

Chapter 255

ZONING

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[HISTORY: Adopted by the Town Meeting of the Town of Wenham 3-3-1947, as amended through 4-11-2015.¹ Subsequent amendments noted where applicable.]

1. Editor's Note: For a list of amendments adopted between 1947 and 2015, see Appendix A, History of Changes, included as an attachment to this chapter.

ARTICLE 1

Purpose, Authority, and Scope**§ 255-1.1. 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, MGL 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.

§ 255-1.2. Authority.

This Zoning Bylaw is enacted in accordance with the provisions of MGL c. 40A and any and all amendments thereto.

§ 255-1.3. Scope.²

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, the location and use of buildings and structures, and the use of land in the Town are regulated as hereinafter provided.

§ 255-1.4. Applicability.³

Unless specifically exempted in this bylaw, all buildings or structures hereafter 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 Bylaw. 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 bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this bylaw shall control.

§ 255-1.5. Amendments.

This bylaw may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in MGL c. 40A, § 5, and any amendments thereto.

§ 255-1.6. Severability.

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

2. Editor's Note: Amendment pending.

3. Editor's Note: Amendment pending.

ARTICLE 2
Terminology

§ 255-2.1. Word usage.

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

§ 255-2.2. Definitions.

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

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 § 255-4.3B.

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.

AGRICULTURE — Farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock, including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations performed by a "farmer," who is hereby defined as one engaged in agriculture as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

A. **AGRICULTURAL USE, EXEMPT** — Use of land for the primary purpose of agriculture, on a parcel of five or more acres in area, or two acres or more if the sale of products produced from the agriculture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars, as set forth in MGL c. 40A, § 3.

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 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 OCCUPANCY — A written form, signed by the Building Inspector, certifying that the stated and described use, structure and/or lot conforms to this bylaw or, in the case of an appeal, to the written instructions of the Zoning Board of Appeals.⁴

CHILD-CARE FACILITY — A child-care center or school-age-child-care program, as those terms are defined in MGL c. 15D, § 1A.

A. CHILD-CARE FACILITY, FAMILY (LARGE OR SMALL) — Any private residence operating as a child-care facility as defined in MGL c. 15D, § 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

4. Editor's Note: Amendment pending.

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 bylaw.

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.⁵

- A. **DWELLING, MULTIFAMILY** — A dwelling with two or more dwelling units.
- B. **DWELLING, SINGLE-FAMILY** — A building containing one dwelling unit intended and designed to be occupied by a single family.

EDUCATIONAL USE, NONEXEMPT — Educational facilities not exempted from regulation by MGL c. 40A, § 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 MGL c. 40A, § 3, for the sale of produce raised on the premises, set back at least five feet from the street sideline, 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 MGL c. 41, § 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 are 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.

5. **Editor's Note: Amendment pending.**

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 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.

- A. **LOT AREA** — The area contained within a lot. When the distance between any two points on lot lines is less than 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 150 feet.
- B. **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 nonpermeable surfaces.
- C. **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 sideline.
- D. **LOT, HAMMERHEAD** — A lot with reduced frontage authorized by special permit in accordance with § 255-5.2B(1) herein.
- E. **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 continuous months, nor may the guest reoccupy any unit within 30 days of a continuous four-month stay, nor may the guest stay more than six months in any calendar year. No occupant of such hotel or motel may claim residency at such location.

MOTOR VEHICLE LIGHT SERVICE FACILITY — Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include bodywork, painting, or major repairs.

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.

- A. **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.

B. MOTOR VEHICLE REPAIR FACILITY, GENERAL — Premises for the servicing and repair of motor vehicles, but not to include fuel sales.

MULTIFAMILY RESIDENCE — Multifamily 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 "townhouses," "row houses," "attached houses" and like terms shall be interpreted as being synonymous with the term "multifamily residence."

A. MULTIFAMILY RESIDENCE, NONRESTRICTED — A multifamily residence in which residence shall not be restricted to persons 55 years of age or over.

B. MULTIFAMILY RESIDENCE, AGE-RESTRICTED — A multifamily residence in which residence is restricted to persons 55 years of age or over. Each such multifamily 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 55 years of age or over. In one of such buildings, a unit may be included for occupancy by a manager of the development and their immediate family, one room of which may be used for an office. The manager's unit need not be occupied by a person 55 years of age or over. Except for the unit so used and occupied by the manager, no dwelling unit in a multifamily age-restricted residence shall be resided in by more than two persons.

MUNICIPAL FACILITIES — Facilities owned or operated by the Town of Wenham.

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 § 255-5.2A.

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, barbershop, 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 gathers. 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 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 Zoning Board of Appeals for structure or use identified in the Table of Use Regulations as permitted with approval of the Zoning 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 MGL c. 41, § 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 § 255-13.6 of this bylaw.

