

# Town of West Stockbridge Zoning By-Laws



## **SECTION 1: TITLE, AUTHORITY, and PURPOSE**

### **1.1 Title**

This By-Law shall be known as the “Zoning By-Law of the Town of West Stockbridge, Massachusetts”, hereinafter referred to as “this By-Law”.

### **1.2 Authority**

This By-Law is adopted in accordance with the provisions of Chapter 40A of the General laws as amended to regulate the use of land, buildings, and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety, and general welfare of the present and future inhabitants of the town.

### **1.3 Purpose**

The purpose of this By-Law is to achieve greater implementation of the powers granted to the municipalities under Article 89 of the Amendments to the Constitution of the Commonwealth in the general interests of public health, safety, and welfare, including, but not limited to the following objectives:

- a.) To prevent overcrowding of land, to secure safety from fire, flood, panic, and other dangers, to conserve health, and to lessen congestion in the streets;
- b.) To facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space, and other public requirements;
- c.) To conserve the value of land and buildings including the conservation of natural resources and the prevention of blight and pollution of the environment;
- d.) To preserve and increase amenities by the promulgation of regulations designed to:
  - Protect the Town’s significant environmental features such as: flood plains and flood prone areas, wetlands, rivers, brooks, ponds, water resources, woodlands, areas of scenic beauty, and sites and structures of historic importance.
  - Preserve the natural, scenic, and aesthetic qualities of the community.
  - Minimize the adverse effects of developments on the Town’s unique environmental and historic features.
  - Further the objectives of the Town’s Comprehensive Plan.
  - Employ cooperatively the various measures taken by the Town’s agencies, under diverse legislative authority, including the State Sanitary Code, Wetlands Protection Act, Subdivision Control Legislation, and the State Building Code, for the protection and enhancement of the Town’s existing small-town character, open spaces, low density of population, and in the interests of the Town’s orderly growth at a deliberate pace.

## **SECTION 2: DEFINITIONS**

- 2.1 For the purpose of this By-Law and unless the context of usage clearly indicates another meaning, the following rules of construction apply to the text of this By-Law:

Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular.

The words “used” or “occupied” include the words “designated,” “intended,” or “arranged to be used or occupied”.

The words “building,” “structure,” “lot,” “land,” or “premises” shall be construed as though followed by the words “or any portion thereof.”

The word “shall” is mandatory; the word “may” is permissive.

The word “including” or “such as” shall not limit a term to specified examples, but are intended to extend its meaning to all other instances or circumstances of like, kind, or character.

Terms and words not defined herein but defined in the Building Code shall have meaning given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meaning given in Webster’s Unabridged Dictionary.

- 2.2 For the purpose of this By-Law, the following words and terms as used herein shall have the meanings or limitations of meaning hereinafter defined, explained or assigned:

**Accessory Building:** A subordinate building, the use of which is customarily incidental to that of a principal building, and located on the same lot therewith.

**Accessory Use:** A use subordinate and customarily incidental to the principal use of a building, structure, or land, and located on the same lot therewith.

**Accessory Apartment:** A second dwelling unit located within a structure constructed as a Single Floor Family Dwelling, subordinate in size to the principal dwelling unit and constructed such as to maintain the appearance of the structure as a Single Family Dwelling.

**Agricultural Use:** Any parcel of land which is used in the raising of agricultural products, livestock, poultry, or dairy products, including necessary farm structures, vehicles, and equipment. This term does not include riding stables, kennels, or facilities for the commercial raising of swine or fur-bearing animals.

**Automobile Service Station:** Any area of land, including structures thereon, which is used or designed to be used to supply motor vehicles with fuel, lubrication, and customary accessories. And may include facilities for lubrication, washing, polishing and minor repairs.

**Building:** An independent structure having a roof supported by columns or walls, resting on its own foundation, and designed for the shelter, housing, or enclosure of person, animals, chattels, or property of any kind.

*All dwellings to include farm animal restrictions.*

**Dwelling, One-Family:** A detached residential building containing one (1) dwelling unit and occupied by one (1) family only, but not including mobile homes whether placed on a foundation or not.

**Dwelling, Two-Family:** A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families.

**Dwelling, Multi-Family:** A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

**Dwelling Unit:** One or more rooms constituting a separate independent housekeeping establishment with cooking, living, sanitary, and sleeping facilities for the use of one family.

**Family:** One or more individuals related by blood, marriage, or adoption, or not more than five (5) individuals who are not so related, living in a single dwelling unit.

**Garage, Commercial:** Any garage available to the public, operated for gain, and which is used for storage or repair of automobiles or other motor vehicles.

**Guest House:** A dwelling in which more than four (4) rooms are rented by resident family for transient guests with or without meals as an accessory use.

**Home Occupation:** A business engaged in within a dwelling by a resident thereof as a use accessory thereto, involving no undue traffic or noise. For the purpose of this By-Law, home occupation does not include gift shop or similar common retail or wholesale establishment.

**Hotel:** A building with six (6) or more rooms in which lodging is offered to paying guests with customary hotel services including feeding in a central dining room or a transient on a transient or permanent basis.

**Kennel:** Structure and other facilities for the keeping of more than three (3) dogs, more than six months old, or three other household mammal pets, for sale or boarding purposes.

**Lot:** A single tract of land, or several contiguous tracts, whether acquired at one time, or at more than one time, held in identical ownership throughout, defined by metes and bounds or lot lines in one or more deeds or conveyances, or shown on a duly recorded plan, with at least sufficient size to meet minimum zoning requirements for area, frontage, and yards under this By-Law.

**Lot, Frontage:** The distance along the street line, (for corner lots to be measured along one street only), which provides direct access to the lot, provided, however, that the depth of any lot created after the effective date of this By-Law, shall not be less than forty (40) feet at any point along its frontage in order to qualify for frontage under this By-Law. A private street approved by the Planning Board under the Subdivision Control Law may provide frontage only for the lots which are contained within the approved subdivision.

**Manufacturing:** Shall be light and clean in nature and be developed in a non-offensive manner. Also, the manufacturing plant and its related activities shall be non-polluting of our air, water and land prior to applicant.

**Mobile Home:** A vehicular portable completely enclosed structure built on a permanent chassis, designed as a dwelling unit to be transported after fabrication on its own wheels or on flatbed or detachable wheels. For the purpose of this By-Law, the term "mobile home" includes trailers incorporating the characteristics of mobile homes as herein defined.

**Motel:** A building or group of buildings, whether detached or connected units designed as individual sleeping units primarily for transients traveling by automobile with off-street parking facilities on the same lot.

**Municipal Use:** Any use of land in accordance with the general laws governing municipal powers and functions including participation in regional uses.

**Private Club:** Land and/or buildings used exclusively by members of an organized group, who are elected by a committee or by membership, and not open to public use.

**Piggery and Fur Farm:** The keeping of two (2) or more pigs or fur-bearing animals exceeding 10 weeks in age shall constitute a piggery or fur farm.

**Sign, Accessory:** Any sign that advertises or indicates the person occupying the premises on which the sign is erected or maintained, or the business transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter.

**Site Plan:** A plan indicating, but not limited to the following: the location of all existing and proposed buildings, structures, access roads, driveways, parking areas, all proposed site improvements, and including the names of all current abutters.

**Story:** That portion of a building contained between any floor and the floor or the ceiling next above it, but not including any portion so contained if more than on-half of such portion vertically is below the average finished grade of the ground adjoining such building.

**Street:** A public way, or a private way either shown on a plan approved in accordance with the Subdivision Control law, or otherwise qualifying lots along it for frontage under the Subdivision Control Law.

**Street Line:** The right-of-way line of a street as established under public authority, or as shown on a plan approved by the Planning Board, or if neither of the above apply, a line parallel to the center line of the street measured back a distance equal to one-half of the normally required right-of-way.

**Tag Sale:** The occasional (infrequent) sale of common household items, for a period not exceeding three (3) consecutive days.

**Yard, Required:** The open areas of the lot extending inward from a lot line for the distance specified in the zoning regulations, within which no structure may be located except as otherwise provided in this By-Law.

**Yard, Front:** A required yard extending along the full length of the front lot line between the side lot lines.

**Yard, Rear:** A required yard extending the full length of the rear lot line between the side lot lines.

**Yard, Side:** A required yard extending along a side lot line from the required front yard to the required rear yard.

### **SECTION 3: ZONING DISTRICTS**

#### 3.1 Establishment of Districts

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

R-1 Acre Residence  
R-3 Acre Residence  
R-D Residence  
C Commercial  
M Manufacturing  
F-P Flood Plain Districts  
W-A Wetland Area

#### 3.2 Location of Districts

The location and boundaries of these districts shall be as shown on the Zoning Map of West Stockbridge, Massachusetts, dated **March 1998** bearing the signatures of the members of the Planning Board, and on file in the Office of the Town Clerk, which map, with all explanatory matter thereon, is hereby made a part of this By-Law.

##### 3.2.1 Flood Plain Districts (F-P) and Wetland Area (W-A) shall be considered as overlying other districts as generally shown on the Zoning Map of West Stockbridge as a recognition of the special hazards which exist in such areas and shall include the following:

1. Flood Plain Areas are shown on the map prepared by Robert G. Brown & Associates, Inc. entitled Zoning Map - West Stockbridge, Massachusetts dated June 4, 1978.
2. Wetlands are shown on the map prepared by Robert G. Brown & Associates, Inc. entitled Zoning map - West Stockbridge, Massachusetts dated June 7, 1978.

#### 3.3 District Boundary Lines

- 3.3.1 The district boundary lines shall be as shown on the Zoning Map and indicated by the dimensions entered thereon.
- 3.3.2 For the purpose of interpretation of district boundaries as shown on the Zoning Map, the following rules shall apply:
  - 3.3.3 Boundaries which appear to follow the centerlines of streets, railroads, or streams shall be construed to follow such lines.
  - 3.3.4 Boundaries indicated as following shorelines of lakes or ponds shall be construed to follow such shorelines.
  - 3.3.5 Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines.
  - 3.3.6 Boundaries which appear to run parallel to the features indicated above shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.
  - 3.3.7 Where a district boundary appears to parallel a street line and no dimension is given, the boundary shall be interpreted as being two hundred (200) feet from said street line.
  - 3.3.8 Where a district boundary line divides a lot in single ownership at the time such district is established, the Board of Appeals may permit by special permit the extension of the regulations

for either portion of the lot not to exceed twenty (20) feet beyond the district line into the remaining portion of the lot.

- 3.3.9 In cases of uncertainty or disagreement concerning the exact locations of a district boundary line or where physical features existing on the ground are at variance with those shown on the Zoning Map or in other circumstances not covered herein, the district boundary shall be determined by the Board of Appeals.

#### **SECTION 4: USE REGULATIONS**

- 4.1 Except as provided by law or in this By-Law, no building or structure shall be erected and no 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 set forth in the accompanying Table of Use Regulations, Section 4.11, as permitted by right in the district in which such building, structure, or land is located, or which may be permitted in said district and so authorized by Special Permit Granting Authority as designated in Section 4.2 herein.
- 4.2 Symbols used in the Table of Use Regulations, Section 4.11 herein, shall mean the following:
- |            |  |
|------------|--|
| <i>Yes</i> | Use permitted by right   |
| <i>SPA</i> | Use which may be authorized by special permit from the Board of Appeals in accordance with the provisions of Section 6.3 herein.   |
| <i>SPP</i> | Use which may be authorized by special permit from the Planning Board in accordance with the provisions of Section 6.3 herein.     |
| <i>SPS</i> | Use which may be authorized by special permit from the Board of Selectmen in accordance with the provisions of Section 6.3 herein. |
| <i>NO</i>  | Specifically excluded or prohibited use.   |
- 4.3 More than one building or structure housing a principal permitted use or any portion thereof may be erected or placed on a single lot, provided that:
- area, width, frontage, yard, and other requirements of this By-Law shall be met for each building or structure as though it were on an individual lot, unless any such requirement is reduced by Special Permit of the Planning Board; and
  - this section 4.3 shall have no application if more than one use on a lot is specifically prohibited by any other provision of this By-Law.
- 4.4 Every use permitted by right or authorized by special permit under the provisions of this By-Law shall be subject to the State Building Code, State Sanitary Code, and the Town's Board of Health Regulations and all other applicable statute, By-Laws, and regulations.
- 4.5 Any use otherwise permitted in the portion of any zoning district overlaid by a Flood Plain District or Wetland Area shall be subject to the restrictions set forth in Section 6.4 and 6.5 respectively.
- 4.6 Where a structure or use might be classified under more than one of the listed uses, the more specific classification shall determine permissibility; if equally specific, the more restrictive shall govern.
- 4.7 Subject to the limitations contained in this By-Law, an accessory use shall be permitted:

- a. on the same lot with the building to which it is accessory, or
  - b. on a lot any portion of the frontage of which is directly across the road from the frontage of the lot containing the principal use, provided that it does not alter the character of the premises and is not detrimental to the neighborhood.
- 4.8 Farm buildings and structures used exclusively for agricultural purposes shall be deemed to be accessory buildings and structures for the purpose of the By-Law. Such buildings and structures may be located on the same lot with the principal permitted use or on separate lots.
- 4.9 Any use of land, buildings, or structures which creates excessive and objectionable noise, fumes, odor, dust, electrical interference or undue traffic shall be prohibited in all districts.
- 4.10 Any non-residential use or combination of uses which occupies a gross floor area of 4,500 square feet or more shall, in addition to satisfying any otherwise applicable requirement of this By-Law, be permitted, unless a Special Permit is otherwise required, only with a Special Permit from the Planning Board.

