1. The lot dimensions;
2. Adjacent ways;
3. The location of dwellings, buildings or structures already on the lot;
4. The exact size and location of the dwelling, building or structure proposed to be erected, placed or converted on the premises; and,
5. A statement of the intended use of the premises, buildings and structures existing and proposed.

**9.1.3 Fee.** A fee has been established for the issuance of any permit, to defray cost of processing.

**9.1.4 Investigation.** If the Building Inspector shall be informed or have reason to believe, that any provision of these Bylaws or any permit or decision hereunder has been, is being or is about to be violated, he shall make or cause to be made an investigation of the facts, including the inspection of the premises where the violations may exist. The Building Inspector shall take action upon written complaint and shall report such action or refusal to act and the reasons therefore, in writing to the complainant within fourteen (14) days of receipt thereof. If the Building Inspector finds no violation or prospective violation, any person aggrieved by his decision or any officer or board of the town, may appeal to the Board of Appeals, as provided by statute.

**9.1.5 Permit Issuance.** If such proposed dwelling, building or structure and use thereof, including the premises, conform to the provisions of the Bylaw, the Building Inspector shall take final action on all petitions for permits within thirty (30) days of their filing.

**9.1.6 Penalty.** Any person who violates any provision of this Bylaw or any of the conditions under which a permit is issued or any decision rendered by the Board of Appeals shall be subject to a fine of not more than \$150.00 (one hundred fifty dollars) for each offense, which shall be recovered as provided by law and shall enure to the Town. Each day that any such

violation continues shall constitute and be a separate offense.

## **9.2 ZONING BOARD OF APPEALS**

**9.2.1 Establishment.** There is hereby established a Zoning Board of Appeals of five members and three associate members to be appointed by the Selectmen, as provided in MGL Chapter 40A, as amended, which shall act on all matters within its jurisdiction under this Bylaw in the manner prescribed in MGL Chapter 40A, as amended.

**9.2.2 Powers.** The Zoning Board of Appeals shall have the following powers:

1. *Appeals.* To hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Inspector or by an Officer or Board of the Town under the provisions of MGL Chapter 40A, as amended or by any person aggrieved by any order of the Building Inspector or by any Officer or Board of the Town in violation of any provision of MGL Chapter 40A, as amended, or of this Bylaw. Any appeal under this Bylaw shall be taken by filing a written Notice of Appeal with the Town Clerk of Middleborough.

- a. An applicant for a permit which is refused shall file within thirty (30) days after receipt of written notice from the Inspector of Buildings, notifying him in writing of the refusal to grant this permit by mailing such notice certified mail, postage prepaid to the applicant at the address shown on his petition or by delivery.
- b. All other persons shall file within thirty (30) days after the entry of any decision or order at the Town Clerk's office by which they claim to be aggrieved.
- c. The Town Clerk shall forthwith transmit copies thereof to the Selectmen or their appointed inspector from whose action the appeal is taken and to the members of the Board of Appeals. The Selectmen or their appointed inspectors shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the case in which the appeal was taken. The notice of appeal as filed with the Town Clerk shall specify the grounds thereof.

In exercising the power granted by Section 9.2.2, the Zoning Board of Appeals may, in conformity with the provisions of this By-law and of MGL Chapter 40A, make orders or decisions, reverse or affirm in whole or in part or modify any order or decision and to that end shall have all of the powers of the officers from whom the appeal is taken and may issue or direct the issuance of a permit.

2. *Special Permits.* To grant a special permit as provided by this Bylaw as set forth in Section 9.4.

3. *Variances.* To authorize upon appeal or upon petition, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this Bylaw; including the authorization of a use or activity not otherwise permitted in the district in which the land or structure is located in accordance with MGL Chapter 40A Section 10, as may be amended and where the Zoning Board of Appeals specifically finds the followings:

- a. That owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant.
- b. That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance of Bylaws.

When granting a variance, the Zoning Board of Appeals may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures, but excluding any condition, safeguard or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

If the rights authorized by a variance are not exercised within one year of the date of the granting of such variance, such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.