WETLANDS — All resource areas subject to protection under MGL c. 131, § 40, and/or the Water Resources Protection Bylaw, Chapter 242 of the Town of Wenham Bylaws, except for floodplains 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.

- A. **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.
- B. **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 sideline of the lot.
- C. **YARD, SIDE** — A yard situated between the nearest point of the building and the sideline of the lot and extending from the front yard to the rear yard or another side yard.

ARTICLE 3
Districts

§ 255-3.1. Primary districts.

For the purpose of this bylaw, the Town of Wenham is hereby divided into the following primary districts:

- A. Residential District (R).
- B. Business District (B).

§ 255-3.2. Overlay and other special districts.

The following overlay and special districts are also established as set forth in Article 12:

- A. Aquifer Protection Overlay District (APOD) (see § 255-12.1).
- B. Floodplain Overlay District (FPOD) (see § 255-12.2).
- C. Senior Housing Overlay District (SHOD) (see § 255-12.3).
- D. Personal Wireless Services Facility Overlay District (see § 255-12.4).⁶
- E. Independent Living Overlay District (ILOD) (see § 255-12.5).

§ 255-3.3. 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 bylaw.

§ 255-3.4. Interpretation of Zoning Map.

Boundaries shall be interpreted as described in the following subsections.

- A. Center line. The boundaries between Residential, Senior Housing District, Floodplain, Aquifer Protection District, and Business Districts are, unless otherwise indicated on the Zoning Map, the center lines of streets.
- B. Lots in two districts. Where a district boundary line divides a lot in single ownership at the same time this bylaw is adopted, the regulations for the less-restricted portion of such lot shall not extend more than 30 feet into the more restricted portion, provided the lot has frontage in the less-restricted district.

6. Editor's Note: Amendment pending.

ARTICLE 4
Use Regulations

§ 255-4.1. 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
		Residential	Business	
Residential				
	Single-family	Y	Y	
	Multifamily	N	N	
	Multifamily 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				

Category	Use	District		Description
		Residential	Business	
	Agriculture, exempt	Y	Y	
	Agriculture, nonexempt	BA	BA	
	Raising and keeping of animals, nonexempt	BA	BA	
	Greenhouse or nursery, nonexempt	BA	BA	
	Commercial stable on less than 2 acres	N	N	
Commercial				
	Educational, nonexempt	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	

Category	Use	District		Description
		Residential	Business	
	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-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 3 motor vehicles, including up to 1 commercial vehicle

Category	Use	District		Description
		Residential	Business	
	Garage, private, for more than 3 motor vehicles or 1 commercial vehicle when 1 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 § 255-4.3E
	Swimming pool	Y	Y	
	Family day care, large or small	Y	Y	
	Keeping of large animals at a density of more than 1 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	

§ 255-4.2. Principal uses.

Except as provided by law or in this bylaw 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.

- A. 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 bylaw.
- B. 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."
- C. By special permit: Zoning Board of Appeals. A use designated in the table by the letters "BA" may be permitted as a special permit only if the Zoning Board of Appeals so determines and grants a special permit therefor as provided in § 255-13.4 of this bylaw subject to such restrictions as are set forth elsewhere in this bylaw, and to such other restrictions as said Board may establish.

- D. 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 therefor as provided in § 255-13.4 of this bylaw subject to such restrictions as are set forth elsewhere in this bylaw, and to such other restrictions as said Board may establish.
- E. Marijuana establishments. Consistent with MGL c. 94G, § 3(a)(2), all types of "marijuana establishments" as defined in MGL c. 94G, § 1, to include marijuana cultivators, independent testing laboratory, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana-related businesses, shall be prohibited within the Town of Wenham. **[Added 4-7-2018 ATM by Art. 17]**

§ 255-4.3. Accessory uses.

- A. 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.
- B. Accessory apartment. **[Amended 4-23-2018 ATM by Art. 22]**
 - (1) 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:
 - (a) One of the units shall be occupied by the resident owner of the premises.
 - (b) The accessory apartment shall not exceed 35% of the floor area of the principal structure or 1,000 square feet, whichever is less, and two bedrooms.
 - (2) General requirements.
 - (a) 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 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 40,000 square feet (exclusive of wetlands and floodplains).
 - [3] Off-street parking for a minimum of three 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.
- (b) Adequate landscaping shall be provided around the lot or the building(s) in order to preserve the single-family residential character of the neighborhood.
- C. Affordable accessory apartment. Where the applicant demonstrates to the satisfaction of the Zoning Board of Appeals that the apartment will be made available to low- and moderate-income households in accordance with the regulations concerning MGL c. 40B and 760 CMR 56.03, 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 50% of the floor area of the principal structure, 1,500 square feet and three bedrooms subject to the following subsections as well as to the general requirements set forth in § 255-4.3B(2). 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. **[Amended 4-23-2018 ATM by Art. 22⁷]**
- (1) Special permit procedures. The procedures and standards for the submission and approval of a special permit application as set forth in § 255-13.4 shall be complied with except that:
- (a) 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.
- (b) 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.
- (2) Decision.
- (a) All special permits pursuant to § 255-4.3B and C shall lapse at the expiration of one year from their granting. The special permit granting authority shall condition each special permit to terminate on the yearly anniversary date of the grant of the special permit, and the special permit 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.
- (b) Such special permit shall automatically terminate upon the sale, transfer or other change in ownership of the property of which such accessory apartment forms a part unless the property is being purchased with the intent to continue the use. In such case, the new owner shall make an application to transfer the special permit or for the issuance of a new special permit, which must be submitted to the Zoning Board of Appeals within 60 days of the sale or transfer of the property.
- D. Home occupation.