**4.11.1: Table of Principal Uses**  
**Principal Use**

Principal Use	District				
	R-3	R-D	C	M	R-1
<i>Residential Uses</i>					
1. One single-family dwelling; more than one single-family dwelling per lot is not permitted, and no other principal use is permitted on a lot which contains a single-family dwelling	YES	YES	YES	YES	YES
2. Two-family dwelling provided the lot area is at least twice the minimum lot area in the district	SPP	SPP	SPP	SPP	SPP
3. Multi-family dwelling; subject to the special requirements set out in Section 4.11.3.4	NO	NO	SPP	SPP	NO
4. Conversion of a one-family dwelling which existed on January 1, 1992 into either a two-family dwelling or a building having a use or combination of uses each of which is permitted at the location either as of right or by Special Permit in the district; subject to the requirements of Section 4.11.3.2 hereof	SPP	SPP	SPP	SPP	SPP



**4.11.1: Table of Principal Uses (cont.)**

Principal Use	District				
	R-3	R-D	C	M	R-1
<i>Institutional, Municipal, &amp; Community Uses</i>					
5. Religious or education use on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by religious sect or denomination, or by a non-profit educational corporation, with at least 200 feet of setback	YES	YES	YES	YES	YES
6. Use by a municipal or governmental body (including, but not limited to, a duly constituted special sewer or other district) with at least 200 feet of setback; provided, however, that the Special Permit Granting Authority may reduce the setback requirement in its discretion to a figure not less than 50 feet	SPP	SPP	SPP	SPP	SPP
7. Public utilities such as telephone exchange, natural gas or electric power facility, railroad or bus station; with at least 200 feet of setback; however, the Special Permit Granting Authority may reduce the setback requirement in its discretion to a figure not less than 50 feet	NO	SPS	SPS	SPS	NO
8. Non-profit library or museum	SPS	SPS	SPS	SPS	SPS
9. Hospital, sanitarium, nursing home, children's day care center or other similar use subject to regulations of the Commonwealth, with at least 200 feet of setback, however, the Special Permit Granting Authority may reduce the setback requirement in its discretion to a figure not less than 50 feet	NO	SPP	SPP	SPP	NO
10. Private school, college, nursery school, trade or professional school, except as regulated under Subsection 4.11.1(5) herein; with at least 200 feet of setback; however, the Special Permit Granting Authority may reduce the setback requirement in its discretion to a figure not less than 50 feet.	NO	SPP	SPP	SPP	NO
<i>Recreational Uses</i>					
11. Golf, tennis, swimming, or sportsmen's club, ski tow, livery or riding stable or other recreational use of similar character	SPP	SPP	SPP	SPP	SPP
12. Summer camp for children or family type campground	SPP	SPP	SPP	SPP	SPP

**4.11.1: Table of Principal Uses (cont.)**

Principal Use	District				
	R-3	R-D	C	M	R-1
13. Private Club, as defined in this By-Law	SPP	SPP	SPP	SPP	SPP
14. Boat house for rental of boats and canoes	SPP	SPP	SPP	SPP	SPP
<b><i>Businesses, Industrial and Other Uses</i></b>					
15. Hotel or motel as defined in this By-Law	NO	NO	SPP	SPP	NO
16. Restaurant (except for Fast Food Eating Establishments) where food is served primarily for consumption within the building	NO	NO	SPS	SPS	NO
17. Fast Food Eating Establishment, defined as a place that has as its principal business the sale of prepared or quickly prepared foods or drinks in disposable containers or wrappers for consumption either on or off the premises, and has a drive-through or drive-up facility	NO	NO	NO	NO	NO
18. Antique or gift shop or art gallery	NO	NO	YES	YES	NO
19. Automobile service station or commercial garage	NO	NO	SPS	SPS	NO
20. Commercial amusement	NO	NO	SPS	SPS	NO
21. Sale or storage of feed, lumber, or building supplies	NO	NO	SPS	SPS	NO
22. Research laboratory or light and clean manufacturing activity where the majority of the services or products is retailed on the premises or by mail	NO	NO	SPS	SPS	NO
23. The removal of sand, gravel, rock, loam, topsoil, or other earth material, as a commercial business	NO	NO	NO	NO	NO
24. Office, bank, retail business or consumer service establishment, unless otherwise specifically regulated in this By-Law	NO	NO	YES	SPP	NO
25. Any lawful industrial, light and clean manufacturing, warehousing, service including processing, fabrication, assembly or storage, unless specifically otherwise regulated in this By-Law; all such uses must meet the requirements of Section 4.11.3.1, and the applicant is required to submit an impact statement addressing said requirements	NO	NO	NO	SPP	NO

**4.11.1: Table of Principal Uses (cont.)**

Principal Use	District				
	R-3	R-D	C	M	R-1
26. Commercial greenhouse, nursery, or landscape gardening	NO	NO	YES	YES	NO
27. The use of land or structure for the primary purpose of agriculture, horticulture, or floriculture with at least five acres of land	YES	YES	YES	YES	YES
28. Piggery of fur farm not qualifying under the preceding section	NO	NO	NO	NO	NO
29. Kennel or veterinary hospital	NO	NO	NO	SPS	NO
30. Cemetery	SPS	SPS	SPS	SPS	SPS
31. Junk yards, commercial racetracks, drive-in theaters, trailer parks, billboards, or off premises signs	NO	NO	NO	NO	NO
32. Automobile sales establishments	NO	NO	SPS	SPS	NO
33. Dump or other area for the disposal of rubbish, except officially designated areas for such purposes by the Town of West Stockbridge.	NO	NO	NO	NO	NO
34. Commercial communication activities, including radio television transmission or receiving facilities, directional beacons and antennas, and cable television reception facilities; provided, however, that any such facilities be visually screened from adjoining public ways and other land to the maximum extent feasible, in accordance with specific conditions to be established by the Special Permit Granting Authority; this section does not include Personal Wireless Service Facilities and Repeaters, which are covered by Section 4.11.1(35)	SPP	SPP	SPP	SPP	SPP
35. Personal Wireless Service Facilities and Repeaters, as defined in Section 8 of these Bylaws, and in accordance with the terms and conditions thereof	SPP	SPP	SPP	SPP	SPP

**4.11.2: Table of Accessory Uses**

Accessory Use	District				
	R-3	R-D	C	M	R-1
1. <i>Home occupation, no off-premises sale</i> : Occupation, business, profession, craft, or art engaged in within a dwelling or in an accessory building by a resident of premises, as a use accessory thereto, whether or not in connection with an off-premises occupation, and involving no on premises sale (for either immediate or later delivery) of goods or services, or public exhibits or displays, and utilizing the services (whether as employee or on commission or as independent contractor) of no persons outside the household, and with no external evidence of the conduct of such accessory use	YES	YES	YES	YES	YES
2. <i>Home occupation in connection with off-premises occupation</i> : Occupation, business, profession, craft or art engaged in within a dwelling or in an accessory building by a resident of premises, as a use accessory thereto, in connection with an off-premises occupation, and conforming to the requirements of Section 4.11.3.3 hereof	SPP	SPP	YES	YES	SPP
3. <i>Home occupation involving sale or delivery of services</i> : Occupation, business, profession, craft or art engaged in within a dwelling or in an accessory building by a resident of premises, and involving the sale or delivery of services, and conforming to the requirements of Section 4.11.3.3 hereof	SPP	SPP	YES	YES	SPP
4. <i>Home occupation involving sale of products made on premises</i> : Occupation, business, profession, craft or art engaged in within a dwelling or in an accessory building by a resident of premises, and involving the sale of products, articles or goods made on the premises, and conforming to the requirements of Section 4.11.3.3 hereof	SPP	SPP	YES	YES	SPP
5. <i>Home occupation involving sale of products not made on premises</i> : Occupation, business, profession, craft or art engaged in within a dwelling or in an accessory building by a resident of premises, and involving the on-premises sale (for either immediate or later delivery) of products, articles, or goods not made on the premises, or public exhibitions or displays, as a use accessory thereto, and conforming to the requirements of Section 4.11.3.3 hereof	NO	NO	SPP	SPP	NO
6. Rental of not more than four rooms, with or without meals in a dwelling by a resident family, provided no separate kitchen facilities are maintained; and provided further that the parking requirements of Section 6.2.1 have been satisfied	YES	YES	YES	YES	YES

**4.11.2: Table of Principal Uses**

Accessory Use (cont.)	District				
	R-3	R-D	C	M	R-1
6a. Accessory Apartment: Subject to the requirements of Section 4.11.3.5	SPP	SPP	SPP	SPP	SPP
7. Guest House as defined by this By-Law	SPP	SPP	SPP	SPP	SPP
8. Roadside farm stand selling primarily agricultural, horticultural, or floricultural products raised on the premises, provided that no products are displayed for sale within twenty (20) feet of the street	YES	YES	YES	YES	YES
9. Greenhouse, tennis court, swimming pool, or any other recreational facility not for commercial purposes	YES	YES	YES	YES	YES
10. The removal of any earth materials, including stripping of topsoil, only when incidental to or required in connection with any of the following operations:	YES	YES	YES	YES	YES
a. The erection of a building or structure on the lot for which a building permit has been properly issued, and the construction of a private driveway					
b. Any otherwise lawful accessory use incidental to a permitted use, including cultivation, planting, or drainage of land or landscaping					
c. The construction of a private street in subdivision approved by the Planning Board under the Sub-division Control Law					
d. Municipal or government construction or operation					
11. The display of a sign or signs pertaining to a permitted use as regulated in Section 6.7 in this By-Law, unless specifically prohibited or regulated by other provisions of this By-Law	YES	YES	YES	YES	YES
12. The raising or keeping of poultry, livestock, or domestic animals, for use by the residents of the premises, not as a commercial venture, subject to the regulations of the Board of Health, provided all grounds used for pasturing or other purposes involving unrestrained animals shall be properly fenced	SPP	SPP	SPP	SPP	SPP
13. The raising or keeping of household pets by the residents of the premises not as a commercial venture	YES	YES	YES	YES	YES
14. Temporary use of a trailer for living purposes while a permanent dwelling is actively under construction on the same lot, for a period not exceeding six months, subject to the approval of the Board of Health, provided off-street parking requirements and yard requirements are met	SPS	SPS	SPS	SPS	SPS

**4.11.2: Table of Principal Uses**

Accessory Use (cont.)	District				
	R-3	R-D	C	M	R-1
15. Trailer of a type intended only for camping purposes, stored within sight of a public way in excess of thirty days in any calendar year provided it is not used for living purposes.	SPS	SPS	SPS	SPS	SPS
16. Radio-television transmission and receiving towers as well as fire, police, and CB antennas not to exceed forty feet in height from the ground, or 25 feet over the height of the roof, whichever is greater; said tower shall be constructed so that if said tower were to collapse or fall, the entire system would fall within the boundaries of said owner.	YES	YES	YES	YES	YES
17. Antennas for the purpose of non-commercial reception of television and/or radio signals from orbiting satellites, subject to the following provisions:	YES	YES	YES	YES	YES
a. Ground-mounted satellite television antennas shall not exceed a height of fifteen feet and shall not be located in the front yard area					
b. All satellite television antennas, when located between the minimum setback distance (front yard) and the dwelling shall be adequately screened from view from the street by plantings.					
18. Tag Sales (Home) or Garage Sales, as defined in Section 2 of these By-Laws, in excess of two per year.	SPS	SPS	SPS	SPS	SPS

**4.11.3 Special Requirements**

**4.11.3.1 Light and Clean Manufacturing**

All uses under Section, 4.11.1 (25), shall meet the following performance standards:

- A. The use shall not be likely to create any dangerous, injurious, noxious, or otherwise objectionable fire, explosion, or other hazard; noise or vibration, smoke, dust, dirt, or other form of air pollution, electrical or other disturbance, glare, or any other dangerous or objectionable substance, condition, or element in such amount as to adversely affect the surrounding area or premises. The determination of the existence of any dangerous or objectionable elements shall be made at or beyond the property lines of the use creating such elements, wherever the effect is greatest. Any use already established on the effective date of this provision shall not be so altered or modified as to conflict with, or further conflict with, these performance standards.
- B. No materials or waste shall be deposited upon a lot in such form or manner that they may be transferred off the lot by natural causes or forces.
- C. All materials or waste which constitute a fire hazard or which may be edible by or attractive to rodents or insects shall be stored outdoors only in closed containers.

