Town of Wenham
Zoning By-Law

2012

Town of Wenham | 138 Main Street | Wenham, MA 01984

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Section 1.0 PURPOSE, AUTHORITY, AND SCOPE

1.1 PURPOSE

These regulations are enacted to promote the general welfare of the Town of Wenham, to protect the health, safety and quality of life of its inhabitants; encourage the most appropriate use of land throughout the Town; preserve the cultural, historical, aesthetic, environmental awareness and agricultural heritage of the community; increase the amenities of the Town; and reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited to, the provisions of the Zoning Act, G.L. c. 40A, as amended, Section 2A of 1975 Mass. Acts 808, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

1.2 AUTHORITY

This Zoning By-Law is enacted in accordance with the provisions of the General Laws, Chapter 40A and any and all amendments thereto.

1.3 SCOPE

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

1.4 APPLICABILITY

Unless specifically exempted in this By-Law, all buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Zoning By-Law. No building, structure, or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. Where the application of this By-Law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-Law shall control.

1.5 AMENDMENTS

This By-Law may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in G.L. c. 40A, s.5, and any amendments thereto.

1.6 SEPARABILITY

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

Section 2.0 DEFINITIONS

2.1 TERMS AND USAGE

In this By-Law, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the By-Law. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied." The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts State building code shall have the meaning given therein unless a contrary intention is clearly evident in this By-Law.

2.2 DEFINITIONS

Accessory apartment: A separate dwelling unit within or as an attached portion of a single family dwelling or within an accessory building subject to the provision of Section 4.3.2.

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

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

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

Agricultural use, nonexempt: Agricultural use of property not exempted by G.L. c. 40A, s. 3 on parcels of less than five acres, limited to (i) the growing or storing of crops, fruits, vegetables, fodder and ensilage as a principal use, or (ii) the raising and/or keeping of poultry, pigeons, dogs, pigs, or other animals as a principal use.

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

Barn: A building used chiefly for storing grain and hay and for keeping farm animals or farm equipment.

Bed and breakfast establishment: An owner-occupied residence in which not more than six (6) rooms, each with no cooking facilities therein, are provided for temporary stay. Breakfast may be provided to guests.

Building height: The vertical distance measured from the grade to the highest point of the roof. When a building faces more than one street, the height shall be measured from the average of the grade at the center line of each street front. Not included are spires, cupolas, antennae, or similar parts of structures which do not enclose potentially habitable floor space.

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

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

Camp: An organized program for groups of boys and/or girls for the purpose of promoting health, education, and knowledge.

Certificate of Use and Occupancy: A written form, signed by the Building Inspector, certifying that the stated and described use, structure and/or lot conforms to this By-Law or, in the case of an appeal, to the written instructions of the Board of Appeals.

Child Care Facility: A child care center or school age child care program, as those terms are defined in G.L. c.15D, s.1A.

> ***Child care facility, family (large or small):*** Any private residence operating as a child care facility as defined in G.L. c.15D, s.1A.

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

Commercial recreation, indoor: A structure for recreational, social or amusement purposes, which may include as an accessory use the consumption of food and drink, including all connected rooms or space with a common means of egress and entrance. Commercial recreation structures shall include theatres, concert halls, dance halls, skating rinks, bowling alleys, health clubs, dance studios, or other commercial recreational centers conducted for or not for profit.

Commercial recreation, outdoor: An outdoor area used for recreational, social or amusement purposes, which may include as an accessory use the consumption of food and drink. Outdoor commercial recreation facilities shall include drive-in theatres, golf courses/driving ranges, bathing beaches, sports clubs, horseback riding stables, boathouses, game preserves, marinas or other facilities where commercial recreation is carried on in whole or in part outdoors, except those activities more specifically designated in this By-Law.

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

Dwelling: Any building, or part thereof, used for habitation for one or more persons, but not including commercial accommodations for transient occupancy or trailers or mobile homes, whether mounted or not.

> ***Dwelling, multifamily:*** A dwelling with three or more dwelling units.
>
> ***Dwelling, single family:*** A building containing one dwelling unit intended and designed to be occupied by a single family.
>
> ***Dwelling, two family:*** A dwelling intended and designed to be occupied by two families independent of each other in regard to the preparation of food. A "semi-detached two family dwelling" is a building in which the dwelling units are separated by a common wall located on the boundary between the lots provided for each dwelling unit.

Educational use, nonexempt: Educational facilities not exempted from regulation by G.L. c. 40A, s. 3.

Essential services: Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhead, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits,

cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment in connection therewith.

Family: An individual, or two or more persons related by blood, marriage or adoption, living and cooking together as a single housekeeping unit, or a group of not more than six persons, who need not be related by blood, marriage or adoption, living and cooking together as a single housekeeping unit.

Farm stand, temporary: A temporary roadside facility not exempted by G.L. c. 40A, s. 3 for the sale of produce raised on the premises, set back at least five feet from the street side line, to be removed at the end of the season.

Floor area, gross: The sum of the gross horizontal areas of all floors in a building and its accessory buildings on the same lot, measured from the exterior faces of the walls. Floor area does not include cellars, attics, or unenclosed porches not used for human occupancy.

Frontage: The boundary of a lot coinciding with a street line, being an unbroken distance along a Street maintained by the Town of Wenham, the County, or the State, or along a way shown on an approved Definitive Subdivision Plan built to specification or secured in accordance with G.L. c. 41, s. 81U.

Funeral home: A facility for conducting funerals and related activities such as embalming.

Garage, Private: A building or structure or portion thereof in which a motor vehicle or vehicles is stored.

General service establishment: A shop for lawn mower repair or service or small appliance repair, upholstery or furniture repair, bicycle repair, builder, carpenter, caterer, electrician, mason, painter, plumber or roofer or the like.

Greenhouse or nursery, nonexempt: A facility used for the nurture of plants or trees not exempt by statute.

Hospital or Sanitarium: An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, and other physical or mental conditions and including, as an integral part of the institution, related facilities including laboratories, outpatient facilities, training facilities, medical offices, and staff residences.

Junkyard: The use of more than six hundred (600) square feet of the area of a lot for the storage or abandonment of junk.

Lot: An area of land in common ownership meeting minimum requirements for area, width, and frontage in the district in which it lies. A lot is buildable.

> ***Lot area:*** The area contained within a lot. When the distance between any two points on lot lines is less than fifty (50) feet, measured in a straight line, the smaller portion of the lot which is bounded by such straight line and such lot lines shall not be considered in computing the minimum lot area unless the total of the distances along such lot lines between such two points is less than one hundred fifty feet.
>
> ***Lot Coverage:*** The area of the lot included within the outside lines of the exterior walls of all structures located on the lot and including all porches, decks, patios, and non-permeable surfaces.
>
> ***Lot line:*** The front, rear, and side lines bounding a lot. Any lot line that is not a front line or a rear line shall be deemed a side line.
>
> ***Lot, hammerhead:*** A lot with reduced frontage authorized by special permit in accordance with Section 5.2.2.1 herein.
>
> ***Lot width:*** The horizontal distance between side lot lines, measured parallel to the lot frontage at the building front line.

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

Motor vehicle repair facility: An establishment, garage, or work area enclosed within a building where repairs are made or caused to be made to motor vehicles.

> ***Motor vehicle repair facility, body:*** An establishment where repairs are made or caused to be made on motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies, but which does not include the storage of vehicles for the cannibalization of parts.
>
> ***Motor vehicle repairs facility, general:*** Premises for the servicing and repair of motor vehicles, but not to include fuel sales.

Motor vehicle light service facility: Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

Municipal facilities: Facilities owned or operated by the Town of Wenham.

Multi-family residence: Multi-family dwellings, each of which contains two or more independent dwelling units consisting of a suite of rooms, bath and toilet facilities, and a kitchen facility. The terms "town houses," "row houses," "attached houses" and like terms shall be interpreted as being synonymous with the term "multifamily residence."

> ***Multi-family residence, non-restricted:*** A multi-family residence in which residence shall not be restricted to persons fifty five years of age or over.
>
> ***Multi-family residence, age restricted:*** A multi-family residence in which residence is restricted to persons fifty five years of age or over. Each such multi-family dwelling building may also include central kitchen and dining facilities for providing meals to the residents thereof and their guests but not to the public and may also provide lounge rooms for the common use of residents and their guests. In each such dwelling unit one of the residents must be a person who is fifty-five years of age or over. In one of such buildings, a unit may be included for occupancy by a manager of the development and his or her immediate family, one room of which may be used for an office. The manager's unit need not be occupied by a person fifty five years of age or over. Except for the unit so used and occupied by the manager, no dwelling unit in a multi-family age restricted residence shall be resided in by more than two (2) persons.

Neighborhood: An area of the town having distinguishing characteristics.

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

Paper Street: A public way constructed in accordance with Section 5.2.1.

Parcel: An area of land that does not satisfy the definition of “lot”.

Personal service establishment: A facility providing personal services such as a hair salon, barber shop, tanning facility, dry cleaner, print shop, or photography studio, or the like.

Place of public assembly: Any structure or facility, whether indoor or outdoor, where the public gather. Places of public assembly shall include churches, meeting halls, auditoriums, libraries, museums, private clubs and lodges, funeral homes, restaurants and similar eating and drinking establishments, theaters, bowling alleys and other places of amusements, bus depots and other passenger terminals.

Private way: A Private Way is a street or Right of Way that has not been approved by the Town and, as such, may not meet the standards for a Street established by the Town.

Restaurant: A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility if authorized by Special Permit from the Zoning Board of Appeals. The term "restaurant" shall not include "fast food establishments."

Retail establishment: A facility selling goods or services whether or not specifically listed in the Table of Use Regulations.

Sign: Any letter, word, symbol, drawing, picture, design, device, article, or object that advertises, calls attention to or indicates any premises, person or activity, whatever the nature of the material and manner of composition or construction, when the same is placed out of doors in view of the general public or placed indoors for exterior observance, except temporary indoor paper signs advertising sales, promotions or special events.

Single ownership: An individual ownership by one person or by several persons whether the tenure be joint or common or by entirety.

Special Permit: A permit granted by the Board of Appeals for structure or use identified in the Table of Use Regulations as permitted with approval of the Board of Appeals.

Street: A way currently maintained by the Town of Wenham, the County or the State, or a way shown on an approved Definitive Subdivision Plan built to specification or secured in accordance with G.L. c. 41, s. 81U.

Street Line**:** Any boundary of a lot and street right-of-way or layout.

Structure: A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, swimming pool, tent, tennis court, deck, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like. The word “structure” shall be construed, where the context allows, as though followed by the words “or part or parts thereof”.

Variance: An exception granted by the Special Permit Granting Authority in accordance with Section 13.6 of this By-Law.

Wetlands: All resource areas subject to protection under MGL Chapter 131, Section 40, and/or the Water Resources Protection By-Law, Chapter XVIII of the Town of Wenham By-Laws, except for flood plains and adjacent upland resource areas..

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

> ***Yard, front:*** A yard extending the full width of the lot and situated between the street line adjoining the lot and the nearest point of the building.
>
> ***Yard, rear:*** A yard on the opposite side of the lot from the front yard extending the full width of the lot, and situated between the rear line of the lot and the nearest part of the main building projected to the side line of the lot.
>
> ***Yard, side:*** A yard situated between the nearest point of the building and the side line of the lot and extending from the front yard to the rear yard or another side yard.

Section 3.0 DISTRICTS

3.1 PRIMARY DISTRICTS

For the purpose of this By-Law, the Town of Wenham is hereby divided into the following primary Districts:

Residential District (R)

Business District (B)

3.2 OVERLAY AND OTHER SPECIAL DISTRICTS

The following overlay and special districts are also established as set forth in Section 12.0:

Aquifer Protection Overlay District (APOD) (see 12.1)

Flood Plain Overlay District (FPOD) (see 12.2)

Senior Housing Overlay District (SHOD) (see 12.3)

Personal Wireless Facility Overlay District (see 12.4)

Independent Living Overlay District (ILOD) (see 12.5)

3.3 ZONING MAP

The boundaries of the Residential District and the Business District are as shown on a map entitled "Zoning Map of the Town of Wenham, Massachusetts," dated June 25, 1973, as amended from time to time prepared by Essex Survey Service, Salem, Massachusetts, signed by the Planning Board and on file with the Town Clerk. Said map is hereby made part of this By-Law.

3.4 INTERPRETATION OF ZONING MAP

Boundaries shall be interpreted as described in the following subsections.

3.4.1 Center Line

The boundaries between Residential, Senior Housing District, Flood Plain, Aquifer Protection District, and Business Districts are, unless otherwise indicated on the zoning map, the center lines of streets.

3.4.2 Lots in Two Districts

Where a district boundary line divides a lot in single ownership at the same time this By-Law is adopted, the regulations for the less restricted portion of such lot shall not extend more than thirty (30) feet into the more restricted portion, provided the lot has frontage in the less restricted district.

Section 4.0 USE REGULATIONS

4.1 TABLE OF USE REGULATIONS

The Table of Use Regulations below specifies the uses permitted in each district and, when a special permit or variance is required, identifies the Special Permit Granting Authority (SPGA) for each.

CATEGORY	USE	DISTRICT		DESCRIPTION
		RES	BUS	
RESIDENTIAL				
	Single Family	Y	Y	
	Multi- Family	N	N	
	Multi-Family Unit in Senior Housing Overlay District (SHOD)	PB	PB	
	Flexible Development	PB	N	
INSTITUTIONAL AND EXEMPT				
	Educational	Y	Y	Use of land or structures for educational purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation
	Cemetery	BA	BA	
	Hospital or sanitarium	BA	BA	
	Religious Use	Y	Y	Use of land or structures for religious use
	Day Care, Adult	BA	BA	
	Day Care, Child	Y	Y	This does not include Family Day Care (large or small)
	Municipal	BA	BA	
	Essential Services	BA	BA	
AGRICULTURAL				
	Agriculture, horticulture, floriculture or viticulture on a parcel of five (5) or more acres	Y	Y	
	Facilities for the sale of produce, and wine and dairy products, exempt by statute	Y	Y	
	Agriculture, non-exempt	BA	BA	
	Raising and keeping of animals, non-exempt	BA	BA	

CATEGORY	USE	DISTRICT		DESCRIPTION
		RES	BUS	
	Greenhouse or Nursery, non-exempt	BA	BA	
	Commercial stable on less than five acres	N	N	
COMMERCIAL				
	Educational, non-exempt	BA	BA	
	Animal clinic or hospital	N	N	
	Kennel	N	N	
	Private club or lodge	N	BA	
	Nursing or convalescent home	BA	BA	
	Funeral home	N	N	
	Hotel or motel	N	N	
	Bed and Breakfast	BA	BA	
	Store, retail or wholesale with manufacturing on premises	N	Y	
	Motor vehicle sales and/or rental	N	N	
	Motor vehicle, general and body repair	N	N	
	Motor vehicle, light services	N	BA	
	Restaurant	N	Y	
	Restaurant, drive-in	N	N	
	Storage of motor vehicles or boats	N	Y	
	Business or professional office including medical	N	Y	
	Bank or financial agency	N	Y	
	Commercial recreation, indoor	N	N	
	Commercial recreation, outdoor	N	N	
	Service establishment, personal	N	Y	
	Service establishment, general	N	Y	
	Wireless Communication Facility	PB	PB	
	Laundry or dry cleaning facility	N	N	
	Printing, newspaper or job	N	BA	
	Camp	BA	BA	
	Large-scale ground-mounted solar voltaic installations	Y	Y	
INDUSTRIAL				
	Manufacturing	N	N	Includes light or heavy manufacturing
	Warehouse	N	N	Includes wholesale, self-

CATEGORY	USE	DISTRICT		DESCRIPTION
		RES	BUS	
				storage, mini-warehouse or distribution facility
	Junkyard or automobile graveyard	N	N	
	Contractor's yard	N	N	
	Transport terminal	N	N	
ACCESSORY				
	Accessory apartment	BA	BA	
	Home occupation	BA	BA	
	Garage, private	Y	Y	For a total of three motor vehicles including up to 1 commercial vehicle
	Garage, private, for more than 3 motor vehicles or 1 commercial vehicle when one or more spaces is for rent	BA	BA	
	Temporary use/occupancy of mobile home, travel trailer, camper or similar vehicle	Y	Y	In compliance with Section 4.3.5
	Swimming pool	Y	Y	
	Family day care, large or small	Y	Y	
	Keeping of large animals at a density of more than one per acre	BA	BA	Examples include horses or cows
	Accessory scientific research or development	BA	BA	
OTHER USES				
	Drive-through windows	N	BA	
	Temporary farm stand	Y	Y	
	Temporary stands or booths for social, civic, or church functions	BA	BA	

4.2 PRINCIPAL USES

Except as provided by law or in this By-Law in each district, no building or structure shall be constructed, used, or occupied, nor shall land be used or occupied, except for the purposes permitted as set forth in the accompanying Table of Use Regulations.

4.2.1 By Right

A use listed in the Table of Use Regulations is permitted as of right in any district under which it is denoted by the letter "Y", subject to such restrictions as may be specified elsewhere in this By-Law.

4.2.2 Use Prohibited

A use listed in the Table of Use Regulations is not permitted in any district under which it is denoted by the letter “N”.

4.2.3 By Special Permit: Board of Appeals

A use designated in the Table by the letters "BA" may be permitted as a special permit only if the Board of Appeals so determines and grants a special permit therefore as provided in Section 13.4 of this By-Law subject to such restrictions as are set forth elsewhere in this By-Law, and to such other restrictions as said Board may establish.