**9.2.3 Rules and Regulations.** The Zoning Board of Appeals shall adopt rules and regulations not inconsistent with the provisions of these Bylaws for conduct of its business and otherwise carrying out the purposes of said MGL Chapter 40A and shall file a copy of such rules in the office of the Town Clerk.

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

**9.2.5 Submittal to Other Boards.** The Zoning Board of Appeals shall submit applications for special permits to the Board of Health, Planning Board, Conservation Commission, Historic Commission, Building Inspector, Department of Public Works and such boards or agencies shall make recommendations as they deem appropriate. Copies of such recommendations shall be sent to the Zoning Board of Appeals and to the applicant, provided, however, that failure of any such board or agency to make recommendations within twenty-one (21) days of receipt by

such board or agency of the petition shall be deemed lack of opposition thereto.

### **9.3 PLANNING BOARD**

**9.3.1 Establishment.** A Planning Board is elected under the provisions of MGL Chapter 41 Section 81A to consist of five (5) members.

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

1. *Special Permits.* To hear and decide applications for special permits upon which the Board is empowered to act under these Bylaws, in accordance with Section 9.4.

**9.3.3 Rules and Regulations.** The Planning Board shall adopt rules and regulations not inconsistent with the provisions of the Zoning Bylaw for conduct of its business and otherwise carrying out the purposes of said Chapter 40A and shall file a copy of such rules in the office of the Town Clerk.

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

**9.3.5 Associate Member.** There shall be one associate member of the Planning Board. The associate member shall sit on the Planning Board for purposes of acting on a special permit or site plan approval application when designated to do so by the Chairman of the Planning Board in the event a member of the Planning Board is unable to sit and act on the application for special permit or site plan approval application because of absence, inability to act, conflict of interest or because there is a vacancy in the membership.

**9.3.6 Term of Associate Member.** The Planning Board shall appoint the associate member. The term of appointment shall be two (2) years from the date of appointment. The Planning Board shall fill any vacancy in the position of associate member for the balance of the term of the associate member when the position becomes vacant.

### **9.4 SPECIAL PERMITS**

**9.4.1 Special Permit Granting Authority.** Where specifically designated, the Zoning Board of Appeals, Planning Board or Board of Selectmen shall act as the Special Permit Granting Authority.

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

1. The proposed site is appropriate for the use or structure;
2. Adequate and appropriate facilities will be provided to insure the proper operation of the use, structure or condition;
3. Traffic flow and safety, including parking and loading are adequate and there will be no nuisance or serious hazard to vehicles or pedestrians;
4. Adequate water, sewer and other utilities as well as other public and private services are available or will be provided;
5. The use involved will not be detrimental to the established or future character of the neighborhood and Town and subject to appropriate conditions or safeguards if deemed necessary;
6. Economic and community needs of the Town are served by the proposal;
7. Impacts on the natural environment have been minimized; and,
8. Fiscal impacts, including impact on town services, tax base and employment have been considered.

**9.4.3 Procedures.** An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority and MGL Chapter 40A Section 9.

**9.4.4 Conditions.** Special permits may be granted with such reasonable conditions, safeguards or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this Bylaw.

**9.4.5 Plans.** An applicant for a special permit shall submit a plan in substantial conformance with the requirements of the applicable section of this Bylaw and the rules and regulations established by the SPGA pursuant to this Bylaw.

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

**9.4.7 Fees.** The Special Permit Granting Authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

**9.4.8 Withdrawal without Prejudice.** Any petition for a variance or application for a special permit which has been transmitted to the permit or special permit granting authority may be withdrawn, without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter be withdrawn without prejudice only with the approval of the permit or special permit granting authority.

**9.4.9 Lapse.** Special permits shall lapse if a substantial use thereof or construction there under has not begun, except for good cause, within twenty-four (24) months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in MGL Chapter 40A Section 17, from the grant thereof) with the Town Clerk.