- D. No discharge at any point into any public sewer, private sewage disposal system, or stream, lake, or pond, or into the ground of any material of such nature or temperature as can contaminate any water supply or cause the emission of dangerous or offensive elements shall be permitted, except in accordance with all relevant laws, rules, and regulations.

#### **4.11.3.2 Conversion of One-family into Two-family Dwelling**

All uses under Section 4.11.1(4) shall meet the following requirements:

- A. The lot size shall be equal to or greater than the minimum lot size in the District, even if the use prior to the conversion was protected as pre-existing.
- B. The livable floor area of such dwelling shall not be increased, and no exterior changes made which would alter the residential character of the building.
- C. The required yards shall be in compliance with the provisions of this By-Law.
- D. The Planning Board may impose such additional conditions as it finds reasonably necessary for the protection of neighboring uses, including fencing, screening, and the maintenance of existing ground improvements and landscaping.

#### **4.11.3.3 Certain Home Occupations**

All uses under Sections 4.11.2(2-5) shall meet the following performance standards:

- A. They shall utilize the services (whether as employee or on commission or independent contractor, or otherwise) of not more than two persons outside the household.
- B. There shall be no external evidence of the conduct of such accessory use, except that there may be a sign if:
  - 1. such sign, if in zones R-1, R-3, or R-D, shall not exceed two square feet in area, and
  - 2. such sign is otherwise permitted under Section 6.7 of this By-Law.
- C. The parking requirements of Section 6.2.1 of this by-Law shall be met.

#### **4.11.3.4 Multi-family Uses**

Any multi-family development shall conform to the following special requirements:

##### **4.11.3.4.1 Development Standards**

- A. The minimum lot area requirements per dwelling unit shall be a minimum of two acres plus an additional one-half acre per living unit over three units per structure.
- B. The required front, side, and rear yard dimensions shall be twice the minimum requirements for the district.
- C. No more than six (6) dwelling units shall be provided for any such development.
- D. The minimum area of developed playgrounds, recreational areas, or other usable, suitably landscaped open space shall be at the rate of 1,000 square feet per bedroom.
- E. Front yard and all open areas shall be suitably screened from the road, suitably landscaped and maintained with grass, trees, shrubs and walks.
- F. Any driveway within the development shall be set back from any side or rear property line not less than 50 feet.
- G. Off-street parking space shall be located to the rear of the building setback line and at least 50 feet from any side or rear property line, and shall conform to the standards set forth in Section 6.2 of this By-Law.

#### **4.11.3.4.2 Bonding**

Unless the installation of all required improvements has been completed, no certificate of occupancy shall be issued by the Building Inspector until the applicant shall have filed in the office of the Town Clerk a bond with surety satisfactory to the Town Counsel and Planning Board. Such bond shall be in the amount sufficient in the judgement of the Planning Board to secure the completion of such work in compliance with all applicable statutes, ordinances, and regulations, and in accordance with the approved site plan.

#### **4.11.3.5 Accessory Apartments**

- A. The size and scale of the structure are appropriate to the neighborhood of predominately single family dwellings; the appearance of a single family house be maintained and its second entrance be to the side or rear of the building to avoid the appearance of a multi-family dwelling.
- B. Adequate parking for at least four vehicles shall be provided.
- C. Adequate visual screening and protection for neighboring properties from noise, traffic and light be provided.
- D. The overall building, landscaping, lighting and paving will not be substantially more detrimental to the neighborhood than would be a single family dwelling.
- E. The owner of at least 50% of the real estate in whole must occupy one of the dwelling units.
- F. Certification be obtained from the Board of Health that the water and sanitary systems are adequate to support both dwelling units.

### **SECTION 5: INTENSITY REGULATIONS**

- 5.1 Any building used for dwelling purposes, and any building or structure housing a principal permitted use, including any use authorized by a special permit, shall be so constructed and located on a lot as to meet the minimum requirements for lot area, frontage, the required front, side, and rear yards, and the maximum height, and maximum lot coverage by buildings as set forth in the Table of Dimensional Requirements and exceptions (Section 5.6 herein) except as otherwise specifically provided in the By-Law.
- 5.2 The land and yard spaces required for any building or structure, or use, shall not include any land or yard area required by any other building, structure or use to meet the minimum requirements of this By-Law.
- 5.3 No lot, nor any building or structure thereon shall be changed in size, nor shall any use be changed, so as to violate lot area, frontage, or yard requirements of this By-Law.
- 5.4 The height regulations of buildings and structures shall not apply to agricultural buildings and structures, churches, spires, chimneys, or other appurtenances usually required to be placed above roof level and not intended for human occupancy. This does not include towers.
- 5.5 Detached accessory buildings and garages, except docks and boat houses, shall conform to the minimum yard requirements as set forth herein unless otherwise authorized by Special Permit from the Zoning Board of Appeals if compliance with these requirements due to the size or shape of the lot would create unnecessary hardship.



**5.6 Table of Dimensional Requirements**

<i>DISTRICT</i>	<i>Minimum Area (acres)</i>	<i>Lot Frontage (feet)</i>	<i>Yard Minimum</i>			<i>Maximum Building Height</i>		<i>Maximum Coverage by Building</i>
			<i>Front</i>	<i>Side</i>	<i>Rear</i>	<i>Stories</i>	<i>Feet</i>	
Residence R-1	1	150	40	25	40	2.5	35	10%
Residence R-3	3	225	40	25	40	2.5	35	10%
Residence R-D	1/2	100	30	15	20	2.5	35	25%
Commercial C	1/2	100	30	15	40	2.5	35	30%
Manufacturing M	3	225	100	15	50	2.5	35	20%

Exceptions to Rules in Table of Dimensional Requirements:

1. Side yards and/or rear yards of commercial or manufacturing uses shall be at least 50 feet when adjacent to a Residence District.
2. When a side or rear yard borders on a street, the minimum distance between the street and any type of building shall be as follows: R-3 40 feet; R-D 30 feet; C 10 feet; M 100 feet; and R-1 35 feet.

**SECTION 6: SPECIAL PROVISIONS**

**6.1 Nonconforming Structures, Uses and Lots**

**6.11 Exemptions**

Except herein provided this By-Law shall not apply to:

- a. Structures and uses lawfully in existence prior to the effective date of this By-Law.
- b. A Structure lawfully begun under a building permit or special permit issued before the first publication of notice of the required public hearing by any special permit grant authorization on the applicable zoning by-law or amendment
- c. The alteration, reconstruction, extension or structural change to a one-family or two-family dwelling provided this does not increase the nonconforming nature of such structure.
- d. The expansion or reconstruction of existing structures for the primary purpose of agriculture, horticulture or floriculture.
- e. Nonconforming lots by separate deeds or records and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Law are exempt from the provisions of this By-Law to the extent and as provided in Section 6, Chapter 40A of the General Laws.

**6.1.2 Requirements for Extension, Reconstruction or Change in Use**

The Board of Appeals may authorize by a special permit any extension, alteration or reconstruction of a non-conforming structure 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, provided that no such extension, alteration, reconstruction, or change in use shall be permitted unless the Board of Appeals finds:

- a. That such change, extension, or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood; and
- b. That such extended, altered, reconstructed structure or changed use shall not be in greater nonconformity with open space, yard, and off-street parking requirements of this By-Law.

### **6.1.3 Reconstruction of Structure Damaged by Fire, Explosion, or Other Catastrophe.**

A nonconforming structure damaged by fire, explosion, or any other catastrophe may be rebuilt provided such rebuilding, reconstruction, or restoration shall be undertaken within two (2) years of such catastrophe and the structure as rebuilt or restored shall not be in greater nonconformity with the provisions of this By-Law. Such rebuilt, reconstructed, or restored structure may be enlarged or changed in use in accordance with the provisions of Section 6.1.2 herein.

### **6.1.4 Maintenance, Repair, and Reconstruction of Unsafe Structure**

Nothing in this By-Law shall be deemed to restrict the normal maintenance and repair on nonconforming structures or prevent reconstruction to a safe condition of any structure or part thereof, declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

### **6.1.5 Abandonment**

Any nonconforming use which has been abandoned or not used for two (2) years or more shall not be reestablished, except by special permit from the Board of Appeals, and any future use of such premises shall conform to the provisions of this By-Law.

### **6.1.6 Conditions, Safeguards, and Limitations**

The Board of Appeals may impose reasonable conditions, safeguards or limitations on applications for special permits under this section, designed to lessen any possible adverse impact on adjacent uses or neighborhood, whenever a nonconforming use is authorized to enlarge, expand, extend, or convert to another nonconforming use under the provisions of this section.

## **6.2 Off-Street Parking Requirements**

**6.2.1** After the effective date of this By-Law, off street parking spaces shall be provided for every new structure, the enlargement of an existing structure, the development of a new use or any change in an existing use, in accordance with the following schedule:

- a. Hotel, Motel, or Guest House - one parking space for each sleeping room.
- b. Accessory Home Occupation, Office, or Roadside Stand - one space for each non-resident employee plus adequate off-street parking for clients or customers.
- c. Commercial District - one off-street parking space for each 100 square feet of gross floor area plus adequate space for employees, service and supply vehicles.
- d. Manufacturing or Wholesale Establishments - one parking space for each two employees plus adequate space for customers, service, and supply vehicles.
- e. Multi-family Dwelling - one parking space for each dwelling unit and adequate space for service and supply vehicles.

- 6.2.2** The minimum number of required off-street parking spaces as set forth in section 6.2.1 may be reduced by special permit from the Board of Appeals upon determination that special circumstances render a lesser provision adequate for the parking needs in any particular case.
- 6.2.3** An area of two-hundred (200) square feet of appropriate dimensions for the parking of an automobile, exclusive of drives or aisles, shall be considered as one (1) off-street parking space.
- 6.2.4** All required parking spaces shall be provided with unobstructed access to and from a street and shall be properly maintained in such manner as to permit them to be used at all times.
- 6.2.5** Any parking area of more than five (5) parking spaces shall be located to the rear of the building setback line, and at least fifty (50) feet from any side or rear property line, unless specifically otherwise authorized by special permit from the Board of Appeals when the compliance with this provision may create unnecessary hardship. Such parking area shall be suitably screened on any property line which abuts upon a residential district or a site in residential use
- 6.2.6** All parking space shall be properly graded for drainage and topped with stone or oil and stone or an appropriate substitute approved by the Board of Appeals.

### **SECTION 6.3: SPECIAL PERMITS**

#### **6.3.1 Special Permit Granting Authority**

Any Board designated as Special Permit Granting Authority in this By-Law may hear and decide applications for special permits upon which such board is specifically authorized to act under this By-Law in accordance with the provisions of Section 9, Chapter 40A of the General Laws.

