

Chapter 275

ZONING

SECTION 1
Title, Authority and Purpose

1.1. Title.

This bylaw shall be known as the "Zoning Bylaw of the Town of West Stockbridge, Massachusetts", hereinafter referred to as "this bylaw".

1.2. Authority.

This bylaw 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 bylaw 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: floodplains 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. Word usage and interpretation.

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

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 words "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 meanings 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. Terms defined.

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

ACCESSORY APARTMENT — A second dwelling unit located within a structure constructed as a single-family dwelling, subordinate in size to the principal dwelling unit and constructed so as to maintain the appearance of the structure as a single-family dwelling.

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.

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 persons, animals, chattels, or property of any kind.

All dwellings to include farm animal restrictions.

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.

DWELLING, MULTIFAMILY — 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, SINGLE-FAMILY — A detached residential building containing one dwelling unit and occupied by one family only; but not including mobile homes, whether placed on a foundation or not.

DWELLING, TWO-FAMILY — A detached residential building containing two dwelling units, designed for occupancy by not more than two families living independently of each other.

FAMILY — One or more individuals related by blood, marriage, or adoption, or not more than five individuals who are not so related, living in a single dwelling unit.

FAST-FOOD EATING ESTABLISHMENT — 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.

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.

GROSS AREA — The overall area of all habitable or occupied space of a building on all floors, measured to the outside face of exterior walls, excluding decks and porches, and excluding uninhabitable basements, attics, and mechanical spaces. **[Added 2-27-2017 STM by Art. 2]**

GUESTHOUSE — A dwelling in which more than four rooms are rented by a 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 bylaw, "home occupation" does not include a gift shop or similar common retail or wholesale establishment.

HOTEL — A building with six or more rooms in which lodging is offered to paying guests with customary hotel services, including feeding in a central dining room on a transient or permanent basis.

KENNEL — A structure and other facilities for the keeping of more than three dogs, more than six months old, or three or more 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 bylaw.

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 bylaw shall not be less than 40 feet at any point along its frontage in order to qualify for frontage under this bylaw. 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 nonoffensive manner. Also, the manufacturing plant and its related activities shall be nonpolluting of our air, water and land.

MIXED USE — A combination of residential and nonresidential uses on a single lot or a combination of one or more nonresidential uses on a single lot. **[Added 2-27-2017 STM by Art. 2]**

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 a flatbed or detachable wheels. For the purpose of this bylaw, 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.

PIGGERY AND FUR FARM — The keeping of two or more pigs or fur-bearing animals exceeding 10 weeks in age shall constitute a piggery or fur farm.

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.

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 1/2 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 1/2 of the normally required right-of-way.

TAG SALE — The occasional (infrequent) sale of common household items, for a period not exceeding three consecutive days.

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, 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 bylaw.

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. [Amended 2-27-2017 STM by Art. 2; 1-14-2019 STM by Art. 1; 9-18-2019 STM by Art. 1]

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

R-1	One-Acre Residence
R-3	Three-Acre Residence
R-D	Residence
C	Commercial
M	Manufacturing
F-P	Floodplain Districts
W-A	Wetland Area
VCOD	Village Core Overlay District
MROD	Marijuana Retail Overlay District
PVOD	Photovoltaic Overlay District

3.2. Location of districts; Zoning Map.

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 bylaw.

3.2.1 Floodplain 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. The Floodplain District includes all special flood hazard areas designated as Zones A, A1-30 on the Town of West Stockbridge Flood Insurance Rate Maps, dated June 1, 1982, on file with the Town Clerk, Planning Board and Building Inspector.
2. Wetlands are shown on the map prepared by Robert G. Brown & Associates, Inc. entitled "Zoning Map - West Stockbridge, Massachusetts," dated June 7, 1978.

3.2.2 The Village Core Overlay District (VCOD) is an overlay district mapped over other districts. It modifies and, where there is inconsistency, supersedes the regulations of those other districts. Except as so modified or superseded, the regulations of the underlying district remain in effect. **[Added 2-27-2017 STM by Art. 2]**

3.2.3 The Marijuana Retail Overlay District (MROD) is an overlay district mapped over other districts. It modifies and, where there is inconsistency, supersedes the regulations of those other districts. Except as so modified or superseded, the regulations of the underlying district remain in effect. **[Added 1-14-2019 STM by Art. 1]**

3.2.4 The Photovoltaic Overlay District (PVOD) is an overlay district mapped over other districts. It modifies and, where there is inconsistency, supersedes the regulations of those other districts. Except as so modified or superseded, the regulations of the underlying district remain in effect. **[Added 9-18-2019 STM by Art. 1]**

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 center lines 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 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 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. General provisions.

Except as provided by law or in this bylaw, 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 4.11 herein.

4.2. (Reserved)

4.3. Multiple buildings on single lot.

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:

- a. Area, width, frontage, yard, and other requirements of this bylaw 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
- b. 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 bylaw.

4.4. Applicability of other laws and regulations.

Every use permitted by right or authorized by special permit under the provisions of this bylaw shall be subject to the State Building Code, State Sanitary Code, and the Town's Board of Health regulations and all other applicable statutes, bylaws, and regulations.

4.5. Floodplains and wetlands.

Any use otherwise permitted in the portion of any zoning district overlaid by a Floodplain District or Wetland Area shall be subject to the restrictions set forth in Sections 6.4 and 6.5, respectively.

4.6. Interpretation of uses.

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. Accessory uses.

Subject to the limitations contained in this bylaw, 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 agricultural structures.

Farm buildings and structures used exclusively for agricultural purposes shall be deemed to be accessory buildings and structures for the purpose of this bylaw. Such buildings and structures may be located on the same lot with the principal permitted use or on separate lots.

4.9. Nuisances prohibited.

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. Large-scale development. [Amended 2-27-2017 STM by Art. 2]

This section is intended to regulate larger-scale development in the Town of West Stockbridge.

4.10.1 Any nonresidential building or use or combination of uses, including mixed uses which include residential components of use, which occupies a gross floor area of 4,500 square feet or more shall, in addition to satisfying any otherwise applicable requirement of this bylaw, be permitted only with a special permit from the Planning Board.

4.10.2 If a special permit is required by this section because the building or use, or combination of uses, is 4,500 square feet or more of gross area and a special permit is also required for one or more of the uses by Subsection 4.11.1, Table of Uses, then only one special permit will be required under Section 4.10, and the applicant must meet all of the standards and requirements of Section 4.10 and all of the applicable standards and requirements for the use or uses as required by Subsection 4.11.1, Table of Uses.

4.10.3 For a building or use or a combination of uses in the VCOD that is 4,500 square feet or more, the Planning Board may reduce the underlying commercial district setback regulations that would be otherwise applicable so as to be no less than the setback requirements of the VCOD overlay district, provided that the following conditions are met:

- a. The proposed structure is in harmony with adjoining structures in terms of mass, proportions of building elements, and general character of building elements.
- b. Main entrances are on the front.

- c. If the proposal includes mixed use, the proposal conforms to all the requirements of Subsection 4.11.3.6.C.
- d. All other applicable regulations are met to the satisfaction of the Planning Board.

4.10.4 Conditions on mixed-use special permits. The special permit granting authority may impose other conditions as it sees necessary on a special permit granted under Section 4.10, as permitted by Subsection 6.3.5.