**9.5 [RESERVED]**

**9.6 REPETITIVE PETITIONS.**

**9.6.1 General.** No appeal, application or petition which has been unfavorably and finally acted upon by the Planning Board or the Board of Appeals shall be acted favorably upon within two years after the date of final unfavorable action unless the Planning Board or the Board of Appeals finds, by a unanimous vote of the Board of Appeals and a vote of four members of the Planning Board, specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in the record of its proceedings, after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

**9.6.2 Timing.** The Planning Board shall act first when the original unfavorable action occurred at the Board of Appeals. The Board of Appeals shall act first when the original unfavorable action occurred at the Planning Board.

## SECTION 10.0 DEFINITIONS

In this Bylaw, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the Bylaw. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. 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 word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts State Building Code shall have the meaning given therein unless a contrary intention is clearly evident in this Bylaw.

**10.1 SPECIFIC DEFINITIONS.** Definitions applicable to individual sections of this Bylaw:

**10.1.1 Flood Plain (Overlay) District Definitions.** For the purposes of Section 8.1, the following terms are defined below:

**Area of special flood hazard:** The land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, AI-30, AE, A99, VI-30, VE, or V.

**Base flood:** The flood having a one percent chance of being equaled or exceeded in any given year.

**Coastal high hazard area:** An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone VE.

**Development:** Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**District:** Section 8.1, the Flood Plain District.

**Federal Emergency Management Agency (FEMA):** the agency administering the National Flood Insurance Program. FEMA provides a Nation wide flood hazard area mapping study program for communities as well as regulatory standards for



development in the flood hazard areas.

**Flood Insurance Rate Map (FIRM):** An official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood insurance study:** An examination, evaluation and determination of flood hazards and if appropriate, corresponding water surface elevations or an examination, evaluation and determination of flood-related erosion hazards.

**Floodway:** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

**Lowest floor:** The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

**Manufactured home (mobile home):** A structure, transportable in one or more sections, which is built on a permanent chassis and is designated for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

**Manufactured (mobile) home park or subdivision:** A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

**New construction:** For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, new construction means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

**One-hundred-year flood:** See Base flood.

**Regulatory Floodway:** See Floodway.

**Special flood hazard area:** An area having special flood and/or flood-related erosion hazards and shown on an FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

**Structure:** For floodplain management purposes, a walled and roofed building,

including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance coverage purposes, means a walled and roofed building other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

**Substantial damage:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

**Substantial improvement:** Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

**Zone A:** The one hundred (100) year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available Federal, State, Local or other data.

**Zone AE (for new and revised maps):** The one hundred (100) year floodplain where the base flood elevation has been determined.

**Zone AH and Zone AO:** The one hundred (100) year floodplain with flood depths of one (1) to three (3) feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and where the velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Zone A99:** Areas to be protected from the one hundred (100) year flood by federal flood protection system under construction. Base flood elevations have not been determined.

**Zone X:** Areas identified in the community flood insurance study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

**10.1.2 Water Resource Protection District Definitions.** For the purposes of Section 8.2, the following terms are defined below:

**Aggregate Lot Size:** The total square footage of the Open Space and Resource Preservation Development divided by the number of building lots allowed by the Planning Board.

**Aquifer:** Geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

**Groundwater:** All the water found beneath the surface to the ground. In this Bylaw the term refers to the slowly moving subsurface water present in aquifers and recharge areas.

**Impervious Surface:** Material or structure on, above or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

**Natural Vegetation Area:** Area of lot kept in its unaltered, natural, existing vegetated condition including trees, woods, brush etc.; land having a well established cover of native plants (grasses, ground covers, trees, mulch etc...) Land altered or paved as a result of a previous use, may be restored to a natural vegetation area. The purpose of said area is to provide and encourage natural drainage patterns, groundwater recharge and natural separation to groundwater tables through uneven topography, leaf litter, dense vegetation and slow rates of runoff. Natural Vegetation does not include planted lawns or other ornamental vegetation, nor does it include removal of naturally occurring trees, shrubs or grasses for installation of utilities, site grading etc., and replacement with planted species.