4.2.4 By Special Permit: Planning Board

A use designated in the Table by the letters "PB" may be permitted as a special permit only if the Planning Board so determines and grants a special permit therefore as provided in Section 13.4 of this By-Law subject to such restrictions as are set forth elsewhere in this By-Law, and to such other restrictions as said Board may establish.

4.3 ACCESSORY USES

4.3.1 General

An accessory use shall be permitted only where on the same lot with, and customarily incidental to, any of the uses permitted in the district. Specific accessory uses are regulated as set forth in the Table of Use Regulations. The term accessory use shall include but not be limited to the specific examples addressed below.

4.3.2 Accessory Apartment

4.3.2.1 General Requirements

The following general requirements apply to all accessory apartments including affordable accessory apartments.

1) The accessory apartment shall be a complete separate housekeeping unit that functions as a unit separate from the principal unit.
2) The lot shall contain at least twenty thousand (20,000) square feet (exclusive of wetlands and floodplains) unless the accessory apartment is in an accessory building, in which case the lot shall contain at least forty thousand (40,000) square feet (exclusive of wetlands and floodplains).
3) Off-street parking for a minimum of three (3) vehicles shall be provided in the driveway or an accessory garage.
4) To the extent feasible, the appearance of a single-family building shall be preserved.
5) Only one accessory apartment may be created on a lot.
6) Adequate provision shall be made for the disposal of sewage, waste, and drainage generated by the occupancy of the accessory apartment in accordance with the requirements of the Board of Health.
7) Adequate provision shall be made for ingress and egress to and from the accessory apartment.

Adequate landscaping shall be provided around the lot or the building(s) in order to preserve the single family residential character of the Neighborhood.

4.3.2.2 Special Permit Required

The Zoning Board of Appeals, by special permit, may authorize one accessory apartment within or as an attached portion of a single family dwelling unit or within an accessory building subject to the following:

1) One of the units shall be occupied by the resident owner of the premises.
2) The accessory apartment shall not exceed thirty-five percent (35%) of the floor area of the principal structure or one thousand (1000) square feet, whichever is less, and two (2) bedrooms.

4.3.3 Affordable Accessory Apartment

Where the applicant demonstrates to the satisfaction of the Board of Appeals that the apartment will be made available to low and moderate income households in accordance with the regulations concerning G.L. c. 40B and 760 CMR 45.00, as they may be amended from time to time, the Zoning Board of Appeals, by special permit, may authorize an accessory apartment that does not exceed fifty percent (50%) of the floor area of the principal structure, fifteen hundred (1500) square feet and three (3) bedrooms subject to the following subsections as well as to the general requirements set for in Section 4.3.2.1.

The applicant shall subject the property to restrictions necessary to ensure that the Affordable Units will remain affordable. The form and substance of the restrictions and the tenant selection process shall be subject to approval by the Zoning Board of Appeals.

4.3.3.1 Permit Procedures

The procedures and standards for the submission and approval of a special permit application as set forth in Section 13.4 are complied with except that:

1) The applicant shall submit a notarized letter stating that the owner of the premises will occupy one of the dwelling units at all times, except for bona fide temporary absences. This shall be a condition of any special permit;
2) The application shall include a floor plan of 1/4 inch to a foot showing proposed changes to the building and a site plan showing the location of the building(s) and the parking spaces.

4.3.3.2 Decision

The special permit shall not be made personal to the applicant and shall instead run with the land. Unless the permit expressly provides otherwise, all special permits shall lapse at the expiration of one year from their granting. Unless otherwise expressly provided in the permit, Special Permits for Accessory Apartments will automatically be renewed on an annual basis unless written objection is filed with the Town Clerk prior to any anniversary date. In the event of written objection, a public hearing shall be held prior to deciding whether the Special Permit will be renewed.

4.3.4 Home Occupation

4.3.4.1 By Right

A home occupation may be allowed as of right, provided that it:

1) is conducted solely within a dwelling and solely by the person(s) occupying the dwelling as a primary residence;
2) is clearly incidental and secondary to the use of the premises for residential purposes;
3) does not produce offensive noise, vibration, smoke, dust, odors, heat, lighting, electrical interference, radioactive emission or environmental pollution;
4) does not utilize exterior storage of material or equipment;

5) does not exhibit any exterior indication, including signs, of its presence or any variation from residential appearance;

6) does not produce more than two (2) customer, pupil, or client trips to the occupation site per day and has no nonresident employees;

7) is registered as a business with the Town Clerk.

4.3.4.2 By Special Permit

A home occupation may be allowed by special permit issued by the Board of Appeals, provided that:

1) it fully complies with Section 4.3.4.1, Subsections 2), 3), 4), and 7) above.

2) it is conducted within a dwelling solely by the person(s) occupying the dwelling as a primary residence and, in addition to the residents of the premises, by not more than two additional employees on site at same time;

3) it does not exhibit any exterior indication of its presence, or any variation from residential appearance, except for a sign or name plate in compliance with this By-Law;

4) a special permit for such use is granted by the Board of Appeals, subject to conditions including, but not limited to, restriction of hours of operation, maximum floor area, off-street parking, and maximum number of daily customer vehicle trips. Such special permit shall expire after five years, or the transfer of the property, whichever first occurs; provided, however, that the special permit shall automatically renew prior to the expiration of said five year period provided that the home occupation remains in compliance with any terms and conditions set forth in the original special permit.

4.3.5 Occupation of a Mobile Home, Travel Trailer, Camper, or Similar Recreation Vehicle

1) Such vehicle may be occupied for a period not to exceed a total of seven days per year unless specifically authorized by the Board of Appeals.

2) Temporary use of a mobile home, travel trailer or camper, or similar temporary structure may be extended for not more than one year by the Board of Appeals, with concurrence of the Board of Health. Temporary use may be permitted only in an emergency situation such as, but not limited to, loss of residence or business establishment by fire or other disaster.

4.3.6 Storage

4.3.6.1 Motor Vehicle Storage

One unregistered motor vehicle may be stored as an accessory use provided that it shall be stored:

1) within the principal or an accessory building; or

2) in the rear yard not less than 35 feet from the side or rear lot lines and screened from a public way. No such unregistered motor vehicle shall be stored as an accessory use when it has been rendered inoperable by dismantling or removing parts.

4.3.6.2 Trailer or Boat Storage

Accessory storage of one trailer or boat is permitted as an accessory use provided that it shall be stored:

1) within the principal or an accessory building; or

2) in the rear yard of the premises but not in a required side or rear yard set back and screened from a public way. By special permit, the Board of Appeals may vary the location of such storage. No trailer or boat shall be used for dwelling purposes, nor be stored as an accessory use when it has been rendered inoperable by dismantling or removing parts.

4.3.6.3 Parking or storage of commercial vehicles or recreational vehicles in residential district

Parking of one (1) commercial or recreational vehicle of not more than 25,000 gvw is permitted in conformance with Section 4.3.6.2. The storage of two additional commercial vehicles with more than 25,000 gvw may be authorized by special permit, provided such vehicles are not visible from any public way. Nothing herein shall be construed to prohibit the parking or storage of farm vehicles.

4.3.6.4 Other Storage

Outside or inside storage accessory to the operation and conduct of a permitted use; provided, however, that:

1) if outside, the storage shall be located to the rear of the principal structure and shall be screened from view from any public way or adjacent residential district property line;
2) if inside, the gross floor area for storage purposes shall not exceed 50% of the gross floor area for the use permitted on the site, whether in a separate structure or not, without a special permit from the Planning Board.

4.3.6.5 Temporary Storage Units or Structures

Temporary storage units, such as PODS and other portable units, and temporary structures, such as tents or awnings used for vehicle or other storage, shall be located to the rear of the building line of the principal building on the lot, and shall not be located in any required side or rear yard. Such storage units or structures shall be used for a period not longer than forty-five (45) days per year without the grant of a special permit from the Board of Appeals.

4.3.7 Other Permitted Accessory Uses

The Table of Use Regulations in Section 4.1 addresses other accessory uses permitted by this By-Law.

4.3.8 Prohibited Accessory Uses

The Table of Use Regulations in Section 4.1 identifies specifically prohibited accessory uses.

4.4 NONCONFORMING USES AND STRUCTURES

4.4.1 Applicability

This By-Law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this By-Law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

4.4.2 Changes to Nonconforming Uses

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

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

4.4.3 Nonconforming Structures

4.4.3.1 Reconstruction, Extension or Structural Change

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

1) Reconstruction, extension or structural change;
2) Alteration to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

4.4.3.2 Variance Required

Except as provided in subsection 4.4.3.3, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity shall require the issuance of a variance from the Board of Appeals; provided, however, that the extension of an exterior wall at or along the same nonconforming distance within a required yard shall require a special permit.

4.4.3.3 Nonconforming Single and Two Family Residential Structures

Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Inspector that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. Where the proposed extension does not increase the square feet contained within the existing structure by more than 25%, the following circumstances shall not be deemed to increase the nonconforming nature of said structure:

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

In all other cases, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

4.4.3.4 Reconstruction after Catastrophe or Voluntary Demolition

Any nonconforming structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions:

1) Reconstruction of a nonconforming structure affected by a catastrophe shall commence within two years after such catastrophe; and

2) In the case of voluntary demolition, a nonconforming structure may be reconstructed subject to the following conditions:

   a. Where the proposed reconstructed building shall be located on the same footprint as the original nonconforming structure, and contains the same volume or area as the original nonconforming structure, such reconstruction shall be completed within two years of demolition upon the issuance of a building permit.

   b. Where the proposed reconstructed building (a) causes the structure to exceed the volume or area of the original nonconforming structure or (b) causes the structure to be located other than on the original footprint, a special permit shall be required from the Board of Appeals prior to such demolition and such reconstruction shall be completed within one year of demolition.

4.4.3.5 Abandonment or Non-Use

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

4.4.3.6 Reversion to Nonconformity

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

4.4.4 Amortization of Nonconforming Lots

Any property owner who owns a lot with less than 50 feet of frontage that would have been entitled to a Building Permit prior to the adoption of this amended zoning By-Law shall have a period of six months from the date of adoption of this amended zoning By-law to make application to the Building Inspector for a Building Permit. So long as such property owner satisfies all requirements of the By-law in effect immediately prior to the adoption of this amended zoning By-law, he/she shall be entitled to a building permit, provided that all other applicable laws, rules, regulations, and requirements are satisfied. After such six-month period, the provisions of G.L c. 40A, s. 6 shall control.

Section 5.0 DIMENSIONAL REQUIREMENTS

5.1 TABLE OF DIMENSIONAL REQUIREMENTS

No building or structure shall be constructed nor shall any existing building or structure be enlarged or altered except in conformance with the following Table of Dimensional Requirements as to lot coverage, lot area, land area per dwelling unit, lot width, front, side and rear setbacks, and maximum height of structures except as may otherwise be provided elsewhere herein.

Table of Dimensional Requirements		
	Residential District	**Business District**
Lot Area	40,000 square feet	Dwelling: 40,000 square feet Non-residential Unit: 40,000 square feet
Frontage	170 feet	Dwelling: 170 feet Non-residential Unit: 170 feet
Lot Width	100 feet	Dwelling: 100 feet Non-residential Unit: 100 feet
Front Yard	20 feet	All structures: 20 feet. With approval of the Board of Appeals, setback may be established to match the actual setback or the average setback of buildings on adjacent lots.
Rear Yard	15 feet	Dwelling: 15 feet Non-residential Unit: 20 feet
Side Yard	15 feet	Dwelling: 15 feet Non-residential Unit: 20 feet
Maximum Height: Structure	35 feet	35 feet
Maximum Lot Coverage (percent)	50%	70%

5.2 SPECIAL REQUIREMENTS

5.2.1 Paper Streets

No house shall be built on any lot, nor permit therefor issued, until the street or streets upon which the frontage is measured are constructed in accordance with plans and specifications approved by the Planning Board or security acceptable to the Planning Board is furnished to assure completion of such construction. No house shall be occupied until such street or streets are constructed in accordance with such plans and specifications. Nothing herein shall prevent a house from being occupied before the final

course of a subdivision road has been put down, provided that security acceptable to the Planning Board is in place to ensure completion of the street. If the subdivision plan for the lot in question shows a way plotted along any boundary, the lot shall not only have the required frontage set forth in the Table of Dimensional Requirements but shall also have the required frontage after construction of said plotted way.

5.2.2 Lot Area

In computing lot area, at least 40,000 square feet of area must be contiguous and exclusive of wetlands and/or land lying in the Flood Plain District.

5.2.2.1 Hammerhead Lots

The frontage requirement for a hammerhead lot may be reduced to fifty (50) feet, by Special Permit granted by the Planning Board, subject to the following conditions and any additional conditions the Planning Board might impose:

1) The total lot area is at least one hundred twenty thousand square feet;
2) The access driveway to the house shall not be longer than five hundred (500) feet, with a grade and width adequate to permit access by fire, police and other emergency vehicles;
3) The nearest point of any building or structure shall be set back fifty feet from all lot lines;
4) No more than two (2) hammerhead lots shall have contiguous frontage.

5.2.2.2 Front Yards

All principal structures shall maintain a setback of twenty (20) feet from the front property line. In the Residential District, the Board of Appeals may, however, authorize by Special Permit a setback not to exceed the average setback of the principal buildings on the lots on either side.

5.2.2.3 Corner Lots

A corner lot is any lot bounded on two or more streets whose intersection(s) are coincident with the corners of the lot. Every lot line of a corner lot that is coincident with a street line shall be a front lot line, and shall have an accompanying front yard. All other lot lines of a corner lot shall be side lot lines, with side yards.

5.2.2.4 Appurtenant Open Space

No yard or other open space required for a building for which a permit has been issued shall during the life of such building be occupied by or counted as open space for another building.

5.2.3 One Structure per Lot

Except as otherwise provided herein, no more than one principal structure may be placed on any lot. In the Business District, more than one principal structure may be placed on any lot by special permit from the Planning Board.

5.2.4 Height Exceptions

By grant of a special permit by the Board of Appeals, the following may exceed the height requirements set forth in the Table of Dimensional Requirements. In granting such special permit, the criteria of Section 13.4 shall not apply.

1) Towers, chimneys, windmills, tanks, radio and television antenna towers and the like, not to exceed 55 feet in height and provided that they are accessory to the principal permitted use of the lot and not used for living purposes.
2) Steeples and spires, subject to the imposition of reasonable restrictions on height and on the use of the structure relating to illumination, sound generation, and exterior appendages so that no nuisance or other activity detrimental to the neighborhood will result and so that the proposed structure does not pose a danger to public health or safety; nor adversely affect adjacent properties due to shadowing or obstruction of scenic vistas.
3) An accessory building which has an eave height exceeding ten feet within twenty feet of the side lot line.

5.2.5 Projections

Nothing herein shall prevent the projections of steps, cornices, bay windows, eaves, and other ornamental features into any required yards.

5.2.6 Residential Driveways

5.2.6.1 General

For the purpose of promoting the safety of the residents of the Town, an application for a building permit for a residential structure shall include a plan, at a scale of 1" = 100 ft., showing the driveway serving the premises, and showing existing and proposed topography at 10 foot or 3 meter contour intervals. All driveways shall be constructed in a manner ensuring reasonable and safe access from the public way serving the premises to within a distance of 100 feet or less from the building site of the residential structure on the premises, for all vehicles, including, but not limited to, emergency, fire, and police vehicles. The Building Inspector shall not issue a building permit for the principal structure on the premises unless all of the conditions in the following Subsections have been met.

5.2.6.2 Maximum Distance

The distance of any driveway measured from the street line to the point where the principal building is proposed shall not exceed a distance of five hundred (500) feet, unless the Planning Board grants a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.

5.2.6.3 Grade

The grade of each driveway where it intersects with the public way shall not exceed four percent (4%) for a distance of 20 feet from the travel surface of the public way unless the Planning Board shall grant a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.

5.2.6.4 Access

Driveways serving the premises shall provide access through the required frontage of the serviced lot, except in the case of a "common driveway" under Section 5.2.6.5, herein or if authorized by Special Permit by the Planning Board in accordance with Section 13.4.1.

5.2.6.5 Common Driveways

Common driveways serving not more than three (3) lots may be allowed by special permit by the Planning Board. A common driveway must satisfy all of the conditions in this Section, as well as all of the following conditions:

1) The centerline intersection with the street centerline shall not be less than 45 degrees;
2) A minimum cleared width of 12 feet shall be maintained over its entire length;
3) A roadway surface of a minimum of pavement or at least 4 inches of graded gravel, placed over a properly prepared base, graded and compacted to drain from the crown shall be installed;
4) The driveway shall be located entirely within the boundaries of the lots being served by the driveway;
5) Proposed documents shall be submitted to the Planning Board demonstrating that, through easements, restrictive covenants, or other appropriate legal devices, the maintenance, repair, snow removal, and liability for the common driveway shall remain perpetually the responsibility of the private parties, or their successors-in-interest.

5.2.7 Permitted Accessory Structures

The accessory structures addressed in the following subsections are permitted in all districts.

5.2.7.1 Accessory Building

An accessory building shall be permitted provided that it is not more than 75% of the height of the principal structures or 20 feet in height above the average grade level around the structure, whichever is greater. The volume of the accessory structure shall not exceed 50% of the volume of the principal structure.