- 6.3.2** Special permits may only be issued following public hearings held within sixty-five (65) days after filing of an application with the Special Permit Granting Authority. Notice of public hearing shall be given by publication in a newspaper of general circulation in the town once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing and by posting such notice in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of such hearing, and by mailing it to "Parties in interest" as provided in Section 11, Chapter 40A (G.L.) which include the petitioner, abutters, owners of land directly opposite any public or private street or way and owners of land within three-hundred feet of the property line, all as they appear on the most recent applicable tax list, the Planning Board, and the planning board of every abutting municipality.

#### **6.3.3 Review by Other Boards and Agencies**

The Special Permit Granting Authority shall within ten (10) days after receipt of an application for special permit transmit a copy thereof for review to the Board of Health, the Planning Board, the Board of Selectmen, the Conservation Commission and any other municipal board or agency at the discretion of the Special Permit Granting Authority. Any board or agency to which such applications are referred for review shall make such recommendations as they deem appropriate in writing, provided however, the failure to make recommendations within thirty-five (35) days of receipt by such board or agency of the application for review shall be deemed lack of opposition thereto.

#### **6.3.4 Findings Required**

Before granting a special permit for any use requiring such permit under the provisions of this By-Law, the Special Permit Granting Authority shall find that the proposed use:

- a. Is in compliance with all provisions and requirements of this By-Law, and in harmony with its general intent and purpose;

- b. Is essential or desirable to the public convenience or welfare at the proposed location;
- c. Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
- d. Will not create undue traffic congestion, or unduly impair pedestrian safety;
- e. Will not overload any public water, drainage, or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the town will be unduly subjected to the hazards affecting public health, safety, or general welfare.

### **6.3.5 Conditions, Safeguards, and Limitations**

Special permits may be issued subject to such conditions, safeguards, or limitations as the Special Permit Granting Authority may impose for the protection of neighboring uses or otherwise serving the purposes of this By-Law. Such conditions, safeguards, or limitations may include, but are not limited to, the following:

- a. Front, side, and rear yards greater than the minimum required by this By-Law; screening buffers or planting strips, fences or walls as specified by the Authority;
- b. Limitations upon the size, number of occupants, method and time of operation, time duration of the permit, or extent of facilities;
- c. Regulations of number and location of driveways, or other traffic features; and off-street parking or loading, or other special features beyond the minimum required by this By-Law.

Any Conditions, safeguards, or limitations shall be imposed in writing and shall be made a part of the building permit.

### **6.3.6 Site Plan Required**

Any application for a special permit shall be accompanied by a site plan drawn to scale indicating the location, size, and height of proposed buildings, site improvements, and containing such other information as may be required by the Special Permit Granting Authority. This shall include the actual layout with reference to all abutting property including all necessary dimensions.

### **6.3.7 Decisions and Vote Requirements**

Special Permit Granting Authority shall act within ninety (90) days following the date of public hearing. Failure to take final action upon application for special permit within said ninety (90) days shall be deemed to be a grant of the permit applied for.

Special permit issued by a Special Permit Granting Authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board and a unanimous vote of a three member board.

### **6.3.8 Expiration of Special Permit**

A special permit shall lapse in two (2) years if a substantial use or construction has not begun under the permit by such date.

### **6.3.9 Associate Member**

The Planning Board shall have one Associate Member, pursuant to General Laws Chapter 40A Sec. 9, who shall sit on the Board only for the purpose of acting on a Special Permit application in the event of either:

- A. An absence, or inability to act, or conflict of interest on the part of any member of the Planning Board or
- B. A vacancy on the Board.

Such position shall be filled by a majority of the members of the Planning Board and the individual selected shall serve for a term of one year from date of appointment. Once the position has been filled, the chairman or acting chairman of the Planning Board may designate the Associate Member to sit for the purpose of the Special Permit application when one of the above events occurs.

## **6.4 Flood Plain Regulations**

### **6.4.1 Purpose of Flood Plain Districts**

- a. To provide that lands in the Town subject to seasonal or periodic flooding shall not be used for residence or other purposes in such a manner as to endanger the health or safety of the occupants thereof.
- b. To protect, preserve, and maintain the water table and water recharge areas within the Town so as to preserve present and potential water supplies for the public health and safety of the residents of the Town.
- c. To assure the continuation of the natural flow pattern of the water course(s) within the Town in order to provide adequate and safe flood water storage capacity to protect persons and property against the hazards of flood inundation.

### **6.4.2 Regulations and Restrictions**

- a. Any person desiring to establish any permitted use in Flood Plain District involving or requiring the erection of new or alteration or moving of existing structures; or dumping, filling, transfer, relocation, or excavation of earth materials, or storage of materials or equipment, shall submit an application to the Board of Selectmen for a special permit, describing in detail the proposed use of the property and the work to be performed, accompanied by plans showing:
  - 1. The location, boundaries, and dimensions of the lot, and existing and proposed structures, water course, and drainage easements, fill, means of access, and sewage disposal facilities;
  - 2. Mean sea level elevation, with two (2) foot or less contour separation, of the existing and proposed land surface of cellar and first floors and sewage disposal facilities.
- b. Copies of the application and plans shall be delivered by the applicant to the Building Inspector, Planning Board, Board of Health, and the Conservation Commission.
- c. The Board of Selectmen may issue, in accordance with the regulations appearing in Section 6.3 of this By-Law, and in compliance with all applicable provisions of this By-Law, a special permit under this section, if the Board determines, as provided in Section 3.2.1 of this By-Law, that the land in question is being in fact not subject to flood plain restrictions for any use which would otherwise be permitted if such land were not, by operation of this section, in the Flood Plain Districts have been established. The Board may issue special permit with such conditions as it deems necessary in the interests of public health or safety,

and welfare. The burden of proving that the proposed use will not endanger health of safety of occupants or public will rest upon the applicant, who will submit such engineering and hydrological data as may be required. Without limiting the generality of the foregoing, the Board shall insure:

1. That the floor level of areas to be occupied by human beings as living or working space shall be at a safe elevation; that furnaces and utilities are protected from the effects of flooding and that the structure will withstand the effects of flooding in accordance with the Building Code;
  2. That the proposed construction, use or change of grade will not obstruct or divert the flood flow, reduce natural storage, or increase storm water runoff so that water levels on other land are substantially raised, or danger from flooding increased;
  3. That safe vehicular and pedestrian movement to, over, and from the premises is provided in the event of flooding;
  4. That the proposed methods of drainage and sewage disposal are approved by the Board of Health, and will not cause pollution or otherwise endanger health in the event of flooding.
- d. Granting of a Special Permit by the Board of Selectmen does not indicate in any way compliance with the provisions of the Wetland Protection Act, Chapter 131, Section 40 (G.L.).

## **6.5 Wetlands Regulations**

**6.5.1** Any person desiring to construct a dwelling or building housing a principal permitted use in any Wetlands Area, shall submit an application to the Board of Selectmen for a special permit describing the proposed use of the property and the work to be performed. The Board of Selectmen may issue, in compliance with all applicable provisions of this By-Law, a special permit under this Section if the Board determines that:

- a. The proposed construction, use, or change of grade will not reduce natural water storage so that water levels on other land are substantially raised, or danger from flooding increased;
- b. Safe vehicular and pedestrian movement to, over, and from the premises is provided;
- c. The proposed method of drainage and sewage disposal is approved by the Board of Health, and will not cause pollution or otherwise endanger public health.

**6.5.2** Granting of a Special Permit by the Board of Selectmen under this Section does not indicate in any way compliance with the provisions of the Wetlands Protection Act, Chapter 131, Section 40 of the General Laws.

## **6.6 Stream, Pond, and Lake Protection**

Hereafter, no on-lot sewage disposal system such as septic tank or cesspool or leaching field, or the drainage system for waste water from showers, sinks, etc. shall be installed or constructed within one-hundred (100) feet of the high water shore line of a man made pond or lake exceeding two (2) acres in area, or of any natural waterways including brooks, streams, Williams River, or ponds of any nature in the Town of West Stockbridge.

## **6.7 Sign Regulations**

**6.7.1** The following signs may be displayed in any district subject to regulations contained in the Town's Sign By-Law:

- a. At a single, detached, one-family house, one sign not over two (2) square feet in area, showing the name of the occupants.
- b. At religious, educational or philanthropic institutions, library, museum, art gallery, or building or area for municipal or government use or service one sign not over four (4) square feet in area at each entrance.
- c. A temporary, unlighted sign not over six (6) square feet in area pertaining to construction, repair, lease, or sale of the property on which it is displayed.
- d. One temporary sign, to be displayed on the premises for not more than one (1) week, not exceeding ten (10) square feet in area, advertising or announcing a sale, entertainment, or other activity open to the public, being conducted by a religious, philanthropic, social, or other non-profit organization.

**6.7.2** The following signs may be displayed with a permit from the Board of Selectmen issued in accordance with the provisions of the Town's Sign By-Law:

- a. At each entrance to a farm, orchard, commercial greenhouse, nursery, truck garden, woodlot, or roadside farm stand permitted or authorized under this By-Law, one sign not over four (4) square feet in area.
- b. For permitted use of residential property, one sign not over two (2) square feet in area.
- c. On property in a Residence District devoted to a use authorized by special permit, one sign not over four (4) square feet in area.
- d. In a Business District no more than two (2) signs, not to exceed twenty-five (25) square feet in total combined area, attached flat against the wall of the building, advertising the name of the firm or goods or services available or produced on the premises. No sign shall project over a parapet wall or over a public way owned or maintained by the Town. In the case of privately owned alleys and lanes, where a sign flat against the building would not be readily visible from a public way, one sign for each establishment, not exceeding four (4) square feet in area, is permitted to project over the private way, provided that its lowest point is at least seven feet above the surface of the way and provided that the Town Building Inspector determines that it would not be dangerous to the public using the way.
- e. In Commercial District any multiple uses on a lot may display only one sign not exceeding sixteen (16) square feet in area for each separate business establishment in addition to a directory sign for multiple listing of uses on the premises. Such directory sign shall not exceed sixteen (16) square feet in area and may provide up to four (4) square feet of space for each separate use on the premises. Such directory sign may be a free standing sign not over ten (10) feet in height.
- f. In Manufacturing District, no more than two signs, not to exceed fifty (50) square feet in total combined area, attached flat against the wall are permitted. Said signs may advertise only the name of the firm and/or goods or services available or produced on the premises. No sign shall project more than six (6) feet above a parapet wall, or
- g. In Manufacturing Districts one sign, not attached flat against the building, advertising the name of the firm and/or goods or services available or produced on the premises, permitted not to exceed twelve (12) square feet in total combined area.

**6.7.3 Sign Restrictions**

- a. No sign shall use moving parts, noise making devices, or blinking, rotation, or flashing or red lights, or changing in light intensity, and no sign shall be placed on the roof of any building or structure, or extend above the parapet or eave line.

- b. No illuminated sign or lighting device shall be so placed or directed upon a public way or adjacent premises as to cause glare or reflection that may constitute a traffic hazard or nuisance.
- c. No sign shall be located off the premises to which it applies except that directional, informational or identification signs may be allowed by the Board of Selectmen where such signs will serve the public convenience and not be detrimental to the neighborhood with respect to size, location, or design.
- d. A free standing sign may not be closer to the front property line than one-half depth of the required front yard, and in Residence Districts may not exceed four (4) feet in height above grade, and in Commercial District ten (10) feet.
- e. No portable sign of any type will be allowed except for a period of not more than three (3) days with a special permit from the Board of Selectmen.

## **6.8 Driveways**

### **6.8.1 Driveways for not more than two principal uses:**

**6.8.1.1** No driveway or other access to a way shall serve more than two (2) dwellings or other principal or permitted structures, except as provided by Special Permit pursuant to the provisions of this bylaw.

**6.8.1.2** The Building Inspector shall request a review of the driveway by the Highway Superintendent prior to the issuance of a building permit, to ensure that the driveway will provide safe access to the property for all vehicles including emergency vehicles and vehicles carrying hazardous materials, such as home heating oil. The Highway Superintendent may, if he/she so chooses consult Town emergency personnel or other such professionals to determine emergency vehicle access adequacy. Following a site visit, the Highway Superintendent shall, if he/she deems such driveway layout proper, issue a *Driveway Cut Permit*. All driveways shall be sufficiently constructed for permanent access and travel before issuance of any *Certificate of Occupancy*. Said certificate of occupancy must be signed by the Highway Superintendent upon driveway acceptance (under this section).