**Recharge Areas:** Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas may include areas designated as WRPD Z1, WRPD Z2 or WRPD Z3.

**Solid Wastes:** Useless, unwanted or discarded solid material with insufficient liquid content to be free flowing. This includes but is not limited to rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse.

**Toxic or Hazardous Material:** Any substance or mixture of physical, chemical or infectious characteristics posing a significant actual or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water in the Town of Middleborough. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis and all substances defined as Toxic or hazardous under MGL Chapter 21C and 21E and 310 CMR 30.00 and also include such products as solvents and thinners in quantities greater than normal household use.

**Water Resource Protection District:** The Zoning Districts defined to overlay other zoning districts in the Town of Middleborough. The Water Resource Protection Districts may include specifically designated recharge areas.

**WRPD Z1:** The four hundred (400') foot protective radius around a public water system well or well field which must be owned by the water supplier or controlled through a conservation restriction. WRPD Z1 is Zone I as defined in 310 CMR 22.0.

**WRPD Z2:** The area of an aquifer which contributes water to a public well under the most severe pumping and recharge conditions that can be realistically anticipated [one hundred eighty (180) days of pumping at safe yield with no recharge from precipitation as defined in 310 CMR 22.00] WRPD Z2 is Zone II as defined in 310 CMR 22.00. For the purposes of this Bylaw, WRPD Z2 also includes Interim Wellhead Protection Areas as defined by 310 CMR 22.00, where a definitive Zone II has not been approved by DEP. Unless otherwise specified by 310 CMR 22.00, an Interim Wellhead Protection Area is defined as one half (1/2) mile radius from the well or well field.

**WRPD Z3:** The land area beyond the area of WRPD Z2 from which surface water and/or groundwater drain into WRPD Z2. WRPD Z3 is Zone III as defined in 310 CMR 22.00.

**WRPD Z4:** The remaining land within the Town outside of WRPD Z1, Z2 and Z3.

**10.1.3 SOLAR-R District and SOLAR –G District Definitions.** For the purposes of Section 8.4, the following terms are defined below:

**Large Scale Ground Mounted Solar Photovoltaic Installation:** A solar powered Photovoltaic system that is structurally mounted on the ground (not roof mounted) and has a nameplate capacity of *50kW* or greater.

**Nameplate Capacity:** The maximum rated output of the electric power production of the photovoltaic system stated in Kilowatts Direct Current (kWDC).

## **10.2 GENERAL BYLAW DEFINITIONS.**

**Accessory building or structure:** A subordinate building or structure located on the same lot as the main or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

**Accessory use:** A use customarily incidental to that of the main or principal building or use of the land.

**Adult day care facility:** A social day care or adult day health facility as those terms are defined by the Commonwealth's Department of Elder Affairs.

**Adult Mobile Home Parks:** Premises especially located and designed for the parking or placing of Mobile Homes under single or common ownership and including recreation areas and other structures or facilities which may be provided for the residents of the Park only and their guests.

**Adult Uses:** The following constitute Adult Uses for the purposes of Section 6.7

**Adult Book Store:** An establishment having thirty percent (30%) or more of its stock in

trade books, magazines, photographs, videos, computer discs, laser discs and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL Chapter 272 Section 31.

**Adult Motion Picture Theatre:** an enclosed building used for creating or presenting materials or transmission distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL Chapter 272 Section 31 .

**Adult Video Store:** An establishment having thirty percent (30%) or more of its stock in trade, videos, movies, computer software, computer discs, laser discs or other film material which are distinguished or characterized by their emphasis or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL Chapter 272 Section 31.

**Nude Dancing Establishment:** An establishment that features male or female nudity as defined in MGL Chapter 272 Section 31.