- (1) By right. A home occupation may be allowed as of right, provided that it:
 - (a) Is conducted solely within a dwelling and solely by the person(s) occupying the dwelling as a primary residence;
 - (b) Is clearly incidental and secondary to the use of the premises for residential purposes;
 - (c) Does not produce offensive noise, vibration, smoke, dust, odors, heat, lighting, electrical interference, radioactive emission or environmental pollution;
 - (d) Does not utilize exterior storage of material or equipment;
 - (e) Does not exhibit any exterior indication, including signs, of its presence or any variation from residential appearance;
 - (f) Does not produce more than two customer, pupil, or client trips to the occupation site per day and has no nonresident employees;
 - (g) Is registered as a business with the Town Clerk.
 - (2) By special permit. A home occupation may be allowed by special permit issued by the Zoning Board of Appeals, provided that:
 - (a) It fully complies with Subsection D(1)(b), (c), (d) and (g) above.
 - (b) 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;
 - (c) 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 bylaw;
 - (d) A special permit for such use is granted by the Zoning 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.
- E. 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 Zoning 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 Zoning 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.

F. Storage.

- (1) Motor vehicle storage. One unregistered motor vehicle may be stored as an accessory use, provided that it shall be stored:
 - (a) Within the principal or an accessory building; or
 - (b) 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.
 - (2) Trailer or boat storage. Accessory storage of one trailer or boat is permitted as an accessory use, provided that it shall be stored:
 - (a) Within the principal or an accessory building; or
 - (b) In the rear yard of the premises but not in a required side or rear yard setback and screened from a public way. By special permit, the Zoning 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.
 - (3) Parking or storage of commercial vehicles or recreational vehicles in residential district. Parking of one commercial or recreational vehicle of not more than 25,000 gvw is permitted in conformance with Subsection F(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) Other storage. Outside or inside storage accessory to the operation and conduct of a permitted use is permitted; provided, however, that:
 - (a) 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;
 - (b) 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.
 - (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 45 days per year without the grant of a special permit from the Zoning Board of Appeals.
- G. Other permitted accessory uses. The Table of Use Regulations in § 255-4.1 addresses other accessory uses permitted by this bylaw.

8. Editor's Note: Amendment pending.

- H. Prohibited accessory uses. The Table of Use Regulations in § 255-4.1 identifies specifically prohibited accessory uses.

§ 255-4.4. Nonconforming uses and structures.

- A. Applicability. This bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by MGL c. 40A, § 5, at which this bylaw, 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.
- B. Changes to nonconforming uses. The Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:
- (1) Change or substantial extension of the use;
 - (2) Change from one nonconforming use to another, less detrimental, nonconforming use.
- C. Nonconforming structures.
- (1) Reconstruction, extension or structural change. The Zoning Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:
 - (a) Reconstruction, extension or structural change;
 - (b) Alteration to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.
 - (2) Variance required. Except as provided in Subsection C(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 Zoning 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.
 - (3) Nonconforming single-family and multifamily residential structures. Nonconforming single-family and multifamily 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.⁹

- (a) 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.
 - (b) In all other cases, the Zoning Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.
- (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:
- (a) Reconstruction of a nonconforming structure affected by a catastrophe shall commence within two years after such catastrophe; and
 - (b) In the case of voluntary demolition, a nonconforming structure may be reconstructed subject to the following conditions:
 - [1] 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.
 - [2] Where the proposed reconstructed building causes the structure to exceed the volume or area of the original nonconforming structure or causes the structure to be located other than on the original footprint, a special permit shall be required from the Zoning Board of Appeals prior to such demolition and such reconstruction shall be completed within one year of demolition.
- (5) Abandonment or nonuse. 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 bylaw.
- (6) Reversion to nonconformity. No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.
- D. 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 Bylaw shall have a period of six months from the date of adoption of this amended Zoning Bylaw to make application to the Building Inspector for a building permit. So long as such property owner satisfies all requirements of the bylaw in effect immediately prior to the adoption of this amended Zoning Bylaw, they 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 MGL c. 40A, § 6 shall control.