**6.8.1.3** No Driveway shall be approved which does not conform to the following standards:

- a. Entrances onto State Highways must conform to Massachusetts Highway Department standards and regulations
- b. No driveway shall be approved at intersections
- c. No driveway shall be located within one hundred (100) feet of an intersection of public ways
- d. Driveways shall be located to the best advantage with regard to alignments with the public way, profile, sight conditions and the like. In no instance shall the driveway intersect the public way at less than sixty (60) degree angle.
- e. Culverts taking the place of roadside ditches shall have a diameter of not less than fifteen (15) inches. A larger diameter may be required at the discretion of the Highway Superintendent. All culverts under the driveway shall become the property owner's responsibility for cleaning, maintenance and replacement as determined by the Highway Superintendent.



- f. The elevation of driveways at the point of entry into the public right of way shall not be more than the elevation of the shoulder of the roadway.
- g. Driveways shall be constructed so that the water runoff from the driveway shall not drain onto the crown of the road or open waterways or ponds.
- h. In no instance shall the section of driveway entering the public way conflict with the flow of surface water runoff.
- i. Individual driveways shall not be less than twelve (12) feet nor more than twenty (20) feet in width within the Town right of way.
- j. Driveways entering a paved way shall have a paved apron installed extending to the width of the Town right of way or twenty (20) feet in from the edge of the paved way, whichever is greater. Maintenance of said paved apron shall become the property owner's responsibility.
- k. The slope of the driveway, at any point, shall not be greater than ten (10) percent.

## **6.8.2 Common Driveways Servings Three or Four Lots**

**6.8.2.1** In all districts, common driveways to serve a maximum of four (4) lots may be created only by Special Permit by the Planning Board. A lot served is any lot crossed by the common driveway whether or not any building or any dwelling on the lot is actually accessed and/or served by this common driveway, or on any lot on which any building or any dwelling is accessed and/or served by this common driveway. All such lots must be included in the list and number of lots served.

**6.8.2.2** Each such common driveway must meet the following criteria:

- a. Common driveways may not be used to satisfy or take the place of other Town Zoning Bylaw requirements. Each lot shall have frontage on ways that serve to satisfy frontage requirements.
- b. Each lot served by the common driveway must have permanent access to the Common Driveway pursuant to an Easement Agreement acceptable to the Planning Board and the Deed to each lot served on a Common Driveway must reference this easement agreement. The Easement Agreement is to be recorded, along with the Special Permit with the Southern Berkshire Registry of Deeds or with the Land Court where appropriate.
- c. Any deeds or ownership of lots served by a common driveway shall require that the owners of said lots must be members of a maintenance association, whose purpose is to provide for maintenance of the common driveway, which shall include, but not limited to, snow plowing, road maintenance, maintaining drainage structures and maintaining design specifications. This maintenance association must be created by a Maintenance Association Agreement acceptable to the Planning Board and the Deed to each lot served on a Common Driveway must reference this Maintenance Association Agreement. This Maintenance Association Agreement is to be recorded along with the Special Permit with the Southern Berkshire Registry of Deeds or Land Court where appropriate.
- d. The common driveway is defined as extending from approved or acceptable right of way to which it is attached, to the point it serves only one lot, the so called terminus. A common driveway may have more than one terminus. A common driveway shall be connected to an approved or accepted right of way at one and only one point. The entire common driveway must lie within the lots served and in the Town of West Stockbridge.

- e. The common driveway must meet the design criteria of this bylaw and any additional design criteria established by the Planning Board in regulations duly voted by said Board according to law. The design criteria of this bylaw are:
  - 1. Twelve (12) feet minimum width of wear surface.
  - 2. A minimum of eight (8) inches of gravel.
  - 3. Passing turnouts must be constructed which provide a total width of a least eighteen (18) feet along a distance of at least twenty five (25) feet spaced no more than three hundred (300) feet between turnouts or a lesser interval where in the Planning Board's opinion a lesser distance is warranted for safety considerations.
  - 4. The length must be such that the distance along the common driveway centerline to each building or dwelling served by the common driveway will not exceed 1800 feet from the street sideline.
  - 5. Signs to direct emergency access and signs with lot number designation must be installed both at the street line and at each driveway intersection with the common driveway.
  - 6. Street addresses for all lots served by a common driveway shall be the address of the lot as designated from accepted town way from which the common driveway intersects.
  - 7. The centerline of the common driveway cannot be located closer than thirty five (35) feet to the centerline of any approved or constructed single dwelling driveway or shared driveway.
  - 8. A staging area of at least forty (40) feet in length and a minimum of twenty (20) feet in width at the street line, tapering to a minimum of twelve (12) feet in width at forty (40) feet from the street line.
  - 9. The requirements of Section 6.8.1.3 shall also be met.

**6.8.2.3** When deciding whether or not to grant Special Permit to create a Common Driveway, the Planning Board should consider:

- a. The safety of the common driveway as designated for normal use.
- b. The safety of the intersection with the Town way.
- c. The adequacy of the legal requirements for maintenance and access.
- d. The adequacy of the common driveway to provide access to vehicles to carry materials that are potentially hazardous if spilled, such as home heating oil.
- e. The environmental impact on wetlands and water resource areas.
- f. The adequacy of the common driveway to provide access to emergency vehicles, fire trucks, ambulances and police vehicles. The Planning Board may if so chooses, consult Town emergency personnel or such professionals to determine emergency vehicle access adequacy.
- g. The adequacy of the common driveway to provide for needs of prospective occupants of the lots.

**6.8.2.4** Strict compliance with the requirements of these rules, and of any regulations which may be issued, may be waived in any specific respect if the Board finds that:

- a. Such waiver is consistent with the public interest; and
- b. Such waiver is consistent with the safety needs of the immediate and likely future users of the property; including the need for speedy and practical access for fire and police. In making this finding, the Board shall consider the views of the Town of West Stockbridge Highway Superintendent, Chief of Police and Chief of the Fire Department, and may consider the particular resources which are legally committed to be available at the proposed site, such as a local cistern or other water supply or sprinkler systems.

No requirements shall be considered to have been waived unless an express written *Request for Waiver* shall have been filed with the Board at the time of the application for the special permit and said *Request for Waiver* shall have been expressly approved by the Board. The Board shall make express and specific written findings relative to its action on any waiver request.

### **6.8.3 Miscellaneous**

- 6.8.3.1** Granting of a Special Permit under this bylaw does not constitute a waiver of any other applicable bylaw or statute.
- 6.8.3.2** The Planning Board may issue regulations to go with this bylaw, including charging a filing fee adequate to cover both legal review and construction inspection.
- 6.8.3.3** The driveway shall be sufficiently constructed for access before the issuance of any building permit. The Building Inspector shall request a review of the driveway by the Highway superintendent prior to the issuance of the permit to ensure that the driveway will provide safe access to the property for all emergency vehicles.
- 6.8.3.4** No certificate of occupancy shall be issued for a residence served by a common driveway until the Planning Board certifies in writing that the common driveway has been completed in accordance with the standards of this section.

## **SECTION 7: ZONING BOARD OF APPEALS**

### **7.1 Membership and Authority**

There shall be a Zoning Board of Appeals consisting of five (5) members and two (2) associate members to be appointed by the Board of Selectmen as provided in Section 12, Chapter 40 A of the General Laws. The Board shall act within its statutory powers as provided in Section 14, Chapter 40A (G.L.) and on matters within its jurisdiction under this By-Law in a manner prescribed in Section 15, Chapter 40A (G.L.). This Board of Appeals shall also serve as Board of Appeals under the Subdivision Control Law as provided in Chapter 41, Section 81-Z of the General Laws.

### **7.2 Statutory Powers of the Zoning Board of Appeals**

#### **7.2.1 Appeals**

The Board is authorized to hear and decide an appeal, as provided in Section 8, Chapter 40A (G.L.), taken by any person aggrieved by reason of his (her) inability to obtain a permit for enforcement action from any administrative officer under the provision of Chapter 40A (G.L.), by the Berkshire County Regional Planning Commission, or by any person including an officer or board of the Town of West Stockbridge, or of an abutting town, aggrieved by an order or decision of the Building Inspector, or other administrative official, in violation of any provision of Chapter 40A (G.L.) or of this By-Law. Any such appeal must be taken within thirty (30) days from the date of the order or decision which is being appealed, by filing a notice of appeal with the Town Clerk, as provided in Section fifteen, chapter 40A (G.L.).

#### **7.2.2 Variances**

The Board may authorize upon appeal or upon petition with respect to a particular land or structure a variance from the terms of this By-Law where the Board specifically finds that owing to circumstances related to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located, literal enforcement of the provisions of this By-Law would involve substantial hardship, financial, or otherwise, to the petitioner or appellant and 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 this By-Law.

##### **7.2.2.1 No Use Variance**

The Board shall not authorize a use or activity not otherwise permitted in the district in which the land or structure is located.

### **7.2.2.3 Expiration of Variance**

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance they shall lapse, and may be reestablished only after notice and a new hearing as provided in Section 7.5.1 herein.

### **7.3 Special Permit**

The Board of Appeals may hear and decide applications for special permits upon which the Board of Appeals is specifically authorized to act under this By-law in accordance with all the applicable provisions of Section 6.3 herein.

### **7.4 Conditions, Safeguards, and Limitations**

The Board of Appeals may impose conditions, safeguards, or limitations both of time and use, including the continued existence of any particular structure but excluding any condition, safeguards, or limitations based upon the continued ownership of the land or structures in question by the same person.

### **7.5 Appeals, Applications, and Petitions to the Board of Appeals**

Any appeal, application, or petition to the Board of Appeals must be filed with the Town Clerk who shall forthwith transmit a copy thereof to the Board of Appeals.

#### **7.5.1 Required Public Hearing**

The Board of Appeals shall hold a hearing on any appeal, application or petition transmitted to it by the Town Clerk within sixty-five (65) days from the date of transmittal after having published, posted and sent a notice of such hearing to parties in interest as provided in Section 11, Ch. 40A (G.L.), and after having notified the town's Planning Board and the planning boards of adjacent cities and towns which may forward recommendations with respect to said matter for consideration of the Board of Appeals as provided in Section 15, Chapter 40A (G.L.).

#### **7.5.2 Review by Other Boards and Agencies**

The Board of Appeals shall within ten (10) days after receipt of an appeal, application or permit transmit a copy thereof for review to the Board of Health, the Planning Board, the Board of Selectmen, and the Conservation Commission and any other Town agency at the discretion of the Board of Appeals. Any board or agency to which such matters are referred for review shall make such recommendations as they deem appropriate in writing to the Board of Appeals, provided, however, that failure to make recommendations within thirty-five (35) days of receipt by such board or agency of the matter for review shall be deemed lack of opposition thereto.

### **7.6 Decisions by the Board of Appeals**

The decision of the Board of Appeals shall be made within seventy-five (75) days after the date of the filing of an appeal, applications or petition with the Town Clerk except in regard to special permits as provided in Section 6.3 of this By-Law. Failure by the Board to act within said seventy-five (75) days shall be deemed to be the grant of relief, application or petition sought except in regard to special permits.

## **Section 8: Personal Wireless Service Facilities and Repeaters**

### **8 Purposes:**

**8.1** The purposes of the Town of West Stockbridge Personal Wireless Service Facilities, Towers and Repeaters Bylaw are to:

**8.1.1** Preserve the character and appearance of the Town while simultaneously allowing Adequate Personal Wireless Services to be developed.

**8.1.2** Protect the scenic, historic, environmental, and natural or man-made resources of the community

**8.1.3** Provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of Personal Wireless Service Facilities and Repeaters.

**8.1.4** Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify Personal Wireless Service Facilities and Repeaters.

**8.1.5** Preserve property values, locate Towers so as to minimize negative impacts on the general safety, welfare and quality of life in the community, such as, but not limited to, visual blight, attractive nuisance, noise and falling objects.

**8.1.6** Require owners of Personal Wireless Service Facilities, Towers and Repeaters to configure them so as to minimize and mitigate the adverse visual impact of the Facilities, Towers and Repeaters, including clustering, co-locating, and camouflaging where appropriate.