**Age Restriction:** As applied in an Adult Mobile Home Park shall be limited to persons fifty-five (55) years of age or older. Occupancy in a Mobile Home may also include not more than two (2) persons who are less than fifty-five (55) years of age, provided that such persons are either the spouse of an occupant of the Mobile Home who is at least fifty-five (55) years of age or a person who is providing medically prescribed nursing care to an occupant of the Mobile Home who is at least fifty-five (55) years of age.

**Agricultural Use:** Use of land for the primary purpose of agriculture, horticulture, floriculture or viticulture including the use, construction, expansion or reconstruction of existing structures thereon. Horticulture shall include the sale and keeping of nursery stock, which shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.

**Alterations:** As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities or an enlargement whether by extending on a side or by increasing in height or the moving from one (1) location or position to another.

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

**Assisted Living Residence:** A facility licensed pursuant to MGL Chapter 19D.

**Aviation field:** A facility at which common carriers or private aircraft, including helicopters, may be landed and take flight, stored or hangared, maintained or repaired and accessory uses thereto.

**Building:** A structure enclosed within exterior walls or firewalls, built, erected and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.

**Building height:** As per the State Building Code. In the GU District, this term shall mean the distance between the average grade of the ground at the front of the building and the roof of the building; excluding roof structures (such as heating, ventilating and air conditioning equipment) normally located on or built above the roof and not devoted to human occupancy.

**Building, principal:** A building in which is conducted the main or principal use of the lot on which said building is situated.

**Business or professional office:** A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage or processing of merchandise.

**Campground:** An area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins, tents and major recreational equipment, which is primarily used for recreational purposes and retains on open air or natural character.

**Child Care Center:** A day care center or school age child care program, as those terms are defined in MGL Chapter 15D Section 1A.

**Club or lodge, private:** Buildings, structures and premises used by a nonprofit social or civic organization or by an organization catering exclusively to members and their guests for social, civic, recreational or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising or commercial activities except as may be required generally for the membership and purposes of such organization.

**Commercial recreation, outdoor:** Drive-in theatre, golf course/driving range, sports club, practice field, boathouse, game preserve, marina, camping, bathing beach or other commercial recreation activity carried on in whole or in part outdoors for a fee, except those activities more specifically designated in this Bylaw.

**Commercial recreation, indoor:** A structure for recreational, social or amusement purposes carried out for a fee, which may include as an accessory use the consumption of food and drink, including all connected rooms or space with a common means of egress and entrance and shall include enclosed sports facilities, concert halls, dance halls, skating rinks, bowling alleys, archery range, dance studios or other commercial recreational centers.

**Contractor's yard:** Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies or parking of tracked or wheeled equipment.

**Dwelling:** A building designed and occupied as the living quarters of one (1) or more families.

**Dwelling, multifamily:** A multifamily dwelling shall be one designed for and occupied by two (2) or more families.

**Dwelling, single family:** Single family dwellings shall be designed for and occupied by not more than one (1) family.

**Dwelling unit:** Habitable room or group of habitable rooms, containing cooking facilities, sanitary facilities, providing facilities for living, sleeping and eating for one family.

**Earth:** All forms of soil including, but not limited to, loam, sand, gravel, clay, peat, hardpan and rock.

**Earth removal:** Carrying earth away from a lot.

**Earth removal on premises owned by the Town:** Earth removal on premises owned by this municipality, provided that the earth removal is in conjunction with preparation or development of the premises for a municipal end use, including, without limitation, recreational or athletic fields or school buildings and facilities.

**Educational use, nonexempt:** Educational facilities not exempted from regulation by MGL Chapter 40A Section 3.

**Erect:** To build, construct, reconstruct, move upon, or conduct any physical development of the premises required for a building; to excavate, fill, drain and the like preparation for building shall also be considered to erect.

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

**Family:** One or more persons related by blood, marriage or adoption and sharing cooking, storage, bathroom, living and sleeping facilities in a dwelling as a single housekeeping unit. In addition, a family may include any of the following:

- a. Domestic partners.
- b. Foster children.
- c. Domestic employees.
- d. Not more than two boarders.
- e. Not more than four additional persons not related to the others by blood, marriage or adoption.

