

TOWN OF BRIMFIELD

ZONING BYLAWS

Updated and current to May 2018

This publication includes all town meeting actions up to and including approval by the Attorney General in 2016. The basic bylaws were adopted in March 1957. This publication includes corrections and annotations by the Special Bylaw Review Committee, March and June 1986; revisions incorporated by review of Bylaw Committee April 1988 and May 1989. The bylaws published in November 2009 represent a restructuring of the basic zoning bylaws with new outline formatting and minor non-substantive administrative changes. In 2014 changes were made by a vote of the Annual Town Meeting as proposed by of the Planning board strictly for textual clarity with no substantive changes (see minutes of 2014 ATM).

Zoning Map: The current zoning map was approved May 17, 2010 under Article 26 and was certified by the town Clerk on June 8, 2010 and subsequently accepted by the Attorney General on July 26, 2010.

Zoning Bylaw Section 1: General Provisions

Section

1.0 Zoning Bylaws of Brimfield

1.1 Purpose

To promote the health, safety, convenience, morals and general welfare of its inhabitants, to lessen the danger from fire and congestion, and to improve the town under the provisions of the General Laws, Chapter 40A, the use, construction, repair, alteration and height of buildings and structures and the use of the premises in the Town of Brimfield are hereby restricted and regulated as hereinafter provided.

1.2 Definitions

All terms and words not otherwise defined in this bylaw shall have the meaning given in Webster's Unabridged Dictionary (latest edition), or if not defined in the Webster's Dictionary, said terms shall have the same definitions provided for in the Massachusetts General Laws. [adopted May 1975, amended May 2012, May 2014 (alphabetized only) and May 2017]

Business District—The Business District is shown on the Zoning Map and is located along US Route 20 at a depth of 500 feet from the established side lines of US Route 20, as laid out by the Commonwealth of MA, with the exception of the portion on the Northerly side of US Route 20 from Crystal Book to Sherman Brook, ad, with the exception of the portion along US Route 20 between Wales (US Route 19 South) and Holland Road, north of Haynes Hill Road, to a depth of 750 feet from the established side lines of US Route 20 and with the exception of Large-Scale Ground-Mounted Solar Photovoltaic Installations (as allowed under the terms and definitions of Section 7A of these by-laws) to extend to a depth of 2,500 feet from established sidelines of US 20, for the parcel known and designated as Map 11-A-9, as laid out by the Commonwealth of MA. [added May 2010] [added May 2018]

Dwelling—A building or dwelling unit, or any part therefore, containing accommodations for permanent occupancy, including single-family semi-detached and two-family houses, boarding or lodging homes, but not including transient accommodations such as in motels or hotels.

Family Camping Ground—A parcel of land on which there is temporarily located, or intended to be temporarily located, two or more camping devices.

Frontage—Frontage, as used in this bylaw, means that portion of a property that is located within the Town of Brimfield and borders upon one of the following types of way: (a) a public way, or (b) a way shown on a plan approved in accordance with the Subdivision Control Law and constructed in accordance with such plan and approval, or (c) a way in existence with the Subdivision Control Law became effective in the Town of Brimfield, having discretionary opinion of the Planning Board, adequate width, grades and construction for the proposed use and for the provision of municipal services therefore. [added May 2007, amended May 2012]

Pet Rescue Shelter—Building or structure used for the purpose of housing dogs and cats received by the shelter as rescue animals and not for breeding or sale, with the exception of an adoption fee which may be charged by the Shelter. [added May 2012]

Retail--A business providing goods or services through various distribution channels directly to the consumer. [adopted May 2017)

Self-service Storage Facility--Any real property used for renting or leasing individual storage spaces which the occupants themselves customarily store and remove their own personal property on a "self-service" basis. [adopted May 2017]

Storage Trailer—A structure originally constructed for transportation use i.e.; truck trailer, sea cargo container, rail container. [added May 2013]

Trailer—Any vehicle which is or can be used as a dwelling and which is, has been or can be mounted on wheels.

Trailer Camp—A parcel of land on which there is located or intended to be located two or more trailer homes occupied for living purposes.

Wholesale-A business providing goods or services through various distribution channels primarily to other businesses such as retailers, wholesalers or other subordinate services. [adopted May 2017]

Zoning Bylaw Section 2: Districts

Section

2.0 Establishment of Districts

2.1 Types of Districts

For purpose of the bylaw, the Town of Brimfield is hereby divided into the following types of use districts:

- Residential
- Agricultural-Residential
- Business
- Industrial
- Flood Plain (see Zoning Section 3.10)
- Multiple Dwelling District for the elderly

2.2 Location of Districts

Said districts are located and bounded as shown on a map entitled "Zoning Map of Brimfield, Massachusetts." The Zoning Map, with all explanatory matter thereon, and as it may hereafter be amended from time to time, is hereby made a part of this bylaw, accepted by the Town Meeting of May 8, 1978, under Article 23 and filed with the town Clerk on the same date. [amended May 2012] *NB the 1978 Zoning Map was revised and accepted May 1987. The most recent revision of the Zoning Map was accepted May 2010.

Zoning Bylaw Section 3: District Use Regulations

Section

3.0 District Use Regulations

3.1 General

Except as provided in Section 5.1.1 hereof, no building or structure shall be constructed, and no structure or land, or part thereof shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located, or set forth as permissible by special permit in said district and so authorized.

3.2 Residential Districts—Permitted Uses

Permitted Uses:

- 3.2.1** Detached one-family dwelling
- 3.2.2** Religious, education or municipal use

3.2.3 Hospital, sanitarium, convalescent home

3.2.4 Renting of rooms or furnishing of board for not more than four (4) persons in a dwelling regularly occupied for residential purposes.

3.2.5 Accessory uses customarily incidental and secondary to the residential use, including but not limited to the following:

3.2.5.1 Use of a room or rooms in a dwelling or accessory buildings for a customary home occupation conducted solely by a resident with no more than two persons besides the resident, in the practice of a recognized profession. [amended May 2015]

3.2.5.2 Uses of premises or building thereon in connection with his trade by a resident artisan who works primarily away from the premises, such as a carpenter, electrician, painter or plumber, provided that no manufacturing or business requiring heavy machinery or substantially continuous employment by carried and that no evidence of the use be visible or audible to the public or abutters.

3.5.5.3 Display of a sign pertaining to a use permitted on the premises with a total area of not more than six (6) square feet. [adopted March 1975]

3.3 Residential Districts—May Be Permitted by Board of Appeals

Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in Section 11.2.2 of this bylaw.

3.3.1 Private club not conducted for profit.

3.3.2 Conversion of a one-family dwelling existing at the time adoption of this bylaw into a two-family dwelling.

3.3.3 Elderly Housing Communities: The Board of Appeals may grant a special permit, pursuant to Section 11.2.2, for elderly housing communities, subject to the following:

3.3.3.1 Elderly Housing Communities shall consist of detached, single-family dwellings with or without a garage and one community building.