### **8.2 Consistency with Federal Law:**

These regulations are intended to be consistent with The Telecommunications Act of 1996 - in that: a) they do not prohibit or have the effect of prohibiting the provision of Personal Wireless Services; b) they are not intended to be used to unreasonably discriminate among providers of functionally equivalent Services; and c) they do not regulate Personal Wireless Services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated Services and Facilities comply with the FCC's regulations concerning such emissions.

### **8.3 Definitions:**

ACT - The Telecommunications Act of 1996.

ADEQUATE COVERAGE - Coverage is considered to be "adequate" within that area surrounding a Base Station where the predicted or measured median field strength of the transmitted signal for at least 75% of the covered area is greater than -95 dbm. It is acceptable for there to be holes within the area of Adequate Coverage where the signal is less than -95 dbm, as long as the signal regains its strength to greater than -95 dbm further away from the Base Station. For the limited purpose of determining whether the use of a Repeater is necessary or desirable, there shall be deemed not to be Adequate Coverage within said holes. The outer boundary of the area of Adequate Coverage, however, is that location past which the signal does not regain a strength of greater than -95 dbm.

ADEQUATE CAPACITY - Capacity is considered to be "adequate" if the Grade of Service is p.05 or better for a worst case day in a preceding month, based on the Erlang B Tables, prior to the date of Application; or as measured using direct traffic measurement of the Personal Wireless Service Facility in question for existing Facilities requesting Major Modification, and where the call blocking is due to frequency contention at the antenna(s).

ANTENNA - A device which is attached to a Tower, or other structure for transmitting and receiving electromagnetic waves.

BASE STATION - The primary sending and receiving site in a wireless telecommunications network.

CHANNEL - The segment of the radiation spectrum from an Antenna which carries one signal. An Antenna may radiate on many Channels simultaneously.

COMMUNICATION EQUIPMENT SHELTER - A structure located at a Base Station designed principally to enclose equipment used in connection with Personal Wireless Service transmissions.

dbm - Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced by 1 milliwatt.

EMF - Electromagnetic Frequency Radiation.

FACILITY SITE - A property, or any part thereof, which is owned or leased by one or more Personal Wireless Service Providers and upon which one or more Personal Wireless Service Facilities and required landscaping are located.

FACILITY/TOWER SPECIAL PERMIT (F/TSP) - The Special Permit required to be obtained in order to install any Tower or Personal Wireless Service Facility or for any Major Modification of an existing Facility.

FCC - Federal Communications Commission. The Federal agency responsible for regulating telecommunications in the United States.

FCC 96-326 - A Report and Order which sets new national standards for emissions of Radio-Frequency emissions from FCC-regulated transmitters. This Report and Order is now contained with title 47 Regulations, Section 1, §1.1307.

GRADE OF SERVICE - A measure of the percentage of calls, which are able to connect to the Base Station, during the busiest hour of the day. Grade of Service is expressed as a number, such as p.05 - which means that 95% of callers will connect on their first try. A lower number (p.04) indicates a better Grade of Service.

MAJOR MODIFICATION OF AN EXISTING FACILITY - Any change, or proposed change in power input or output, number of Antennas, change in Antenna type or model, repositioning of Antenna(s), change in number of Channels per Antenna above the maximum number approved under an existing Special Permit. Also any increase, or proposed increase in dimensions of an existing and permitted Tower or other structure designed to support Personal Wireless Service transmission, receiving and/or relaying antennas and/or equipment.

MAJOR MODIFACATION OF AN EXISTING REPEATER – Any removal or change in location of any Repeater(s) from the Site(s) for which a Repeater Special Permit has been received.

MONITORING - The measurement, by the use of instruments in the field, of the radiation from a Site as a whole, or from individual Personal Wireless Service Facilities, Towers, Antennas or Repeaters.

MONITORING PROTOCOL - The testing protocol, initially the Cobbs Protocol, which is to be used to monitor the emissions from existing and new personal Wireless Service Facilities and Repeaters upon adoption of this Article. The SPGA may, as the technology changes, require, by written regulation, the use of other testing protocols. A copy of the Monitoring Protocol shall be on file with the Town Clerk.

MONOPOLE - A single self-supporting vertical pole with below grade foundations.

PERSONAL WIRELESS SERVICES - Commercial Mobile Services, unlicensed wireless services, and common carrier wireless exchange access services. These services include: cellular services, personal communications services (PCS), Specialized Mobile Radio Services, and Paging Services.

PERSONAL WIRELESS SERVICE FACILITY - All equipment (excluding any Repeaters) with which a Personal Wireless Service Provider broadcasts and receives the radio-frequency waves which carry their services and all locations of said equipment or any part thereof. This Facility may be sited on one or more Towers or structure(s) owned and permitted by another owner or entity.

PERSONAL WIRELESS SERVICE PROVIDER - An entity, licensed by the FCC to provide Personal Wireless Services to individuals or institutions.

RADIATION PROPAGATION STUDIES OR RADIAL PLOTS - Computer-generated estimates of the radiation emanating from Antennas or Repeaters sited on a specific Tower or structure. The height above mean sea level, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations.

REPEATER - A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive Adequate Coverage directly from a Base Station.

REPEATER SITE - The location within the Town of West Stockbridge leased by one or more Personal Wireless Service Providers and upon which one or more Repeater(s) and required camouflage or screening are located.

REPEATER SPECIAL PERMIT (RSP) - The Special Permit required to be obtained in order to install any Repeater, or for Major Modification Of An Existing Repeater within the Town of West Stockbridge.

SPECIAL PERMIT GRANTING AUTHORITY (SPGA) - The Planning Board shall be the SPGA for this use.

TELEPORT - A multi-user commercial facility utilizing satellite dishes of greater than 2.0 meters in diameter designed to uplink to communications satellites for transmission of data.

TOWER - A monopole, lattice, or other structure that is designed to support personal Wireless Service transmission, receiving and/or relaying antennas and/or equipment.

## **8.4 SCOPE**

**8.4.1** This Article specifically exempts the following wireless telecommunications facilities: police, fire, ambulance and other emergency dispatch, citizen band radio, and amateur radio towers used exclusively by a federally licensed amateur radio operator. No Personal Wireless Service Facility or Repeater shall be considered exempt from this Article for any reason whether or not said Facility or Repeater is proposed to share a Tower or other structure with such exempt uses.

**8.4.2** There shall be no Teleport(s) within the Town of West Stockbridge.

## **8.5 Requirement of Special Permit**

No Personal Wireless Service Facility, Tower, or Repeater shall be erected, constructed, or installed or undergo Major Modification without first obtaining a Special Permit from the SPGA

in accordance with the requirements set forth herein. One or both of two kinds of Special Permits are required: a) A Facility/Tower Special Permit (hereforth F/TSP) for new Facility/Tower construction (or Major Modification Of An Existing Facility); b) A Repeater Special Permit (hereforth RSP) for Repeater(s) to be mounted on an existing, or newly permitted Tower or structure (or Major Modification Of An Existing Repeater).

## **8.6 Application Requirements**

**8.6.1** For Personal Wireless Service Facilities or Towers a F/TSP is required. Applicant must submit all information required in §8.6.2. For all Repeaters proposed for installation, an RSP is required. An RSP may be applied for by an Applicant who is currently applying for a F/TSP under this Article, or by an Applicant who has previously received a F/TSP under this Article or by an entity which is providing Personal Wireless Services to the Town of West Stockbridge from a base station outside the Town. Applicant must submit all information required in §8.6.3. If Applicant is applying for both Permits, they shall be submitted and examined concurrently.

### **8.6.2 Application Requirements for Facilities or Towers**

**8.6.2.1** General - The application shall include the following information:

**8.6.2.1.1** The exact legal name, address or principal place of business and phone number of the Applicant. If any Applicant is not a natural person, it shall also give the state under which it was created or organized.

**8.6.2.1.2** The name, title, address and phone number of the person to whom correspondence or communications in regard to the application are to be sent. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the Applicant.

**8.6.2.1.3** Name, address, phone number and written consent to apply for this permit, of the owner of the property on which the proposed Personal Wireless Service Facility and/or Tower shall be located, or the owner(s) of the Tower or structure on which the proposed Personal Wireless Service Facility shall be located.

**8.6.2.2** Engineering Requirements - Reports prepared by one or more professional engineers, which shall include the following:

**8.6.2.2.1** Copies of all submittals and showings pertaining to: FCC Licensing; Environmental Impact Statements; Federal Aviation Administration Notice of Construction or Alteration; Aeronautical Studies; and, all data, assumptions and calculations relating to service coverage and power levels regardless of whether categorical exemption from Routine Environmental Evaluation under the FCC rules is claimed.

**8.6.2.2.2** Copies of all information submitted in compliance with the requirements of Massachusetts Department of Public Health, 105CMR 122 FIXED FACILITIES WHICH GENERATE ELECTROMAGNETIC FIELDS IN THE FREQUENCY RANGE OF 300 kHz TO 100 GHz AND MICROWAVE OVENS, or any revisions thereof as the Department of Public Health may, by written notice, create.

**8.6.2.3** Adequate Coverage, Adequate Capacity and Justification of Need for F/TSP:

**8.6.2.3.1** Applicant shall provide written documentation of any Facility Site(s) in West Stockbridge, and any sites in abutting towns located within five miles of any boundary of the Town of West Stockbridge, in which it has a legal or equitable interest, whether by ownership, leasehold, or otherwise. For each



such Facility Site, it shall demonstrate with written documentation that this Facility Site is not already providing, or does not have the potential by adjusting the Site, to provide Adequate Coverage and/or Adequate Capacity to the Town of West Stockbridge. The documentation shall include, for each Facility Site listed:

- 8.6.2.3.1.1** The exact Tower location (in Longitude and Latitude, to degrees, minutes, seconds), ground elevation above mean sea level at the Tower location, height of Tower or structure, and height of proposed antennas on tower or structure.
- 8.6.2.3.1.2** Type, manufacturer and model number of antennas, and antenna gain.
- 8.6.2.3.1.3** Output frequency, number of channels, power input, and maximum power output per channel.
- 8.6.2.3.1.4** Potential adjustments to these existing Facility Sites, including changes in Antenna type, orientation, gain, height or power output shall be specified.
- 8.6.2.3.1.5** Radial plots from each of these Facility Sites, as they exist, and with adjustments as above, shall be provided as part of the Application.

**8.6.2.3.2** Applicant shall demonstrate with written documentation that they have examined all existing Facility Sites located in West Stockbridge and in the sites in abutting towns located within five miles of any boundary of the Town of West Stockbridge, in which Applicant has no legal or equitable interest, whether by ownership, leasehold, or otherwise to determine whether those existing Facility sites can be used to provide Adequate Coverage and/or Adequate Capacity to the Town of West Stockbridge. The documentation shall include, for each existing Facility Site examined:

- 8.6.2.3.2.1** The exact Tower location (in Longitude and Latitude, to degrees, minutes, seconds), ground elevation above mean sea level at the Tower location, height of Tower or structure, and height of proposed antennas on tower or structure.
- 8.6.2.3.2.2** Type, manufacturer and model number of antennas, and antenna gain.
- 8.6.2.3.2.3** Output frequency, number of channels, power input, and maximum power output per channel.

Radial Plots from each of these existing Facility Sites, configured as documented above, shall be provided as part of the Application.

Notwithstanding anything else in this section 8.6.2.3.2, applicant may request that the requirement to provide documentation be waived or modified as to any or all existing Facility Sites outside the Town of West Stockbridge and not less than three miles from any boundary of the Town of West Stockbridge. Such a request shall be submitted in writing and shall be supported by a statement of reasons and supporting material. The Planning Board may waive or modify said requirement if it finds that consideration of the documentation as to which waiver is sought is not necessary because the intended technology is clearly not feasible for use at said site. The Planning Board's finding as to the waiver request shall be based on all the evidence, which may include but is not limited to then current industry standards, government regulatory standards or materials, and input from the Planning Board's Independent Consultant.

8.6.2.3.3 Applicant shall demonstrate with written documentation that it has analyzed the feasibility of Repeaters in conjunction with all existing Facility Sites listed in compliance with §8.6.2.3.1 and 8.6.2.3.2 (above) to provide Adequate Coverage and/or Adequate Capacity to the Town of West Stockbridge. Radial Plots of all Repeaters considered for use in conjunction with these Facility Sites shall be provided as part of the Application.