5.2.7.2 Boundary Fences, Walls, or Hedges

Boundary fences, walls, or hedges shall be permitted provided that they do not exceed eight (8) feet in height and provided that no fence which obstructs vision shall exceed thirty-six (36) inches in height within twenty (20) feet of the street line or within fifteen (15) horizontal feet of a habitable room in an abutting dwelling on a separate lot.

5.2.7.3 Flag Poles

Flag poles of a height not to exceed 20 feet are permitted and shall be exempt from the setback requirements of this Section.

5.2.7.4 Swimming Pools and Game Courts

Swimming pools, game courts, and the like are accessory structures and shall comply with the State Building Code and all applicable setback requirements of this Zoning By-Law.

5.2.7.5 Barns

Barns may be authorized by Special Permit from the Board of Appeals in the Residential District. New barns shall meet the dimensional requirements for principal structures set forth in the Table of Dimensional Requirements.

5.2.8 Dimensional Requirements and Location

Except as otherwise provided herein, the following dimensional rules shall apply to accessory structures:

1) No accessory building or structure, except a permitted sign or roadside stand, shall be located within a required front yard setback.
2) Accessory structures or buildings with a footprint of 125 square feet or more shall meet the height and setback requirements set forth in the Table of Dimensional Requirements.

3) An accessory building attached to its principal building or within ten (10) feet of it shall be considered an integral part thereof and as such shall be subject to the front, side, and rear yard requirements applicable to the principal building.

4) Accessory structures and buildings shall be located on the same lot as the principal structure on the premises.

Section 6.0 PARKING AND LOADING REQUIREMENTS

6.1 TABLE OF PARKING REQUIREMENTS

Off-street parking spaces shall be provided for every new building, the enlargement of an existing building, the development of a new land use or any change in any existing use in accordance with the Table of Parking Requirements in this section. Off-street parking may be provided either outside or within a structure.

PRINCIPAL USE	PARKING REQUIREMENT
One or two family dwelling	Two parking spaces per dwelling unit
Nursing home, assisted living or senior housing facility	One parking space per two rooms
Place of public assembly	One parking space for each 4 seats. Where no fixed seats are used (as in a museum or terminal), one parking space per each 200 square feet of gross floor area
Retail business, personal or general service establishment	One parking space for each 200 square feet of gross floor area
Office, bank	One parking space for each 250 square feet of gross floor area
Restaurant	One parking space per four seats
All other permitted uses	Sufficient parking spaces to accommodate, under all normal conditions, the cars of occupants, employees, members, customers, or visitors of the premises, as may be determined by the Planning Board

6.2 SPECIAL REQUIREMENTS: RESIDENTIAL

6.2.1 Shared Parking

Notwithstanding any other provisions of this By-Law, common parking areas may be permitted by the Planning Board, subject to site plan approval, for the purpose of servicing two (2) or more principal uses on the same or separate lots, provided that:

1) Evidence is submitted that parking is available within four hundred (400) feet of the premises, which satisfies the requirements of this By-Law and has excess capacity during all or part of the day, which excess capacity shall be demonstrated by a competent parking survey conducted by a traffic engineer registered in the Commonwealth of Massachusetts.

2) A proposed contract, agreement, or suitable legal instrument acceptable to the Town's legal counsel, shall be filed with the Planning Board specifying the location of all spaces to be jointly used, the number of such spaces, the hours during the day that such parking shall be available, and the duration or limit, if any, on such parking.
3) Any space resulting from the reduction in area required for parking because of these joint use provisions may be required to be reserved as landscaped open space.
4) Nothing in this section shall relieve the owner from providing parking facilities in accordance with this By-Law if subsequently the joint use of parking facilities shall terminate.

6.3 SPECIAL REQUIREMENTS: NONRESIDENTIAL

The following standards shall apply to off-street parking for nonresidential uses.

6.3.1 Parking Space Size

Each parking space shall measure ten (10) feet in width and twenty (20) feet in length.

6.3.2 Handicapped Parking

Parking spaces for the exclusive use of handicapped individuals shall be provided in accordance with the most recent Local, State, and Federal rules and regulations.

6.3.3 Lighting

All lighting shall be shielded so as not to shine directly onto a public or private way or onto any property in a residential district or into the night sky. Poles for lighting shall be limited to four feet in height.

6.3.4 Prohibition

Parking spaces shall be arranged so as not to require backing of automobiles onto any street.

6.3.5 Additional Parking Standards for Areas Subject to Site Plan Review

All parking areas containing more than five spaces shall be either contained within structures or subject to the following requirements:

6.3.5.1 Surface

The parking area and access driveways thereto shall be surfaced with bituminous or cement concrete material and shall be graded and drained so as to dispose of all surface water accumulation away from adjacent public ways.

6.3.5.2 Storage

Unless authorized by special permit of the Planning Board, there shall not be any storage of materials or equipment or display of merchandise within required parking area except as part of building operations approved by the Board of Appeals or Planning Board, as appropriate.

6.3.5.3 Location

Parking shall not be located nearer than fifteen (15) feet from any lot line.

6.3.6 Landscaping in Parking Areas with Five Spaces or More

6.3.6.1 The area shall be effectively screened on each side which adjoins or faces the side or rear lot line of a lot situated in any residential district, consisting of landscaping and/or a solid fence or wall not less than three (3) feet nor more than six (6) feet in height at the time of occupancy of such lot.

6.3.6.2 All plantings shall be maintained by the owner and/or occupant so as to keep a dense screen year round.

6.3.6.3 The Planning Board may require landscaping within the parking area in order to break up solid rows of twenty or more parking spaces.

6.3.6.4 All Parking Areas shall comply with the landscaping requirements set forth in Section 8.0.

6.3.7 Special Permit

Any parking requirement set forth herein may be reduced upon the issuance of a special permit by the Planning Board if the Board finds that the reduction is not inconsistent with public health and safety, or that the reduction promotes a public benefit.

6.4 LOADING REQUIREMENTS

6.4.1 General

Adequate off-street loading spaces or loading areas shall be provided and maintained by the owner of the property for each nonresidential building or use which is erected, enlarged, or altered after the effective date of this By-Law, according to the following regulations.

6.4.1.1 Location

No loading dock or bay shall be located within twenty (20) feet of the boundary of any residential district.

6.4.1.2 Size

Loading bays shall not be less than twelve (12) feet in width, sixty-five (65) feet in length, and fourteen (14) feet in height, exclusive of driveway and maneuvering space.

6.4.1.3 Same Lot

All loading spaces or loading areas shall be on the same lot as the building or use which they are intended to serve, and in no case shall any required loading area be part of an area used to satisfy the off-street parking requirements of this By-Law.

6.4.1.4 No Queues or Backing onto Street

No loading facility shall be designed to require trucks to queue on a public way while awaiting off-loading. No loading facility shall be designed to require vehicles to back onto a public way; all turning maneuvers shall be accommodated on the premises.

6.4.2 Shared Loading

No part of an off-street loading area for any nonresidential building or use shall be included as part of an off-street loading area similarly required for another building or use, unless the type of buildings or uses indicates that the usage of such loading area would not occur simultaneously, as determined by the Planning Board.

6.4.3 Screening

Loading areas shall be screened in accordance with Section 6.3.6.

6.4.4 Special Permit

Any loading requirement set forth herein may be reduced upon the issuance of a special permit by the Planning Board if the Board finds that the reduction is not inconsistent with public health and safety, or that the reduction promotes a public benefit.

Section 7.0 SIGNS

Signs shall be erected or maintained as provided in this Section and only after a permit has been issued by the Planning Board. All signs shall be erected in the exact location and manner described in the permit. All signs shall bear the corresponding permit number.

7.1 RESIDENTIAL DISTRICT

Signs are prohibited, except those pertaining to lease, sale, or use of a lot or building on which such signs are placed.

1) On any lot there shall be no more than one such sign pertaining to the use thereof or having the name and occupation of the occupant or occupants, and no such sign shall exceed two (2) square feet in area
2) On any lot there shall be no more than one sign not exceeding six (6) square feet in area, pertaining to lease or sale of the lot or building on which such sign is placed.
3) One temporary sign advertising the sale of real estate, services, or products shall be permitted for a period not to exceed seven (7) days after such sale or completion of work.
4) The Planning Board may in each case issue a special permit for a specific time period for the erection of larger signs, which they deem not detrimental to the surrounding property nor injurious to the public welfare, provided however that any such permitted sign in the Historic District is also subject to the approval of the Historic District Commission.

7.2 BUSINESS DISTRICT

Signs advertising goods or services offered by an occupant of the premises for sale, hire or use, are permitted provided however that any such sign in the Historic District is subject to the approval of the Historic District Commission and further provided that signs shall not exceed six (6) square feet for one business, or In the case of a building containing more than one business, such signs shall not exceed a total of ten (10) square feet for all businesses contained therein.

7.3 SENIOR HOUSING OVERLAY DISTRICT (SHOD)

See Section 12.3.8 for special requirements for signs located in a Senior Housing Overlay District.

7.4 GENERAL STANDARDS FOR SIGNS

The following standards apply to all signs:

1) No sign shall be erected so as to obstruct any fire escape, window, door, or other opening or so as to prevent free passage from one part of a roof to any other part thereof.
2) No sign shall be attached in any manner to a fire escape or shall be placed to interfere with an opening which is required for ventilation.
3) No exposed, un-insulated parts of an electrical sign shall be permitted.
4) No sign shall be erected that shall in any way create a traffic hazard nor in any way obscure or confuse traffic control.
5) No sign or sign structure shall interfere in any way with a public way, including sidewalks.

6) Letters, figures, characters, or representations in cutout or irregular form, maintained in conjunction with, attached to or superimposed upon any sign, shall be safely and securely built or attached to the sign structure.

7) Signs shall be designed, constructed, and erected in accordance with the State Building Code.

8) No sign shall be posted on or attached to utility poles, trees nor attached to any parapet.

7.5 ELECTRIC SIGNS

The following additional standards apply to electric signs.

1) Electric signs are not permitted within residential districts.

2) No red or green or other colored lights shall be used on any sign if such light would create a driving hazard.

3) No sign may be illuminated more than thirty (30) minutes after closing of any store or business or thirty (30) minutes after working hours in an industrial building, except signs identifying public buildings; provided however, that the Planning Board, in granting a permit, may, for good cause shown, extend the time during which a sign may be illuminated.

7.6 MOVING SIGNS

Swinging signs, flashing signs, revolving signs, and signs consisting of pennants, ribbons, streamers, spinners, strings of light bulbs, revolving beacons, searchlights, animated signs, and signs illuminated to create the illusion of motion are prohibited.

7.7 MAINTENANCE

Every sign shall be maintained by the owner in a clean, sanitary condition and in good repair. In addition, every freestanding pole or ground sign shall be kept free and clear of all obnoxious substances, rubbish, and weeds.

7.8 AMORTIZATION

Nonconforming signs shall be amortized over a ten year period, commencing on the effective date of this By-Law. Any nonconforming sign in existence at the time of the effective date hereof, shall be brought into compliance with Section 7.0 within ten (10) years thereafter.

7.9 SPECIAL PERMIT

Notwithstanding the provisions set forth in this Section, the Planning Board may authorize larger signs or a greater number of signs by the grant of a special permit, where such relief is not detrimental to the Neighborhood or the Town.

7.9.1 Exemptions

No permit is required for the following types of signs:

1) Any sign legally erected before the date of the Town Meeting approving this Section shall be exempt from the requirements in this Section, with the exception of those requirements set forth in Section 7.8.

2) Any sign erected or required by the Town or by the Commonwealth of Massachusetts or by the United States, or any subdivision or agency thereof, or for any sign intended solely for the protection of life or property.

7.9.2 Permit Process

7.9.2.1 Application

Application for a sign permit shall be made in writing upon forms furnished by the Planning Board. Such application shall contain the location by street number of the proposed sign, the name and address of the owner of the sign, the name and address of the sign contractor or erector, if any, and a scale drawing showing the construction, the method of installation or support, colors, dimensions, and position of the sign, method of illumination and such other relevant information as may be requested.

7.9.2.2 Fee

A sign permit fee shall be paid to the Town for each permit in accordance with the schedule established by the Planning Board.

7.9.2.3 Inspection

The Building Inspector shall inspect every sign within thirty (30) days after it is erected and shall report to the Planning Board that said sign has been erected properly and in accordance with the provisions of this Section and any other applicable law.

7.9.2.4 Constructive Grant

If a sign permit has not been denied within sixty (60) days after application has been made, it shall be deemed to be approved.

7.9.2.5 Lapse

A sign permit shall become null and void if the work for which the permit was issued has not been completed within a period of twelve (12) months from the date of the permit; provided, however, that the Planning Board may, in its discretion, issue extensions covering a period not to exceed an additional one (1) year from the date of issue of the original permit. The applicant shall notify the Building Inspector of completion of work under a permit within ten (10) days of completion.

Section 8.0 LANDSCAPING REQUIREMENTS

The requirements of this section shall apply to any nonresidential use and to multifamily dwellings.

8.1 PURPOSE

This section is designed to accomplish the following objectives:

1) provide a suitable boundary or buffer between residential uses and nearby nonresidential uses;
2) separate different and otherwise incompatible land uses from each other in order to partially or completely reduce potential nuisances such as dirt, dust, litter, noise, glare from motor vehicle headlights, intrusion from artificial light (including ambient glare), or view of signs, unsightly buildings or parking lots;
3) provide visual relief and a source of shade in parking lots and other areas, and protection from wind in open areas; and
4) offer property owners protection against diminution of property values, if any, due to adjacent nonresidential use.

8.2 COORDINATION WITH SITE PLAN APPROVAL

The Planning Board shall require a landscaping plan as part of the overall site plan for the premises. Such landscaping plan shall be at a scale sufficient to determine compliance with the specifications set forth in this Section.

8.3 GENERAL LANDSCAPING REQUIREMENTS

Some combination of planting, screening, or fencing shall be installed at the following locations:

1) Property line(s) which also bound residential districts shall be screened from non-residential uses by means of plantings or maintenance of trees of a species common to the area and appropriate for screening, spaced to minimize visual intrusion, and providing an opaque year-round visual buffer between uses. Such plantings shall be provided and maintained by the owner of the property used for non-residential purposes. No part of any building or structure or paved space intended for or used as a parking area may be located within the buffer area. Planted buffer areas along property lines which also bound residential districts or uses shall be of a minimum depth of 20 feet.
2) Any accessory receptacle or structure with a holding capacity of at least one hundred (100) cubic feet for temporary storage of solid or liquid waste materials, including garbage, rubbish, junk, discarded bulk items and similar waste items shall be screened from all adjacent premises and streets from which it would otherwise be visible in accordance with this Section.
3) Any loading area or HVAC equipment or other electrical equipment placed on the ground level shall be screened from all adjacent premises and streets from which it would otherwise be visible in accordance with this Section.

8.4 PLANTED AREA REQUIREMENTS

Planted areas shall contain an appropriate mix of the following types of plants. Plant species shall be appropriate to proposed use, siting, soils, and other environmental conditions. Where the Planning Board determines that the planting of trees is impractical, the permit applicant may substitute shrubbery for trees.

1) Shrubs and hedges shall be at least 2.5 feet in height at the time of planting, and have a spread of at least 18 inches.
2) Existing trees with a caliper of six inches (6") or more shall be preserved wherever feasible. Measurement shall take place six inches above grade.
3) Deciduous trees shall be at least two (2") inches in caliper as measured six (6") inches above the root ball at time of planting. Deciduous trees shall be expected to reach a height of 20 feet within ten years after planting. Evergreens shall be a minimum of eight (8') feet in height at the time of planting.

8.5 MAINTENANCE OF LANDSCAPED AREAS

The owner of the property used for nonresidential purposes shall be responsible for the maintenance, repair and replacement of all landscaping materials installed in accordance with this section and shall have a continuing obligation to comply with the provisions set forth herein. All plant materials required by this chapter shall be maintained in a healthful condition.

8.6 REDUCTION IN REQUIREMENTS BY SPECIAL PERMIT

By special permit, the Planning Board may authorize a reduction in the requirements of this section based on the criteria set forth in Section 13.4.3.

Section 9.0 ADDITIONAL PERFORMANCE STANDARDS

9.1 GENERAL

No activity shall be permitted in any district unless it shall be in conformity with the standards included herein. After a permit is issued in accordance with this section, continuing compliance is required. When the Building Inspector suspects a subsequent violation he or she may, as necessary, obtain expert advice, which if the violation is established, shall be paid for by the violator, otherwise, by the Town. The following standards are hereby established.

9.2 NOISE

No use shall be permitted within the Town which, by reason of excessive noise generated there from, would cause nuisance or hazard to persons or property, as set forth in 310 CMR 7.10. No person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 70 dBA or 10 dBA above ambient, whichever is lower, when measured at the property boundary of the receiving land use.

9.3 EROSION CONTROL

Site design, materials, and construction processes shall be designed to avoid erosion damage, sedimentation, or uncontrolled surface water runoff by conformance with the following:

1) Grading or construction which will result in final slopes of 15% or greater on 25% or more of lot area, or on 20,000 square feet or more on a single lot, even if less than 25% of lot area, shall be allowed only by special permit from the Planning Board, which shall be granted only upon demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled surface water runoff, or other environmental degradation. Applications and plans for such special permits shall be referred to the Conservation Commission for its advisory review.

2) All such slopes exceeding 15% which result from site grading or construction activities shall either be covered with topsoil to a depth of 4 inches and planted with vegetative cover sufficient to prevent erosion or be retained by a wall constructed of masonry, reinforced concrete or treated pile or timber.