**Family accessory apartment:** A dwelling unit which is included within a single family

dwelling structure, including a single family dwelling with attached garage; but said apartment is separate from and not located within the principal dwelling unit contained within the single family dwelling.

**Family day care home, small:** Any private residence operating a facility as defined in MGL Chapter 15D Section 1A which services ten (10) or fewer children.

**Family day care home, large:** Any private residence operating a facility as defined in MGL Chapter 15D Section 1A which services more than ten (10) children.

**Flea market, indoor:** A building in which stalls or sales areas are set aside and rented or otherwise provided and which are intended for use by various unrelated individuals to sell articles that are either homemade, homegrown, handcrafted, old, obsolete or antique and may include selling goods at retail by businesses or individuals who are generally engaged in retail trade. Flea markets are conventional, permanent profit seeking businesses that require all local permits and licenses.

**Floor area (gross):** The sum of the areas of the several floors of a building, measured from the exterior faces of the outside walls. It does not include cellars, unenclosed porches or attics not used for human occupancy or any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of Section 5.3 or any such floor space intended and designed for accessory heating and ventilating equipment.

**Floor area ratio (FAR):** A mathematical expression determined by dividing total floor area of a building by the area of the lot on which it is located. For example, a one (1) acre lot with an FAR of 0.75 could contain thirty two thousand six hundred seventy (32,670) square feet of gross floor area ( $43,560 \times 0.75 = 32,670$ ).

**Footprint:** The entire area of ground covered by and in contact with a building or structure, exclusive of pavement, eaves and overhangs; the perimeter of the structure in contact with the ground. Attached porches are included within the footprint.

**Front building wall:** The wall containing the primary entrance to the building. For buildings with multiple storefronts or business spaces equipped with separate individual entrances, the primary front of each store shall be considered the front building wall.

**Funeral home:** Facility for the conducting of funerals and related activities such as embalming.

**General Service establishment:** An establishment providing services such as small motor or appliance repair, upholstery, furniture repair and the like.

**Health Club:** A facility at which patrons may use exercise equipment and engage in various activities, including tennis, swimming and other sports, with all accessory components.



**Impervious area:** Land covered by buildings, roads, driveways, sidewalks, parking areas, loading areas, service yards or other improvements which do not allow precipitation or surface water to penetrate directly into the soil.

**Junk:** Any article or material or collection thereof which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which, unaltered or unchanged and without further reconditioning, cannot be used for its original purpose as readily as when new shall be considered junk.

**Junkyard or automobile graveyard:** The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials or the dismantling, demolition or abandonment of automobiles, other vehicles, machinery or parts thereof.

**Kennel, commercial:** A commercial establishment in which a pack or collection of more than ten (10) dogs, three (3) months old or older, are housed, groomed, bred, boarded, trained or sold.

**Kennel, hobby -** An establishment in which a pack or collection of six (6) to ten (10) dogs, three (3) months old or older, are housed, groomed, bred, boarded, trained or sold.

**Kennel, household –** A pack or collection of four (4) to five (5) dogs, three (3) months old or older, maintained as household pets on a lot, not maintained for breeding purposes.

**Kennel, private -** A pack or collection of four (4) to five (5) dogs, three (3) months old or older, maintained as household pets on a lot, maintained for breeding purposes.

**Light manufacturing:** Fabrication, assembly, processing, finishing work or packaging.

**Lot:** An area of land held in one ownership, with definite boundaries, used or available for use, as the site of one or more buildings under this Zoning Bylaw.

**Lot area:** The horizontal area of the lot exclusive of any area in a street or recorded way open to public use.

**Lot, corner:** A lot with two (2) adjacent sides abutting upon streets or other public spaces.

**Lot, depth of:** The mean distance from the street line of the lot to its opposite rear line measured in the general direction of the side lines of the lot.