4.10.5 In addition to the site plan required under Subsection 6.3.6, all special permit applications made under Section 4.10 shall include building floor plans and elevations, drawn to scale, showing all floor areas and the general character of the proposed structure, prepared in a manner that is adequate for the Planning Board to assess conformance of the proposal to the requirements for the special permit.

4.10.6 Uses in the VCOD that are less than 4,500 square feet of gross floor area, in addition to uses in the VCOD greater than 4,500 square feet of gross floor area, which seek to reduce setbacks to less than five feet in the VCOD when frontage of the lot is located on a sidewalk may, by special permit, reduce frontage to up zero feet, provided that:

- a. If existing, the sidewalk has been in existence for at least five years prior to the construction of the new building or buildings being proposed.
- b. If new, the proposed sidewalk extends and connects continuously to at least six other lots and connects to an existing sidewalk that has been in existence for at least five years prior to the construction of the new building or buildings being proposed.
- c. The main entrance to the proposed building is on the front of the building and is connected to the sidewalk.

4.11. Tables of Principal and Accessory Uses.

4.11.1 Table of Principal Uses. **[Amended 2-27-2017 STM by Art. 2; 1-14-2019 STM by Art. 1; 1-14-2019 STM by Art. 4; 9-18-2019 STM by Art. 1]**

Symbols used in the Table of Use Regulations shall mean the following:

- Yes Use permitted by right.
- SPA Use which may be authorized by special permit from the Board of Appeals in accordance with the provisions of Section 6.3 herein.
- SPP Use which may be authorized by special permit from the Planning Board in accordance with the provisions of Section 6.3 herein.
- SPS Use which may be authorized by special permit from the Select Board in accordance with the provisions of Section 6.3 herein.
- NO Specifically excluded or prohibited use.

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
Residential Uses								
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.	Multifamily dwelling, subject to the special requirements set out in Subsection 4.11.3.4	NO	NO	SPP	SPP		NO	
4.	Conversion of a single-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 Subsection 4.11.3.2 hereof	SPP	SPP	SPP	SPP		SPP	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
Institutional, Municipal, and Community Uses								
5.	Religious or education use on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation, 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	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
7.	Public utilities such as a 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.	Nonprofit 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	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
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	
Recreational Uses								
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	
13.	Private club, as defined in this bylaw	SPP	SPP	SPP	SPP		SPP	
14.	Boat house for rental of boats and canoes	SPP	SPP	SPP	SPP		SPP	
Businesses, Industrial and Other Uses								
15.	Hotel or motel as defined in this bylaw	NO	NO	SPP	SPP		NO	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
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	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	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
24.	Office, bank, retail business or consumer service establishment, unless otherwise specifically regulated in this bylaw	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 bylaw; all such uses must meet the requirements of Subsection 4.11.3.1, and the applicant is required to submit an impact statement addressing said requirements	NO	NO	NO	SPP		NO	
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 5 acres of land	YES	YES	YES	YES		YES	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
28.	Piggery or 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.	Junkyards, 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	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
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 shall 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 Subsection 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	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
36.	Mixed use, subject to the specific requirements set forth in Subsection 4.11.3.6	NO	NO	SPP (1)	NO		NO	
37.	Retail sales of medical and adult use (i.e., recreational) marijuana	NO	NO	NO	NO	SPS	NO	
38.	Cultivation of marijuana for commercial purposes	SPP See Sub-section 4.11.3.7.	NO	NO	SPP	NO	SPP See Sub-section 4.11.3.7.	
39.	Marijuana manufacturing and production of marijuana-based products	NO	NO	NO	SPP	NO	NO	
40.	Marijuana testing facility	NO	NO	NO	SPP	NO	NO	
41.	Marijuana transportation business	NO	NO	NO	SPP	NO	NO	
42.	(Reserved)							
43.	Large-scale ground-mounted solar energy system	NO	NO	SPP	SPP		NO	NO
44.	Medium-scale ground-mounted solar energy system	NO	NO	SPP	SPP		NO	YES

4.11.2 Table of Accessory Uses. **[Amended 1-14-2019 STM by Art. 1; 1-14-2019 STM by Art. 4; 9-18-2019 STM by Art. 1]**

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
1.	Home occupation, no on-premises sale: 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	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
2.	Home occupation in connection with off-premises occupation: 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 Subsection 4.11.3.3 hereof	SPP	SPP	YES	YES		SPP	
3.	Home occupation involving sale or delivery of services: 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 Subsection 4.11.3.3 hereof	SPP	SPP	YES	YES		SPP	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
4.	Home occupation involving sale of products made on premises: 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 Subsection 4.11.3.3 hereof	SPP	SPP	YES	YES		SPP	
5.	Home occupation involving sale of products not made on premises: 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 Subsection 4.11.3.3 hereof	NO	NO	SPP	SPP		NO	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
6.	Rental of not more than 4 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 Subsection 6.2.1 have been satisfied	YES	YES	YES	YES		YES	
6a.	Accessory apartment, subject to the requirements of Subsection 4.11.3.5	SPP	SPP	SPP	SPP		SPP	
7.	Guesthouse as defined by this bylaw	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 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	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
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 a subdivision approved by the Planning Board under the Subdivision Control Law							
d.	Municipal or government construction or operation							

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
11.	The display of a sign or signs pertaining to a permitted use as regulated in Section 6.7 in this bylaw, unless specifically prohibited or regulated by other provisions of this bylaw	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	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
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 6 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	
15.	Trailer of a type intended only for camping purposes, stored within sight of a public way in excess of 30 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 40 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	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
17.	Antennas for the purpose of noncommercial 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 15 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 bylaws, in excess of 2 per year	SPS	SPS	SPS	SPS		SPS	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
19.	Marijuana microbusiness, engaged within a dwelling or in an accessory building by a resident of the premises involving no on-premises sales of products, articles, or goods made on or off the premises to consumers and conforming to Subsection 4.11.3.3 hereof	SPP	NO	NO	SPP	SPP	SPP	
20.	Marijuana craft cooperative, engaged within a dwelling or in an accessory building by a resident of the premises involving no on-premises sales of products, articles, or goods made on or off the premises to consumers and conforming to Subsection 4.11.3.3 hereof	SPP	NO	NO	SPP	SPP		
21.	Large-scale ground-mounted solar energy system	NO	NO	SPP	SPP		NO	NO
22.	Medium-scale ground-mounted solar energy system	NO	NO	SPP	SPP		NO	YES
23.	Small-scale ground-mounted solar energy system	SPP	SPP	SPP	SPP		SPP	YES
24.	Roof-mounted solar energy system	YES	YES	YES	YES		YES	YES

4.11.3 Special requirements.

4.11.3.1 Light and clean manufacturing. All uses under Subsection 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 it may be transferred off the lot by natural causes or forces.
- C. All materials or waste which constitutes 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 single-family into two-family dwelling. All uses under Subsection 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 preexisting.
- B. The livable floor area of such dwelling shall not be increased, and no exterior changes shall be made which would alter the residential character of the building.
- C. The required yards shall be in compliance with the provisions of this bylaw.
- 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 Subsections 4.11.2(2) through (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 Zone 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 bylaw.
- C. The parking requirements of Subsection 6.2.1 of this bylaw shall be met.

4.11.3.4 Multifamily uses. Any multifamily 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 1/2 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 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 bylaw.