3) No area or areas totaling 0.5 acres or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear-stripped or be filled 6 inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity, or unless necessarily incidental to construction on the premises under a currently valid building permit, or unless within streets which are either public or designated on an approved subdivision plan, or unless a special permit is approved by the Planning Board on condition that runoff will be controlled, erosion avoided, and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by special permit shall remain through the winter without a soil control plan approved by the Planning Board, except in the case of agricultural activity where such temporary cover would be infeasible.

4) The Building Inspector may require the submission of all information from the building permit applicant or the landowner, in addition to that otherwise specified herein, necessary to ensure compliance with these requirements, including, if necessary, elevations of the subject property, description of vegetative cover, and the nature of impoundment basins proposed, if any.

5) In granting a special permit hereunder, the Planning Board shall, unless waived, require a performance bond to ensure compliance with the requirements of this Section.

6) Hillside areas, except naturally occurring ledge or bedrock outcroppings or ledge cuts, shall be retained with vegetative cover as per an approved plan.

9.4 OUTDOOR LIGHTING

Outdoor lighting, including lighting on the exterior of a building or lighting in parking areas, shall be arranged to minimize glare and light spilling over to neighboring properties and the night sky.

9.5 NUISANCE

Cinders, dust, fumes, gases, odors, smoke, radiation, refuse or other waste materials shall be effectively confined to the premises and treated or disposed of in accordance with state, federal, and town laws and regulations.

9.6 INTERFERENCE

No process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in excess of ten (10) percent in line voltage off the premises.

9.7 FLAMMABLE OR EXPLOSIVE SUBSTANCES

All activities involving, and all storage of, flammable and explosive materials shall be provided with adequate safety devices against hazards from fire and explosion, and with adequate fire fighting and fire suppression equipment standards established by Local, State, and Federal Regulations.

9.8 PESTS

All materials which may be edible by or attractive to rodents or insects shall, when stored in or outdoors, be stored in tightly closed containers, and separated as required.

Section 10.0 SPECIAL REGULATIONS

10.1 SOIL STRIPPING, EARTH REMOVAL AND GRADING

10.1.1 Removal of Earth

The removal or extraction from any site of soil, loam, sod, sand, gravel, quarried stone or any combination thereof, hereinafter called earth, forming a part of the real estate in the Town of Wenham is prohibited in all districts, except as permitted by the Earth Removal By-Law of the Town of Wenham.

10.1.2 Grading and Redistribution of Earth

The grading and redistribution of earth on the site is prohibited without Special Permit issued by the Planning Board except under the following conditions:

1) Where alteration of the existing topographical contours is less than five (5) feet and less than five hundred (500) cubic yards of earth is to be redistributed, or when necessarily incidental to the construction at the site for which a building permit has been issued and when such incidental grading involves redistribution of less than one thousand (1000) cubic yards of earth;
2) Where grading will be made only above a grade substantially level with adjoining lots; and
3) When made in such a manner as (a) not to cause depression in which rain and other water may collect and (b) to avoid any detrimental increase in drainage onto adjoining lots.

10.1.3 Permits for Grading and Redistribution of Earth

The Planning Board shall hear and decide petition for permits by holding a public hearing in accordance with Massachusetts General Laws, Chapter 40A, Sections 9 and 11.

10.1.3.1 The applicant shall make written application and shall show to the satisfaction of the Planning Board that such alteration of the site for which the application is made will not alter any significant topographical feature and will not cause a nuisance, noise, vibration, dust, smoke, gas fumes, odor, or other objectionable features; will not be hazardous because of fire or explosion or other reason; will not adversely affect the economic status of the District or the Town; will not be injurious or dangerous to the public health and welfare of the District or town; and will not result in a change in topography and cover which will be disadvantageous to the appropriate re-use of the land as permitted by this zoning By-Law.

10.1.3.2 The Planning Board may grant a permit on conditions especially designed (1) to safeguard the district and the Town against permanent and temporary injury to the stabilized values in the district after the operations are completed or because of the methods of handling such materials at the site, and (2) to ensure that such grading or redistribution of earth will not result in a change in topography or cover which will be disadvantageous to the appropriate re-use of the land as permitted by this zoning By-Law.

10.1.3.3 The applicant may be required to file a suitable bond, or other acceptable performance surety acceptable to the Planning Board, to guarantee adherence to the above conditions and requirements so that the site will be left in, or returned to, a suitable condition and will not be a hazard.

10.1.3.4 The Planning Board may, after a hearing and finding of violation of the terms of any permit issued, withdraw the permit, after which the use shall be discontinued and a reclamation plan approved by the Planning Board implemented.

10.1.3.5 Failure to apply for a permit and each day thereafter in violation of this By-Law and, where a permit has been issued, each day in violation of the conditions of the permit, shall constitute a separate offense subject to fine, as defined under Section 13.1.6 of this By-Law.

10.2 LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS

10.2.1 Purpose

The purpose of this Section is to:

1) promote the creation of new large-scale ground-mounted solar photovoltaic installations;
2) provide 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
3) provide adequate financial assurance for the eventual decommissioning of such installations.

10.2.2 Applicability

This Section applies to any large-scale ground-mounted solar photovoltaic installation, as defined herein, and shall supersede any conflicting provisions of this By-Law. Such installation may proceed in all districts without the need for a special permit, variance, zoning amendment, waiver, or other discretionary approval. Such installation shall be subject to site plan review by the Planning Board pursuant to Section 13.5 of this By-law and the additional requirements set forth in sections 10.2.4 and 10.2.5. Any substantial modification to an approved installation made after issuance of the required building permit shall also require approval by the Planning Board.

10.2.3 Definitions

The following definitions shall apply in this Section:

Abandonment: Absent notice of a proposed date of decommissioning, or written notice of extenuating circumstances and the written consent of the Planning Board, a solar photovoltaic installation shall be considered abandoned when it fails to operate for more than two years. The burden of proof shall be on the owner or operator.

Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system on a parcel, or set of contiguous parcels in common ownership on the effective date of this Section, of at least 20 acres that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

On-Site Solar Photovoltaic Installation: A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

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

10.2.4 General Requirements

1) **Building Permit.** No large scale solar photovoltaic installation shall be constructed, installed, or modified as provided in this section without first obtaining a building permit as specified in Section 13.1.4 of this Bylaw and paying the associated fee.

2) **Site Plan Review.** A site plan shall be submitted in accordance with the requirements of Section 13.5. In order to comply with the provisions of Section 22(c) of the Green Communities Act, site plan review shall be expedited and no decision shall be rendered more than one year after the date of application.

10.2.5 Additional Requirements for Large-Scale Photovoltaic Installations

The following additional requirements apply specifically to large-scale photovoltaic installations.

1) **Documentation**. In addition to the information required by Section 13.5.5 of this By-law, the applicant shall submit the following documentation:

   a. drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures

   b. documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

   c. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;

   d. documentation of the major system components to be used, including the PV panels, mounting system, and inverter;

   e. Documentation of actual or prospective access and control of the project site.

   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; and

   h. The name, contact information and signature of any agents representing the project proponent

   i. An operation and maintenance plan including measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation;

   j. Proof of liability insurance;

   k. Description of financial surety that satisfies Section 10.2.15;

   l. Evidence that the utility company that operates the electrical grid where the installation is to be located has been informed of the applicant's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

2) **Construction and Operation.**

a. The construction and operation of all large scale solar photovoltaic installations and all buildings and fixtures shall be consistent with all applicable federal, state, and local requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements.

b. Clearing and trimming 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. The Planning Board may require plantings or screening in appropriate circumstances.

10.2.6 Dimension and Density Requirements; Setbacks

For large-scale ground-mounted solar photovoltaic installations, front, side, and rear setbacks shall be as follows; provided, however, that by special permit the Planning Board may authorize a smaller front, side or rear yard setback:

1) Front yard. The front yard depth shall be at least 300 feet.
2) Side yard. Each side yard shall have a depth at least 300 feet.
3) Rear yard. The rear yard depth shall be at least 300 feet.

10.2.7 Accessory Structures

All accessory structures shall be related to the large-scale ground-mounted solar photovoltaic installations on the locus, and shall be limited to one story in height. Such accessory structures may include equipment shelters, storage facilities, transformers, and substations. All accessory structures shall meet the setback requirements of Section 10.2.6 for the district; provided, however, that the Planning Board may impose greater setbacks as a condition if site plan approval. Accessory structures shall be screened from view from adjacent residentially zoned or occupied properties by landscaping or other means and/or joined or clustered to avoid adverse visual impacts.

10.2.8 Lighting

Lighting of solar photovoltaic installations shall be consistent with local, state, and federal law. Lighting of other parts of the installation, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall not cast measurable light onto adjacent properties or into the night sky. Lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

10.2.9 Signs

Signs on large-scale ground-mounted solar photovoltaic installations shall comply with a Section 7.0 of this By-law. Such installation shall display a sign identifying the owner and providing a 24-hour emergency contact phone number. Such installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the installation.

10.2.10 Utility Connections

The Planning Board may require as a condition of site plan approval that all utility connections from the solar photovoltaic installation shall be underground, after considering 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.

10.2.11 Emergency Services

The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the 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 solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

10.2.12 Monitoring and Maintenance; Reporting

The owner or operator of the large-scale ground-mounted solar photovoltaic installation shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services, as prescribed in the site plan approval of the Planning Board. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way. The owner or operator shall provide a copy of any report required to be submitted to the Mass. Department of Energy Resources to the Planning Board at the time of such submittal.

10.2.13 Abandonment or Decommissioning

Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life 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 or abandonment. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

1) Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers, and transmission lines from the site.
2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

10.2.14 Removal by Town

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 abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation.

10.2.15 Performance Guarantee

The Planning Board shall require an applicant for a large-scale ground-mounted solar photovoltaic installation to provide a performance guarantee, in the form of an escrow account, bond or tripartite agreement, to cover the cost of removal in the event the town must remove the installation and repair any damage done to the subject property, in an amount and form determined to be reasonable by the Board. Such performance guarantee shall not be required for municipal or state owned facilities.

10.2.16 Accessory Roof-Mounted Solar Photovoltaic Installations

Nothing in this Section 10.2 shall be construed to prevent the installation, pursuant to G.L. c. 40A, s. 3, of accessory roof-mounted solar photovoltaic installations in any district.

Section 11.0 SPECIAL RESIDENTIAL REGULATIONS

11.1 FLEXIBLE DEVELOPMENT

11.1.1 Purpose

The purpose of a Flexible Development is to:

1) encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use;
2) preserve historical and archeological resources; to protect the natural environment, including the Town's varied landscapes and water resources;
3) protect the value of real property;
4) promote more sensitive siting of buildings and better overall site planning;
5) perpetuate the appearance of the Town's traditional New England landscape;
6) facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7) offer an alternative to standard subdivision development; and/or
8) promote the development of housing affordable to low, moderate, and median income families.

11.1.2 Applicable Definitions

The following terms shall have the following definitions for the purposes of this section:

Affordable to persons or families qualifying as low income*:* affordable to persons in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning less than 50% of the median income.

Affordable to persons or families qualifying as moderate income*:* affordable to persons in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning more than 50% but less than 80% of the median income.

Contiguous open space*:* open space suitable, in the opinion of the Planning Board, for the purposes set forth herein. Such open space may be separated by the road(s) constructed within the Flexible Development. Contiguous open space shall not include required yards.

11.1.3 Applicability

In accordance with the following provisions, a Flexible Development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels held in common ownership and located in the districts set forth in the Table of Use Regulations.

11.1.4 Modification of Lot Requirements

The Planning Board encourages applicants for Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitations:

1) Lots having reduced area or frontage shall not have frontage on a public way but rather on a street created by the Flexible Development; provided, however, that the Planning

Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.

2) At least 50% of the required side and rear yards in the district shall be maintained in the Flexible Development.

11.1.5 Contiguous Open Space

A minimum of forty percent (40%) of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

11.1.5.1 The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in Section 11.1.1 above. In no case shall the percentage of contiguous open space which is wetlands exceed fifty (50%) of the tract.

11.1.5.2 The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, scenic vistas, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.

11.1.5.3 The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to ten (10%) percent of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bike paths.

11.1.5.4 Underground utilities to serve the Flexible Development site may be located within the contiguous open space.

11.1.6 Ownership of the Contiguous Open Space

The contiguous open space shall, at the Planning Board's election, be conveyed to

1) the Town or its body incorporate;

2) a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

3) a corporation or trust owned jointly or in common by the owners of lots within the Flexible Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the Town an easement for this purpose, if so required. In such event, the Town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the Town may perform it. In the event that the Town is not promptly reimbursed for the cost of such maintenance, the Town may lien any improvement on the property. Each individual deed, and the deed or trust

or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

11.1.7 Basic Maximum Number of Dwelling Units

The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations, and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

11.1.8 Density Bonus

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the Flexible Development shall not, in the aggregate, exceed fifty (50%) percent of the Basic Maximum Number. The units required by Section 11.1.9 shall not be considered as density bonus units. Computations shall be rounded to the lower number. A density bonus may be awarded in the following circumstances:

1) For each additional ten percent (10%) of the site (over and above the required forty percent) set aside as contiguous open space, a bonus of five (5%) percent of the Basic Maximum Number may be awarded; provided, however, that this density bonus shall not exceed 25% of the Basic Maximum Number.
2) For every two (2) dwelling units restricted to occupancy by persons over the age of fifty-five, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 25% of the Basic Maximum Number.

11.1.9 Affordable Component

As a condition of the grant of any special permit for a Flexible Development, affordable housing shall be provided in perpetuity in the following manner:

1) 10% of the units shall be affordable to persons or families qualifying as low income; or
2) 15% of the units shall be affordable to persons or families qualifying as moderate income.

These affordable units are calculated based upon the basic maximum number of units. Density bonus units, if any, are not included in the calculation. The restriction shall be approved as to form by legal counsel to the Planning Board, and a right of first refusal upon the transfer of such restricted units shall be granted to the local Housing Authority for a period not less than 120 days after notice thereof.

11.1.10 Types of Buildings

The Flexible Development may consist of any combination of single-family, two-family and multifamily residential structures. A multifamily structure shall not contain more than four (4) dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding, an articulated footprint, and varied facades.

11.1.11 Roads

The principal roadway(s) serving the site shall be designed to conform to the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town. Private

ways shall be adequate for the intended use and vehicular traffic as determined by the Planning Board and shall be maintained by an association of unit owners or by the Applicant.

11.1.12 Parking

Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

11.1.13 Buffer Areas

A buffer area of fifty (50) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed, or removed, except for normal maintenance. The Planning Board may waive the buffer requirement where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least fifty (50') feet in depth which may include such restricted land area within such buffer area calculation; or where the land abutting the site is held by the Town for conservation or recreation purposes; or where the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

11.1.14 Drainage

Storm water management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board, as well as State and Federal storm water regulations and policies.

11.1.15 Permit Procedures

A Flexible Development may be authorized upon the issuance of a special permit by the Planning Board. Applicants for Flexible Development shall file with the Planning Board ten (10) copies of the following:

1) A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board.
2) Where wetland delineation is in doubt or dispute, the Planning Board may refer the matter to the Conservation Commission for clarification. Data on proposed wastewater disposal, which shall be referred to a consulting engineer for review and recommendation.
3) The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.

11.1.15.1 Design Process

Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, house lots, and contiguous open space.

1) *Understanding the Site.* The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic, and cultural resources on the site, and to determine the connection of these important features to each other.
2) *Evaluating Site Context.* The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.

3) *Designating the Contiguous Open Space.* The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.

4) *Location of Development Areas.* The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.

5) *Lot Lines.* The final step is simply to draw in the lot lines (if applicable).

11.1.15.2 Decision

The Planning Board may approve, approve with conditions, or deny an application for a Flexible Development after determining whether the Flexible Development better promotes the purposes of Section 11.1.1 of this Flexible Development By-Law than would a conventional subdivision development of the same locus.

11.1.15.3 Relation to Other Requirements

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law.

Section 12.0 OVERLAY AND SPECIAL DISTRICTS

12.1 AQUIFER PROTECTION OVERLAY DISTRICT (APOD)

12.1.1 Purpose

The purpose of the Aquifer Protection Overlay District (APOD) is to promote the public health by protecting, preserving, and maintaining the quality and quantity of the existing and potential ground water supplies, aquifers, and recharge areas of the Town of Wenham as present and potential sources of public water supply.

12.1.2 Applicable Definitions

For the purposes of this Section the following terms shall be defined as set forth below:

***Animal Feedlot**:* A plot of land on which twenty-five (25) or more livestock per acre are kept for the purpose of feeding.

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

***Groundwater**:* Slowly moving subsurface water present in aquifers and recharge areas.

***Impervious surfaces**:* Material on the ground that does not allow surface water to penetrate into the soil, such as asphalt or granite.

***Leachable wastes**:* Waste materials including solid wastes, sewage, sludge, and agricultural wastes that are capable of releasing water-borne contaminants into the surrounding environment.

***Mining of land**:* The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

***Recharge Areas**:* Areas composed of permeable, stratified sand and gravel and certain wetlands that collect precipitation or surface water and convey it to the aquifers.

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

***Underlying Zoning**:* The zoning regulations which apply to the development project, with the exception of those contained in the APOD.

***Wetlands**:* As defined in M.G.L. Chapter 131 Section 40 and the implementing regulations enacted thereunder and the By-Laws of the Town of Wenham.