**Lot frontage:** The frontage of a lot on a public or private street.

**Lot line:** A line dividing one lot from another or from a street or any public place.

**Lot width:** The minimum width of a lot at any point between the street line and the required minimum street setback line for erection of a dwelling, building or structure on the lot.

**Manufacturing:** A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding the following: acid manufacture; cement, bituminous concrete or asphalt manufacture; lime, gypsum or plaster of paris manufacture; production of chlorine or similar noxious gases; distillation of bones; drop-forge industries manufacturing forging with power hammers; manufacture or storage of explosives in bulk quantities; fertilizer manufacture; garbage, offal, or dead animal reduction or dumping; glue manufacture; hair manufacture; petroleum refining; processing of sauerkraut, vinegar or yeast; rendering or refining of fats or oils; smelting of tin, copper, zinc or iron ore, including blast furnace or blooming mill; stockyard or feeding pen; slaughter of animals, not including the killing of fowl.

**MGL:** Massachusetts General Laws

**Medical office, center or clinic:** A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

**Mobile camping unit:** Any vehicle or object on wheels which is so designed and constructed or reconstructed or added to by means of accessories as to permit the vehicle to travel over the highways and as to permit the use thereof for camping purposes. The words mobile camping unit shall include travel trailers, self powered camping units, expandable camping units and similar camping devices.

**Mobile home (manufactured housing):** A dwelling unit built on a chassis and containing complete electrical, plumbing and sanitary facilities and designed to be installed on a temporary or permanent foundation for permanent living quarters.

**Motel or hotel:** A building or buildings intended and designed for transient, overnight or extended occupancy, divided into separate units within the same building with or without a public dining facility. If such hotel or motel has independent cooking facilities, such unit shall not be occupied by any guest for more than four (4) continuous months, nor may the guest reoccupy any unit within thirty (30) days of a continuous four (4) month stay, nor may the guest stay more than six (6) months in any calendar year. No occupant of such hotel or motel may claim residency at such location.

**Motor vehicle body repair:** An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage of vehicles for the cannibalization of parts.

**Motor vehicle general repairs:** Premises for the servicing and repair of autos, but not to include fuel sales.

**Motor vehicle light service:** Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting or major repairs. Said premises may include retail or fast food sales.

**Municipal facilities:** Facilities owned or operated by the Town.

**Nursing or convalescent home:** Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

**Open space:** Land not covered by buildings, roads, driveways, sidewalks, parking areas, loading areas, service yards or other improvements. Open space shall include, without limitation, (a) the buffer zones provided herein, (b) any wetlands, marches, meadows, swamps, creeks, streams and ponds as defined in Mass. General Laws, Chapter 131, Section 40 (provided that the applicant is not hereby prevented from doing any work in such areas as is permitted by the Middleborough Conservation Commission pursuant to said act) and (c) any other protected natural areas.

**Operations involving radioactive materials:** The collection, treatment, storage, burial, refining, processing, incineration, reclamation, stabilization, decomposition or disposal of nuclear or radioactive waste of any kind or description including without limitation waste classified as low-level radio-active waste. The use prohibition set forth in the Table of Uses shall not apply to Middleborough hospitals, dispensaries, clinics, offices of physicians and dentists or other Middleborough facilities where nuclear or radioactive waste is generated or produced as a result of medical or dental treatment.

**Parcel:** A tract of land that is not a buildable lot.

**Parking aisle:** The corridor located within a parking area by which vehicles enter and leave parking stalls. Dimensional requirements are set forth in Section 5.3.

**Parking area:** An area for the parking of vehicles open to the public, with or without a fee.

**Parking bay:** The parking rows located on each side of the parking aisle. Dimensional requirements are set forth in Section 5.3.

**Parking garage:** A structure which is accessory to a commercial or industrial establishment and is primarily for the parking and storage of vehicles operated by the customers, visitors and employees of such an establishment.

**Parking row:** Any row of parking stalls within a parking area.

**Parking stall or space:** An area dedicated to the parking of a single vehicle within a parking area. Dimensional requirements are set forth in Section 5.3.