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 judgment 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 shall be appropriate to the neighborhood of predominately single-family dwellings; the appearance of a single-family house shall be maintained and its second entrance shall be to the side or rear of the building to avoid the appearance of a multifamily 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 shall 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 shall be obtained from the Board of Health that the water and sanitary systems are adequate to support both dwelling units.

4.11.3.6 Mixed use. **[Added 2-27-2017 STM by Art. 2]**

- A. Mixed use in the VCOD.
 1. Mixed use shall be allowed by right in the VCOD if the proposed uses to be mixed are all allowed by right in the Table of Principal Uses (Subsection 4.11.1).
 2. Any underlying use which requires a special permit according to the Table of Principal Uses shall continue to require such underlying special permit, notwithstanding that it is one of a combination of mixed uses.
- B. Mixed use in the Commercial District outside of the VCOD.
 1. Mixed use shall require a special permit in the Commercial District outside of the VCOD whether the underlying uses are authorized by right or by special permit.
- C. Requirements applicable to all mixed uses. All mixed use, whether or not located in the VCOD, and whether allowed in the district by right or by special permit, must meet the following requirements:

1. Any allowable use may be combined with one or more other allowable uses.
 2. Six dwelling units or fewer are allowed on a mixed-use lot.
 3. Fifty percent of the ground floor adjacent to the street on which the lot has frontage must be used as a nonresidential use.
 4. At least one entrance to a mixed-use building must be located on the street on which the lot has frontage.
 5. The allowable uses may be co-located in the same building or in separate buildings on the same lot.
 6. Off-street parking shall be as required by Section 6.2.
- D. Conditions on mixed-use special permits. The special permit granting authority may impose conditions on its approval of a mixed-use special permit as permitted by Subsection 6.3.5.
- 4.11.3.7 A special permit for cultivation of marijuana for commercial purposes may only be granted in a residential district when the proposed use is part of the activity of a farm. For the purposes of this subsection, a farm must meet the criteria given in Subsection 4.11.3.7.a or 4.11.3.7.b. **[Added 1-14-2019 STM by Art. 1]**
- a. A farm is defined as having more than five acres dedicated to agricultural production and the farm must meet the federal definition of a farm where the entity has an EIN number and shows a minimum of \$2,500 in gross sales of any agricultural commodity.
 - b. For farms that meet the federal criteria listed in Subsection 4.11.3.7.a but which are on lands less than five acres in size but more than two acres in size, a special permit may also be granted for the commercial cultivation of marijuana.

Where an applicant may propose to combine multiple marijuana-related uses on one site, each of which may require a separate license from the Cannabis Control Commission, the SPGA may elect to issue a single special permit for a facility that proposes to combine multiple licensed uses at one site.

Marijuana-related uses may be of a business type or format as allowed by and as licensed by the Cannabis Control Law, 935 CMR 500, including marijuana microbusinesses and craft cooperatives.

Other regulations relating to the cultivation of marijuana are given in Section 9.1.

SECTION 5
Intensity Regulations

5.1. Compliance with intensity regulations required.

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 bylaw.

5.2. Required land and yard spaces.

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 bylaw.

5.3. Change in lot size or use prohibited.

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 bylaw.

5.4. Height regulations.

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.

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. [Amended 2-27-2017 STM by Art. 2; 1-14-2019 STM by Art. 1; 1-14-2019 STM by Art. 4; 9-18-2019 STM by Art. 1]

District	Minimum Area (acres)	Lot Frontage (feet)	Yard Minimum			Maximum Building Height		Maximum Coverage by Building
			Front	Side	Rear	Stories	Feet	
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%
VCOD	0.10	50	5 (1,2,3)	3 (3,4)	15 (3)	2.5	35	75%
MROD	1/2	100	30	15	40	2.5	35	30%

FOOTNOTES

1. The five-foot setback is only applicable "as of right" to buildings or uses with less than 4,500 square feet gross floor area.
2. The front setback may be reduced by special permit, as provided for by Section 4.10, to less than five feet where a sidewalk exists along the street and at least one entrance to the building is located along the sidewalk.
3. For buildings or uses greater than 4,500 square feet in gross floor area, the setback requirements of the underlying Commercial District shall apply, except that the underlying Commercial District setback requirements may be reduced by special permit as provided for by Section 4.10.
4. Total setback of both sides shall be equal to six feet. The total may be all on one side, all on the other side, or divided in any proportion.
5. Ground-mounted solar photovoltaic installations shall meet yard setback requirements, except that setback requirements may be reduced by special permit as a part of the special permit granted for the underlying use.
6. Solar energy systems shall not be included in calculations for lot coverage or impervious surface.

7. Ground-mounted solar energy generation systems at any scale shall not exceed 15 feet above the ground as measured under each panel module, except the overall height of tracking-type systems may exceed 20 feet for transient conditions when dumping snow.
8. The size of a small-scale solar photovoltaic system, defined as having a total collector area of 750 square feet or less, may be increased by the SPGA per Subsection 9.2.6.

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.

6.1.1 Exemptions. Except as herein provided this bylaw shall not apply to:

- a. Structures and uses lawfully in existence prior to the effective date of this bylaw.
- 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 bylaw or amendment.
- c. The alteration, reconstruction, extension or structural change to a single-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 bylaw to the extent and as provided in MGL c. 40A, § 6.

6.1.2 Requirements for extension, reconstruction or change in use. The Board of Appeals may authorize by special permit any extension, alteration or reconstruction of a nonconforming 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 nonconforming 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 bylaw.

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 years of such catastrophe and the structure as rebuilt or restored shall not be in greater nonconformity with the provisions of this bylaw. Such rebuilt, reconstructed, or restored structure may be enlarged or changed in use in accordance with the provisions of Subsection 6.1.2 herein.

- 6.1.4 Maintenance, repair, and reconstruction of unsafe structure. Nothing in this bylaw shall be deemed to restrict the normal maintenance and repair of 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 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 bylaw.
- 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.
- 6.1.7 Nonconforming lots; effect of taking. Any lot that is protected as a nonconforming lot shall not lose its protection and rights as a nonconforming lot solely because of a reduction in area as a result of any land being taken by eminent domain, or conveyed for a public purpose for which land could have been taken by eminent domain, unless the total area of said lot is reduced because of said taking by a percentage of more than 15%.

6.2. Off-street parking requirements. [Amended 2-27-2017 STM by Art. 2]

- 6.2.1 Required parking minimums. After the effective date of this bylaw, off-street parking spaces shall be provided and maintained for every new structure, enlargement of an existing structure, the development of a new use or any change in an existing use, in accordance with the Table of Parking Minimums below.