3.3.3.2 Notwithstanding any other provision in these Bylaws, multiple single-family dwellings may be constructed on one lot within Elderly Housing Communities, provided that the total number of such structures shall not exceed one for each acre of lot area.

3.3.3.3 Each lot and/or dwelling shall be deed-restricted for ownership and occupancy by persons 55 years of age or older. The form of such deed restriction shall be approved by the Board of Appeals and Town Counsel and attached to and incorporated within the special permit.

3.3.3.4 The Board of Appeals may impose such other reasonable conditions as it deems appropriate and shall require the applicant to obtain Site Plan approval from the Planning Board. [section c added May 2005]

3.3.3.5 Elderly Housing Community shall be on one parcel or on contiguous parcels of land totaling at least five (5) acres in size. [section c added May 2005 and amended May 2007]

3.4 Agricultural-Residential Districts—Permitted Uses

Permitted Uses:

3.4.1 All uses permitted in a Residential District

3.4.2 Farm or nursery, including the display and sales of natural products raised in the town and the raising of stock except as limited by Section 3.5 below.

3.4.3 Accessory uses

3.4.4 The raising of hogs, pigs, or fur-bearing animals provided such activity is carried on at least 500 feet from any property line.

3.4.5 Parking of vehicles relative to flea markets as defined in General Bylaws, Chapter 5. [adopted February 1998]

3.4.6 The outdoor rental of space to merchants for the purpose of buying, selling, or bartering merchandise on the premises, to the same extent permitted in the business district, in that area of the Agricultural-Residential District bounded as follows: southerly by Route 20; easterly by the Warren Road; westerly by Crystal Brook; and northerly by a line parallel to Route 20 at a depth not to exceed 500 feet which extends easterly from the northerly limit of the Business District at Crystal Brook to the Warren Road. [adopted October 1984]

3.4.7 The outdoor rental of space to merchants for the purpose of buying, selling, or bartering merchandise on the premises, relative to flea market, to the same extent permitted in the Business District in that area of the Agricultural-Residential District which is abutting the Route 20 Business District at a depth not to exceed 1000 feet from US Route 20 State Highway Bounds. [adopted February 1998]

3.5 Agricultural-Residential Districts—May be Permitted by Board of Appeals

Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in Section 11.2.2 of this bylaw:

3.5.1 Golf course, boat livery, riding stable and ski tow

3.5.2 Private club not conducted for profit

3.5.3 Soil, gravel, loam and sand removal in the following cases only:

3.5.4 The materials removed will be used by the Town of Brimfield or any department or agency thereof.

3.5.5 Removal will be limited to not more than one thousand (1,000) cubic yards total from a lot.

3.5.6 Exemptions

The following activities are exempted from this bylaw:

3.5.7 Removal of not more than a total of five hundred (500) cubic yards from a lot for a purpose related to constructing a building or other structure and associated facilities on such lot in accordance with a building permit.

3.5.8 Removal of not more than a total of five hundred (500) cubic yards from a lot for constructing or improving a private way on such lot. [section amended May 2006]

3.5.9 Conversion of a one-family dwelling existing at the time of adoption of this bylaw into a two-family dwelling.

3.5.10 Family camping ground. [adopted Sept. 1969]

3.6 Business District – Permitted Uses

Permitted Uses:

3.6.1 Any use permitted in a Residential District

3.6.2 Office, bank, newspaper or job-printing establishment

3.6.3 Hotel, motel or restaurant

3.6.4 Any business including, wholesale or retail business, research laboratory, service of public utility not involving manufacture on the premises except of products the major portion of which is sold on the premises by the producer to the consumer. [amended May 2017]

3.6.5 Conversion of a one-family dwelling existing at the time of the adoption of the bylaw into a two-family dwelling. [adopted Oct. 1970]

3.6.6 Pet Rescue Shelter—the first building of which is to be located on a minimum lot size of five (5) acres with each additional building requiring one (1) additional acre.

All buildings used for said Pet Rescue Shelter purposes, shall be located a minimum of forty (40) feet from all front yard, side yard and rear yard lot lines.

Each Pet Rescue Shelter shall require a minimum of twenty (20) square feet of housing space for each dog and five (5) square feet of housing space for each cat.

Said permitted use in the Business District shall also be permitted to extend no greater than 500 feet into the Agricultural-Residential District and/or Flood Plain District provided said extension is from property which extends from the Business District for a single parcel. [Section 3.6.6 adopted May 2012]

3.6.7 Any fitness, wellness, sport or recreational facility, including indoor and outdoor facilities necessary for those activities, to be used for profit or educational purposes. [adopted May 2017]

3.7 Business District—May Be Permitted by Board of Appeals

Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in Section 11.2.2 of the bylaw.

3.7.1 Place of amusement or assembly or club conducted for profit.

3.7.2 Automobile service station, repair shop, storage garage, or salesroom.

3.7.3 Trailer camp.

3.8 Industrial District—Permitted Uses

Permitted Uses:

3.8.1 Any business use permitted in a Business District.

3.8.2 Any manufacturing or industrial use including processing, fabrication and assembly, provided that no such use shall be permitted which would be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of explosion or fire.

3.8.3 Religious, education or municipal use.

3.9 Industrial District—May be Permitted by Board of Appeals

Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in Section 11.2.2 of this bylaw:

3.9.1 Automobile dismantling or used parts yard.

3.9.2 Junk yard.

3.10 Flood Plain District—Purpose

The purposes of the Flood Plain District are to:

3.10.1 Ensure public safety through reducing the threats to life and personal injury.

3.10.2 Eliminate new hazards to emergency response officials.

3.10.3 Prevent the occurrence of public emergencies resulting from water quality contamination and pollution due to flooding.

3.10.4 Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding.

3.10.5 Eliminate costs associated with the response and cleanup of flooding conditions.

3.10.6 Reduce damage to public and private property resulting from flooding waters.

3.11 Definitions

Area of Special Flood Hazard is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, AI-30, AE, A99, VI-30, VE, or V.

Base Flood means the flood having a one percent chance of being equaled or exceed in any given year.

Development means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

District means flood plain district.

Existing Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the flood plain management regulations adopted by a community.

Expansion To An Existing Manufactured Home Park or Subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either the final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard area.

Flood Boundary and Floodway Map means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and 100-year floodway. (For maps done in 1987 and later the floodway designation is included on the FIRM).

Flood Hazard Boundary Map (FHBM) means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

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

Flood Insurance Study means an examination, evaluation, and determination of flood hazards, and if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

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

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

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

Manufactured Home Park or Subdivision means a parcel (or continuous parcels) of land divided into two or more manufactured homes lots for rent or sale.

New Construction means, for flood plain management purposes, structures for which the “start of construction” commenced on or after the effective date of a flood plain management regulation adopted by a community. For the purpose of determining insurance rates, New Construction means structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

New Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which construction of facilities for serving the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the flood plain management regulations adopted by a community.

One-Hundred-Year Flood see Base Flood.