12.1.3 Overlay District

The APOD is an overlay district. The regulations of the underlying district shall remain in full force and effect, provided that, where conflicts between the APOD and the underlying district exist, the provisions of the APOD shall govern unless the underlying district is more restrictive, in which case it will govern.

12.1.4 Location

The APOD shall be comprised of the areas shown on a map on file in the Office of the Town Clerk entitled "Aquifer Protection District Map Town of Wenham," dated March 1990 and prepared by Hancock Associates ("APD Map"). The APOD comprises areas in the Town lying within the aquifer recharge areas which now or may in the future provide public water supply. For data, standards and

procedures by which the boundary of the APOD was established see "Report on Aquifer Planning Study Wenham, Massachusetts" by Haley & Aldrich, Inc. dated September 1987.

12.1.5 Boundary Disputes

Where the applicant disputes the boundaries delineated on the APOD Map, the burden of proof shall be on the applicant to show where the boundaries should properly be located. In the event such a dispute arises, at the request of the Board of Appeals the applicant shall make available to the Board of Appeals funds sufficient to cover expenses connected with engaging a consultant on behalf of the Board of Appeals to determine more accurately the location and extent of an aquifer or recharge area, or a watershed. Consultants hired by the applicant or the Town shall be limited to registered professional hydrologists, certified professional geologic scientists, registered professional engineers, certified ground water professionals, and certified professional soil scientists. The provisions of the APOD shall not apply to any portion of a parcel where the applicant has shown to the satisfaction of the Zoning Board of Appeals that there is no hydrological basis for including the parcel in the APOD.

12.1.6 Permitted Uses

The following uses are permitted in the APOD where also permitted by the underlying district.

1) Conservation of soil, water, plants, and wildlife.
2) Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted.
3) Foot, bicycle and/or horse paths, boat docks, and bridges.
4) Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply, and conservation devices.
5) Uses rendering impervious less than twenty percent (20%) of a lot (exclusive of wetlands and land in the Flood Plain Overlay District).
6) Farming, gardening, nursery, forestry, harvesting, and grazing, provided that fertilizers, herbicides, pesticides, and other leachable materials are not stored outdoors and are applied in accordance with Local, State and Federal regulations.

12.1.7 Design and Operation Requirements and Guidelines

Applications made under this section of the By-Law shall include proposed methods, as described below, for preventing or minimizing harmful effects on the quality or quantity of ground or surface water in the APOD.

12.1.7.1 Location

Where the premises are partially outside the APOD, potential sources of pollution, if permitted, shall be located outside the APOD to the extent feasible.

12.1.7.2 Drainage

All runoff from impervious surfaces shall be recharged on the site to the maximum extent possible. The preferred method is diversion toward vegetated areas for surface infiltration. Underground leaching facilities shall only be used where other methods are not feasible for reasons other than cost, and shall be preceded by oil, grease, and sediment traps to facilitate removal of contaminants.

12.1.7.3 Monitoring

Periodic monitoring may be required by the Board of Appeals, including sampling of wastewater disposed to on-site systems or drywells and sampling from ground water monitoring wells to be located

and constructed as specified in the Special Permit with reports to the Board of Appeals, the Board of Health, the Conservation Commission, and the Water Department. The costs of monitoring, including sampling and analysis, shall be borne by the applicant.

12.1.7.4 Erosion and Sedimentation Control

Erosion and sedimentation measures approved by the Board of Appeals or its agent shall be in place before the commencement of any operation which will expose the erodible materials to the elements. Filter fabric shall be used for sediment retention. Such control measures shall remain in place until the Board of Appeals or its agent determines that the danger of erosion or sedimentation no longer exists.

12.1.8 Prohibited Uses

The following uses are prohibited in the APOD.

1) Disposal of solid wastes, other than brush, stumps, and other organic material generated on the site.
2) Storage of petroleum or other refined petroleum products (except propane and natural gas) unless secondary containment of the tank and piping is provided; with the exception of such storage tanks in existence as of the effective date of this By-Law, in which case if replaced and not enlarged, this provision shall not apply.
3) The disposal of liquid or leachable wastes, except through residential septic systems. The repair and/ or expansion of septic systems existing as of the effective date of this By-Law are permitted, provided they comply with Title 5, 310 C.M.R. 15.00, et seq. and Wenham Board of Health regulations.
4) New commercial and industrial uses which discharge waste water on-site.
5) Storage of road salt except in confined and covered areas.
6) Dumping of snow containing de-icing chemicals which is brought in from outside the APOD.
7) Animal feedlots.
8) The storage of uncovered manure in quantities greater than residential landscape or gardening use.
9) Mining of land except as incidental to a permitted use.
10) Storage or disposal of hazardous wastes, as defined by the Hazardous Waste Regulations promulgated by the Hazardous Waste Board, the Water Resources Commission, and the Division of Water Pollution Control under the provisions of Section 27 (8), 52, 57, and 58 of Chapter 21 of the Massachusetts General Laws.
11) Automotive service and repair shops, trucking and bus terminals, and junk and salvage yards.

12.1.9 Uses Requiring Special Permit

The following uses may be authorized by special permit in the APOD subject to the approval of the Board of Appeals which may impose such conditions as it deems necessary to further the purposes set forth in this Section:

1) The application of fertilizers for non-domestic or non-agricultural uses provided that such application shall be made in such a manner as to minimize the adverse impacts on groundwater due to nutrient transport and deposition and sedimentation.

2) Golf courses.

12.1.10 Permit Procedure

The Board of Appeals shall be the special permit granting authority for special permits in the APOD. The special permit procedures in Section 13.4, but not the criteria, shall apply to the review of special permit uses in the APOD. A special permit in the APOD shall not be made personal to the applicant and shall instead run with the land.

12.1.10.1 Ten (10) copies of the application shall be filed with the Town Clerk and certified as to date of receipt. The Board of Appeals shall refer copies of the application to the Board of Health, Planning Board, Conservation Commission, Water Department and Highway Department, so each board may review, either jointly or separately, the application and submit comments in writing to the ZBA within forty-five (45) days of its receipt of the application. Failure to do so shall be deemed lack of opposition.

12.1.10.2 Applicants shall provide a site plan prepared by a professional engineer or a professional land surveyor, showing existing and proposed structures and a narrative description of the measures proposed to comply with the requirements of subsection 12.1.11.

12.1.11 Standards and Criteria for Special Permit Review

In determining whether to approve, approve with conditions, or deny a special permit in the APOD the Board of Appeals shall consider whether the use:

1) Is consistent with the purpose set forth in Section 12.1.1;
2) Is appropriate to the natural topography, soils and other characteristics of the site to be developed; and
3) Will not, during construction or thereafter, have an adverse impact on the aquifer or recharge area.

12.1.12 Lapse

Special permits issued under this section shall lapse within two (2) years (not including the duration of an appeal made under M.G.L. Chapter 40A) from the grant thereof, if a substantial use has not commenced sooner except for good cause, or in the case of a permit for construction, if construction has not begun by such date except for good cause as determined by the Board of Appeals.

12.1.13 Rules and Regulations

The Board of Appeals may enact Rules and Regulations to implement the provisions of this section of the By-Law.

12.2 FLOOD PLAIN OVERLAY DISTRICT (FPOD)

12.2.1 Purpose

The purpose of the Flood Plain Overlay District (FPOD) is to:

1) protect the public health, safety and general welfare;
2) protect human life and property from the hazards of periodic flooding; and
3) preserve the natural flood control characteristics and the flood storage capacity of the floodplains in Wenham.

12.2.2 Overlay District

The FPOD is established as an overlay district to all other districts. Any development within the FPOD, whether structural or non-structural, shall be subject to all otherwise applicable requirements of the underlying zoning district in which it is located, including the usual use and dimensional requirements.

12.2.3 Location

The FPOD includes all special flood hazard areas within the Town of Wenham designated as Zone A, AH and AE on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). The map panels of the Essex County FIRM that are wholly or partially within the Town of Wenham are panel numbers 25009C0406F, 25009C0407F, 25009C0408F, 25009C0409F, 25009C0426F, 25009C0427F, 25009C0428F, 25009C0429F, and 25009C0433F dated July 3, 2012. The exact boundaries of the FPOD may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 3, 2012. The FPOD locations and boundaries also include all flood plain areas shown on the Town of Wenham Flood Plain District zoning Map dated 1973, prepared by Essex Survey Service, Inc., Salem, MA. These areas comprise the 100-year flood plain, also known as the base flood elevation, in the Town of Wenham. The base flood means that flood which has a one percent chance of being equaled or exceeded in any given year. The FIRM and Wenham Flood Plain District Zoning Map are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Inspector, Conservation Commission, and Zoning Board of Appeals.

12.2.4 Uses Permitted By Right

The following uses of low flood damage potential and uses causing no obstructions to flood flows shall be allowed provided they are permitted in the underlying district and they do not require structures, fill, alteration in topography or existing soil and surface water levels, or storage of materials and equipment:

1) Agricultural uses including farming, grazing, horticulture, and similar activities.
2) Forestry and nursery uses.
3) Outdoor recreational uses including fishing, boating, play areas, and similar activities.
4) Conservation of water, plants, and wildlife.
4) Wildlife management areas and foot, bicycle, and horse paths.
5) Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
6) Buildings lawfully existing prior to the adoption of these provisions which shall not hereafter be enlarged or extended, nor shall such buildings be adapted for sustained human occupation unless otherwise already in use for such purposes on May 13, 1989.

12.2.5 Uses Requiring Special Permit

Alterations to any land or structure in the Flood Plain District, whether structural or non-structural, except for those uses permitted by right, require a Special Permit issued by the Planning Board.

12.2.6 Permit Process

12.2.6.1 Application

Applications submitted hereunder which propose to alter a portion of the 100-year flood plain shall document on a site plan the extent of the applicable flood plain, as defined in Section 12.2.3.

1) For activities proposed in the unnumbered A Zones of the FIRM Map, drainage calculations may further determine the elevation of the 100-year floodplain in the area utilizing actual topography and the methodology set forth in 310 CMR 10.57 (2).

2) For activities proposed in FIRM 100-year floodplain zones for which a Letter of Map Revision or a Letter of Map Amendment has been issued by the Federal Emergency Management Agency, the Letter of Map Amendment or Letter of Map Revision shall be included with any application.

12.2.6.2 Conditions

Prior to the issuance of any building permit in the FPOD, the applicant shall first present evidence to the satisfaction of the Building Inspector of compliance with the following requirements:

1) 780 CMR, the Massachusetts State Building Code (Satisfactory evidence shall consist of a Building Permit or a determination by the Building Inspector that such Building Permit is not required for the work proposed.);

2) 310 CMR 10.00, the Wetlands Protection Act regulations (Satisfactory evidence shall consist of a Determination that no Notice of Intent is required for the project, or an Order of Conditions for the Project, or a Notification of Non-Significance, or an Extension Permit from the Conservation Commission or the Massachusetts Department of Environmental Protection);

3) 310 CMR 13.00, the Inland Wetlands Restriction Act (Satisfactory evidence shall consist of any Order, as amended, modified, corrected, or repealed, issued by the Massachusetts Department of Environmental Management.);

4) 310 CMR 15, Title 5, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage (satisfactory evidence shall consist of any Permit issued by the Board of Health for the project and/or a written statement from the Board of Health or its Agent that no such Permit is necessary for the project.);

5) The Wenham Water Resources Protection By-Law, General By-Law Chapter XVIII, and its accompanying regulations (Satisfactory evidence shall consist of a determination that no Notice of Intent is required for the project, or a Permit for the project, or a Notification of Non-significance, or an Extension Permit.) including:

    a. In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. In Zone AE, inclusive, along water courses that have not had a regulatory floodway designated, no new construction, substantial improvement, or other development shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood. In Zone AE, inclusive, along watercourses that have a regulatory floodway designated within the Town of Wenham on the Essex County FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge; and

    b. In a riverine situation, evidence shall be provided that the following entities have been notified of any alteration or relocation of a watercourse:

- Adjacent Communities
- NFIP State Coordinator

  Massachusetts Department of Conservation and Recreation

  251 Causeway Street, Suite 600-700

  Boston, MA 02114-2104
- NFIP Program Specialist

  Federal Emergency Management Agency, Region I

  99 High Street, 6th Floor

  Boston, MA 02110

c. All subdivision proposal must be designed to assure that:
   i. such proposals minimize flood damage;
   ii. all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
   iii. adequate drainage is provided to reduce exposure to flood hazards.

d. 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.

e. Within Zone AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

12.3 SENIOR HOUSING OVERLAY DISTRICT (SHOD)

12.3.1 Purpose

The purpose of the Senior Housing Overlay District (SHOD) is to provide, upon the grant by the Planning Board of a special permit and the approval of site plan, Multi-family residences for persons over the age of 55, such housing to be owned and controlled only by a non-profit organization, or by a cooperative housing corporation, or by the Town or by the Wenham Housing Authority, or jointly by such organizations as permitted by law.

12.3.2 Applicable Definitions

For the purposes of the SHOD, the following terms shall be defined as set forth below:

Non-profit organization: a corporation, foundation or other organization no part of the net earnings of which inures to the benefit of any private shareholder or individual and which, if appropriate, has been organized pursuant to Massachusetts General Laws, Chapter 180, as amended;

Cooperative housing corporation*:* a corporation formed pursuant to M.G.L. Chapter 157B, whose articles of organization contain limitations on the transfer value of its stock.

12.3.3 Overlay District

The SHOD is an overlay district. In order to qualify as an SHOD and for the Town Meeting to rezone the property accordingly, the parcel must contain the following minimum area:

1) Where land is to be developed solely for Multi-family residences the site shall contain not less than 7.5 acres exclusive of any area of land lying in the Flood Plain Overlay District.
2) Where land is to be developed as a Housing Incentive Development, the site shall contain not less than 35 acres exclusive of any area of land lying in the Flood Plain Overlay District.
3) A portion of these total land areas may be within an abutting town.

12.3.4 Permitted Uses and Uses Requiring Special Permit

In a SHOD, no building or land shall be used and no buildings shall be erected or converted except under the following conditions:

12.3.4.1 Any of the uses permitted, as a matter of right, in the underlying residential district, provided that multi-family residence housing units comply in all respects with requirements of this By-Law that are applicable to the residential district.

12.3.4.2 A Housing Incentive Development consisting of Multi-Family residences for the persons over the age of 55 together on the same lot with non-restricted Multi-Family residences. The Multi-Family residences for persons over the age of 55 shall constitute at least thirty percent (30%) of the total number of residences developed on the lot, and such Multi-Family residences for persons over the age of 55 shall be organized and controlled as provided herein.

12.3.5 Affordability Requirement

In exchange for an increase in density above that which is permitted as a matter of right in the underlying zone, the applicant shall provide that at least fifteen percent (15%) of the residences in the Housing Incentive Development shall be available to low and moderate income households in accordance with M.G.L. c. 40B and its implementing regulations as they may from time to time be amended.

12.3.6 Local Preference

Age restricted dwelling units within the development shall be available to all persons age 55 or over. However, a plan shall be prepared by the petitioner which shall, to the extent allowable by law, give a preference for age restricted dwelling units within a development first to Wenham residents, then to immediate family members of Wenham residents and then to the residents of towns with reciprocal agreements with the Town of Wenham.

12.3.7 Standards

12.3.7.1 All senior housing shall be owned and controlled by a non-profit organization, or by a cooperative housing corporation, or by the Town, or by the Wenham Housing Authority, or jointly by two or more of such organizations so far as permitted by law.

12.3.7.2 All newly constructed housing developed in a SHOD shall have not more than 7 dwelling units per acre, or portion thereof, provided however that the Planning Board may limit development to as few as one dwelling unit per acre. Where an existing building is converted or enlarged, not more than 7 units of housing shall be developed for each acre of land, or portion thereof, occupied by the building, its parking and accessory facilities, and those common acres dedicated to the use of the residents. In no case, however, shall the total number of dwelling units in a Housing Incentive Development exceed a

total of 3.5 multiplied by the number of acres in the development, excluding wetlands and land lying in the Flood Plain.

12.3.7.3 The site shall have frontage on a public or private way, including ways built within the site, which is reasonable and consistent with the overall Site Plan.

12.3.7.4 The proposed plan shall provide that there shall be on- site off-street parking containing at least five (5) parking spaces for each three (3) age restricted dwelling units contained in the development, and at least two (2) parking spaces for each non-restricted Multi-Family residence.

12.3.7.5 Roads within the development shall be constructed in accordance with Planning Board Subdivision regulations with such waivers, if any, as the Planning Board deems appropriate.

12.3.7.6 The entire site shall be a size and shape as shall provide a housing site which will be in harmony with the natural terrain and other features of the site and will preserve natural vistas and the existing rural or other character of the Neighborhood.

12.3.7.7 The site shall be supplied with a water system approved by the Water Department, adequate to meet the needs of the units constructed on the site.

12.3.7.8 All dwelling units must be served by adequate sewage treatment facilities approved by the Board of Health or an approved on-site sewage disposal system.

12.3.7.9 No site on a plan for which an approval is granted under this section may be subdivided so as to create additional buildable lots and a notation to that effect shall be shown on the plan.

12.3.7.10 Age restricted dwellings constructed under this section shall not be eligible for subsequent conversion to conventional apartments.

12.3.7.11 Buildings shall be designed to be consistent with the single family appearance of the Town and shall be complementary in exterior design with each other and, where applicable, with the existing Neighborhood in which the development is located.