Table of Parking Minimums	
	Required Parking Spaces
Residential Uses	
Single-family and two-family dwellings	1 space for each dwelling unit
Multifamily dwelling	1 space for each dwelling unit, plus adequate space for service and supply vehicles
Nonresidential Uses	
Accessory home occupation, office or roadside stand	1 space in addition to the spaces required for the principal use

Table of Parking Minimums	
	Required Parking Spaces
Antique or gift shop or art gallery	1 space per 400 square feet of gross floor area, plus 1 space per employee on an average-sized shift
Automobile service station or commercial garage	To be determined by the special permit granting authority (see Subsection 6.2.7) based upon the anticipated number of patrons and employees
Bank, retail business or consumer service establishment, unless specifically regulated	1 space per 250 square feet of gross floor area, plus 1 space per employee on an average-sized shift.
Commercial greenhouse, nursery, landscape gardening	1 space per 250 square feet of gross floor area of indoor sales space, plus 1 space per employee on an average-sized shift
Other nonresidential uses, unless specifically regulated in this table	To be determined by the special permit granting authority (see Subsection 6.2.7) based upon the anticipated number of patrons and employees
General office	1 space per 400 square feet of gross floor area
Hotel, motel or guesthouse	1 space for each sleeping room, plus 1 space per employee on an average-sized shift
Manufacturing, industrial, wholesale	1 parking space for each 2 employees, plus adequate space for customers, service and supply vehicles
Medical office	2 spaces per medical professional employed on-site, plus 1 space per employee (including medical professionals) on an average-sized shift
Mixed use	Sum of the parking spaces required for each use
Restaurant, theater, other places of assembly or amusement	1 space for each 3 seats, plus 1 space per employee on an average-sized shift

6.2.2 Reduction in minimum parking requirements.

- a. If the required minimum number of off-street parking spaces for lots located in the VCOD, computed in accordance with Subsection 6.2.1 or other provisions in this bylaw, is seven or fewer, then the minimum number shall be reduced to zero.
- b. The required minimum number of off-street parking spaces for lots may be reduced up to 50% by special permit where the SPGA (as determined by Subsection 6.2.7) finds that municipal parking spaces equal to the percent reduction requested are available within 300 feet of the lot.
- c. The required minimum number of off-street parking spaces for lots may be reduced up to 50% by special permit where the SPGA (as determined by Subsection 6.2.7) finds that shared parking spaces equal to the percent reduction requested are available within 300 feet of the lot and the following criteria have been met:
 1. The applicant must demonstrate that the uses served by the shared parking facility are not normally open, used or operated during similar hours and that sufficient parking is available to justify its requested percent reduction.
 2. A written agreement establishing the shared use of a parking facility shall be submitted to and approved by the SPGA (as determined by Subsection 6.2.7) as part of the special permit application. The written agreement must state specifically the use or uses for which the off-street parking requirement exists. The approved agreement shall be recorded in the title of both properties in the Southern Berkshire District Registry of Deeds prior to the issuance of an occupancy permit for the project.
 3. A party to the written shared parking agreement may only terminate the agreement after providing 90 days' written notice to the other party, the Building Inspector and the board that issued the original shared parking special permit.
 4. The shared parking special permit shall automatically expire after 90 days from the date the notice of intent to terminate the shared parking agreement is received by the other party.
 5. During this ninety-day period, the holder of the shared parking special permit shall make alternative arrangements to meet the applicable off-street parking requirements and submit an application to amend the special permit or for a new special permit.
 6. A safe and convenient pedestrian connection exists between the site and the shared parking facility.
 7. The availability of parking at the shared parking facility is indicated by directional signs as permitted by Section 6.7, Sign regulations.

- d. A written shared parking agreement shall terminate automatically if there is a change in the use of the property requiring a greater number of parking spaces; notwithstanding the foregoing, it shall not terminate solely because of a change of use if the new use requires the same or a lesser number of parking spaces than the use to which the agreement applies.
- e. The SPGA may require the applicant to provide a parking study or parking survey with all information deemed necessary to render a decision in Subsection 6.2.2.b.
- f. The minimum number of required off-street parking spaces as set forth in Subsection 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. If a reduction in parking is made under this section based on the use of shared parking, the requirements for shared parking under Subsection 6.2.2.c above shall apply.

6.2.3 Off-street parking space dimensions. An area of 175 square feet of appropriate dimensions for the parking of an automobile, exclusive of drives or aisles, shall be considered as one off-street parking space.

6.2.4 Street access and maintenance. All required parking spaces shall be provided with unobstructed access to and from a street and shall be properly maintained in such a manner as to permit them to be used at all times.

6.2.5 Location and screening. Any parking area of more than five parking spaces shall not be located within the front, side or rear setbacks. Such parking area shall be suitably screened on any property line which abuts upon a residential district.

6.2.6 Drainage and surface material. All parking spaces shall be properly graded for drainage and topped with stone or oil and stone or an appropriate substitute approved by the SPGA (as determined by Subsection 6.2.7).

6.2.7 Designation of SPGA. If a special permit for the use of the property is requested, then the board designated as the SPGA for the use special permit shall be the SPGA for this section. If a special permit for the use of the property is not requested, then the Zoning Board of Appeals shall be the SPGA for this section.

6.3. Special permits.

6.3.1 Special permit granting authority. Any board designated as special permit granting authority in this bylaw may hear and decide applications for special permits upon which such board is specifically authorized to act under this bylaw in accordance with the provisions of MGL c. 40A, § 9.

- 6.3.2 Special permits may only be issued following public hearings held within 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 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 14 days before the day of such hearing, and by mailing it to "parties in interest" as provided in MGL c. 40A, § 11, which include the petitioner, abutters, owners of land directly opposite on any public or private street or way and owners of land within 300 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 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 Select Board, 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 it deems appropriate in writing; provided, however, the failure to make recommendations within 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 bylaw, the special permit granting authority shall find that the proposed use:
- a. Is in compliance with all provisions and requirements of this bylaw, 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 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 bylaw. 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 bylaw; 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 bylaw.

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.

The special permit granting authority shall act within 90 days following the date of the public hearing. Failure to take final action upon application for a special permit within said 90 days shall be deemed to be a grant of the permit applied for.

A special permit issued by a special permit granting authority shall require a 2/3 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 three 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 MGL c. 40A, § 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. Floodplain regulations.

6.4.1 Purpose of Floodplain 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 watercourse(s) within the Town in order to provide adequate and safe floodwater 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 Floodplain 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 Select Board 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, watercourses, and drainage easements, fill, means of access, and sewage disposal facilities;
 2. Mean sea level elevation, with two-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 Select Board may issue, in accordance with the regulations appearing in Section 6.3 of this bylaw, and in compliance with all applicable provisions of this bylaw, a special permit under this

section, if the Board determines, as provided in Subsection 3.2.1 of this bylaw, that the land in question is being in fact not subject to floodplain restrictions for any use which would otherwise be permitted if such land were not, by operation of this section, in the Floodplain Districts have been established. The Board may issue a 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 the health or safety of occupants or the 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 stormwater 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;
5. That within Zone A of the Flood Insurance Rate Maps and the Flood Boundary and Floodway Maps that are then in effect and on file with the Town Clerk, Planning Board and Building Inspector, where the base flood elevation is not provided, the applicant shall obtain any existing base flood elevation data, which shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.
6. That in the floodway, designated on the Flood Boundary and Floodway Map, the following provisions shall apply:
 - (a) All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 1,200-year flood.

- (b) Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.
- d. Granting of a special permit by the Select Board does not indicate in any way compliance with the provisions of the Wetland Protection Act, MGL c. 131, § 40.

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 Select Board for a special permit describing the proposed use of the property and the work to be performed. The Select Board may issue, in compliance with all applicable provisions of this bylaw, 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 Select Board under this section does not indicate in any way compliance with the provisions of the Wetlands Protection Act, MGL c. 131, § 40.