Regulatory Floodway see Floodway.

Special Flood Hazard Area means an area having special flood and/or flood-related erosion hazards and shown on a FHBM or FIRM as Zone A, AO, AI-30, AE, A99, AH, V, VI-30, VE.

Start of Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of permit date. The actual start means either the first placement of permanent construction or a structure on the site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation, or placement of a manufactured home on a foundation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

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

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before

the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. (Accepted October 1996)

3.12 District Boundaries

The Floodplain District is herein established as an overlay district. The District includes all special hazard areas within the Town of Brimfield designated as Zone A or AE on the Hampden County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Hampden County FIRM that are wholly or partially within the Town of Brimfield are panel numbers:

25013C0267E, 25013C0269E, 25013C0286E, 25013C0287E, 25013C0288E, 25013C0289E, 25013C0291E, 25013C0292E, 25013C0293E, 25013C0294E, 25013C0457E, 25013C0459E, 25013C0476E, 25013C0477E, 25013C0478E, 25013C0479E, 25013C0481E, 25013C0482E, 25013C0483E and 25013C0484E dated July 16, 2013.

The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Hampden County Flood Insurance Study (FIS) report dated July 16, 2013. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official and Conservation Commission. [amended May 2013]

3.13 Floodway Date

In Zone A, and ZE along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. [amended May 2013]

3.14 Base Flood Elevation Data

Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser within unnumbered a zones. [amended May 2013]

3.15 Notification of Watercourse Alternation

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

- Adjacent Communities
- NFIP State Coordinator
- Massachusetts Office of Water Resources, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104
- NFIP Program Specialist, Federal Emergency Management Agency, Region 1, 99 High Street, 6th Floor, Boston, MA 02110
- FEMA Region I, Room 462, McCormack Office Building, Boston, MA 02109 [amended May 2013]

3.16 Permitted Uses

The following use of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment.

3.16.1 Agricultural uses such as farming, grazing, truck farming, horticulture, etc.

3.16.2 Forestry and nursery uses.

3.16.3 Outdoor recreational uses, including fishing, boating, play areas, etc.

3.16.4 Conservation of water, plants, wildlife.

3.16.5 Wildlife management areas, food, bicycle, and/or horse paths

3.16.6 Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops on the premises.

3.16.7 Building lawfully existing prior to the adoption of these provisions

3.17 References to Existing Regulations

The Flood Plain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal high hazard areas;
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00); Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations. [amended May 2013]

3.18 Other Use Regulations

3.18.1 Within Zones AH and AO on the FIRM, require adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

3.18.2 In Zone AE, along watercourses that have a regulatory floodway designated on the Brimfield FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. [amended May 2013]

3.18.3 Review all subdivision proposals to assure that: a) such proposals minimize flood damage; b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and c) adequate drainage is provided to reduce exposure to flood hazards.

3.18.4 There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Town Engineer, Building Commissioner for comments which will be considered by the appropriate permitting board prior to approving applicable permits.

3.19 Multiple Dwelling District for Elderly--Permitted Uses

Permitted Uses:

3.19.1 Housing for elderly. [adopted January 1974]

Zoning Bylaw Section 4: Density Regulations

Section

4.0 Density Regulations

A dwelling, building or structure erected in any district shall be located on a lot having not less than the minimum requirements set forth in the table below. No existing lot shall be changed as to size or shape so as to result in a new or increased violation of the requirements set forth below, and no more than one primary structure shall be located on each lot. [amended May 2012 and May 2014]

4.1 Lots, yards, heights with footnotes

District	Minimum Lot Area (Sq. Ft.) (a)	Minimum Lot Frontage (Ft.) (a)	Minimum Front Yard (Ft.) (b)	Minimum Side Yard (Ft.)	Minimum Rear Yard (Ft.)	Building Height Limit (Ft.) (c)	Maximum Lot Coverage (including accessory buildings)
Residential	65,340	150	25	15	40	35	30%
Agricultural-Residential	65,340	150	35	15	40	35	20%
Business	65,340	150	25	15 (d)	40 (e)	40	60% Business 40% Residential
Industrial	65,340	250	25	40 (d)	40 (e)	50	60%

FOOTNOTES:

- a. Existing non-conforming lots may be built upon and pre-existing non-conforming structures or uses may be extended or altered only in accordance with the applicable provision of Chapter 40A, Section 6 of the Mass General Laws, or Section 4.2 of this bylaw.
- b. To be measured from the right-of-way line where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan, from a line 25 feet from and parallel with the center line of the traveled way.

- c. *The limitation on height of buildings which shall not apply in any district to chimneys, ventilators, towers, spires, or other ornamental features of buildings which are in no way used for living purposes.*
- d. *Side yard dimensions will be 50 feet when adjacent to Agricultural/Residential District and Residential District.*
- e. *Rear yard dimensions will be 50 feet when adjacent to Agricultural/Residential District and Residential District. [amended March 1971, May 1986 and May 2008]*

4.2 Non-Conforming Buildings

Buildings in existence at the time of the adoption of this amendment without the minimum front, side or rear yards required by Section 4.1 may be added to, pursuant to a Special Permit under M.G.L. 40A Section 6, after a finding by a special permit granting authority that the proposed changes and, or, construction are not substantially more detrimental to the neighborhood than the existing non-conforming situations. Alterations and construction allowed under such special permits shall meet all other existing state requirements. [adopted March 1975; amended May 2017]

In accordance with Section 11.2.2, Special Permits-Buildings including accessory buildings without the minimum front, side or rear yards required by Section 4.1 may be added to, pursuant to a special permit granted by the Zoning Board of Appeals. [(this section) adopted May 2017]

Zoning Bylaw Section 5: Miscellaneous Provisions

Section

5.0 Miscellaneous Provisions

5.1 Non-conforming Uses

5.1.1 The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this bylaw may be continued although such structure or use does not conform with provisions of the bylaw. This provision is not intended to afford protections for pre-existing structures or lots broader than those set forth in Chapter 40A, Section 6 of the General Laws. [amended May 2012]

5.1.2 Extension. No increase in the extent of the non-conforming use of the structure or land may be made except as provided by Chapter 40A Section 6 of the General Laws of the Commonwealth or Section 4.2 of this bylaw.

5.1.3 Abandonment. A non-conforming use which has been abandoned or discontinued for two (2) years or more shall not be re-established and any future use shall conform with this bylaw. [amended May 2012]

5.1.4 Changes. Once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use.

5.1.5 Construction or use under a building permit or special permit shall conform to any subsequent amendment of the Town Zoning Bylaw unless the use or construction is

commenced within a period of six (6) months after issuance of the permit and in cases involving construction, unless construction is continued through to completion as continuously and expeditiously as is reasonable. The applicable provisions of Chapter 40A, Section 6 of the General Laws of the Commonwealth of Massachusetts shall apply.