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

**Restaurant:** A building or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and

consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast food restaurant."

**Restaurant, Fast Food:** An establishment whose primary business is the sale of food for consumption on or off the premises which is: primarily intended for immediate consumption rather than for use as an ingredient or component of meals; available upon a short waiting time; and packaged or presented in such manner that it can be readily eaten outside the premises where it is sold. Drive-in Food Service Establishment is a fast food restaurant which provides convenient vehicular access and may provide service to customers while in their vehicles.

**Retail:** A facility selling goods to the public in an enclosed building but not specifically listed in the Table of Use Regulations.

**Roadside stand:** A building or structure used only for the display and sale of farm products raised on the land of the owner or lessee; however, the majority of products for sale, based on gross sales dollars or volume shall have been produced by the owner or lessee of the land on which the building or structure is located. Land divided by a public or private way or watercourse shall be considered one parcel.

**Roof Sign:** A sign erected upon or above a roof or parapet of a building.

**Shape factor:** Required lot shape as defined in Sections 4.2.3 and 4.7.3.

**Sign:** Any device designed to inform or attract the attention of persons not on the premises on which the device is located. Any building surfaces other than windows which are internally illuminated or decorated with gaseous tube or other lights are considered "signs."

**Sign area:** The area of the smallest horizontally or vertically oriented rectangle which could enclose all the display area of the sign, together with any backing different in color or material from the finish material of the building face, without deduction for open space or other irregularities. Structural members not bearing advertising matters shall not be included unless internally or decoratively lighted. Only one side of flat, back-to-back signs need be included in calculating sign area.

**Solid waste disposal facility:** Refuse transfer station, composting plant, solid waste recycling operation and any other works or use approved by the Massachusetts Department of Public Health and the Board of Health of the Town for processing, handling, treating, and disposing of solid or liquid waste materials, including garbage, rubbish, junk, discarded bulk items and sludge but not raw sewage and similar waste items.

**Street:** (1) A public way (other than a non access highway) or a way which the Town Clerk certifies is maintained and used as a public way; or, (2) A way shown on a plan approved and endorsed in accordance with the Subdivision Control Law (MGL Chapter 41 Section 81K et seq); or, (3) A way in existence when the Subdivision Control Law became effective in Middleborough, having, in the opinion of the Planning Board, sufficient width, suitable grades

and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of the municipal services to serve such land and the buildings erected or to be erected thereon.

**Street line:** The dividing line between a street and a lot.

**Street Side Wall:** The side of a building which faces a second street upon which the lot also has frontage.

**Structure:** A combination of materials assembled at a fixed location to give support or shelter, including but not limited to a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like. Fences, signs and flagpoles shall be exempt from setback requirements for structures, but subject to other requirements set forth herein.

**Temporary structure:** A structure without any foundation or footings to be removed within a twelve-month time period. Said structure shall conform to the requirements of the Table of Dimensional Requirements and shall receive a permit from the Building Inspector.

**Trade shop:** Use of premises or dwelling, building or structure thereon in connection with his trade by one resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring substantially continuous employment be carried on; provided such use is not noxious or offensive by reason of noise, color, odor, smoke or static and does not create a public hazard and provided further that no merchandise or materials worked upon, required for use or made for sale, are visible to the passing public.

**Transport terminal:** Terminal facilities for handling freight with or without maintenance facilities.

**Vehicle:** Automobile, trailer, truck, boat or other motorized means of transportation.

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

**Yard:** A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving and other customary yard accessories.

**Yard, Front:** The area of a lot lying between the right of way sideline of a public or private road on which the lot has frontage and the nearest building on the lot. In the case of corner lots or lots otherwise having on more than one road, all fronting yards shall be considered front yards.

**Yard, Rear:** The area of a lot between the rear most building on the lot and the rear lot line. The rear yard shall extend across the full width of the lot.

**Yard, Side:** The area on a lot between the side lot line and the building or buildings on the lot,

extending between the front yard and rear yard.