12.3.7.12 Sufficient financial surety must be provided to insure completion of the development and continuing compliance upon its completion with the provisions of the approval.

12.3.8 Signs

Signs in the SHOD shall be limited to one sign at each vehicular entrance to the District provided that such signs do not exceed six square feet. Such sign may be non-flashing white lighted.

12.3.9 Permit Process

12.3.9.1 Site Plan Approval

In a SHOD no building shall be constructed, enlarged, or changed to accommodate Multi-Family residences for persons over the age of 55 or non-restricted Multi-Family residences except in conformity to this By-Law and to a special permit granted and a site plan approved by the Planning Board. The Planning Board may, pursuant to the special permit, allow the use, alteration, or enlargement of any existing building or structure for Multi-Family residences for persons over the age of 55. The Planning Board shall not approve any such special permit and site plan unless the applicable standards in Massachusetts General Laws and the following standards and criteria are met.

12.3.9.2 Application

The original and seven copies of the application shall be filed with the Planning Board and with the Town Clerk. The Planning Board, acting as the Site Plan Approval Authority and Special Permit Granting Authority under this section, shall give notice, conduct public hearing, and render a decision in conformity with Massachusetts General Laws Chapter 40A, Section 9, and with Section 12.4.15 of this By-Law.

Each application shall include:

1) Information required for submission of a Definitive Plan for Standard Subdivisions as provided for in the Planning Board's Rules and Regulations governing the subdivision of land.
2) Provisions for privacy and security.
3) Provisions for parking.
4) Proposed landscaping, exterior lighting, architectural exterior design and elevations, typical floor plan.
5) Projected phasing, timing of construction, type of ownership, proposed binding covenants, restrictions and agreements on resale, transfer, leasing and subleasing applicable to owners and occupants of the age restricted housing units.
6) Other projected benefits to the Town of the proposed development compared to alternative permitted uses at the same site, including possible increases in the available stock of affordable housing, so as to comply with the provisions of M.G.L. Chapter 40B and its implementing regulations as they may from time to time be amended.
7) Projected revenues to the Town in taxes or payments in lieu of taxes.

12.3.9.3 Decision

The Planning Board shall render its decision after consideration of the following factors, in addition to those set forth in Section 13.4:

1) The plan promotes the more efficient use of land in harmony with its natural features, water courses, scenic areas, natural vistas, existing rural character, and similar community assets within the general intent of the Zoning By-Law and the long-range plan of the Town.
2) The plan protects adjoining premises against serious detrimental effects by providing among other things, surface water drainage, sound and sight barriers, and preservation of views and light.
3) The plan provides for convenience and safety of vehicular and pedestrian movement within the site, and appropriate location of driveway openings in relation to traffic or to adjacent streets.
4) The plan provides for adequate methods of disposal of refuse and other wastes.
5) The plan provides for suitable architectural design and a favorable relationship of structures and open space to the natural landscape, barriers, and preservation of views and light.

12.3.9.4 Conditions

Dwelling units within the development shall be subject to appropriate conditions to assure their continued use for the purposes for which the special permit is granted. Construction must commence

within one year of the granting of the approval. Construction must be completed within two years of its commencement unless otherwise provided for in the Special Permit or as amended by the Planning Board.

12.4 PERSONAL WIRELESS SERVICE FACILITIES

12.4.1 Purpose

It is the express purpose of this Section to minimize the visual and environmental impacts of a Personal Wireless Service Facility (PWSF). This Section enables the review and approval of PWSF by the Special Permit Granting Authority (SPGA) in keeping with the Town's existing By-Laws and historic development patterns, including the size and spacing of structures and open spaces. This Section is intended to be used in conjunction with other regulations adopted by the Town, including historic district regulations, site plan review, and other local By-Laws designed to encourage appropriate land use, environmental protection, and provision of adequate infrastructure development in Wenham.

The regulation of PWSFs is consistent with the purpose of the ongoing planning efforts of the Town to further the conservation and preservation of developed, natural and undeveloped areas, wildlife, flora and habitats for endangered species; balanced economic growth; the provision of adequate capital facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; and the preservation of historical, cultural, archaeological, architectural and recreational values.

12.4.2 Definitions

For the purposes of this Section, the following terms shall be defined as set forth below:

Above Ground Level (AGL)*:* A measurement of height from the natural grade of a site to the highest point of a structure.

Antenna*:* The surface from which wireless radio signals are sent and received by a personal wireless service facility.

Camouflaged*:* A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure is considered "camouflaged."

Carrier*:* A company that provides wireless services.

Co-location*:* The use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.

Cross-polarized (or dual-polarized) antenna*:* A low mount that has three panels flush mounted or attached very close to the shaft.

Elevation*:* The measurement of height above sea level.

Equipment Shelter*:* An enclosed structure, cabinet, shed, or box at the base of the mount within which are housed batteries and electrical equipment.

Fall Zone*:* The area on the ground within a prescribed radius from the base of a personal wireless service facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

Functionally Equivalent Services*:* Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.

Guyed Tower*:* A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

Lattice Tower*:* A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

***Licensed Carrier**:* A company authorized by the FCC to construct and operate a commercial mobile radio services system.

***Monopole**:* The type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top.

***Mount**:* The structure or surface upon which antennas are mounted, including the following four types of mounts:

1) Roof-mounted. Mounted on the roof of a building.
2) Side-mounted. Mounted on the side of a building.
3) Ground-mounted. Mounted on the ground,
4) Structure-mounted. Mounted on a structure other than a building.

***Omnidirectional (whip) antenna**:* A thin rod that beams and receives a signal in all directions.

***Panel Antenna**:* A flat surface antenna usually developed in multiples.

Personal Wireless Service Facility: Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996.

Personal Wireless Services: The three types of services regulated by this Section as defined above as Functionally Equivalent Services and as defined by the Telecommunications Act of 1996 as commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

***Radiofrequency (RF) Engineer**:* An engineer specializing in electrical or microwave engineering, especially the study of radiofrequencies.

Radiofrequency Radiation (RFR): The emissions from PWSFs.

***Security Barrier**:* A locked, secure wall, fence, or berm that completely seals an area from unauthorized entry or trespass.

Separation: The distance between one carrier's array of antennas and another carrier's array.

***Special Permit Granting Authority (SPGA)**:* the Planning Board for the purposes of this Section.

12.4.3 Regulations

A PWSF shall require a building permit in all cases and may be permitted as follows:

12.4.3.1 A PWSF may locate on any existing guyed tower, lattice tower, monopole, electric utility transmission tower, fire tower or water tower, provided that the installation of the new facility does not increase the height of the existing structure except as provided herein. Such installations shall not require a special permit but shall require site plan approval by the Planning Board.

12.4.3.2 A PWSF involving construction of one or more ground or building (roof or side) mounts shall require a special permit. Such facilities may locate by special permit in all zoning districts within the Town, provided that the proposed use complies with the height and setback requirements and all of the special permit standards set forth herein.

12.4.3.3 A PWSF that exceeds the height restrictions of this Section may be permitted by special permit in accordance with Section 12.4.5, below.

12.4.4 Location

Applicants seeking approval for a PWSF shall comply with the following:

12.4.4.1 If feasible, a PWSF shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more PWSFs. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

12.4.4.2 If the applicant demonstrates that it is not feasible to locate it on an existing structure, a PWSF shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.

12.4.4.3 The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of application for a Building Permit and/or Special Permit.

12.4.5 Height Requirements

A PWSF shall comply with the following requirements:

12.4.5.1 Height, General

Regardless of the type of mount, PWSFs shall be no higher than ten feet above the average height of buildings within 200 feet of the proposed facility. In addition, the height of a PWSF shall not exceed by more than ten feet the height limits of the zoning district in which the facility is proposed to be located, unless the facility is completely camouflaged such as within a flagpole, steeple, chimney, or similar structure. A PWSF may locate on a building that is legally non-conforming with respect to height, provided that the facility does not project above the existing building height.

12.4.5.2 Height, Ground-Mounted Facilities

A ground-mounted PWSF shall not project higher than ten feet above the average building height of buildings within 200 feet, or, if there are no buildings within 200 feet, these facilities shall not project higher than ten feet above the average tree canopy height, measured from ground level. If there are no buildings within 200 feet of the proposed site of the facility, all ground-mounted PWSFs shall be surrounded by dense tree growth to screen views of the facility in all directions. These trees may be existing on the subject property or planted on site.

12.4.5.3 Height, Side- and Roof-Mounted Facilities

12.4.5.4 Side- and roof-mounted PWSFs shall not project more than ten feet above the height of an existing building nor project more than ten feet above the height limit of the zoning district within which the facility is located. Height, Existing Structures

New antennas located on any of the following structures existing on the effective date of this By-Law shall be exempt from the height restrictions of this By-Law provided that there is no increase in height of the existing structure as a result of the installation of a PWSF: Water towers, guyed towers, lattice towers, fire towers, and monopoles.

12.4.5.5 Height, Existing Structures (Utility)

New antennas located on any of the following existing structures shall be exempt from the height restrictions of this By-Law provided that there is no more than a twenty foot (20’) increase in the height of the existing structure as a result of the installation of a personal wireless service facility: electric transmission and distribution towers, telephone poles and similar existing utility structures.

12.4.5.6 Height, Wireless Facility Overlay Districts

In the Personal Wireless Services Facility Overlay District (herein designated as the Personal Wireless Services Facility Overlay District on the Town zoning map), PWSFs of up to 180 feet in height may be permitted by Special permit. This District consists of the parcels of property described in Personal Wireless Facility Overlay District Parcels –dated November 14, 2000, attached to and made a part of this By-Law. Monopoles are the preferred type of mount for such taller structures. Such structures shall comply with all setback and special permit regulations set forth in this By-Law.

12.4.6 Other Dimensional Requirements

All PWSFs and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, the following setbacks shall be observed:

12.4.6.1 In order to ensure public safety, the minimum distance from the base of any ground-mounted personal wireless service facility to any property line, road, habitable dwelling, business or institutional use, or public recreational area shall be at least one-half the height of the facility/mount, including any antennas or other appurtenances. This setback is considered a "fall zone".

12.4.6.2 In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing non-conforming structures, PWSFs and their equipment shelters shall not increase any non-conformities.

12.4.6.3 In addition, no ground mounted facility shall be located less than 200 feet from a neighboring residential building.

12.4.6.4 Flexibility. In reviewing a special permit application for a personal wireless service facility, the Planning Board may reduce the required fall zone and/or setback distance of the zoning district by as much as 50% of the required distance, if it finds that a substantially better design will result from such reduction. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

12.4.7 Camouflage Standards

PWSFs will be located so as to have the least visibility and the least impact on community character. A PWSF shall be camouflaged as follows:

12.4.7.1 Camouflage by Existing Buildings or Structures. When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the facade in order to limit their impact on the building's silhouette.

12.4.7.2 PWSFs which are side mounted shall blend with the existing building's architecture and, if over 5 square feet, shall be painted or shielded with material which is consistent with the design features and materials of the building.

12.4.7.3 Camouflage by Vegetation. If PWSFs are not camouflaged from public viewing areas by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted PWSFs shall provide a vegetated buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility

or a combination of both. The SPGA shall approve the types of trees and plant materials and depth of the needed buffer based on site conditions. Vegetation will be maintained with respect to depth, height, density and speciation according to the requirements of the SPGA

12.4.7.4 Color. PWSFs which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

12.4.7.5 To the extent that any PWSFs extend above the height of the vegetation immediately surrounding it, they shall be painted in a light grey or light blue hue which blends with sky and clouds.

12.4.8 Equipment Shelters

Equipment Shelters for PWSFs shall be designed consistent with one of the following design standards:

1) Equipment shelters shall be located in underground vaults; or
2) Equipment shelters shall be designed consistent with local architectural styles and materials; or
3) Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or a wooden fence. The SPGA shall approve the style of fencing and/or landscape buffer that is compatible with the neighborhood.

12.4.9 Lighting and Signage

12.4.9.1 PWSFs shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from view from abutting properties. There shall be total cut-off of all light at the property lines of the parcel to be developed.

12.4.9.2 Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Town's sign regulations.

12.4.9.3 All ground mounted PWSFs shall be surrounded by a security barrier.

12.4.10 Historic Buildings and Districts

12.4.10.1 Any PWSFs located on or within an historic structure in the Historic District shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.

12.4.10.2 Any alteration made to an historic structure to accommodate a PWSF shall be fully reversible.

12.4.10.3 PWSFs within an historic district shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas within the district.

12.4.11 Environmental Standards

12.4.11.1 PWSFs shall not be located in wetlands. Locating of wireless facilities in wetland buffer areas shall be avoided whenever possible and disturbance to wetland buffer areas shall be minimized.

12.4.11.2 No hazardous waste shall be discharged on the site of any PWSF. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.

12.4.11.3 Storm water run-off shall be contained on-site.

12.4.11.4 Ground-mounted equipment for PWSFs shall not generate noise in excess of 50 db at the property line.

12.4.11.5 Roof-mounted or side-mounted equipment for PWSFs shall not generate noise in excess of 50 db at ground level at the base of the building on which the antenna is affixed.

12.4.11.6 Applicants shall certify in writing that should any complaint of electronic or electromagnetic interference with other electronic devices be received, the applicant shall immediately exercise its responsibility to remedy such interference.

12.4.11.7 The special permit shall remain valid only so long as the structure is maintained in good operating condition as determined by the Building Inspector, and the grounds and natural screening are maintained as required by the SPGA.

12.4.12 Safety Standards

Radiofrequency Radiation (RFR) Standards. All equipment proposed for a PWSF shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines).

12.4.13 Special Permit Granting Authority (SPGA)

The Special Permit Granting Authority (SPGA) for PWSFs shall be the Planning Board. Where proposed construction is subject to both site plan review and a special permit, the SPGA will attempt to conduct both processes simultaneously, using the time limits of the special permit process to cover both reviews.

12.4.14 Pre-Application Conference

Prior to the submission of an application for a special permit under this regulation, the applicant is strongly encouraged to meet with the Planning Board at a public meeting to discuss the proposed PWSF in general terms and to clarify the filing requirements.

12.4.14.1 Pre-Application Filing Requirements

The purpose of the conference is to inform the Planning Board as to the preliminary nature of the proposed PWSF. As such, no formal filings are required for the pre-application conference. However, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the SPGA of the location of the proposed facility, as well as its scale and overall design.

12.4.15 Application Filing Requirements

Applications for a special permit for all PWSFs shall include the items identified in the subsections below. Ten (10) copies of the application for special permit shall be filed with the Planning Board.

12.4.15.1 General Filing Requirements

1) Application fee for Special Permit.
2) An amount of money to be placed in an engineering review escrow account. The Planning Board may enact regulations setting such fees.
3) Name, address, and telephone number of applicant and any co applicants as well as any agents for the applicant or co-applicants. Co-applicants may include the landowner of the subject property, licensed carriers, and tenants for the PWSF. A licensed carrier shall either be an applicant or a co-applicant.
4) Original signatures for the applicant and all co-applicants applying for the special permit. If the applicant or co-applicant will be represented by an agent, original signature authorizing the agent to represent the applicant and/or co-applicant. Photo reproductions of signatures will not be accepted.
5) A copy of the lease agreement, if any.

12.4.15.2 PWSF on Municipal Property

If a free-standing, exterior PWSF is to be placed on municipal property the following conditions must be satisfied:

1) Certificate of Insurance for liability coverage in the amount of $1,000,000 must be provided naming the Town as an additional insured, such certificate to be presented to the Town annually.
2) An agreement whereby the user indemnifies and holds the Town harmless against any claims for injury or damage resulting from or arising out of the use or occupancy of the Town owned property by the user.
3) A surety bond in a reasonable amount determined and approved by the Planning Board shall be in force to cover removal of a PWSF and restoration of the site to the condition that the premises were in at the onset of the lease, when use of said facility becomes discontinued or obsolete. The amount is to be payable to the Town in the event that the user breaches the agreement in Section I, below.

12.4.15.3 Location Filing Requirements

1) Identify the subject property by name of the nearest road or roads, and street address, if any.
2) Tax map and parcel number of subject property.
3) Zoning district designation for the subject parcel (Submit copy of Town zoning map with parcel identified).
4) A line map to scale showing the lot lines of the subject property and all properties within 300 feet and the location of all buildings, including accessory structures, on all properties shown.
5) A town-wide map showing the other existing PWSFs in the Town and outside the Town within one mile of its corporate limits.
6) The proposed locations of all existing and proposed future PWSFs in the Town on a Town-wide map for this carrier.

12.4.15.4 Siting Filing Requirements

One inch-equals-40 feet (or other if pre-approved by the SPGA) vicinity plan showing the following:

1) Property lines for the subject property.
2) Tree cover on the subject property and adjacent properties within 300 feet, by predominant species and average height, as measured by or available from a verifiable source.
3) Outline of all existing buildings, including purpose (e.g. residential buildings, garages, accessory structures, etc.) on subject property and all adjacent properties within 300 feet.
4) Proposed location of antenna, mount, and equipment shelter(s).
5) Proposed security barrier, indicating type and extent as well as point of controlled entry.
6) Location of all roads, public, and private, on the subject property and on all adjacent properties within 300 feet including driveways proposed to serve the PWSF.
7) Distances, at grade, from the proposed PWSF to each building on the vicinity plan.
8) Contours at each two feet above mean sea level (AMSL) for the subject property and adjacent properties within 300 feet.
9) All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
10) Representations, dimensioned and to scale, of the proposed mount, antennas, equipment shelters, cable runs, parking areas and any other construction or development attendant to the PWSF.
11) Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from “Sight Lines” sub-section b. immediately below.