5.2 Accessory Buildings

5.2.1 No accessory buildings or structures shall be located within the required front yard area.

5.2.2 No accessory building shall be located in any side yard area nearer to the side lot line than 15 feet, or in a rear yard nearer to the rear line than 15 feet, or nearer to another principle or accessory building than 15 feet.

5.3 Flood Plain Restrictions

In a Flood Plain District, uses otherwise permitted as set forth in Section 5.1.1 through 5.1.5 above may be authorized after a finding by the Board of Appeals, after a hearing with due notice given, that said use will not endanger the health or safety of the occupants thereof. [amended May 1986]

5.4 Parking Requirements

Any building hereafter constructed for business or industrial use shall be so located upon its parcel of land that there may be provided an off-street parking area equal to twice the floor area of the building to be constructed.

Zoning Bylaw Section 6: Sign Regulations

Section

6.0 Sign Regulations

6.1 Purpose and Definitions

For the purpose of this bylaw, a sign is defined as any outdoor surface with letters, words, numbers or other symbols, any of which exceed one inch in height, or any three-dimensional representation, intended to convey a message.

6.2 Prohibitions and Exceptions

All signs are prohibited except the following:

6.2.1 All signs existing on the date of adoption of this bylaw, provided they are photographed by the owner and registered with the enforcing authority within thirty (30) days of adoption date.

6.2.2 Signs on mail boxes and newspaper tubes not larger than said mailboxes or newspaper tubes.

6.2.3 Signs erected by the Town, Commonwealth, or their agencies.

6.2.4 Signs required by law.

6.2.5 Provided they are otherwise permitted by the Town's bylaws, one non-flashing, non-neon, non-moving, non-three-dimensional sign on a building; and on other such sign per building, free standing, on or two-surfaced, not over 20 feet above ground level and not closer than fifteen (15) feet to the edge of a traveled way; signs on buildings not to exceed fifty (50) square feet and free-standing signs not to exceed twenty five (25) square feet, neither class to be artificially illuminated from within or the rear. [amended May 1986]

6.3 Enforcement

It shall be the responsibility of the Selectmen or their legally appointed delegate to take the initiative to enforce this bylaw with or without a citizen's complaint. No sign shall hereinafter be displayed without a permit issued by the enforcing authority. [adopted May 1977]

Zoning Bylaw Section 7: Site Plan Approval

Section

7.0 Site Plan Approval

7.1 Purpose

The purpose of site plan approval is to further the purposes of this bylaw and to ensure that new development is designed in a manner which reasonably protects visual and environmental qualities and property values of the town, and to assure adequate drainage of surface water and safe vehicular and non-vehicular access. [amended May 2012]

7.2 Projects Requiring Site Plan Approval

The construction or exterior alteration of or change of use of:

- A non-residential/agricultural structure or use
- A commercial or business structure or use
- An industrial structure or use
- Any other use specified in this zoning bylaw which indicates Site Plan Approval is required

No building permit, shall be issued and no application for such permits shall be accepted for any of the above uses unless a site plan has been endorsed by the Planning Board and written approval received from other boards, including but not limited to the following:

Building Inspector, Board of Health, Board of Selectmen, Conservation Commission, Highway Department, Fire Department and Police Department.

The Planning Board may waive any or all requirements of site plan review for external enlargements or changes of use of less than 25% of the existing floor area. [amended May 2008, May 2011, May 2012, May 2013 and May 2014]

7.3 Application for Site Plan Approval

7.3.1 Each application for Site Plan Approval shall be submitted to the Planning Board by the current owner of record, accompanied by eight (8) copies of the site plan and one electronic copy (i.e. PDF, etc.). [amended May 2008 and May 2014]

7.3.2 Pursuant to Chapter 44, Section 53G of the General Laws, the Planning Board shall obtain with each submission, a deposit sufficient to cover any expenses connected with a public hearing and review of plans, including but not limited to the costs of any engineering, legal or planning consultant services necessary for review purposes. In the event such initial deposit is inadequate to satisfy the Planning Board's expenses, the Planning Board may require a further deposit during the course of the public hearing and/or as a condition of approval of the site plan. [amended May 2012]

7.4 Required Site Plan Contents

All site plans shall be prepared by a registered architect, landscape architect, or professional engineer and a professional land surveyor unless this requirement is waived by the Planning Board because of unusually simple circumstances. All site plans shall be on standard 24"x36" sheets and shall be prepared at a sufficient scale to show:

7.4.1 The location and boundaries of the lot, adjacent streets of ways, and the location and owner's names of all adjacent properties.

7.4.2 Existing and proposed topography including contours, the location of wetlands, streams, water bodies, drainage swales, areas subject to flooding, and unique natural land features.

7.4.3 Existing and propose structures, including dimensions and elevations.

7.4.4 The location of parking and loading areas, driveways, walkways, access and egress points.

7.4.5 The location and description of all proposed septic systems, water supply, storm drainage systems, utilities, and refuse and other waste disposal methods.

7.4.6 Proposed landscape features including the location and description of screening, fencing and plantings.

7.4.7 The location, dimensions, height and characteristics of propose signs.

7.4.8 The location and a description of proposed open space or recreation areas. The Planning Board may waive any information requirements it judges to be unnecessary to the review of a particular plan. The Planning Board may require such additional information as it may deem necessary to review a particular plan. [amended May 2008 and May 2012]

7.5 Procedure for Site Plan Review: Role of Planning Board

7.5.1 The Planning Board shall refer copies of the application within 15 days to the Building Inspector, Board of Health, Conservation Commission, Board of Selectmen, Highway Department, Fire Department and Police Department who shall review the application and submit their recommendations and comments to the Planning Board. Failure of Boards to make recommendations within 35 days of the referral of the application shall be deemed to be lack of opposition. [amended May 2008]

7.5.2 The Planning Board shall hold a public hearing within sixty-five (65) days of the receipt of the application and after due consideration of the recommendations of the Board shall take final action within 90 days from the time of the hearing closing. [amended May 2011]

7.6 Special Permit Review

The period of review for a special permit requiring site plan approval shall be the same as any other special permit and shall conform to the requirements of Chapter 40A, Sec. 9, "Special Permits." A joint public hearing to address the Special Permit application and Site Plan Approval application may be held at the discretion of the Planning Board and Board of Appeals. [amended May 2011 and May 2012]

7.7 Criteria for Site Plan Review

The following criteria shall be considered by the aforementioned Boards in the review and evaluation of a site plan, consistent with a reasonable use of the site for the purposes permitted or permissible by the regulations of the district in which it is located:

7.7.1 If the proposal requires a special permit, it must conform to the special permit requirements as listed in Section 11.2.2 of this bylaw.

7.7.2 The development shall be integrated into the existing terrain and surrounding landscape and shall be designed to protect abutting properties and community amenities. Building sites shall, to the extent feasible; 1) minimize use of wetlands, steep slopes, flood plains, hilltops; 2) minimize obstruction of scenic views from publicly accessible locations; 3) preserve unique natural or historical features; 4) minimize tree, vegetation and soil removal and grade changes; 5) maximize open space retention; and 6) screen objectionable features from neighboring properties and roadways.