ARTICLE 5
Dimensional Requirements

§ 255-5.1. 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 Nonresidential unit: 40,000 square feet
Frontage	170 feet	Dwelling: 170 feet Nonresidential unit: 170 feet
Lot width	100 feet	Dwelling: 100 feet Nonresidential unit: 100 feet
Front yard	20 feet	All structures: 20 feet With approval of the Zoning 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 Nonresidential unit: 20 feet
Side yard	15 feet	Dwelling: 15 feet Nonresidential unit: 20 feet
Maximum height: structure	35 feet	35 feet
Maximum lot coverage (percent)	50%	70%

§ 255-5.2. Special requirements.

- A. 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.
- B. 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 Floodplain District.
- (1) Hammerhead lots. The frontage requirement for a hammerhead lot may be reduced to 50 feet, by special permit granted by the Planning Board, subject to the following conditions and any additional conditions the Planning Board might impose:
 - (a) The total lot area is at least 120,000 square feet;
 - (b) The access driveway to the house shall not be longer than 500 feet, with a grade and width adequate to permit access by fire, police and other emergency vehicles;
 - (c) The nearest point of any building or structure shall be set back 50 feet from all lot lines;
 - (d) No more than two hammerhead lots shall have contiguous frontage.
 - (2) Front yards. All principal structures shall maintain a setback of 20 feet from the front property line. In the Residential District, the Zoning 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.
 - (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.
 - (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.
- C. 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.
- D. Height exceptions. By grant of a special permit by the Zoning 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 § 255-13.4 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 10 feet within 20 feet of the side lot line.
- E. Projections. Nothing herein shall prevent the projections of steps, cornices, bay windows, eaves, and other ornamental features into any required yards.
- F. Residential driveways.
- (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 one inch equals 100 feet, showing the driveway serving the premises, and showing existing and proposed topography at ten-foot or three-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.
 - (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 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.
 - (3) Grade. The grade of each driveway where it intersects with the public way shall not exceed 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.
 - (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 Subsection F(5) herein or if authorized by special permit by the Planning Board in accordance with § 255-13.4A.
 - (5) Common driveways. Common driveways serving not more than three lots may be allowed by special permit by the Planning Board. A common driveway must satisfy all of the conditions in § 255-5.2F, Residential driveways, as well as all of the following conditions: **[Amended 4-23-2018 ATM by Art. 23]**
 - (a) The center line intersection with the street center line shall not be less than 45°;
 - (b) A minimum cleared width of 12 feet shall be maintained over its entire length;
 - (c) A roadway surface of a minimum of pavement or at least four inches of graded gravel, placed over a properly prepared base, graded and compacted to drain from the crown shall be installed;

- (d) The driveway shall be located entirely within the boundaries of the lots being served by the driveway;
 - (e) 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;
 - (f) Each lot served by the common driveway shall have adequate frontage as required by the Zoning Bylaw dimensional requirements (§ 255-5.1).
- G. Permitted accessory structures. The accessory structures addressed in the following subsections are permitted in all districts.
- (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.
 - (2) Boundary fences, walls, or hedges. Boundary fences, walls, or hedges shall be permitted, provided that they do not exceed eight feet in height and provided that no fence which obstructs vision shall exceed 36 inches in height within 20 feet of the street line or within 15 horizontal feet of a habitable room in an abutting dwelling on a separate lot.
 - (3) Flagpoles. Flagpoles of a height not to exceed 20 feet are permitted and shall be exempt from the setback requirements of this section.
 - (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 Bylaw.
 - (5) Barns. Barns may be authorized by special permit from the Zoning 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.
- H. 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 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.

ARTICLE 6
Parking and Loading Requirements

§ 255-6.1. Table of Parking Requirements.¹⁰

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
Single-family or multifamily dwelling	2 parking spaces per dwelling unit
Nursing home, assisted living or senior housing facility	1 parking space per 2 rooms
Place of public assembly	1 parking space for each 4 seats; where no fixed seats are used (as in a museum or terminal), 1 parking space per each 200 square feet of gross floor area
Retail business, personal or general service establishment	1 parking space for each 200 square feet of gross floor area
Office, bank	1 parking space for each 250 square feet of gross floor area
Restaurant	1 parking space per 4 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

§ 255-6.2. Special requirements: residential.

- A. Shared parking. Notwithstanding any other provisions of this bylaw, common parking areas may be permitted by the Planning Board, subject to site plan approval, for the purpose of servicing two or more principal uses on the same or separate lots, provided that:
 - (1) Evidence is submitted that parking is available within 400 feet of the premises, which satisfies the requirements of this bylaw 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.

10. Editor's Note: Amendment pending.

- (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 bylaw if subsequently the joint use of parking facilities shall terminate.

§ 255-6.3. Special requirements: nonresidential.