12.4.15.5 Sight lines and photographs as described below.

1) Sight line representation. A sight line representation shall be drawn from any public road within 300 feet and the closest facade of each residential building (viewpoint) within 300 feet to the highest point of the PWSF. Each sight line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings. In the event there is only one residential building within 300 feet there shall be at least two sight lines from the closest habitable structures or public roads, if any.
2) Existing (before condition) photographs. Each sight line shall be illustrated by one four-inch by six-inch color photograph of what can currently be seen from any public road within 300 feet.
3) Proposed (after condition). Each of the existing condition photographs shall have the proposed PWSF superimposed on it to show what will be seen from public roads if the proposed PWSF is built.
4) Siting elevations, or views at-grade from the north, south, east and west for a 50-foot radius around the proposed PWSF plus from all existing public and private roads that serve the subject property. Elevations shall be at either one-quarter inch equals one foot or one-eighth inch equals one foot scale and show the following:

   a. Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.

b. Security barrier. If the security barrier will block views of the PWSF, the barrier drawing shall be cut away to show the view behind the barrier.

c. Any and all structures on the subject property.

d. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.

e. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours above mean sea level.

12.4.15.6 Design Filing Requirements

1) Equipment brochures for the proposed PWSF such as manufacturer's specifications or trade journal reprints shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
2) Materials of the proposed PWSF specified by generic type and specific treatment (e.g., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
3) Colors of the proposed PWSF represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
4) Dimensions of the PWSF specified for all three directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any.
5) Appearance shown by at least two photographic superimpositions of the PWSF within the subject property. The photographic superimpositions shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any, for the total height, width and breadth.
6) Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species.
7) Within 30 days of the pre-application conference, or within 21 days of filing an application for a Special permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the Town at least 14 days, but not more than 21 days prior to the test.
8) If lighting of the site is proposed, the applicant shall submit a manufacturer's computer-generated point-to-point printout, indicating the horizontal footcandle levels at grade, within the property to be developed and twenty-five (25) feet beyond the property lines. The printout shall indicate the locations and types of luminaires proposed.

12.4.15.7 Noise Filing Requirements

The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed PWSFs, measured in decibels Ldn (logarithmic scale, accounting for greater sensitivity at night), for the following:

1) Existing, or ambient: the measurements of existing noise.
2) Existing plus proposed PWSFs: maximum estimate of noise from the proposed PWSF plus the existing noise environment.

3) Such statement shall be certified and signed by an acoustical engineer, stating that noise measurements are accurate and meet the Noise Standards of this By-Law.

12.4.15.8 Radiofrequency Radiation (RFR) Filing Requirements

The applicant shall provide a statement listing the existing and maximum future projected measurements of RFR from the proposed PWSF, for the following situations:

1) Existing, or ambient: the measurements of existing RFR.
2) Existing plus proposed PWSFs: maximum estimate of RFR from the proposed PWSF plus the existing RFR environment.
3) Certification signed by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radiofrequency Radiation Standards sub-section of this By-Law.

12.4.16 Co-location

Licensed carriers shall share PWSFs and sites where feasible and appropriate, thereby reducing the number of PWSFs that are stand-alone facilities. All applicants for a special permit for a PWSF shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes:

1) A survey of all existing structures that may be feasible sites for co-locating PWSFs;
2) Contact with all the other licensed carriers for commercial mobile radio services operating in the County; and
3) Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.

In the event that co-location is found to be not feasible, a written statement of the reasons for the infeasibility shall be submitted to the SPGA. The SPGA may retain a technical expert in the field of RF engineering to verify if co-location at the site is not feasible or is feasible given the design configuration most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant. The SPGA may deny a Special permit to an applicant that has not demonstrated a good faith effort to provide for co-location. If the applicant does intend to co-locate or to permit co-location, the SPGA shall request drawings and studies which show the ultimate appearance and operation of the PWSF at full build-out. If the SPGA approves co-location for a PWSF site, the special permit shall indicate how many facilities of what type shall be permitted on that site. Facilities specified in the Special permit approval shall require no further zoning approval. However, the addition of any facilities not specified in the approved Special permit shall require a new Special permit. Estimates of RFR emissions will be required for all facilities, including proposed and future facilities.

12.4.17 Modifications

A modification of a PWSF may be considered equivalent to an application for a new PWSF and will require a Special permit when the applicant and/or co-applicant wants to alter the terms of the Special permit by changing the PWSF in one or more of the following ways:

1) Change in the number of facilities permitted on the site;
2) Change in technology used for the PWSF;
3) The applicant and/or co-applicant wants to add any equipment or additional height not specified in the original design filing.

12.4.18 Monitoring and Maintenance

After the PWSF is operational, the applicant shall submit, within 90 days of beginning operations, and at annual intervals from the date of issuance of the Special Permit, existing measurements of RFR from the PWSF. Such measurements shall be signed and certified by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radiofrequency Standards section of this By-Law.

After the PWSF is operational, the applicant shall submit, within 90 days of the issuance of the Special permit, and at annual intervals from the date of issuance of the special permit, existing measurements of noise from the PWSF. Such measurements shall be signed by an acoustical engineer, stating that noise measurements are accurate and meet the Noise Standards sub-section of this By-Law. The applicant and co-applicant shall maintain the entire PWSF in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

12.4.19 Abandonment or Discontinuance of Use

At such time that a licensed carrier plans to abandon or discontinue operation of a PWSF, such carrier will notify the SPGA by certified U.S. mail of the proposed date of abandonment or discontinuance of operations. Such notice shall be given no less than 60 days prior to abandonment or discontinuance of operations. In the event that a licensed carrier fails to give such notice, the PWSF shall be considered abandoned upon such discontinuance of operations.

Upon abandonment or discontinuance of use, the carrier shall physically remove the PWSF within 90 days from the date of abandonment or discontinuation of use. “Physically remove” shall include, but not be limited to: Removal of antennas, mount, equipment shelters and security barriers from the subject property; Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations; and Restoring the location of the PWSF to its natural condition, except that any landscaping and grading shall remain in the after-condition. If a carrier fails to remove a PWSF in accordance with this section of this By-Law, the Town shall have the authority to enter the subject property and physically remove the facility. The Planning Board shall require the applicant to post a bond at the time of construction to cover costs for the removal of the PWSF in the event the Town must remove the facility.

12.4.20 Construction or Replacement of Existing Towers and Monopoles

Except as otherwise allowed herein, guyed towers, lattice towers, utility towers and monopoles in existence at the time of adoption of this By-Law may be reconstructed, altered, extended or replaced on the same site by Special Permit, provided that the Planning Board finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the Town than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension, or replacement will create public benefits such as opportunities for co-location, improvements in public safety, and/or reduction in visual and environmental impacts. No reconstruction, alteration, extension, or replacement shall exceed the height of the existing facility by more than twenty (20) feet.

12.5 INDEPENDENT LIVING OVERLAY DISTRICT (ILOD)

12.5.1 Purpose

The purpose of the Independent Living Overlay District (ILOD) is to provide a mechanism for the approval of:

1) independent living facilities (ILF) that offer housing and other services to persons over the age of fifty five, subject to the Age Restriction definition in 12.5.2 below;
2) the development of ILF in a manner that conserves environmental features, woodlands, wetlands, open space, areas of scenic beauty, views and vistas as well as encouraging the renovation and rehabilitation of older, existing buildings; and
3) the development of ILF in a manner harmonious with the surrounding land uses while protecting natural resources and open space.

12.5.2 Definitions

Within this Section, the following terms shall have the following meanings:

Accessory Structures and Uses: Structures and uses accessory to the ILF may include, but are not limited to, recreational, personal services, hotel rooms, places of assembly, religious, educational, and cultural places, and the like. Such accessory uses and structures shall be designed for the primary use of the residents and staff of the ILF. Such accessory uses may not be designed for or used as a general business by the general public. Such accessory uses shall have no exterior advertising display.

Affordable Dwelling Unit: A dwelling unit affordable to persons or families in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development (DHCD), earning more than 50% but less than 80% of the median income, adjusted for household size.

Age Restriction: The ILF shall be subject to an Age-Restriction as follows: eighty percent (80%) of the occupied units shall be occupied by at least one person who is age fifty-five (55) or older (the "Qualified Occupant"); provided, however, that in the event of the death of the Qualified Occupant(s) of a unit or other involuntary transfer of a unit, a one year exemption shall be allowed to allow for the rental of the unit to another Qualified Occupant(s) (the "Age Restriction") so long as the provisions of the Housing Laws (defined below) are not violated by such occupancy. The Age Restriction is intended to be consistent with, and is set forth in order to comply with the Fair Housing Act, 42 USC section 3607(b), as amended, the regulations promulgated thereunder, 24 CFR Subtitle B, Ch. 1, section 100.300 et seq. and G.L. c. 151B, section 4 (the "Housing Laws"). This condition shall be incorporated into the deed riders and association organizational documents. This restriction and any proposed deed shall be subject to review and approval by the Planning Board and approved as to form by Town Counsel prior to the issuance of a certificate of occupancy for any dwelling unit.

Applicant : The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

Bedroom: A separate room intended for, or which customarily could be used for, sleeping.

Dwelling Unit: A residence, including studio units. Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and shall contain a kitchen area or combination kitchen/living area.

Independent Living Complex (ILC): A structure or structures with a mix of dwelling units, common areas and accessory uses.

Independent Living Facility (ILF): An Independent Living Complex with or without ancillary buildings, subject to an Age Restriction.

Regulations: The rules and regulations of the Planning Board relative to subdivisions, special permits and site plans.

Wetlands*:* Resource areas subject to the provisions of G.L. c. 131, ss. 40 and 40A, and the Wenham Water Resources By-Law, Chapter 28 of the General By-Laws.

12.5.3 Overlay District

The ILOD shall be construed as an overlay district. Within the ILOD, the requirements of the underlying zoning district(s) shall remain in full force and effect until a special permit for an ILF has been granted, except where the requirements herein are more restrictive or provide for uses or structures not otherwise available in the underlying district; in such cases, the requirements herein shall supersede the underlying zoning regulation.

12.5.4 Use Regulations

An ILF may be constructed, subject to the requirements set forth herein, upon the issuance of a special permit by the Planning Board. No other use or structures shall be permitted, except as specifically provided herein:

1) An ILF consisting of any combination of at least (one) Independent Living Complex and ancillary buildings.
2) Accessory structures and uses.

12.5.5 Administration

The Planning Board shall serve as the special permit granting authority pursuant to this Section. The Planning Board may waive the submittal of technical information or documents otherwise required hereunder where the Applicant demonstrates that, due to the simplicity of the proposal, such information is not necessary for or applicable to the Planning Board's decision pursuant to this section. An application for a special permit shall be governed by the following rules.

12.5.6 Application

An application for a special permit shall be submitted to the Planning Board on forms furnished by the Planning Board. Each such application shall be accompanied, by a filing fee of $1,000 and a technical review fee pursuant to G.L. c. 44, s. 53G. The application shall be accompanied by all of the information required for site plan review, as set forth in Sections 13.5.4 and 13.5.5 of the Zoning By-Law.

12.5.7 Standards

In order to be eligible for consideration for a special permit pursuant to this Section, the proposed development shall meet all of the following standards:

12.5.7.1 Parcel Size and Frontage. Minimum parcel size for an ILF shall be ten (10) acres, with land under water being excluded from this computation. Minimum frontage for an ILF shall be 200 feet.

12.5.7.2 Buffer. A buffer area of 50 feet shall be provided at the perimeter of the property where it abuts existing residentially occupied properties, except for driveways necessary for access and egress to and from the site, or for storm water retention facilities. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation; or (ii) where the land abutting the site is held for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

12.5.7.3 Removal and Replacement of Vegetation. Within the site, no clear cutting shall be permitted, except incidental to construction of buildings, roads, trails and parking areas, as approved by the Planning Board.

12.5.7.4 Roadways. The principal roadway(s) serving the site shall be designed to conform with the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

12.5.7.5 Parking. The Applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces. Such parking may be underground, in a structure, or on the surface. The minimum number of parking spaces provided on the site shall be 1.25 per dwelling unit in an ILF. The Planning Board may require, when parking is less than 1.5 spaces per dwelling unit, that a reserve area be set aside for additional parking if needed. One (1) parking space shall also be provided for every employee during the largest shift. All parking areas shall be screened from view by a landscaped border at least 50 feet in width from adjacent residentially occupied premises located outside the ILF, including public ways.

12.5.7.6 Loading. Screening and landscaping shall be provided to block all views of loading areas (except those specifically designated for emergency vehicles) from the public right-of-way and adjacent properties.

12.5.7.7 Stormwater Management. The stormwater management system shall be designed in accordance with Massachusetts Department of Environmental Protection Stormwater Management Regulations.

12.5.7.8 Utilities. All electric, gas, telephone, and cable lines shall be placed underground, except upon a demonstration of exceptional circumstances such as rock, ledge and wetlands.

12.5.7.9 Sidewalks and Paths. Sidewalks shall be required to connect parking areas and buildings to nearby buildings. Paths for the use of residents shall be attractively designed with proper regard for convenience, separation of vehicular, bicycle and pedestrian traffic, adequate connectivity, completeness of access to the various amenities and facilities on the site and to connect to pathways on adjacent sites or public ways.

12.5.7.10 Emergency Systems. The ILF shall have an integrated emergency call, telephone and other communications system to provide monitoring for its residents. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Fire Department for the emergency evacuation of the residents with emphasis on ensuring the safety of residents with physical impairments.

12.5.7.11 Lighting. All exterior lighting shall not produce lighting so as to unreasonably interfere with the use and enjoyment of property within the Town. Lighting practices and systems shall reduce light pollution, light trespass and glare in order to preserve and enhance the natural, scenic, and aesthetic qualities of the Town; conserve energy and decrease lighting cost without decreasing night time safety, security, and productivity; and preserve the night sky as a natural resource to enhance nighttime enjoyment of property within the Town.

12.5.7.12 Emergency Access. When the ILF has a single access road with a length greater than 1000 feet, a second means of access adequate for emergency vehicles, as determined by the Fire Department, and approved by the Planning Board shall be provided,

12.5.7.13 Further Subdivision. After a special permit is issued for an ILF, no further subdivision of land shall be permitted.

12.5.7.14 Density. The aggregate number of dwelling units shall not exceed 5 times the total number of acres in the ILOD.

12.5.7.15 Building Height. An Independent Living Complex shall have a maximum building height of four stories. Ancillary buildings shall have a maximum height of three stories. Underground or partially underground parking and or building service areas shall not be considered a story. In addition, where a building is designed to accommodate variations in grade, each building segment shall be considered separately in determining the maximum number of stories.

12.5.8 Sustainable Design

The Applicant shall present to the Planning Board a matrix indicating the sustainable design components that shall be achievable as part of the Project. The Applicant shall complete all of the items indicated on the matrix. Upon completion of the Project, the Applicant shall provide a report to the Planning Board from its design, engineering and construction team summarizing how the items were accomplished., and such report will replace any requirement that the Applicant obtain a LEED Certification for the Project.

12.5.9 Incentives for Conversion of Structures

Applicants are encouraged to propose the appropriate reuse of land and buildings that are no longer needed or suitable for their original use, where such conversion is compatible with the character of the neighborhood. In the event of such conversion to an Independent Living Complex, the number of stories of any additions or extensions shall not exceed the number of stories of the existing structure on the premises.

12.5.10 Affordable Dwelling Units

1) Not less than 10% of the number of dwelling units in the ILF shall be Affordable Dwelling Units provided on-site.
2) In the alternative, the Applicant, or a related entity such as a single purpose limited

liability company under the control or direction of the Applicant, may provide off-site homeownership or rental Affordable Dwelling Units equal to 15% of the total number of on-site units.

3) In the alternative, the Applicant, or a related entity such as a single purpose limited liability company under the control or direction of the Applicant, may provide off-site rental housing equal to 15% of the total number of on-site units provided that 100% of such units shall be counted on the DHCD's Subsidized Housing Inventory.

4) If the Applicant proposes to situate required Affordable Dwelling Units off-site, the Applicant or such related entity shall demonstrate control of such off-site location(s).

5) The Planning Board shall require specific deadlines for the provision of the required off-site units and the land on which such units are located.

6) If the Applicant elects to provide Affordable Dwelling Units both on and off the site, the Planning Board shall establish the total number of such Affordable Dwelling Units in the grant of any special permit.

7) The Affordable Dwelling Units shall meet the standards of the DHCD as to size and location. The Applicant shall cooperate with the Town to ensure that all Affordable Dwelling Units are counted on DHCD's Subsidized Housing Inventory.

12.5.11 Action By The Planning Board

The Planning Board may grant a special permit for an ILF where it makes the following findings, in addition to those set forth in Section 13.4.3 of this By-law. Except as set forth in Section 12.5.6, above, Section 13.5, governing site plan review, shall not apply in the ILOD.

1) proposed facility complies with the requirements of this Section; provided, however, the Planning Board may waive a substantive requirement (except the Affordable Dwelling Unit requirement), when the Board determines that the waiver will not result in substantial detriment to the district or the Town.