6.6. Stream, pond and lake protection.

Hereafter, no on-lot sewage disposal system such as a septic tank or cesspool or leaching field, or the drainage system for wastewater from showers, sinks, etc. shall be installed or constructed within 100 feet of the high water shoreline of a man-made pond or lake exceeding two acres in area, or of any natural waterways, including brooks, streams, the 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 Bylaw:

- a. At a single, detached, single-family house, one sign not over two square feet in area, showing the name of the occupants.
- b. At religious, educational or philanthropic institutions, a library, museum, art gallery, or building or area for municipal or

government use or service, one sign not over four square feet in area at each entrance.

- c. A temporary, unlighted sign not over six 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 week, not exceeding 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 nonprofit organization.

6.7.2 The following signs may be displayed with a permit from the Select Board issued in accordance with the provisions of the Town's Sign Bylaw:

- a. At each entrance to a farm, orchard, commercial greenhouse, nursery, truck garden, woodlot, or roadside farm stand permitted or authorized under this bylaw, one sign not over four square feet in area.
- b. For permitted use of residential property, one sign not over two square feet in area.
- c. On property in a Residence District devoted to a use authorized by special permit, one sign not over four square feet in area.
- d. In a Business District, no more than two signs, not to exceed 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 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 a Commercial District, any multiple uses on a lot may display only one sign not exceeding 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 16 square feet in area and may provide up to four square feet of space for each separate use on the premises. Such directory sign may be a freestanding sign not over 10 feet in height.
- f. In a Manufacturing District, no more than two signs, not to exceed 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 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 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 changes in light intensity; and except as otherwise provided herein, 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 Select Board where such signs will serve the public convenience and not be detrimental to the neighborhood with respect to size, location, or design.
- d. A freestanding sign may not be closer to the front property line than 1/2 the depth of the required front yard, and in Residence Districts may not exceed four feet in height above grade, and in Commercial Districts 10 feet.
- e. No portable sign of any type will be allowed except for a period of not more than three days with a special permit from the Select Board.

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 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 Department of Transportation standards and regulations.
- b. No driveway shall be approved at intersections.
- c. No driveway shall be located within 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 a 60° angle.
- e. Culverts taking the place of roadside ditches shall have a diameter of not less than 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 12 feet nor more than 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 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 10%.

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 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 the 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 feet minimum width of wear surface.
2. A minimum of eight inches of gravel.
3. Passing turnouts must be constructed which provide a total width of at least 18 feet along a distance of at least 25 feet spaced no more than 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 center line to each building or dwelling served by the common driveway will not exceed 1,800 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 the accepted Town way from which the common driveway intersects.
7. The center line of the common driveway cannot be located closer than 35 feet to the center line of any approved or constructed single dwelling driveway or shared driveway.
8. A staging area of at least 40 feet in length and a minimum of 20 feet in width at the street line, tapering to a minimum of 12 feet in width at 40 feet from the street line.
9. The requirements of Subsection 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 it 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.

6.9. (Reserved)¹**6.10. (Reserved)²**

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- 1. Editor's Note: Former Sec. 6.9, Temporary moratorium on recreational marijuana establishments, added 11-13-2017 STM by Art. 1, was repealed 1-14-2019 STM by Art. 1. See now Sec. 9.1 of this chapter.**
 - 2. Editor's Note: Former Sec. 6.10, Temporary moratorium on medical marijuana treatment centers, added 11-13-2017 STM by Art. 2, was repealed 1-14-2019 STM by Art. 1. See now Sec. 9.1 of this chapter.**

SECTION 7
Zoning Board of Appeals

7.1. Membership and authority.

There shall be a Zoning Board of Appeals consisting of five members and two associate members to be appointed by the Select Board as provided in MGL c. 40A, § 12. The Board shall act within its statutory powers as provided in MGL c. 40A, § 14, and on matters within its jurisdiction under this bylaw in a manner prescribed in MGL c. 40A, § 15. This Board of Appeals shall also serve as Board of Appeals under the Subdivision Control Law as provided in MGL c. 41, § 81-Z.

7.2. Statutory powers of Board.

7.2.1 Appeals. The Board is authorized to hear and decide an appeal, as provided in MGL c. 40A, § 8, taken by any person aggrieved by reason of his (her) inability to obtain a permit or enforcement action from any administrative officer under the provision of MGL c. 40A, 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 MGL c. 40A or of this bylaw. Any such appeal must be taken within 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 MGL c. 40A, § 15.

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 bylaw 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 bylaw 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 bylaw.

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 Subsection 7.5.1 herein.

7.3. Special permits.

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 bylaw 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 Board.

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 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 MGL c. 40A, § 11, 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 MGL c. 40A, § 15.

7.5.2 Review by other boards and agencies. The Board of Appeals shall, within 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 Select Board, 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 it deems appropriate in writing to the Board of Appeals; provided, however, that failure to make recommendations within 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 Board.

The decision of the Board of Appeals shall be made within 120 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 bylaw. Failure by the Board to act within said 120 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**8.1. Purposes.**

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 radiofrequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning such emissions.

8.3. Definitions.

As used in this Section 8, the following terms shall have the meanings indicated:

ACT — The Telecommunications Act of 1996.

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).

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.

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 one 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 radiofrequency emissions from FCC-regulated transmitters. This report and order is now contained with 47 CFR Chapter I, § 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 REPEATER — Any removal or change in location of any repeater(s) from the site(s) for which a repeater special permit has been received.

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.

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 Section 8. 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 SERVICE FACILITY — All equipment (excluding any repeaters) with which a personal wireless service provider broadcasts and receives the radiofrequency 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.

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.

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 Section 8 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 Section 8 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. Special permit required.

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 (henceforth F/TSP) for new facility/tower construction (or major modification of an existing facility); b) a repeater special permit (henceforth 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. The applicant must submit all information required in Subsection 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 Section 8, or by an applicant who has previously received a F/TSP under this Section 8 or by an entity which is providing personal wireless services to the Town of West Stockbridge from a base station outside the Town. The applicant must submit all information required in Subsection 8.6.3. If the applicant is applying for both permits, the applications 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, 105 CMR 122, Nonionizing Radiation Limits for: the General Public from Non-Occupational Exposure to Electromagnetic Fields, Employees from Occupational Exposure to Electromagnetic Fields, and Exposure from 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 The 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 The 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 Subsection 8.6.2.3.2, the 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 The 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 Subsections 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-inch by 36-inch sheets, on as many sheets as necessary, and at scales which are no smaller (i.e., no less precise) than listed below in Subsection 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 one inch equals 40 feet (1:480) or metric equivalent (1:500) showing the entire vicinity within a 400-foot radius of the tower site, with topography drawn with a maximum two-foot (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 feet 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 one inch equals 10 feet.
 - 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 of any proposed appurtenant structure at a scale of no smaller than 1/4 inch equals one foot (1:48).

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 one inch equals 10 feet.

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 Section 8, 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 one inch equals 40 feet (1:480 or metric equivalent 1:500), showing the entire vicinity within a 300-foot radius of the repeater site, with topography drawn with a minimum two-foot (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 feet 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 the applicant cannot provide adequate coverage and adequate capacity from existing facility sites, either controlled by the applicant or on which the applicant could reasonably co-locate.

A special permit shall not be granted for a tower to be built on speculation. If the 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 Section 8 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 a 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 are 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 Section 8, 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 ridgelines and where their visual impact is least detrimental to highly rated scenic areas. (See, for example, Massachusetts Landscape Inventory, MGL c. 131, § 39A: Conducted by Massachusetts Department of Environmental Management, 1982.)