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

- A. Parking space size. Each parking space shall measure 10 feet in width and 20 feet in length.
- B. 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.
- C. 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.
- D. Prohibition. Parking spaces shall be arranged so as not to require backing of automobiles onto any street.
- E. 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:
 - (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.
 - (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 Zoning Board of Appeals or Planning Board, as appropriate.
 - (3) Location. Parking shall not be located nearer than 15 feet from any lot line.
- F. Landscaping in parking areas with five spaces or more.
 - (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 feet nor more than six feet in height at the time of occupancy of such lot.
 - (2) All plantings shall be maintained by the owner and/or occupant so as to keep a dense screen year round.
 - (3) The Planning Board may require landscaping within the parking area in order to break up solid rows of 20 or more parking spaces.
 - (4) All parking areas shall comply with the landscaping requirements set forth in Article 8.

- G. 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.

§ 255-6.4. Loading requirements.

- A. 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 bylaw, according to the following regulations:
- (1) Location. No loading dock or bay shall be located within 20 feet of the boundary of any residential district.
 - (2) Size. Loading bays shall not be less than 12 feet in width, 65 feet in length, and 14 feet in height, exclusive of driveway and maneuvering space.
 - (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 bylaw.
 - (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.
- B. 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.
- C. Screening. Loading areas shall be screened in accordance with § 255-6.3F.
- D. 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.

ARTICLE 7

Signs**[Amended 4-6-2019 ATM by Art. 16]****§ 255-7.1. Purpose.¹¹**

The purpose and intent of this bylaw shall be to regulate, restrict and place limitations on the size, location, type and illumination of signs, as specified herein, to ensure that they are appropriate to the land, building or use to which they are related, be protective of property values and the public safety and not unnecessarily detract from the historic qualities and characteristics of the Town of Wenham.

§ 255-7.2. District regulations.

A. Residential District. Signs are prohibited in the Residential District, except as described below. All allowable signs are subject to the general standards set forth in § 255-7.3. Any signs found to be in violation of this section are subject to removal by the Town.

(1) Allowable temporary signs.

(a) Real estate signs. On any lot there shall be no more than one temporary sign not exceeding seven square feet in area, pertaining to lease or sale of the lot or building on which such sign is placed. The sign shall be permitted for a period not to exceed seven days after such sale or lease execution.

(b) Contractor signs. One temporary sign not exceeding seven square feet in area, advertising contracted services being provided on site shall be permitted for a period not to exceed seven days after such completion of work.

(c) Noncommercial signs.

[1] On any lot, any noncommercial temporary sign {other than a special event sign addressed under Subsection A(1)(c)[2] of this bylaw} shall not exceed seven square feet in area.

[2] Special event signs. On any lot there shall be no more than one temporary sign not exceeding seven square feet in area, providing notice of the day and date of a special event, which signs may be erected for a period not to exceed two weeks prior to the event and are to be removed within two business days following the date of the event.

(2) Allowable permanent signs. 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 square feet in area. All permanent signs located in the Historic District are also subject to Historic District Commission review and approval.

(3) Special permit. The Planning Board may, upon a request therefor, issue a special permit for the erection of a temporary or permanent sign under this § 255-7.2 that is larger, or posted for a longer period of time, than otherwise authorized hereunder,

11. Editor's Note: Amendment pending.

which sign the Planning Board deems 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.

- B. 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 seven square feet in area for one business, or in the case of a building containing more than one business, the following shall apply:
- (1) One street side sign not to exceed seven square feet to identify the complex itself.
 - (2) Individual businesses within the complex identified at street side with signs 12 inches by 36 inches arranged vertically in a single structure.
 - (3) Each business within the complex may have one two-square-foot sign located at the doorway for business identification.
- C. Senior Housing Overlay District (SHOD). See § 255-12.3H for special requirements for signs located in a Senior Housing Overlay District.

§ 255-7.3. General standards for signs.

The following standards apply to all signs:

- A. 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.
- B. 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.
- C. No exposed, uninsulated parts of an electrical sign shall be permitted.
- D. No sign shall be erected that shall in any way create a traffic hazard or in any way obscure or confuse traffic control.
- E. No sign or sign structure shall interfere in any way with a paved roadway or sidewalk on a public way, or adjacent public property between a paved roadway and sidewalk.
- F. 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.
- G. Signs shall be designed, constructed, and erected in accordance with the State Building Code.
- H. No sign shall be posted on or attached to utility poles, or trees, or attached to any parapet.¹²
- I. No nonmunicipal sign shall be located on public property, with the exception of a location to be designated by a policy of the Board of Selectmen, with such policy to be set only after a public hearing process, including notification in a newspaper of general circulation at least seven days prior to the date of the public hearing

12. Editor's Note: Amendment pending.

§ 255-7.4. Illuminated signs.

The following additional standards apply to illuminated signs.