2) The proposed facility does not cause substantial detriment to the neighborhood after considering the following potential consequences:

   a. noise, during the construction and operational phases;

   b. light pollution;

   c. visual impact caused by the character and scale of the proposed structure(s).

12.5.12 Lapse

Notwithstanding the provisions of Section 13.4.7, a special permit for an ILF shall lapse after 24 months if substantial use or construction as granted under a permit have not commenced without good cause. This time limit excludes the time required to pursue or await the determination of an appeal.

Section 13.0 ADMINISTRATION

The following rules and regulations shall govern the administration and enforcement of the Wenham Zoning By-Law. In addition, the procedures governing variances, special permits, and site plan review are set forth herein.

13.1 OFFICE OF THE BUILDING INSPECTOR

13.1.1 Appointment

The Board of Selectmen shall, within thirty days after this By-Law becomes effective and thereafter in March, appoint a Building Inspector, who shall hold office for the term of one year. His compensation shall be regulated by the Selectmen unless determined by a vote of the Town at the annual town meeting preceding his appointment. He shall not be interested in any contract or in the furnishing of materials for any buildings.

13.1.2 Removal

The Board of Selectmen shall have the power to discharge the Inspector for failure to perform his duties, and to fill any vacancy in the office, during the period of his/her appointment.

13.1.3 Powers and Responsibilities

Except as otherwise provided, this By-Law shall be enforced by the Building Inspector, who shall not approve applications of any kind, or plans, or specifications, or intended use, which are not in all respects in conformity with this By-Law.

13.1.3.1 If the Building Inspector shall refuse to issue a permit, the applicant may appeal to the Board of Appeals.

13.1.3.2 If the Building Inspector is requested in writing to enforce the By-Law against any person allegedly in violation thereof, and he declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen (14) days of receipt of such request.

13.1.3.3 The Building Inspector may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the Commonwealth. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed in principal use unless in compliance with then-applicable zoning, and after all necessary permits have been received under federal, state, or local law.

13.1.4 Permit Process

No building shall be erected or enlarged or moved without first filing with the Building Inspector plans in duplicate showing lot size, height of building, location of proposed building or buildings or additions thereto, on a lot which complies with Section 4.0, and showing the Flood Plain District boundary and wetlands boundaries, if any, on the site.

13.1.4.1 Permit Approval

The Building Inspector shall issue a building permit when satisfied that the plan complies in all respects with this By-Law, and where applicable when the approval of the Board of Health, Planning Board, Conservation Commission, Water Department, Tree Warden, and the Superintendent of Streets has been obtained, except that structures constructed within the Historic District are subject to prior approval of the Historic District Commission. One set of plans properly stamped by the Building

Inspector is to be returned to the applicant with the permit, the other to be filed by the Building Inspector.

13.1.4.2 Lapse

A building permit shall become void unless construction is commenced within six (6) months of the date of issue and completed within two (2) years of the date of issue, unless for good cause such time shall have been extended by the Building Inspector in writing.

13.1.4.3 Records

The Building Inspector shall keep a record of all business of the department, which record and all other books and papers relating to the transactions of the department shall be open at all times to the inspection of the public, and shall submit to the Selectmen a yearly report on such business and such other reports as they may require.

13.1.5 Fees

The Building Inspector, shall with the approval of the Board of Selectmen, set fees for all permits and inspections, such fees not to be inconsistent with the State Building Code.

13.1.6 Penalties

The penalty for violation of any provision of this By-Law, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals shall be Three Hundred dollars ($300.00) for each offense. Each day that each violation continues shall constitute a separate offense.

13.2 ZONING BOARD OF APPEALS

13.2.1 Establishment

There shall be a Board of Appeals consisting of up to three persons, citizens of the Town. The members shall be appointed by the Board of Selectmen. They shall hold office for a term of three years, except that, when the Board is first established hereunder, one member shall be appointed for a term of one year, one member shall be appointed for a term of two years, and one member shall be appointed for a term of three years. The Board of Selectmen shall appoint up to three persons, citizens of the Town, as associate members of said Board of Appeals, who shall hold office for a term of three years, except that, when associate members are first appointed hereunder, one shall be appointed for a term of one year, one shall be appointed for a term of two years and one shall be appointed for a term of three years. In case of vacancy, inability to act or interest on the part of any member of the Board of Appeals, his place shall be taken by an associate member designated by the Selectmen.

13.2.2 Powers

The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this By-Law. The Board's powers are as follows:

1) To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority.
2) To hear and decide appeals or petitions for variances from the terms of this By-Law, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10. The Board of Appeals shall not grant use variances.
3) To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.

4) To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or non-profit corporation, as set forth in G.L. c. 40B, ss. 20-23.

13.2.3 Regulations

The Board of Appeals may adopt rules and regulations for the administration of its powers.

13.2.4 Conditions

In granting variances, the board shall impose such conditions, safeguards, and limitations on time and use as it judges necessary to meet the general purposes of this By-Law and to insure that results arising from the variance remain in harmony with the general purposes of this By-Law, except that such conditions cannot require continued ownership of the land or structure to which the variance pertains by the applicant, petitioner or owner.

13.2.5 Fees

The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits under M.G.L., Chapter 40B.

13.2.6 Lapse

Rights authorized by variance not exercised within one year of the date of granting shall lapse.

13.3 PLANNING BOARD

13.3.1 Establishment

A Planning Board is established under the provisions of General Laws (Ter. Ed.) Chapter 41, Section 81A (Acts of 1936, Chapter 211) to consist of five (5) members, one member to be elected each year at the Annual Town Meeting.

13.3.2 Powers

The Planning Board shall have and exercise all powers granted to it by Chapters 40A and 41 of the General Laws and by this By-Law. The Board's relevant zoning powers are to hear and decide:

1) Applications for special permits. Where specified herein, the Planning Board shall serve as the special permit granting authority (SPGA).
2) Applications for site plan review in accordance with Section 13.5 herein.

13.3.3 Regulations

The Planning Board may adopt rules and regulations for the administration of its powers.

13.3.4 Conditions

In granting special permits for site plan approval, the Planning Board shall impose such conditions, safeguards, and limitations on time and use as it judges necessary to meet the general purposes of this By-Law and to insure that results arising from the permit or approval remain in harmony with the general purposes of this By-Law.

13.3.5 Fees

The Planning Board may adopt reasonable administrative and technical review fees for petitions for special permits and site plan review.

13.4 SPECIAL PERMITS

13.4.1 Application

An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.

13.4.2 Plans

Unless otherwise provided the rule or regulation of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 13.1.4, herein.

13.4.3 Approval Criteria

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

1) Community needs which are served by the proposal;
2) Traffic flow and safety, including parking and loading;
3) Adequacy of utilities and other public services;
4) Neighborhood character and social structures;
5) Impacts on the natural environment; and
6) Potential fiscal and economic impact, including impact on town services, tax base, and employment.

13.4.4 Conditions

In granting special permits the board shall impose such conditions, safeguards, and limitations on the time and use of specific permits as it judges are reasonably necessary to meet the general purposes of this By-Law and to insure that uses permitted by special permit remain in substantial harmony with the general purposes and intent of this By-Law.

Unless the permit expressly provides otherwise, all special permits shall be personal to the applicant and shall lapse at the expiration of one year from their granting. Unless otherwise expressly provided in the permit, special permits will automatically be renewed on an annual basis unless written objection is filed with the Town Clerk prior to any anniversary date. In the event of written objection, a public hearing shall be held prior to deciding whether the Special Permit will be renewed.

13.4.5 Regulations

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

13.4.6 Fees

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

13.4.7 Lapse

Special permits shall lapse if substantial use or construction as granted under a permit has not commenced without good cause within one year from granting. This time limit excludes the time required to pursue or await the determination of an appeal.

13.5 SITE PLAN REVIEW

13.5.1 Applicability

The following types of activities and uses require site plan review by the Planning Board:

1) Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or residential structure with two or more dwelling units;
2) Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or residential structure with two or more dwelling units;

13.5.2 Approval Required

An application for a building permit to perform work as set forth in Section 13.1.4 shall be accompanied by an approved Site Plan. Prior to the commencement of any such activity, the project proponent shall obtain site plan approval from the Planning Board.

13.5.3 Procedures

Applicants for site plan approval shall submit ten (10) copies of the site plan to the Board for review. The Board shall provide a copy of the application to the Fire Department, Building Inspector, Board of Selectmen, Department of Public Works, Conservation Commission, Board of Health, and Police Chief for their advisory review and comments. Failure of such board or official to respond within thirty-five days of submittal shall be deemed a lack of opposition thereto. The Planning Board shall review and act upon the Site Plan, with such conditions as may be deemed appropriate, within ninety (90) days of its receipt, and notify the applicant of its decision. The decision of the Board shall be by a majority of the Board and shall be in writing. No building permit shall be issued by the Building Inspector without the written approval of the site plan by the Planning Board, or unless 90 days lapse from the date of the submittal of the site plan without action by the Board.

1) The applicant may request, and the Board may grant by majority vote, an extension of the time limits set forth herein.
2) No deviation from an approved site plan shall be permitted without such modification being subject to Planning Board approval.

13.5.4 Preparation of Plans

Applicants are invited to submit a pre-application sketch of the proposed project to the Board and to schedule a comment period at a regular meeting of the Board. Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1"=20'.

13.5.5 Contents of Plan

Five (5) separate plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the Board. The plans are as follows:

1) Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the Board.
2) Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling storm water drainage.
3) Utility and landscaping plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.
4) Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.
5) Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.

The site plan shall be accompanied by:

1) A written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.
2) A written summary of the contemplated projects indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this By-Law.
3) Drainage calculations by a registered professional engineer. Storm drainage design must conform to the Town's Subdivision Regulations.
4) If the Board requires, narrative assessments of the on-site and off-site impacts of the proposed use and structures.
5) Certification that the proposal is fully compliant with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board.

13.5.6 Waiver of Technical Compliance

The Board may, upon written request of the applicant, waive any of the technical requirements of this Section where the project involves relatively simple development plans or constitutes a minor site plan.

13.5.7 Approval

Site Plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and storm water drainage consistent with the functional requirements of the Planning Board`s Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

1) Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of storm water flow increase from the site, soil erosion, and threat of air and water pollution;
2) Maximize pedestrian and vehicular safety both on the site and egressing from it;
3) Minimize obstruction of scenic views from publicly accessible locations;
4) Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
5) Minimize glare from headlights and lighting intrusion;
6) Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;
7) Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances; and
8) Ensure compliance with the provisions of this Zoning By-Law, including parking and landscaping.

13.5.8 Lapse

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

13.5.9 Regulations

The Board may adopt additional reasonable regulations for the administration of site plan review.

13.5.10 Fees

The Board may adopt reasonable administrative fees and technical review fees for site plan review.

13.5.11 Appeal

Any decision of the Board pursuant to this Section shall be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

13.6 VARIANCE

13.6.1 Application

The Permit Granting Authority shall have the power after public hearing for which notice has been given by publication and posting and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located; provided however, that such variances properly granted prior to January 1st 1976, but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date.

13.6.2 Plans

Unless otherwise provided in the rules or regulations of the Board of Appeals, an applicant for a Variance shall submit a plan in substantial conformance with the requirements of Section 13.1.4, herein.

13.6.3 Conditions

The Permit Granting Authority may impose conditions, safeguards, and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

13.6.4 Regulations

The Board of Appeals may adopt rules and regulations for the administration of this section.

13.6.5 Fees

The Board of Appeals may adopt reasonable administrative fees and technical review fees for applications for Variance.

13.6.6 Lapse

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the Permit Granting Authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such Permit Granting Authority prior to the expiration of such one year period. If the Permit Granting Authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section.

APPENDIX A HISTORY OF CHANGES

March 3, 1947	First Zoning Bylaw adopted
June 16, 1947	Change wording in Administration of Building Inspector
January 7, 1952	Change lot size to 20,000 square feet
May 11, 1955	Change lot size to 40,000 square feet
March 3, 1956	Change boundaries of Residential and Business District
August 1, 1956	Change Business District and add to permitted uses in Residential District
December 4, 1956	Change use in Residential District
July 19, 1966	Remove Agricultural District
March 21, 1970	Add Flood Plain District
March 16, 1974	Add permit procedures for professional offices, signs, mobile homes, apartments and swimming pool enclosures in Residential District. Changes of uses in Business District and require site plans for new construction. Change height limitations on structures.
May 1, 1976	Add Wetlands District Map
January 9, 1978	Changes in preamble, permitting procedures and notices, and used in Residential District to conform with revised Zoning Enabling Act (Chapter 808 of the Acts of 1975). Change soil stripping regulations and fines, and add Earth Removal Bylaw to Protective Zoning Bylaw. Change lot width to 100 foot minimum. Add Wetland wording to lot size. Add limits on size of signs in Business District, and on number of large animals per acre.
May 13, 1978	Add standards for apartment conversions.
May 12, 1979	Changes wording concerning apartment conversions. Change height limitations on accessory buildings near lot lines.
March 26, 1980	Add provision for cluster zoning alternative on lots of 15 acres or more: Open Space Residential Development (ROSC)
November 20, 1985	Amend Elder Housing District Amendment.
May 9, 1987	Amend Elder Housing District Amendment.
May 13, 1989	Amendment to Floodplain and Wetlands of the Protective Zoning Bylaw.
October 3, 1989	Amend the Elder Housing District provision to rezone as an Elder Housing District the property at 116-130 Main Street, to provide for additional forms of ownership and to reduce the minimum site size.
May 13, 1990	Change height exceptions. Amend Accessory Apartment Bylaw.
November 13, 1990	Add Aquifer Protection District to Protective Zoning Bylaw. Further amendments pertaining to Accessory Apartments, child care facilities, Cluster zoning and affordable housing, Signs, Single-family dwellings. Amend the Zoning Bylaw by renumbering, alphabetizing, and adding definitions in Section II.
May 4, 1991	Frontage

May 1, 1993	Amend sections stating Flood Plain and Wetlands Districts District to read Flood Plain District. Revoke Section V Flood Plain and Wetlands and replace with new Section V entitled Flood Plain District.
May 6, 1995	Amend Section XVII B.1q. to reduce the minimum age requirement to 55 years of age in the Elder Housing District.
November 14, 2000	Add Section XX Personal Wireless Service Facilities
March 3, 2009	Completely update and reorganize Bylaw to ensure compliance with current regulations, consistency, and ease of maintenance; add Section 7: Signs and Section 13: Administration
May 1, 2010	Amend to include Section 10.2 Large-Scale Ground-Mounted Solar Photovoltaic Installations and reference in table in Section 4.1 to reflect change.
May 5, 2012	Amend to include Section 12.2 Flood Plain Overlay District and Section 12.5 Independent Living Overlay District and add Summary of Changes to the Town of Wenham Zoning Bylaw as an appendix to the document.

APPENDIX B PERSONAL WIRELESS OVERLAY PARCELS

November 14, 2000

Map	Lot	Area	Location	Date of Acquisition	Department/ Board
99	9	1.75 ac	Off Grapevine CAG	3/27/68	
7	67	871 ft^2	Batchelder Park	12/81	
7	59	9148 ft^2	Pleasant Street		
7	58	2.31 ac	Pleasant Street	12/66	Conservation Commission
7	53	5800 ft^2	Lake Ave & Fairview	12/81	
7	51	3750 ft^2	Oak St Idlewood		
7	5	16117 ft^2	Pleasant Street	2/16/82	
7	45	2178 ft^2	Pleasant Street	12/81	
48	7	1.99 ac	Grapevine Road	1/14/99	
48	2A	19166 ft^2	336-338 Grapevine Road	1/14/97	
47	4	15682 ft^2	Grapevine Road Rear	1/14/97	
47	3A	5.5 ac	Grapevine Road Rear	9/10/96	
47	33b	5.5 ac	Off Boulder Lane	2/28/00	
47	3	2 ac	Boulder Lane	2/5/99	
47	2	5.3 ac	Boulder Lane / Rt 128	1968	
44	21	2.71 ac	21 Hull Street	10/5/92	Conservation Commission
44	18	8.7 ac	23 Hull Street	10/6/92	Conservation Commission
41	11	2.59 ac	Off Essex Street	7/1/87	
37	22	5.5 ac	Dodges Row	12/1/82	
31	1	79.53 ac	91 Grapevine Road	1974	Iron Rail Commission
27	34	7.4 ac	62 Main Street	1640	Cemetery Commission
25	28	3.14 ac	Higginson Park	11/19/96	Recreation Commission
23	12	5.7 ac	Maple Street Rear	8/1/88	
20	11	8.97 ac	Larch Row	6/1/75	Conservation Commission
20	1	24.87 ac	Larch Row	12/1/84	Conservation Commission

Map	Lot	Area	Location	Date of Acquisition	Department/ Board
19	85	26136 ft^2	Main Street & Arbor Street	1925	
19	84	35719 ft^2	144 Main Street	1962	Fire and Police Department
19	79	39204 ft^2	Wallis Lot	1962	
19	29	1.8 ac	138 Main Street	1640	
16	57	3920	Maple Street	1726	
16	115A	6098 ft^2	William Fairfield Drive	4/23/81	Cemetery Commission
15	29	40075 ft^2	Topsfield Road	12/1/83	
15	2A	7841 ft^2	Topsfield Road Rear	12/4/98	
15	2	15.01 ac	Rear Mayflower Drive	5/16/96	
14	5	16.48 ac	Pingree Park	1916	Recreation Department
12	15	17.88 ac	42 Pleasant Street	1940	Water Department

APPENDIX C MAPS