8.7.2.4 A vegetated buffer strip of undisturbed trees of at least 100 feet 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 or 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 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 square feet indicating the name of the personal wireless service facility's owner(s) and a twenty-four-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 1 1/2 times their maximum structural height from the outer boundaries of the site on 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, the applicant must demonstrate the future utility of such structure for expansion of service for the 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. Consultant review.

- 8.9.1 Upon submission of an application for any special permit under this Section 8, 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 Section 8, 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 Section 8 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 bylaw, 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 The 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 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 Section 8 shall be in conformance with Section 332 (47 U.S.C. § 332), Subsection (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 radiofrequency 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, Select Board, 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 Select Board, 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 reactivation of any facility which has been idle for six months shall be cause for new initial monitoring in accordance with Subsection 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 Select Board 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 noncompliance. That plan shall reduce emissions to the applicable FCC standard within 15 days of initial notification of noncompliance. Failure to accomplish this reduction of emissions within 15 business days of initial notification of noncompliance 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 Select Board, 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 The 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 Select Board'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 8 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 8 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
Other Special Uses
[Added 1-14-2019 STM by Art. 1³]

9.1. Marijuana-related uses.

9.1.1 Statement of purpose.

- a. The purpose of this bylaw is to allow for the siting of state-licensed marijuana establishments and medical marijuana treatment centers in appropriate locations in accordance with An Act to Ensure Safe Access to Marijuana, Chapter 55 of the Acts of 2017, and all regulations which have or may be issued by the Cannabis Control Commission, including, but not limited to, 935 CMR 500.000 and 935 CMR 501.000, and to impose reasonable safeguards to govern the time, place and manner of marijuana establishments and medical marijuana treatment centers to ensure public health, safety, well-being and mitigate against undue impacts on the natural and build environment of the Town and its residents.
- b. It is the intent of these bylaws to enable small-scale and local marijuana-related business activity. For all districts, special permits for cultivation of marijuana may only be granted when the size and amount of cultivation for an individual or corporate entity does not exceed a "Tier One" scale of cultivation activity, as defined by 935 CMR 500.000, except that a craft cooperative shall be limited to three noncontiguous cultivation sites in the Town of West Stockbridge, each of which is limited to a Tier 1 canopy (5,000 square feet).

9.1.2 Definitions. Where not expressly defined herein, the meaning of terms used in this bylaw shall be interpreted as defined by the Cannabis Control Commission's regulations governing adult use of marijuana (935 CMR 500.000) in effect on the effective date of this zoning bylaw and otherwise by their plain language.

9.1.3 Special permit application requirements for marijuana-related activities.

9.1.3.1 A marijuana establishment and medical marijuana treatment center may be allowed only in locations set forth in the Table of Uses, Subsection 4.11.1, by special permit from the Planning Board (the "SPGA") in accordance with MGL c. 40A, § 9.

9.1.3.2 Only an applicant holding a valid license or certificate, whether provisional or final, from the Cannabis Control Commission, Department of Public Health, or other appropriate state agency, as

3. Editor's Note: This bylaw also redesignated former Secs. 9 and 10 as Secs. 10 and 11, respectively.

the case may be, is eligible to apply for a special permit pursuant to this bylaw.

9.1.3.3 In addition to the special permit requirements of Section 6.3, special permit applications for any marijuana-related use or activity shall also include the following:

- a. Names and addresses of each owner of the marijuana establishment or medical marijuana treatment center, and where the owner is a business entity, the names and addresses of each owner of that establishment.
- b. Copies of all licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies or, if the applicant's license is provisional, a written description of the status of its application to the Cannabis Control Commission relative to the establishment at issue.
- c. A copy of the final, executed host community agreement ("HCA") between the applicant and the Town of West Stockbridge.
- d. A list of any waivers of regulations that the applicant seeks to obtain from the Cannabis Control Commission or a copy of any such waivers that the Commission has issued to the applicant, as applicable.
- e. Copies of all policies and procedures approved by the Cannabis Control Commission, including without limitation the marijuana establishment's and medical marijuana treatment center's operating and safety procedures, or copies of such policies and procedures that the applicant intends to submit to the Commission, as applicable.
- f. A plan that identifies potential energy use reduction and that demonstrates best practices for energy conservation and a plan that identifies opportunities for renewable energy generation. The plan may include an electrical system overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand.
- g. Site plans and/or application narratives that contain sufficient information so that the SPGA can evaluate conformance of the proposal with applicable state law and this zoning bylaw.
- h. The SPGA may require the applicant to provide additional information as it deems necessary, including a traffic study.

9.1.3.4 Upon the filing of the special permit application with the SPGA, the applicant shall simultaneously deliver copies of the full application to the Select Board (if the Planning Board is the SPGA), the Planning Board (if the Select Board is the SPGA), the Building

Commissioner, the Board of Health, the Police Department and the Fire Department.

9.1.4 Outdoor cultivation of marijuana.

9.1.4.1 Cultivation of marijuana outside and not in a building shall conform to the following:

- a. No marijuana cultivation shall be less than 10 feet from a property line.
- b. No marijuana cultivation or related activity shall be allowed in a front yard setback.
- c. Fencing of cultivation areas shall be provided in conformance with 935 CMR 500.000 and with other applicable provisions of this bylaw.
- d. No cultivation may be visible from a public way. Fencing or landscape screen planting may be used to shield cultivation activities.
- e. Where state law requires monitoring by video camera 24 hours per day, only infrared-type technology may be used. The applicant shall provide information relating to the type of video monitoring equipment proposed to be used.
- f. No equipment shall be used that creates continuous noise that is measurable at a property line.
- g. Fencing or landscape planting for screening shall be shown on the site plan submitted with the application.

9.1.5 Indoor cultivation of marijuana.

9.1.5.1 All cultivation of marijuana inside buildings shall comply with the following:

- a. No artificial lighting used for growing inside the building shall be visible on the exterior of the building. Greenhouses that transmit light from inside to outside may not be used for cultivation of marijuana.
- b. Where state law requires monitoring by video camera 24 hours per day on any part of the exterior of a building used for cultivation, only infrared-type technology may be used. The applicant shall provide information relating to the type of video monitoring equipment proposed to be used.
- c. Fencing shall be provided in conformance with 935 CMR 500.000 and shall be shown on the site plan submitted with the application.

- d. No equipment shall be used that creates continuous noise from the regular operation of the facility that is measurable at a property line.

9.1.6 Retail sales of marijuana.

9.1.6.1 No more than one special permit for the retail sale of medical marijuana shall be granted in the Town of West Stockbridge.

9.1.6.2 No more than one special permit for the retail sale of adult use (i.e., recreational) marijuana shall be granted in the Town of West Stockbridge.

9.1.6.3 Upon receipt of a special permit application for a marijuana retail use, the Select Board, as the SPGA for such retail use, shall forward a copy of the full special permit application to the Planning Board and shall request the Planning Board to review the application and make recommendations back to the Select Board as to the completeness of the application and its conformance to these bylaws.

9.1.6.4 In addition to other information required for a special permit application, the following additional information shall be submitted with the special permit application:

- a. Lighting. A site plan with all parking lot lighting and showing all lighting mounted on buildings. Include photometric studies for exterior light levels around the building and specifications for exterior light fixtures showing that all fixtures proposed to be used are "cut-off" type fixtures and that no light pollution shall occur.
- b. Elevation drawings of any new building or renovated building proposed for retail marijuana sales shall be submitted with the special permit application. These drawings shall show how the proposed building will mitigate the effect of the state law and how the proposed building will be compatible with the scale and character of West Stockbridge.
- c. The SPGA may require that a traffic study be submitted.