- A. Illuminated signs are not permitted within residential districts without a special permit.
- B. No red or green or other colored lights shall be used on any sign if such light would create a driving hazard.
- C. No sign may be illuminated more than 30 minutes after closing of any store or business or 30 minutes after working hours in a commercial building, except signs identifying public buildings; provided, however, that the Planning Board, in granting a special permit, may, for good cause shown, extend the time during which a sign may be illuminated.

§ 255-7.5. 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.

§ 255-7.6. 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 substances, rubbish, and weeds.

§ 255-7.7. Removal of existing signs.

Nonconforming signs that are enlarged, redesigned, replaced or altered in any way shall comply immediately with all applicable provisions of this bylaw.

§ 255-7.8. Special permit.

Notwithstanding the provisions set forth in this article, the Planning Board may authorize nonconforming 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.

- A. 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 article shall be exempt from the requirements in this article.
 - (2) Any sign erected or required by the Town, 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.
- B. Special permit process.
 - (1) Application. Application for a sign special 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.

- (2) Fee. A sign special permit fee shall be paid to the Town for each permit in accordance with the schedule established by the Planning Board.
- (3) Inspection. The Building Inspector shall inspect any sign subject to a special permit within 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 article and any other applicable law.
- (4) Constructive grant. If a sign special permit has not been denied within 60 days after application has been made, it shall be deemed to be approved.
- (5) Lapse. A sign special permit shall become null and void if the work for which the permit was issued has not been completed within a period of one year 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 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 10 days of completion.

§ 255-7.9. Administration and penalties.

This bylaw may be enforced by the Building Inspector by any means available in law or in equity in accordance with Chapter 1, Article I, of the General Bylaws, including noncriminal disposition.

ARTICLE 8
Landscaping Requirements

§ 255-8.1. Applicability; purpose.

- A. The requirements of this article shall apply to any nonresidential use and to multifamily dwellings.
- B. This article 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.

§ 255-8.2. 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 article.

§ 255-8.3. General landscaping requirements.

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

- A. Property line(s) which also bound residential districts shall be screened from nonresidential 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 nonresidential 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.
- B. Any accessory receptacle or structure with a holding capacity of at least 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 article.
- C. 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 article.

§ 255-8.4. 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.

- A. 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.
- B. Existing trees with a caliper of six inches or more shall be preserved wherever feasible. Measurement shall take place six inches above grade.
- C. Deciduous trees shall be at least two inches in caliper as measured six inches above the root ball at time of planting. Deciduous trees shall be expected to reach a height of 20 feet within 10 years after planting. Evergreens shall be a minimum of eight feet in height at the time of planting.

§ 255-8.5. 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 article and shall have a continuing obligation to comply with the provisions set forth herein. All plant materials required by this article shall be maintained in a healthful condition.

§ 255-8.6. Reduction in requirements by special permit.

By special permit, the Planning Board may authorize a reduction in the requirements of this article based on the criteria set forth in § 255-13.4C.

ARTICLE 9
Additional Performance Standards

§ 255-9.1. 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 article, continuing compliance is required. When the Building Inspector suspects a subsequent violation they 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.

§ 255-9.2. Noise.

No use shall be permitted within the Town which, by reason of excessive noise generated therefrom, 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.

§ 255-9.3. 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:

- A. 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.
- B. All such slopes exceeding 15% which result from site grading or construction activities shall either be covered with topsoil to a depth of four 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.
- C. No area or areas totaling 0.5 acre or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear-stripped or be filled six 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.

- D. 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.
- E. 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.
- F. Hillside areas, except naturally occurring ledge or bedrock outcroppings or ledge cuts, shall be retained with vegetative cover as per an approved plan.

§ 255-9.4. 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.

§ 255-9.5. 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.

§ 255-9.6. 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 10% in line voltage off the premises.

§ 255-9.7. 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 firefighting and fire suppression equipment standards established by local, state, and federal regulations.

§ 255-9.8. 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.

ARTICLE 10
Special Regulations

§ 255-10.1. Soil stripping, earth removal and grading.

- A. 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 Bylaw of the Town of Wenham.¹³
- B. 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 feet and less than 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 1,000 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.
- C. 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 MGL c. 40A, §§ 9 and 11.
- (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 reuse of the land as permitted by this Zoning Bylaw.
 - (2) The Planning Board may grant a permit on conditions especially designed to:
 - (a) 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
 - (b) 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 reuse of the land as permitted by this Zoning Bylaw.

13. Editor's Note: See Ch. 133, Earth Removal.

- (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.
- (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.
- (5) Failure to apply for a permit and each day thereafter in violation of this bylaw 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 § 255-13.1F of this bylaw.

§ 255-10.2. Large-scale ground-mounted solar photovoltaic installations.

A. 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.

B. Applicability. This section applies to any large-scale ground-mounted solar photovoltaic installation, as defined herein, and shall supersede any conflicting provisions of this bylaw. 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 § 255-13.5 of this bylaw and the additional requirements set forth in § 255-10.2D and E. Any substantial modification to an approved installation made after issuance of the required building permit shall also require approval by the Planning Board.¹⁴

C. 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.

14. Editor's Note: Amendment pending.

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).