7.7.3 Architectural style shall be in harmony with the prevailing character and scale of buildings in the neighborhood and the Town through the use of appropriate building materials, screening, breaks in roof and wall lines and other architectural techniques. Variation in detail, form and siting shall be used to provide visual interest and avoid monotony. Proposed buildings shall relate harmoniously to each other with adequate light, air, circulation and separation between buildings.

7.7.4 The development shall be served with adequate water supply and waste disposal systems. For structures to be served by on-site waste disposal systems, the applicant shall submit a septic system design prepared by a Certified Engineer and approved by the Board of Health.

7.7.5 The plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent ways. The plan shall describe estimated average daily and peak hour vehicle trips to be generated by the site and traffic flow patterns for vehicles and pedestrians showing adequate access to and from the site and adequate circulation within the site.

7.7.6 The site plan shall show adequate measures to prevent pollution of surface or ground water, to minimize erosion and sedimentation and to prevent changes in ground water levels, increased run-off and potential for flooding. Drainage shall be designed so that run-off shall not be increased, ground water recharge is maximized, and neighboring properties will not be adversely affected.

7.7.7 The development will not place excessive demands on Town services and infrastructure.

7.7.8 Electric, telephone, cable TV and other such utilities shall be underground where physically and environmentally feasible.

7.7.9 Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures, and other unsightly uses shall be set back or screened to protect the neighbors from objectionable features.

7.7.10 The site plan shall comply with all zoning requirements for parking, loading, dimensions, environmental performance standards and all other provisions of this bylaw.

7.7.11 Before approval of a site plan, the reviewing board may request the applicant to make modifications in the proposed design of the project to ensure that the above criteria are met.

7.8 Final Action

The Planning Board's final action shall consist of either:

7.8.1 A determination that the propose project will constitute a suitable development and is in compliance with the criteria set forth in this bylaw;

7.8.2 A written denial of the application stating the reasons for such denial; or

7.8.3 Approval subject to any conditions, modifications and restrictions as the Planning Board may deem necessary.

7.9 Enforcement

7.9.1 The Planning Board may require the posting of a bond or other suitable security to assure compliance with the plan and conditions and may suspend any permit or license when work is not performed as required. [amended May 2012]

7.9.2 Any special permit with site plan approval issued under this section shall lapse within one (1) year if a substantial use thereof has not commenced sooner except for good cause.

7.9.3 The Planning Board may periodically amend or add rules and regulations relating to the procedures and administration of this section.

7A Large-Scale Ground-Mounted Solar Photovoltaic Installations In the Business District

1.0 Purpose

The purpose of this bylaw is to provide for the regulation of Large-Scale Ground-Mounted Solar Photovoltaic Installations, as defined herein, by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety and minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

1.1 Applicability

This section applies to Large-Scale Ground-Mounted Solar Photovoltaic Installations proposed to be constructed after the effective date of this section, as well as to physical modifications to such installations presently existing or hereafter constructed that materially alter the type, configurations or size of the installation or related equipment or impact abutters.

2.0 Definitions

The following definitions shall apply to Section 7A.

Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted and has a nameplate capacity of 250 KW DC.

Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

Site Plan Approval Authority: The site plan approval authority as designated by the Zoning Bylaws.

Solar Photovoltaic Array: An arrangement of solar photovoltaic panels.

Zoning Bylaws: The Town of Brimfield Zoning Bylaws.

3.0 General Siting Standards

3.1 Lot Requirements

Large-Scale Ground-Mounted Solar Photovoltaic Installations shall be permitted on lots larger than 5 acres in the Business District.

3.2 Site Control

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed Large-Scale Ground-Mounted Solar Photovoltaic Installation.

3.3 Setbacks

For Large-Scale Ground-Mounted Solar Photovoltaic Installations, front, side and rear setbacks shall be as follows:

(a) Front yard: The front yard depth shall be at least 100 feet.

(b) Side yard: Each side yard shall have a depth at least 100 feet.

(c) Rear yard: The rear yard depth shall be at least 100 feet.

3.4 Height of Structures

The height of any structure associated with a Large-Scale Ground-Mounted Solar Photovoltaic Installation shall not exceed 15 feet.

3.5 Project Area

The total area of a Large-Scale Ground-Mounted Solar Photovoltaic Installation, including all appurtenant structures and improvements, shall not exceed ten (10) acres.

4.0 Permit Process, Requirements & Enforcement

4.1 Site Plan Review

Large-Scale Ground-Mounted Solar Photovoltaic Installations shall be constructed, installed, used and modified only in conformity with site plan approval issued by the Site Plan Approval Authority in accordance with the Zoning Bylaws. The requirements set forth in this chapter shall be applied coincident with the site plan approval requirements set forth in Section 7.0 of the Zoning Bylaws and any amendments thereto. The requirements of this section shall take precedence in the event of a direct conflict.

4.2 Required Documents

Pursuant to the site plan approval process the project proponent shall provide the following:

- i. A site plan prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts showing property lines and physical features, including roads, for the project site, proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures, and existing trees 6" caliper or larger;
- ii. Blueprints or drawings of the installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
- iii. One or three-line electrical diagram detailing the installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
- iv. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
- v. Name, address and contact information for proposed system installer;
- vi. Name, address, phone number and signature of all project proponents and property owners;
- vii. The name, contact information and signature of any agents representing the project proponent;
- viii. Documentation of actual or prospective access and control of the project site;
- ix. An operation and maintenance plan (see also Section 6.6);
- x. Zoning district designation for the parcel(s) of land comprising the project site;
- xi. Proof of liability insurance written by companies licensed to provide such insurance in Massachusetts and with coverage limits at commercially acceptable levels;
- xii. Description of financial surety that satisfies Section 6.3;
- xiii. A list of any hazardous materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment, as appropriate;
- xiv. Documentation by an acoustical engineer of the noise levels projected to be generated by the installation;
- xv. Documentation of soil types on all land involved with the project;

- xvi. Locations of wetlands and Priority Habitat Areas defined by the Natural Heritage & Endangered Species Program (NHESP);
- xvii. Locations of floodplains or inundation areas for moderate or high hazard dams; and
- xviii. Provision of water including that needed for fire protection.

The Site Plan Approval Authority may require additional information, data or evidence as it deems necessary pursuant to the site plan approval process or may waive information requirements as it deems appropriate.

All material modifications to a Large-Scale Ground-Mounted Solar Photovoltaic Installation made after site plan approval has been issued shall require approval of the Site Plan Approval Authority under the site plan approval process.

5.0 Design Standards

5.1 Lighting

Lighting of Large-Scale Ground-Mounted Solar Photovoltaic Installations shall be consistent with local, state and federal law. Overnight lighting shall not be permitted unless required by the Site Plan Approval Authority or by Local, State or Federal Law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

5.2 Signs and Advertising

Signs on Large-Scale Ground-Mounted Solar Photovoltaic Installations shall comply with the Zoning Bylaws. A sign consistent with this section shall be required to identify the owner and provide a 24-hour emergency contact phone number. Large-Scale Ground-Mounted Solar Photovoltaic Installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the installation.