9.1.6.5 Parking for retail sales of marijuana-related products shall be provided in accordance with the requirements of Subsection 6.2.1 and the particular requirements for "retail businesses".

9.1.6.6 In addition to the findings required pursuant to Subsection 6.3.4, the SPGA shall make the following findings with respect to retail marijuana uses:

- a. The scale and character of the proposed retail facility shall be compatible with the general scale and character of West Stockbridge.

- b. There will be no negative impact on traffic or parking.

9.1.7 Other requirements for marijuana-related uses.

9.1.7.1 The marijuana establishment and medical marijuana treatment centers shall provide the Chief of Police and Building Commissioner up-to-date contact information, as required by the Chief of Police and Building Commissioner, including the name, telephone number and electronic mail address of a contact person, who must be available 24 hours a day, seven days a week.

9.1.7.2 In addition to compliance with applicable state laws and regulations and other requirements of this bylaw, the SPGA may impose reasonable conditions to improve site design, traffic flow, public safety, water quality, air quality, protection of significant environmental resources and the preservation of community character of the surrounding area, including, without limitation, including, but not limited to the following:

- a. The SPGA shall consider the following and may include conditions concerning the following in any special permit granted pursuant to this Section 9.1:
 - 1. Hours of operation, including dispatch for any home delivery of medical marijuana.
 - 2. Compliance with the host community agreement.
- b. The submission of a copy of the final license or final certificate of registration from the Cannabis Control Commission, Department of Public Health or such other applicable state entity, as the case may be, with the Building Commissioner prior to the issuance of a building permit, certificate of occupancy, or commencement of use, whichever occurs first.
- c. The reporting of any cease-and-desist order, quarantine order, suspension order, limiting sales order, notice of hearing or final action by the Cannabis Control Commission, Department of Public Health or such other applicable state entity, as the case may be, regarding the marijuana establishment and medical marijuana treatment center to the Building Commissioner within 48 hours of the applicant's receipt.

9.1.7.3 A special permit issued pursuant to this bylaw shall be subject to the following:

- a. The special permit shall expire within three years of the date of issue. If the applicant wishes to renew the special permit, an application to renew must be submitted at least 120 days prior to the expiration of the special permit. The SPGA may, at the time of a renewal, renew a special permit for a marijuana-

related use for a period of time not less than three years and not greater than 10 years.

- b. Special permits shall be limited to the original applicant(s) and shall expire on the date the special permit holder ceases operation of the Marijuana Establishment and medical marijuana treatment center.
- c. The holder of a special permit shall annually file an affidavit with the Building Commissioner demonstrating that it is in good standing with respect to its license or certificate from the Cannabis Control Commission, Department of Public Health, and any other applicable state licenses.
- d. The holder of a special permit shall notify the Building Commissioner and the SPGA in writing within 48 hours of the cessation of operation of the marijuana establishment or the expiration or termination of the permit holder's state license.
- e. Special permits shall lapse upon the expiration or termination of an applicant's license from the Cannabis Control Commission, Department of Public Health or such other applicable state entity, as the case may be.

9.1.8 Discontinuance of use.

9.1.8.1 Any marijuana establishment or medical marijuana treatment center permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia prior to expiration of its operating license or certificate issued by the Commonwealth of Massachusetts or no more than seven days following revocation or voiding of such license or certificate.

9.1.8.2 The licensee shall notify the Select Board, Planning Board, Building Inspector by certified mail of the expiration or revocation of a license or certificate from the Cannabis Control Commission, Department of Public Health or such other applicable state entity, as the case may be, the proposed date of discontinued operations, and the date by which all removals will be completed.

9.1.8.3 All cessation of business and removals of materials shall be in compliance with applicable state regulations, including, but not limited to:

- a. Physical removal of all exterior security-related items (fences, cameras, lights, etc.).
- b. Disposal of all marijuana or marijuana products.
- c. Stabilization or revegetation of the site as necessary. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

9.1.8.4 If the licensee of the marijuana-related use fails to carry out removals in accordance with the requirements of this section within 120 days of expiration or revocation of license, the Town may enter the property and remove items/materials after obtaining an appropriate court order.

9.1.8.5 Absent notice as required by Subsection 9.1.8.2 above or written notice of extenuating circumstances, the marijuana-related use shall be considered discontinued when it fails to operate for more than one year without the written consent of the special permit granting authority or when its license to operate has expired or has been revoked.

9.1.8.6 Financial assurance. The SPGA may require the licensee of a marijuana-related use to provide a surety to ensure adequate funds are available to provide for decommissioning and removal of the installation.

9.2. Photovoltaic solar energy systems. [Added 9-18-2019 STM by Art. 1]

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

9.2.2 Definitions. As used in this bylaw, the following terms shall have the meanings indicated:

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

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

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

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

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

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

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

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

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

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

9.2.3 Medium- or large-scale photovoltaic solar developments.

9.2.3.1 Special permit required. Medium- or large-scale photovoltaic solar developments require a special permit per the Table of Uses, Subsections 4.11.1 and 4.11.2. Medium-scale systems do not require a special permit on the PVOD.

9.2.3.2 In addition to the standard special permit application requirements of Subsection 6.3.6, a special permit application for large- and medium-scale photovoltaic solar energy systems the site plan submitted shall include the following additional information:

- a. Property lines and physical features, including roads, for the project site;
- b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- c. Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from or to nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
- d. One- or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all Massachusetts Electric Code (527 CMR 12.00) compliant disconnects and overcurrent devices;
- e. Documentation of the major system components to be used, including the panels, mounting system, and inverter;
- f. Name, address, and contact information for proposed system installer;

- g. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- h. The name, contact information and signature of any agents representing the project proponent;
- i. Zoning district designation for the parcel(s) of land comprising the project site;
- j. Locations of active farmland and prime farmland soils, wetlands, permanently protected open space;
- k. Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage & Endangered Species Program (NHESP) and "Important Wildlife Habitat" mapped by the DEP;
- l. Locations of floodplains or inundation areas for moderate- or high-hazard dams;
- m. Locations of local or national historic districts;
- n. Documentation of actual or prospective access and control of the project site;
- o. An operation and maintenance plan;
- p. Proof of liability insurance;
- q. A public outreach plan, including a project development time line, which indicates how the project proponent will meet the required special permit review notification procedures and otherwise inform abutters and the community.
- r. Site plans submitted for the above shall be prepared by a MA licensed professional engineer.

9.2.4 Design standards for large- and medium-scale photovoltaic solar developments where a special permit is required.

9.2.4.1 Standards for large- or medium-scale ground-mounted solar energy systems proposed within all zoning districts where a special permit is required.