D. 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 § 255-13.1D of this bylaw and paying the associated fee.
- (2) Site plan review. A site plan shall be submitted in accordance with the requirements of § 255-13.5. In order to comply with the provisions of Section 22(c) of the Green Communities Act,¹⁵ site plan review shall be expedited and no decision shall be rendered more than one year after the date of application.

E. 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 § 255-13.5E of this bylaw, the applicant shall submit the following documentation:¹⁶
 - (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) Name, address, and contact information for proposed system installer;
 - (f) Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
 - (g) The name, contact information and signature of any agents representing the project proponent;
 - (h) An operation and maintenance plan including measures for maintaining safe access to the installation, stormwater controls, as well as general procedures for operational maintenance of the installation;

15. Editor's Note: See MGL c. 25A, § 10(c).

16. Editor's Note: Amendment pending.

- (i) Proof of liability insurance;
 - (j) Description of financial surety that satisfies Subsection O; and
 - (k) 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.
- F. 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.
- G. 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 Subsection F 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.
- H. 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 cutoff fixtures to reduce light pollution.
- I. Signs. Signs on large-scale ground-mounted solar photovoltaic installations shall comply with Article 7 of this bylaw. Such installation shall display a sign identifying the owner and providing a twenty-four-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.

- J. 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.
- K. 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.
- L. 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 Massachusetts Department of Energy Resources to the Planning Board at the time of such submittal.
- M. 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 revegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- N. 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.
- O. 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.

- P. Accessory roof-mounted solar photovoltaic installations. Nothing in this section shall be construed to prevent the installation, pursuant to MGL c. 40A, § 3, of accessory roof-mounted solar photovoltaic installations in any district.

ARTICLE 11
Special Residential Regulations

§ 255-11.1. Flexible development.

- A. 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 archaeological 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.
- B. 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.
- C. 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.
- D. 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 lots 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.
- E. Contiguous open space. A minimum of 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.
- (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 Subsection A above. In no case shall the percentage of contiguous open space which is wetlands exceed 50% of the tract.
 - (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.
 - (3) The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to 10% 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.
 - (4) Underground utilities to serve the flexible development site may be located within the contiguous open space.
- F. 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 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.

- G. 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.
- H. 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 50% of the basic maximum number. The units required by Subsection I 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 10% of the site (over and above the required 40%) set aside as contiguous open space, a bonus of 5% 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 dwelling units restricted to occupancy by persons over the age of 55, one dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 25% of the basic maximum number.
- I. Affordable component.
- (1) 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:
 - (a) Ten percent of the units shall be affordable to persons or families qualifying as low-income; or
 - (b) Fifteen percent of the units shall be affordable to persons or families qualifying as moderate-income.
 - (2) 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.
- J. Types of buildings. The flexible development may consist of any combination of single-family and multifamily residential structures. A multifamily structure shall not contain more than four 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.¹⁷

- K. 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.
- L. Parking. Each dwelling unit shall be served by two off-street parking spaces. Parking spaces in front of garages may count in this computation.
- M. Buffer areas. A buffer area of 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 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.
- N. Drainage. Stormwater 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 stormwater regulations and policies.
- O. Permit procedures.
 - (1) 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 10 copies of the following:
 - (a) A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board.¹⁸ Where wetland delineation is in doubt or dispute, the Planning Board may refer the matter to the Conservation Commission for clarification.
 - (b) Data on proposed wastewater disposal, which shall be referred to a consulting engineer for review and recommendation.
 - (c) The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.
 - (2) 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.

17. Editor's Note: Amendment pending.

18. Editor's Note: See Ch. 300, Subdivision of Land.

- (a) 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.
 - (b) 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.
 - (c) 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.
 - (d) 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.
 - (e) Lot lines. The final step is simply to draw in the lot lines (if applicable).
- (3) 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 Subsection A of this section than would a conventional subdivision development of the same locus.
 - (4) Relation to other requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law¹⁹ or any other provisions of this Zoning Bylaw.

19. Editor's Note: See MGL c. 41, §§ 81K to 81GG.

ARTICLE 12
Overlay and Special Districts

§ 255-12.1. Aquifer Protection Overlay District (APOD).

A. 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 groundwater supplies, aquifers, and recharge areas of the Town of Wenham as present and potential sources of public water supply.

B. 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 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 waterborne 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 MGL c. 131, § 40, and the implementing regulations enacted thereunder and the bylaws of the Town of Wenham.