5.3 Utility Connections

Reasonable efforts, as determined by the Site Plan Approval Authority, shall be made to place all utility connections from the Large-Scale Ground-Mounted Solar Photovoltaic Installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

5.4 Fencing

The Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be fenced so as to control access to the facility. The fence setback from the property line will be a minimum of 90 feet. The fencing should be a non-reflective, color blending fence.

5.5 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 the Large-Scale Ground-Mounted Solar Photovoltaic Installation or otherwise prescribed by applicable laws, regulations and bylaws.

5.6 Control of Vegetation

Herbicides shall not be used to control vegetation at the installation. Mowing, grazing or using geotextile materials underneath the solar array are possible alternatives.

5.7 Noise

Noise generated by Large-Scale Ground-Mounted Solar Electric Installations and associated equipment and machinery shall conform to applicable state and local noise regulations, including the DEP's Division of Air Quality noise regulations, 310 CMR 7.10.

5.8 Facility Access and Conditions

The Large-Scale Ground-Mounted Solar Photovoltaic Installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for maintaining the installation and any access road (s) that are not accepted public ways maintained by the responsible public authority. The owner operator of the installation shall identify a responsible person for emergency purposes and public inquiry and shall at all time throughout the life of the installation maintain current contact information (name, address, telephone number, e-mail address) for such person(s) on file with the Building Inspector, the Fire Chief and Site Plan Approval Authority.

5.9 Screening

Large-Scale Ground-Mounted Solar Photovoltaic Installations shall be screened from view by a staggered and grouped planting of shrubs and small trees having a minimum depth of fifteen (15) feet. Such plantings shall use native plants and a mix of deciduous and evergreen species and may be located within the setback area.

5.10 Appurtenant Structures

All appurtenant structures to a Large-Scale Ground Mounted Solar Photovoltaic Installation shall be considered part of that Installation for purposes of applying dimensional regulations as set forth in this bylaw and otherwise in the Zoning Bylaws, including such regulations concerning the bulk and height of structures, lot areas, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

6.0 Additional Provisions

6.1 Discontinuance and Decommissioning

The Large-Scale Ground-Mounted Photovoltaic Installation, or any substantial part thereof, not in operation for a period of one hundred and fifty (150) continuous days or more without written permission from the Site Plan Approval Authority, or that has reached the end of its useful life, shall be considered discontinued and shall be removed. Upon written request from the Building Inspector addressed to the contact address provided and maintained by the owner and operator as required above, the owner or operator shall provide evidence to the Building Inspector demonstrating continued use of the installation. Failure to provide such evidence within thirty (30) days of such written request shall be conclusive evidence that the installation has been discontinued. The owner or operator of the installation shall notify the Site Plan Approval Authority and Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal.

6.2 Removal Requirements

The owner or operator shall physically remove the installation no more than one hundred and fifty (150) days after the date of discontinued operations.

Removal shall consist of:

- (a) Removal of the installation in its entirety, including all associated structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Approval Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

If the owner or operator of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of discontinuance or the proposed date of decommissioning, the Town of Brimfield shall have the right, to the extent it is otherwise duly authorized by law, to enter the property and remove the installation at the expense of the owner of the installation and the owner(s) of the site on which the installation is located.

6.3 Financial Surety

Proponents of Large-Scale Ground-Mounted Solar Photovoltaic Installations shall provide to the Town, prior to construction, a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Site Plan Approval Authority. Such surety will not be required for municipally- or state-owned installations. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

6.4 Compliance with Laws, Bylaws and Regulations

The construction and operation of all Large-Scale Ground-Mounted Solar Photovoltaic Installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical and communications requirements. All buildings and

fixtures forming part of the installation shall be constructed in accordance with the State Building Code.

6.5 Building Permit and Building Inspection

No Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

6.6 Fees

A site plan approval application for Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be accompanied by the required fee, and in, accordance with the site plan approval requirements of the Zoning Bylaws, a deposit sufficient to cover any expenses connected with a public hearing and review of plans, monitoring and inspection fees, including but not limited to the costs of any engineering, legal or planning consultant services necessary for review purposes. An application for the required building permit shall be accompanied by the appropriate fee. All other fees that shall be required by permitting parties (Conservation Commission, etc.) shall be administered according to their regulations.

6.7 Operation & Maintenance Plan

The project proponent shall submit a plan for the operation and maintenance of the Large-Scale Ground-Mounted Solar Photovoltaic Installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

6.8 Utility Notification

No Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be constructed until evidence has been given to the Site Plan Approval Authority that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

6.9 Emergency Services

The Large-Scale Ground-Mounted Solar Photovoltaic Installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the installation shall be clearly marked.

6.10 Waiver

The Site Plan Approval Authority may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in this bylaw, provided that the Site Plan Approval Authority finds in writing that there are no reasonable conditions or alternatives that would allow the propose activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the

use of the property as to constitute an unconstitutional taking without compensation; or take any other action thereon.

7.0 Severability

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

Zoning Bylaw Section 8: Open Space Communities

Section

8.0 Open Space Communities

Open space communities shall be permitted in the Agricultural-Residential and Business districts only upon issuance of a Special Permit with Site Plan Approval from the Planning Board, as specified in Sections 7 and 11.2.2 of this bylaw, and in accordance with the additional requirements specified herein.

8.1 General Description

An "Open Space Community" shall mean a single family residential development in which the houses are clustered together into one or more groups on the lot and separated from each other and adjacent properties by permanently protected open space.

8.2 Purposes

The purposes of open space community development are to:

8.2.1 Allow for greater flexibility and creativity in the design of residential subdivisions, provided that the overall density of the development is no greater than what is normally allowed in the district;

8.2.2 Encourage the permanent preservation of open space, agricultural lands and other natural resources;

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

8.2.4 Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner;

8.2.5 Encourage a less sprawling form of development that consumes less open land.

8.3 Procedures and Pre-application Review

8.3.1 Applicants for Open Space Communities shall follow the Special Permit procedures specified in Section 11.2.2 and the Site Plan Approval procedures specified in Section 7.

8.3.2 To promote better communication and to avoid misunderstanding, applicants are encouraged to submit a Preliminary Plan for review by the Planning Board prior to the application for a special permit. Such Preliminary Plans shall comply with the Town's Subdivision Control Regulations.

8.3.3 The approval of special permit hereunder by the Zoning Board of Appeals shall not substitute for compliance with the Subdivision Control Act nor oblige the Planning Board to approve a related Definitive Plan for subdivision, nor reduce any time periods for Board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under law, adopt regulations establishing procedures for submission of a combined Special Permit application/Subdivision Plan which shall satisfy the Board's regulations under the Subdivision Control Act.