- a. Utility notification. No grid-intertie photovoltaic system shall be installed until evidence has been given to the special permit granting authority that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.
- b. Utility connections. Reasonable efforts, as determined by the special permit granting authority, shall be made to place all

utility connections from the solar photovoltaic installation to the point of interface with the grid tie-in underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

- c. Safety. The large- or medium-scale ground-mounted solar energy system owner or operator shall provide a copy of the special permit application to the Fire Chief for review. All means of shutting down the solar installation shall be shown on the application and plans filed, and shall be clearly marked on-site.
- d. Safety. Fencing that is required for safety and prevention of access to photovoltaic equipment shall be set back from roads and property lines to the greatest extent possible and shall be separate from other visual screening that is required.
- e. Visual screening, by opaque fence and/or landscape planting, shall be provided, as per conditions set by the SPGA, to prevent the solar energy system from being visible from the street or streets which the system has frontage on, from adjoining streets which abut the lot, or from a distance of 250 feet or less from an adjoining residential property. This regulation is not intended to require screening of solar energy systems where the topography within the site of the solar installation and adjoining the solar energy system site rises or falls to an extent that fencing or landscape screening is impractical or unnecessary. If the natural circumstances of existing landscape and vegetation provide screening that is satisfactory to the SPGA, additional visual screening may not be required.
- f. Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ordinances. Maintenance of vegetation shall be by mowing. No chemicals, weed killers or herbicides shall be used at any time.
- g. Stormwater management. Best management practices shall be used for controlling and managing stormwater run-off and drainage for the medium-scale ground-mounted solar photovoltaic installation in compliance with all applicable federal, state and local regulations.
- h. The SPGA may require a glare analysis and proposed mitigation, if any, to minimize the impact of glare on affected properties.

- i. The SPGA may review the proposed installation with the Conservation Commission.
- j. The SPGA may require an environmental impact report or statement.

9.2.4.2 Design standards for a medium-scale photovoltaic system where a special permit is not required.

- a. Site plans and construction drawings submitted shall be prepared by a MA licensed professional engineer.
- b. Provide evidence that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator and that the utility company has approved the connection.
- c. Utility connections shall be underground to the connection point of the grid tie-in or to the property line of the site. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- d. All means of shutting down the solar installation shall be shown on the plans filed, and shall be clearly marked on site.
- e. Safety fencing shall be provided to prevent access to photovoltaic equipment. Safety fencing shall be set back from roads and property lines to the greatest extent possible and shall be separate from other visual screening that is required.
- f. Visual screening, by evergreen landscape planting or existing evergreens, shall be provided to prevent the solar energy system from being visible from the street or streets which the system has frontage on, from adjoining streets which abut the lot, or from a distance of 200 feet or less from buildings on an adjoining property or across the street. This regulation is not intended to require screening of solar energy systems where the topography within the site of the solar installation and adjoining the solar energy system site rises or falls to an extent that fencing or landscape screening is impractical or unnecessary.
- g. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ordinances. Plans shall show habitat impacts are mitigated during construction and over the life of the facility. Maintenance of vegetation shall be by mowing. No chemicals, weed killers or herbicides shall be used at any time.

- h. Best management practices shall be used for controlling and managing stormwater run-off and drainage in compliance with all applicable federal, state and local regulations.
- i. Plans submitted shall show a glare analysis and proposed mitigation, if any, to minimize the impact of glare on neighboring properties.
- j. All regular building permit sign-offs shall be approved by local boards or authorities, including the Conservation Commission and Fire Chief.

9.2.5 Special permit requirements for small-scale ground-mounted photovoltaic solar energy systems.

9.2.5.1 A special permit application for small-scale ground-mounted photovoltaic solar energy systems shall include the following additional information on the site plan that is required by Subsection 6.3.6.

- a. North arrow and direction of solar south.
- b. Locations of buildings on neighboring lots within 300 feet.
- c. Topography based on USGS, or a survey by a licensed surveyor.
- d. Satellite imagery of the site and neighboring lots showing tree coverage.

9.2.5.2 The SPGA may impose reasonable conditions for landscape screening or fencing.

9.2.5.3 Findings required for small-scale ground-mounted photovoltaic solar energy systems:

- a. The general findings required for all special permits under Subsection 6.3.4 are required to be made.
- b. The proposed ground-mounted residential photovoltaic solar energy system will not have any negative impact on neighbors or abutters within 300 feet.
- c. The proposed small-scale ground-mounted residential photovoltaic solar energy system will not have any negative impact on views from a public way.
- d. If an increase in size above 750 square feet of collector area is requested as a part of the special permit application per Subsection 9.2.6, the increase in size will not have any negative impact on neighbors or abutters within 300 feet or on views from a public way.

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

9.2.6 Increase in size of small-scale ground-mounted photovoltaic solar energy systems.

9.2.6.1 The Planning Board, acting as the special permit granting authority (SPGA), may, as a part of the issuance of a special permit for a small-scale ground-mounted photovoltaic solar energy system, allow a small-scale ground-mounted photovoltaic system that is larger than 750 square feet of collector area, provided that findings as required under Subsection 6.3.4 and Subsection 9.2.5.3 are made.

9.2.7 Abandonment or decommissioning.

9.2.7.1 Removal requirements. Any commercial large- or medium-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life, is no longer operational or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Select Board, Planning Board, and Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- a. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
- b. Disposal of all solid and hazardous waste brought to the site or generated by the owner or operator or otherwise related to the large-scale ground-mounted solar photovoltaic installation in accordance with local, state, and federal waste disposal law and regulations.
- c. Stabilization or revegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

9.2.7.2 Abandonment. The large- or medium-scale ground-mounted solar photovoltaic installation shall be considered abandoned when it does not operate for more than one year without the written consent of the special permit granting authority. If the owner or operator of the large- or medium-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to

enter and remove an abandoned, hazardous, or decommissioned large- or medium-scale ground-mounted solar energy system. As a condition of special permit approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation.

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

SECTION 10

Administration and Enforcement**10.1. Enforcement by Building Inspector; compliance with laws and regulations required.**

This bylaw shall be enforced by the Building Inspector appointed by the Select Board as provided in the State Building Code.

10.1.1 No permit shall be issued by the Building Inspector unless the application for a permit indicates compliance with this bylaw and any other applicable Town bylaws 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.

10.1.2 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 bylaw.

10.2. Construction and use to comply with permits.

10.2.1 Special permits or building permits issued on the basis of plans and applications approved by the Select Board, 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 bylaw and punishable as provided herein.

10.2.2 Construction or operation under a building or special permit shall conform to any subsequent amendment of this bylaw 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 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.

10.3. 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 11
Amendment and Validity

11.1. Amendment.

11.1.1 This bylaw may be amended from time to time in an Annual or Special Town Meeting in accordance with MGL c. 40A, § 5. Any change to the Zoning Map of the Town or to the Table of Uses set forth in Section 4.11 of this bylaw shall be made only at an Annual Town Meeting and not at a Special Town Meeting.

11.1.2 No zoning bylaw 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 MGL c. 40A, § 5, and has made a report with recommendations to the Town Meeting or after 21 days shall have elapsed after such hearing without submission of such report.

- a. Any nonresident property owner may request that notice of hearing by the Planning Board on any zoning bylaw 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 1, accompanied by a fee in an amount set from time to time by the Select Board. A separate, conspicuous statement shall be included annually with all tax bills sent to nonresident property owners informing them of this provision.

11.2. Validity.

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

11.2.2 This bylaw, or any amendment thereto, shall take effect on the date on which such adoption or amendment is voted by the Town Meeting.

11.2.3 This bylaw repeals and replaces any previous zoning bylaws adopted by the Town Meeting of the Town of West Stockbridge and any subsequent amendments made thereto.

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