**8.6.2.4** The following engineering plans, prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts. (Note: survey plans shall also be stamped and signed by a Professional Land Surveyor registered in Massachusetts.) Plans shall be on 24 x 36" sheets, on as many sheets as necessary, and at scales which are no smaller (i.e. no less precise) than listed below in §8.6.2.4.1. Each plan sheet shall have a title block indicating a project title, sheet title, sheet numbers, date, revision dates, scale(s), and original seal and signature of the P.E. and other professionals who prepared the plan.

**8.6.2.4.1** Proposed Site Plans: Proposed Facility Site Layout, grading and utilities at a scale no smaller than 1" = 40' (1:480) or metric equivalent 1:500) showing the entire vicinity within a 400' radius of the Tower site with topography drawn with a maximum of 2' (0.6 meter) contour interval, and including:

**8.6.2.4.1.1** Proposed Tower location and appurtenances, if any, and any accessory building (Communication Equipment Shelter or other). Indicate property boundaries and setback distances to the base(s) of the Tower and to the nearest corners of each of the appurtenant structures to those boundaries, and dimensions of all proposed improvements. The site plan shall include the location of all abutting properties within 300' of the tower property and names of current owners of each.

**8.6.2.4.1.2** Limits of areas where vegetation is to be cleared or altered and justification for any such clearing or alteration.

**8.6.2.4.1.3** Plans for proposed access driveway or roadway and parking area at the Facility Site. Include grading, drainage and traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.

**8.6.2.4.2** Proposed Tower and Appurtenances:

**8.6.2.4.2.1** Plans, elevations, sections and details at appropriate scales but no smaller than 1" = 10'.

**8.6.2.4.2.2** Two cross sections through proposed Tower drawn at right angles to each other, and showing the ground profile to at least 100 feet beyond the limit of clearing. Indicate proposed spot elevations at the base of the proposed Tower. Indicate the proposed height of Tower above average grade at Tower base. Indicate the maximum allowable structural height of the Tower after addition of any modular sections. Show all proposed antennas, including their location on the Tower.

**8.6.2.4.2.3** Details of typical Tower foundation, including cross sections and details. Show all ground attachments, specifications for anchor bolts and other anchoring hardware.

**8.6.2.4.2.4** Detail proposed exterior finish and camouflage of the Tower.

**8.6.2.4.2.5** Indicate relative height of the Tower to the tops of surrounding trees as they presently exist.

**8.6.2.4.3** Proposed Communications Equipment Shelter:

**8.6.2.4.3.1** Floor Plans, elevations and cross sections at a scale of no smaller than 1/4" = 1' (1:48) of any proposed appurtenant structure.

**8.6.2.4.3.2** Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.

**8.6.2.4.4** Proposed Equipment Plan:

**8.6.2.4.4.1** Plans, elevations, sections and details at appropriate scales but no smaller than 1" = 10'.

**8.6.2.4.4.2** Number of Antennas and Repeaters (if any), as well as the exact location of all Repeaters (if any) located on a map as well as by Degrees, minutes and seconds of Latitude and Longitude.

**8.6.2.4.4.3** Mounting locations on Tower or structure, including height above ground.

**8.6.2.4.4.4** Antenna type(s), manufacturer(s) model number(s).

**8.6.2.4.4.5** For each Antenna, the Antenna gain and Antenna radiation pattern.

**8.6.2.4.4.6** Number of channels per Antenna, projected and maximum.

**8.6.2.4.4.7** Power input to the Antenna(s).

**8.6.2.4.4.8** Power output, in normal use and at maximum output for each Antenna and all Antennas as an aggregate.

**8.6.2.4.4.9** Output frequency of the Transmitter(s).

**8.6.2.5** Details of proposed method of financial surety as required in Section 8.13.

**8.6.2.6** A written, irrevocable commitment valid for the duration of the existence of the Tower, to rent or lease Available Space for co-location on the Tower at fair market prices and terms, without discrimination to other Personal Wireless Service Providers.

**8.6.3** Application Requirements for RSP:

The use of Repeaters to assure Adequate Coverage, or to fill holes within areas of otherwise Adequate Coverage, while minimizing the number of required Towers is permitted and encouraged. An Applicant who has received, and is in compliance with a current F/TSP under this Article, or an entity which is providing Personal Wireless Services to the Town of West Stockbridge from a base station outside the Town, may apply for a RSP. Applicants for RSP shall provide the following information:

**8.6.3.1** exact location (in Longitude and Latitude, to degrees, minutes, seconds) as well as by street address or Pole number (if applicable);

**8.6.3.2** ground elevation;

**8.6.3.3** type, manufacturer and model number of proposed Repeater;

**8.6.3.4** height of proposed Repeater above ground;

- 8.6.3.5** proposed output frequency;
- 8.6.3.6** proposed number of channels;
- 8.6.3.7** proposed power input;
- 8.6.3.8** proposed maximum power output per channel;
- 8.6.3.9** Radial Plots from any proposed Repeater(s), configured as documented above, shall be provided as part of the Application;
- 8.6.3.10** name, address, phone number, and written consent to apply for this permit, of the owner of the property on which the proposed Repeater shall be located, and of the owner(s) of the Tower or structure on which the proposed Repeater shall be located;
- 8.6.3.11** proposed Repeater Site layout, grading and utilities at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) showing the entire vicinity within a 300' radius of the Repeater Site with topography drawn with a minimum of 2' (0.6 meter) contour interval;
- 8.6.3.12** proposed Repeater location and appurtenances, if any, and any accessory building (Communication Equipment Shelter or other). The site plan shall include the location of all abutting properties within 300' of the tower property and names of current owners of each;
- 8.6.3.13** limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration;
- 8.6.3.14** plans of any proposed access driveway or roadway and parking area at the Repeater site. Include grading, drainage, and traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.

**8.7 General Requirements for Issuance of F/TSP(s):**

- 8.7.1** Provision of Service -- No new facility or tower shall be permitted unless the Board finds that Applicant cannot provide Adequate Coverage and Adequate Capacity from existing Facility Sites, either controlled by Applicant or on which Applicant could reasonably co-locate.

A Special Permit shall not be granted for a Tower to be built on speculation. If Applicant is not, itself simultaneously installing a Personal Wireless Service Facility on the Tower, it shall provide a copy of its existing lease/contract with a Personal Wireless Service Provider. Said Provider shall provide all necessary data to comply with the terms of this Article, as part of Applicant's Application for a F/TSP or the Special Permit shall not be granted.

If primary coverage (greater than 50%) from proposed Personal Wireless Service Facility is outside West Stockbridge, then the permit may be denied unless the Applicant demonstrates to the satisfaction of the SPGA that the Applicant is unable to locate within the Town which is primarily receiving service from the proposed Facility.

**8.7.2 Environmental Conditions**

- 8.7.2.1** In general, Towers and Personal Wireless Services Facilities shall be located so as to provide Adequate Coverage and Adequate Capacity with the least number of Towers and Antennas which is technically and economically feasible.

**8.7.2.2** In furtherance of the above, the following locations are ranked in order of preference:

- a. Shared use of existing Personal Wireless Service Facilities
- b. Clustering of Towers: Applications for Towers adjacent to Existing Towers
- c. The use of municipal lands which comply with other requirements of this Article, and where visual impact can be minimized and mitigated
- d. The use of Repeaters to provide Adequate Coverage without requiring new Tower(s)
- e. The use of land, distant from higher density residential properties, and where visual impact can be minimized.

**8.7.2.3** Those towers which are necessary shall minimize, to the extent feasible, adverse visual impacts on the environment. The SPGA may impose reasonable conditions to ensure this result, including but not limited to, requiring the use of camouflage, painting, lighting standards and screening, or the mimicking of a tree or other appropriate object. Towers shall, when possible, be sited off ridge lines, and where their visual impact is least detrimental to highly rated scenic areas. (See, for example, Massachusetts Landscape Inventory, MGL ch. 131. Sec. 39A: Conducted by Massachusetts Department of Environmental Management, 1982.)

**8.7.2.4** A vegetated buffer strip of undisturbed trees of at least 100' in depth (or less if determined by the SPGA to be sufficient), shall be retained as close to the Tower as possible, but in all cases there shall be no clearing at a distance in excess of 25 feet in radius from the base of the Tower except where the access drive is located.

**8.7.2.5** No Tower or Personal Wireless Service Facility with the exception of Repeaters shall be located within any of the following prohibited areas:

**8.7.2.5.1** Massachusetts or federally regulated wetland

**8.7.2.5.2** A Massachusetts Certified Vernal Pool

**8.7.2.5.3** The habitat of any State-listed Rare or Endangered Wildlife or Rare Plant Species

**8.7.2.5.4** Within 100 feet horizontally from any Massachusetts regulated wetland

**8.7.2.5.5** Within 200 feet horizontally of the Outer Riparian Zone of any river of perennial stream, as defined in the Wetland's Protection Act and regulations thereunder

**8.7.2.5.6** Within 500 feet horizontally from any Historic District or property listed on the state or federal Register of Historic Places or determined by the Massachusetts Historic Commission to be eligible for such listing

**8.7.2.5.7** Within 500 feet horizontally from any known archaeological site, pursuant to MGL C. 9 § 26

**8.7.2.6** In addition to the above, Towers and Personal Wireless Service Facilities shall be located so as to minimize the following potential impacts:

**8.7.2.6.1** Diminution of residential property values: Siting shall be in as low population density as areas as possible

**8.7.2.6.2** Unsafe structural conditions and attractive nuisance

**8.7.2.6.3** Excessive electromagnetic radiation: In case the Tower or Personal Wireless Service Facility is found in excess of the FCC guidelines.

**8.7.3 Physical Plant**

- 8.7.3.1** Fencing: The area around the Tower and Communication Equipment Shelter(s) shall be completely fenced for security within an area no greater than 25 feet in radius from the base of the Tower, and to a height of six feet, and gated. Use of razor wire is not permitted.
- 8.7.3.2** Signs: There shall be no signs except the following: A sign no greater than two (2) square feet indicating the name of the Personal Wireless Service Facility's owner(s) and a 24 hour emergency telephone number shall be posted adjacent to the entry gate. In addition, No Trespassing or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of this Bylaw.
- 8.7.3.3** Communication Equipment Shelters and Accessory Buildings shall be designed to be architecturally similar and compatible with each other, and shall be no more than 12 feet high. The buildings shall be used only for the housing of equipment related to this particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.
- 8.7.3.4** New Towers shall not exceed the minimum height necessary as determined by the SPGA to provide Adequate Coverage from the Personal Wireless Service Facility(ies) proposed for use on the Tower, and shall in no event exceed 190 feet.
- 8.7.3.5** Towers shall be located at least on and one-half times their maximum structural height from the outer boundaries of the site in which the Tower is located.
- 8.7.3.6** To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of Personal Wireless Service Providers which are reasonably likely to utilize the site to provide services to the Town of West Stockbridge and surrounding areas.
- 8.7.3.7** Unless required by the Federal Aviation Administration, no night lighting of Towers, or the Personal Wireless Facility, is permitted, except for manually operated emergency lights for use only when operating personnel are on site.
- 8.7.3.8** No Tower or Personal Wireless Service Facility that would be classified as a hazard to air navigation, as defined by the Federal Aviation regulations (Title 14 CFR) is permitted.
- 8.7.3.9** Tower(s) must be of a type which will maximize potential sharing. Lattice type structures are preferred, but where a Monopole is requested, Applicant must demonstrate the future utility of such structure for expansion of service for Applicant and other future Applicants.
- 8.7.3.10** Commercial advertising shall not be allowed on any Antenna, Tower, or Accessory Building or Communication Equipment Shelter.

**8.8 General Requirements for RSP(s):**

- 8.8.1** No repeater shall be located closer than 50 feet to an existing Dwelling Unit, nor less than 25 feet above ground.
- 8.8.2** The SPGA may require the use of screening, painting, or camouflage to reduce the visual impact of Repeaters.

**8.8.3** Repeaters shall be located so as to have the least impact on the views of residents of the Town of West Stockbridge.