8.3.4 A Site Plan/Development Plan shall be submitted to the Zoning Board of Appeals and the Planning Board with the application for a special permit. Following approval of the special permit, a Definitive Plan shall be submitted to the Planning Board consistent with the Subdivision Regulations and in substantial conformity with the approved Site Plan/Development Plan, except where the Cluster Development does not constitute a subdivision under the Subdivision Control Law. [adopted May 1990]

8.4 General Requirements

The following standards shall be used as additional requirements in the special permit/site plan approval process for all open space communities:

8.4.1 The development shall include single family dwellings only.

8.4.2 The minimum land required for open space community development shall be five (5) acres and the parcels shall be held in single ownership or control at the time of application.

8.4.3 Each lot shall have adequate access on a public or private way.

8.4.4 Each lot shall be of a size and shape to provide a building site which shall be in harmony with the natural terrain and features of the land.

8.4.5 There shall be an adequate, safe and convenient arrangement of pedestrian circulation, facilities, roadways, driveways and parking.

8.4.6 The site plan shall identify the location and extent of all wetlands on the site as determined by the Conservation Commission under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40.

8.4.7 All buildings, homes and structures shall be separated from any existing public ways or agricultural land, either within the development or on abutting properties, by a 50-foot wide buffer strip of trees and fencing sufficient to minimize conflicts between farming operations and residences and to shield the development from view.

8.4.7.1 A plan for the buffer strip prepared by a registered landscape architect shall be submitted to the Planning Board for approval. The plan shall include a list of all tree types and sizes to be planted and an explanation of the suitability of a buffer. Trees shall be of fast-growing species and shall be mixed in type

8.4.7.2 Existing forest cover shall be used as a buffer wherever feasible. If no forest cover exists, as a minimum guideline for buffer planting, the Planning Board shall require the planting of twenty trees on each lot, a minimum of 18-24 inches in height at the time of planting.

8.4.7.3 If appropriate, the buffer strip shall be installed at the time all subdivision streets and utilities are installed. Otherwise, the buffer strip shall be installed at the beginning of the next planting season.

8.4.7.4 A deed restriction shall be recorded for each lot requiring the property owners to retain the buffer strip in perpetuity.

8.5 Utility Requirements

8.5.1 All structures which require plumbing shall be connected to a community septic system at no expense to the municipality.

8.5.2 For dwellings to be served by on-site waste disposal systems, the applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the special permit application. No community septic system serving the development shall exceed sewage flow of 2,000 gallons per day. Septic systems shall be placed in the development to maximize the distance between systems and shall be placed within common areas rather than on individual lots. Maintenance of community septic systems shall be the responsibility of the community association specified in Section 8.9.

8.6 Dimensional and Density Requirements

8.6.1 A one-family detached dwelling, or lawful accessory building, may be constructed on a lot within an Open Space Community development although such lot has less area and frontage than normally required, as herein specified.

8.6.2 The maximum number of dwelling units permitted in an open space community shall be calculated based upon one unit per 1 ½ acres for the net developable acreage remaining once the area of all wetlands and all areas unsuitable for on-site sewage disposal have been subtracted from the total acreage of the property.

8.6.3 Under the supervision of the Conservation Commission and in accordance with the provisions of the Wetland Protection Act, M.G.L. Chapter 131, Section 40, all wetlands shall be identified, and their area subtracted from net developable acreage of the total parcel.

8.6.4 Under the supervision of the Board of Health, and in conformance with Title V, percolation tests shall be conducted for all lots in the total acreage of the property which would be developed in a standard subdivision layout. The area of those lots which is determined not to be suitable for on-site sewage disposal shall be subtracted from net developable acreage of the total parcel.

8.6.5 Lot sizes in a cluster development shall not be less than ½ acre.

8.6.6 In no instance shall a designated lot have less than 100 feet of frontage on a public or private way.

8.6.7 Minimum front, rear and side setbacks shall be the same as normally required in the district.

8.6.8 All residential structures and accessory uses within development shall be set back from the boundaries of the development by a buffer strip of at least fifty (50) feet in width which shall include trees and shall be kept in a natural or landscaped condition.

8.7 Common Open Space Requirements

8.7.1 All land not devoted to dwellings, accessory uses, roads, or other development shall be set aside as common land for recreation, conservation or agricultural uses which preserve the land in essentially its natural condition.

8.7.2 The total area of common open space shall equal or exceed the area by which all single-family dwelling lots are reduced below the basic minimum lot area normally required in the zoning district.

8.7.3 The following lands shall not be used to meet the common open space requirements:

8.7.3.1 Lands within the flood plain district;

8.7.3.2 Lands identified as wetlands in accordance with the Massachusetts Wetlands Protection Act;

8.7.3.3 Lands with slopes greater than twenty-five percent (25%)

8.7.4 Further subdivision of common open land or its use for other than recreation, conservation, or agriculture, except for easements for underground utilities and septic systems, shall be prohibited. Structures or buildings accessory to recreation, conservation, or agricultural uses may be erected but shall not exceed 5% coverage of such common open land.

8.8 Common Open Space Ownership and Conveyance

All common open land shall be either:

8.8.1 Conveyed to a community association owned or to be owned by the owners of lots within the development. If such a community association is utilized, ownership thereof shall pass with conveyances of the lots in perpetuity;

8.8.2 Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space;

8.8.3 Conveyed to the Town, at no cost, and be accepted by it for a park or open space use. Such conveyance shall be at the option of the Town and shall require the approval of the voters at a Town Meeting.

8.8.4 Farmland owners and owners of managed forest lands are not required to sell the part of their property which is to become permanent agricultural open space, provided that they convey the development rights of that open space in a conservation easement prohibiting future development of the property in accordance with Section 8.7.1 to 8.7.3.

8.8.5 In any case where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways. Such restrictions shall further provide for maintenance for the common land in a manner which will ensure its suitability for its function, appearance, cleanliness and proper maintenance of drainage, utilities and the like.

8.9 Community Association

8.9.1 A non-profit, incorporated community association shall be established, requiring membership of each lot owner in the open space community. The association shall be responsible for the permanent maintenance of all communal facilities. A community association agreement of covenant shall be submitted with the special permit/site plan approval application guaranteeing continuing maintenance of such common utilities, land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of Town Counsel and the Planning Board.

8.9.2 Such agreements or covenants shall provide that in the event that the association fails to maintain the common open land in reasonable order and condition in accordance with the agreement, the Town may, after notice to the association and public hearing, enter upon such land and maintain it in order to preserve the common open land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed ratably against the properties within the development.

Zoning Bylaw Section 9: Common Driveways

Section

9.0 Common Driveways

9.1 Defined

A common driveway is defined as a driveway providing primary access to more than one lot.

9.2 Conditions to be Determined by Board of Appeals

Common driveways shall meet the following conditions, unless otherwise authorized by the Zoning Board of Appeals:

9.2.1 Not more than two lots shall be accessed by a single common driveway.

9.2.2 A common driveway shall not be more than 500 feet in length.

9.2.3 Common driveways shall be constructed to meet the design standard for a secondary street, namely: Standard width – 2 rods/33 feet with a driving surface of 24 feet; Sub-base -1 foot of gravel and 2 inches of processed gravel; Other specification such as Type 1, shoulder grade, road grade to be left to the discretion of the Planning Board in consultation with the Highway Superintendent.

9.3 Frontage and Access

Each lot must have legal frontage on a public way or approved private way. Common driveways must be accessed over such approved frontage. Distance along common driveways shall not be used to satisfy minimum frontage requirements.

9.4 Owners Responsibility

It is the responsibility of the property owners using said driveway to plow, maintain, and repair said driveway. [adopted May 17, 1995]

Zoning Bylaw Section 10: Trailers

Section

10.0 Trailers

10.1 Location

Not more than one (1) house trailer, mobile home or trailer which contains sleeping and eating accommodations may be kept on any parcel of land. No house trailer, mobile home or trailer which contains sleeping and eating accommodations may be used as living quarters while so located. Space shall not be leased for trailers, provided, however, that the foregoing shall not prohibit the establishment of a trailer camp under the provisions of Chapter 140 of the General Laws, or a family camping ground under Article VIII of the State Sanitary Code.

10.2 Emergency Use

The owner or occupier of a residence which has been destroyed by fire or other natural disaster may place a mobile home on the site of such residence and reside in said mobile home for a period not to exceed twelve (12) months while the residence is being rebuilt. Any such mobile home shall be subject to the provisions of the State Sanitary Code. [adopted May 1984]

10.3 Relative to Flea Markets in Established Districts

The provisions of Section 10.1 shall not apply to licensed vendors at flea market grounds in Business and Agricultural-Residential zones for a period not to exceed seven (7) consecutive days three (3) times per year. [adopted May 1986; amended May 2008]

Zoning Bylaw Section 11: Administration

Section

11.0 Administration

11.1 Enforcement by Zoning Officer

The Board of Selectmen shall appoint a Zoning Officer for a term of one (1) year who is charged with enforcing this bylaw. No building shall be built or altered, and no use of land or building shall be begun or changed without a permit. No building shall be occupied until a certificate of occupancy has been issued.

The provisions of this bylaw, the conditions of a permit granted under this bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, may, without limitation of any other enforcement mechanisms, be enforced by the Zoning Officer by non-criminal complaint pursuant to the provisions of General Laws, Chapter 40, Section 21D. The fine for any violation disposed of through this procedure shall be one hundred dollars (\$100.00) for the first offense, two hundred dollars (\$200.00) for the second offense, and three hundred dollars (\$300.00) for the third and subsequent offense.

Each day of a violation is considered a separate offense. [this section amended May 1981, May 2008 and May 2012]

11.2 Duties of Board of Appeals

There is hereby established a Board of Appeals of three (3) members and two (2) associated members to be appointed by the Selectmen, as provided in Chapter 40A of the General Laws, which shall act on all matters within its jurisdiction under this by law and Chapter 40A of the General Laws. The Board of Appeals shall have the following powers:

In exercising these powers, pursuant to Chapter 44, Section 53G of the General Laws, the Board of Appeals shall obtain with each submission, a deposit sufficient to cover any expenses connected with a public hearing and review of plans, including but not limited to the costs of any engineering, legal or planning consultant services necessary for review purposes. In the event such initial deposit is inadequate to satisfy such expenses, the Board of Appeals may require a further deposit during the course of the public hearing and/or as a condition. [amended May 2012]

11.2.1 Appeals

To hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40A, General Laws, or by any officer or board of the town, or by any person aggrieved by any order or decision of the zoning officers or other administrative official in violations of any provision of Chapter 40A, General Laws, or of this bylaw.

11.2.2 Special Permits

To grant a special permit as provided by sections of this bylaw when it shall have found after a detailed study, duly advertised public hearing, held within sixty-five (65) days after filing of an application with the Board of Appeals, a copy of which shall forthwith be given to the Town Clerk by the applicant, and the concurring vote of all members of the Board of Appeals, that the use involved will not be detrimental to the established or future character of the neighborhood and town and subject to appropriate conditions or safeguards if deemed necessary. Special permits shall lapse if construction or use has not begun within two (2) years of issuance, in accordance with the provisions of Chapter 40A, Section 9 of the General Laws of the Commonwealth. [amended May 2012]

11.2.3 Variances

To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon a variance from the terms of this bylaw where, owing to conditions especially affecting such a parcel or such building but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without substantially derogating from the intent or purpose of this bylaw, but not otherwise. Nothing in this bylaw shall be construed as granting the Board of Appeals the power to authorize a use or activity not otherwise permitted in the district in which the land or structure is located. [amended September 1980]

11.3 Amending Zoning Bylaws

This bylaw may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of Section 5 of Chapter 40A.

11.4 Validity

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

11.5 Duties of Building Inspector: Applications and Permits

Any building, sign or structure to be erected, altered or changed in use shall require a building permit from the Inspector of Buildings.

The Inspector of Buildings shall first determine that no town bylaw affecting land, building or structure has been or will be violated, and may require any information needed in order to determine the legality or illegality of the proposed use. Any application for such a permit shall be accompanied by a site plan, showing the shape and dimensions of the building, lot to be built on including the locations and size of all buildings or structures affected.

The Inspector of Buildings shall take action in writing on an application for a permit, either granting the permit or disapproving the application, within thirty (30) calendar days of receipt of the application.

Buildings begun but not completed within two (2) years of the date of the permit shall be deemed a violation of this bylaw enforcement shall fall under Section 11.1 Enforcement. [adopted May 1975; amended May 2008]

Zoning Bylaw Section 12: Temporary Moratorium on Recreational Marijuana Establishments

Section

12.0 Purpose

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The laws, which

allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended December 30, 2016; Chapter 351 of the Acts of 2016) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses on April 1, 2018. Currently under the Zoning Bylaw, a non-medical Marijuana Establishment (hereinafter, a "Recreational Marijuana Establishment"), as defined in G.L. c. 94G §1, is not specifically addressed in the Zoning Bylaw. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana rises novel, legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation on Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

12.1 Definition

"Recreational Marijuana Establishment" shall mean a "marijuana cultivator marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business".

12.2 Temporary Moratorium

For reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through September 30, 2018 or until such time as the Town adopts Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments and shall consider adopting new Zoning Bylaws in response to these new issues. [adopted May 2017 (all of Section 12)]

NOTES

Section 12 was deleted from the Zoning Bylaws in its entirety by a 2/3 vote of the 2014 Annual Town Meeting. Please see minutes of that meeting for complete reference pertaining to Rate of Development Bylaw which is now deleted.

According to Mass. General Laws, Chapter 40, Section 32, the effective date of this bylaw is the date of delivery of the bulletin or pamphlet to each occupied dwelling in the town.

According to Chapter 40A, Section 11 of the General Laws, the enforcement date of this bylaw is June 11, 1968, the date of the public hearing before the Planning Board.