## **8.9**

**8.9.1** Upon submission of an Application for any Special Permit under this Article, the Applicant shall pay a review fee determined by the SPGA, consisting of reasonable costs to be incurred by the SPGA for the employment of independent consultants. The SPGA shall select the Independent Consultant(s). These Consultants shall each be qualified professionals with a record of service to municipalities in one of the following fields, as appropriate: 1) telecommunications engineering, 2) structural engineering, 3) monitoring of electromagnetic fields, and if determined necessary by the SPGA, 4) other relevant fields of experience as determined by the SPGA.

**8.9.2** Upon submission of a complete Application for any Special Permit(s) under this Article, the SPGA shall provide its Independent Consultant(s) with the full Application(s) for their analysis and review.

**8.9.3** Applicants for any Special Permit(s) under this Article shall grant permission for the Town's Independent Consultant(s), to conduct any necessary site visit(s), or obtain permission from the owner(s) of the proposed site(s) for any site visit(s).

## **8.10 Approval Criteria:**

**8.10.1** In acting on any Special Permit Application, the SPGA shall proceed in accordance with the procedures and time lines established for the Special Permits in state law, this by-law, and other applicable law.

**8.10.2** In addition to the findings required by the Zoning Bylaw by special permits generally, the SPGA shall make the following findings before granting the Special Permit:

**8.10.2.1** Applicant is not already providing Adequate Coverage and/or Adequate Capacity to the Town of West Stockbridge.

**8.10.2.2** Applicant has agreed to rent or lease Available Space on the Tower, under the terms of a fair-market lease, without discrimination to other Personal Wireless Service Providers.

**8.10.2.3** Applicant is not able to use Existing Tower/Facility Sites in or around the Town of West Stockbridge, either with or without the use of Repeaters, to provide Adequate Coverage and/or Adequate Capacity to the Town of West Stockbridge.

**8.10.2.4** Proposed Personal Wireless Service Facility/Tower or Repeater will not be likely to have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources.

**8.10.2.5** Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the Towers or Facilities.

**8.10.2.6** Emergency access to the site via the planned drive or roadway is adequate: the SPGA shall request and consider input from the Chiefs (or the designees) of Fire, Police and other Emergency services regarding this issue.

**8.10.2.7** The proposal shall comply with FCC 96-326 and any and all other applicable FCC regulations, regarding emissions of electromagnetic radiation and that the required Monitoring program is in place and shall be paid for by the Applicant.

**8.10.2.8** The General Requirements (Sections 8.7 and/or 8.8) have been met.

**8.10.3** Any decision by the SPGA to deny an Application for a Special Permit under this Article shall be in conformance with Sec. 332 [47 U.S.C. 332] (7)(B)(ii)(iii) of the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

**8.11 Monitoring and Evaluation of Compliance:**

**8.11.1** Initial Monitoring: It shall be a condition of any Special Permit granted under this Bylaw that, in order to determine the Tower and Facility's or Repeater's radio frequency emissions and their compliance with FCC regulations, the Applicant shall, after the granting of a Special Permit and within 30 days of the date that Applicant's Personal Wireless Facility(ies) or Repeater(s) begin(s) transmission, pay for an Independent Consultant, hired by the Town, to Monitor the levels of EMF radiation, around the proposed Facility and/or Repeater site(s). The Independent Consultant shall use the Monitoring Protocol. A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the Planning Board, Board of Selectmen, the Board of Health, the Zoning Board of Appeals, the Building Inspector, the Conservation Commission, and the Town Clerk.

**8.11.2** Ongoing Monitoring: It shall be a condition of any Special Permit granted under this Bylaw that, in order to determine ongoing compliance with FCC regulation, after transmission begins, the owner(s) of any Personal Wireless Service Facility(ies) or Repeater(s) located on any Facility or Repeater Site shall pay for an Independent Consultant, hired by the Town, to conduct annual testing and Monitoring of EMF radiation emitted from said Site, and to report results of said Monitoring, as follows:

**8.11.2.1** There shall be annual Monitoring of emissions by the Independent Consultant using actual field measurement of radiation, utilizing the Monitoring Protocol. This Monitoring shall measure levels of EMF radiation from the Facility Site's primary Antennas as well as from Repeater Site(s), (if any). A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the Planning Board, the Board of Selectmen, the Board of Health, the Zoning Board of Appeals, the Building Inspector, the Conservation Commission, and the Town Clerk.

**8.11.2.2** Any Major Modification of Existing Facility, or the activation of any additional permitted channels, or the re-activation of any facility which has been idle for six months shall be cause for new Initial Monitoring in accordance with §8.11.1.

**8.11.2.3** Excessive Emissions: Should the Monitoring of a Facility or Repeater Site reveal that the Site exceeds the FCC 96-326 standard, or any other applicable FCC standard, then the owner(s) of all Facilities utilizing that Site shall be so notified. The owner(s) shall submit to the SPGA, the Board of Selectmen and the Building Inspector a plan for the reduction of emissions to a level that complies with the FCC 96-326 standard and any and all other applicable FCC regulations within 10 business days of notification of non-compliance. That plan shall reduce emissions to the applicable FCC standard within 15 days of initial notification of non-compliance. Failure to accomplish this reduction of emission within 15 business days of initial notification of non-compliance shall be a violation of the Special Permit and subject to penalties and fines as specified in this Zoning Bylaw. Such fines shall be payable by the owner(s) of the Personal Wireless Service Facilities with Antennas on the Facility Site, until compliance is achieved.

**8.11.2.4** Structural Inspection: It shall be a condition of the Special Permit that Tower owner(s) shall pay for any Independent Consultant (a licensed professional structural engineer), hired by the Town, to conduct inspections of the Tower's structural integrity and safety. Towers shall be inspected every five years. A report of the inspection results shall be prepared by the Independent Consultant and submitted to the Board of Selectmen, the Planning Board, the Board of Health, the Building Inspector, and the Town Clerk. Any Major Modifications or Existing Facility which includes changes to Tower dimensions or antenna numbers or type shall require new structural inspection.



**8.11.2.5 Unsafe Structure:** Should the inspection of any tower reveal any structural defect(s) which, in the opinion of the Independent Consultant render(s) that Tower unsafe, the following actions must be taken: Within 10 business days of notification of unsafe structure, the owner(s) of the Tower shall submit a plan to remediate the structural defect(s). This plan shall be initiated within 10 days of the submission of the remediation plan, and completed as soon as reasonably possible. Failure to accomplish this remediation of structural defect(s) within 10 business days of initial notification shall be a violation of the Special Permit and subject to penalties and fines as a zoning violation. Such fines shall be payable by the owner(s) of the Tower, until compliance is achieved.

**8.12 Removal Requirements:**

Any personal Wireless Service Facility or Repeater which ceases to operate for a period of one year shall be removed. Cease to operate is defined as not performing the normal functions associated with the Personal Wireless Facility or Repeater and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the Facility or Repeater Site shall be remediated such that all Personal Wireless Service Facility or Repeater improvements which have ceased to operate are removed. If all Facilities on a Tower have ceased to operate, the Tower shall also be removed, and the Facility or Repeater Site, including any access road(s) which lead to that Facility or Repeater Site from the main access road, shall be revegetated. If all Facility or Repeater Sites have ceased to operate, the owner of the last Personal Wireless Service Facility or Repeater to leave the site shall revegetate the access road in its entirety. Existing trees shall only be removed with the written permission of the SPGA, and only if the SPGA determines such removal of trees to be necessary to complete the required removal of Personal Wireless Service Facility(s) or Repeater(s).

**8.13 Performance Guarantees:**

**8.13.1** Applicant shall, as a condition of the Special Permit:

**8.13.1.1** Post an initial cash bond in a reasonable amount determined and approved by the SPGA. This bond shall be in force to cover the costs of the remediation of any damage to the landscape which occurs during the clearing of the Site; and to cover the cost of the removal of the Tower or Facility or Repeater from the Site, and remediation of the landscape, should the Facility or Repeater cease to operate.

**8.13.1.2** Post a maintenance bond for the access road(s), site(s), and tower(s) in amounts approved by the SPGA.

**8.14 Fees and Insurance:**

8.14.1 Towers, Personal Wireless Service Facilities and Repeaters shall be insured by the owner(s) against damage to persons or property. The owner(s) shall provide a Certificate of Insurance to the SPGA and the Selectmen's Office on an annual basis. For Towers, Facilities and Repeaters located on property owned by the Town of West Stockbridge, the Town of West Stockbridge shall be an additional named insured.

8.14.2 A schedule of fees for Personal Wireless Service Facility, Tower or Repeater permitting and renewal, any Monitoring of emissions and inspection of structures, and any other fees shall be established by the SPGA pursuant to MGL c.40A, §9. This schedule may be amended from time to time.

### **8.15 Permit Expiration and Renewal:**

**8.15.1** Any Special Permit granted under this section shall lapse if the Applicant fails to begin construction on the Facility or Tower or Repeater within a two year period of said grant.

**8.15.2** All Special Permits granted under this section shall be granted for five years. The SPGA shall renew said Special Permit for additional five year period(s) if the SPGA, upon application filed prior to the expiration of any five year period, determines that the Tower and/or Facility and/or Repeater so permitted shall have been and shall remain in compliance with all terms and conditions of this Bylaw and of any conditions placed upon the original Special Permit at the time of granting.

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

## **SECTION 9: ADMINISTRATION AND ENFORCEMENT**

### **9.1 Enforcement by Building Inspector**

This By-Law shall be enforced by the Building Inspector appointed by the Board of Selectmen as provided in the State Building Code.

**9.1.1** No permit shall be issued by the Building Inspector unless the application for a permit indicates compliance with this By-Law and any other applicable Town By-Laws and regulations, the State Sanitary Code and; the Board of Health Regulations, the Planning Board's Subdivision Control Regulations, and the Wetlands' Protection Act, if applicable.

**9.1.2** No permit or license shall be granted for a new use of a building, structure or land which use would be in violation of this By-Law.

### **9.2 Construction and Use to be as Provided in Permits**

**9.2.1** Special permits or building permits issued on the basis of plans and applications approved by the Board of Selectmen, Board of Health, Planning Board or the Board of Appeals authorize only the use, arrangement and construction as set forth in such approved plans and applications. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this By-Law and punishable as provided herein.

**9.2.2** Construction or operation under a building or special permit shall conform to any subsequent amendment of this By-Law unless the permit is issued before the first publication of the required notice of public hearing by the Planning Board on such amendment, and the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

### **9.3 Frontage Requirement for Building Lots**

No building permit shall be issued by the Building Inspector unless the lot on which the construction is proposed has at least the required minimum frontage on an accepted public way, or on a way shown on an approved and recorded subdivision plan, or on a way otherwise qualifying or approved by the Planning Board under the Subdivision Control Law.

**SECTION 10: AMENDMENT AND VALIDITY**

**10.1 Amendment**

**10.1.1** This By-Law may be amended from time to time in an annual or special town meeting in accordance with Chapter 40A, Section 5 of the General Laws.

**10.1.2** No zoning By-Law or amendment thereto shall be adopted until after the Planning Board has held a public hearing thereon, for which a notice has been published, posted and mailed as provided in Section 5, Chapter 40A (G.L.), and has made a report with recommendations to the town meeting or after twenty-one (21) days shall have elapsed after such hearing without submission of such report.

- a. Any non-resident property owner may request that notice of hearing by the Planning Board on any Zoning By-Law amendment be sent by mail to him (her) by the Town Clerk. Such request must be filed annually with the Town Clerk no later than January first accompanied by five dollars (\$5) fee. A separate, conspicuous statement shall be included annually with all tax bills sent to non-resident property owners informing them of this provision.

**10.2 Validity**

**10.2.1** In their interpretation and application, the provisions of this By-Law shall be held to be minimum requirements. Wherever the requirements of this By-Law are at variance with the requirements of any other lawfully adopted regulations or By-Laws, or with deed restrictions or covenants, the most restrictive or the one imposing the higher standards, shall govern.

**10.2.2** This By-Law, or any amendment thereto, shall take effect on the date on which such adoption or amendment is voted by the town meeting.

**10.2.3** This By-Law repeals and replaces the Zoning By-Law adopted originally on \_\_\_\_\_ and any other subsequent amendments made thereto.

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