C. 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.

D. 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.

- E. 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 Zoning Board of Appeals the applicant shall make available to the Zoning Board of Appeals funds sufficient to cover expenses connected with engaging a consultant on behalf of the Zoning 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 groundwater 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.
- F. 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) Footpaths, 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 20% of a lot (exclusive of wetlands and land in the Floodplain 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.
- G. Design and operation requirements and guidelines. Applications made under this section of the bylaw 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.
- (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.
 - (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.
 - (3) Monitoring. Periodic monitoring may be required by the Zoning Board of Appeals, including sampling of wastewater disposed to on-site systems or dry wells and sampling from groundwater monitoring wells to be located and constructed as

specified in the special permit with reports to the Zoning 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.

- (4) Erosion and sedimentation control. Erosion and sedimentation measures approved by the Zoning 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 Zoning Board of Appeals or its agent determines that the danger of erosion or sedimentation no longer exists.

H. 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 bylaw, 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 bylaw is permitted, provided they comply with Title 5, 310 CMR 15.00 et seq., and Wenham Board of Health regulations.
- (4) New commercial and industrial uses which discharge wastewater on site.
- (5) Storage of road salt except in confined and covered areas.
- (6) Dumping of snow containing deicing 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 Division of Hazardous Waste of the Department of Environmental Protection, the Water Resources Commission, and the Division of Water Pollution Control under the provisions of MGL c. 21, § 27(8).²⁰
- (11) Automotive service and repair shops, trucking and bus terminals, and junk and salvage yards.

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

20. Editor's Note: Amendment pending.

- (1) The application of fertilizers for nondomestic or nonagricultural 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.
- J. Permit procedure. The Zoning Board of Appeals shall be the special permit granting authority for special permits in the APOD. The special permit procedures in § 255-13.4, 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.
- (1) Ten copies of the application shall be filed with the Town Clerk and certified as to date of receipt. The Zoning Board of Appeals shall refer copies of the application to the Board of Health, Planning Board, Conservation Commission, Water Department and Department of Public Works, so each board may review, either jointly or separately, the application and submit comments in writing to the ZBA within 45 days of its receipt of the application. Failure to do so shall be deemed lack of opposition.²¹
 - (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 K.
- K. Standards and criteria for special permit review. In determining whether to approve, approve with conditions, or deny a special permit in the APOD the Zoning Board of Appeals shall consider whether the use:
- (1) Is consistent with the purpose set forth in Subsection A;
 - (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.
- L. Lapse. Special permits issued under this section shall lapse within two years (not including the duration of an appeal made under MGL c. 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 Zoning Board of Appeals.
- M. Rules and regulations. The Zoning Board of Appeals may enact rules and regulations to implement the provisions of this section of the bylaw.

§ 255-12.2. Floodplain Overlay District (FPOD).

- A. Purpose. The purpose of the Floodplain Overlay District (FPOD) is to:
- (1) Protect the public health, safety and general welfare;

21. Editor's Note: Amendment pending.

- (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.
- B. Overlay district. The FPOD is established as an overlay district to all other districts. Any development within the FPOD, whether structural or nonstructural, 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.
- C. 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 floodplain areas shown on the Town of Wenham Floodplain District Zoning Map dated 1973, prepared by Essex Survey Service, Inc., Salem, MA. These areas comprise the 100-year floodplain, also known as the "base flood elevation," in the Town of Wenham. The "base flood" means that flood which has a 1% chance of being equaled or exceeded in any given year. The FIRM and Wenham Floodplain 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.
- D. 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.
 - (5) Wildlife management areas and foot, bicycle, and horse paths.
 - (6) Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
 - (7) 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.

- E. Uses requiring special permit. Alterations to any land or structure in the Floodplain District, whether structural or non-structural, except for those uses permitted by right, require a special permit issued by the Planning Board.
- F. Permit process.
- (1) Application. Applications submitted hereunder which propose to alter a portion of the one-hundred-year floodplain shall document on a site plan the extent of the applicable floodplain, as defined in Subsection C.
 - (a) 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).
 - (b) 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.
 - (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:
 - (a) The Massachusetts State Building Code, 780 CMR. (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.)
 - (b) The Wetlands Protection Act regulations, 310 CMR 10.00. (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 nonsignificance, or an extension permit from the Conservation Commission or the Massachusetts Department of Environmental Protection.)
 - (c) The Inland Wetlands Restriction Act, 310 CMR 13.00. (Satisfactory evidence shall consist of any order, as amended, modified, corrected, or repealed, issued by the Massachusetts Department of Environmental Protection.)²²
 - (d) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, 310 CMR 15, Title 5. (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.)
 - (e) The Wenham Water Resources Protection Bylaw, General Bylaws Chapter 242, 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 nonsignificance, or an extension permit), including:
 - [1] 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 watercourses 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

- [2] In a riverine situation, evidence shall be provided that the following entities have been notified of any alteration or relocation of a watercourse:

- [a] Adjacent communities.

NFIP State Coordinator

Massachusetts Department of Conservation and Recreation

251 Causeway Street, Suite 600-700

Boston, MA 02114-2104

- [b] NFIP Program Specialist.

Federal Emergency Management Agency, Region I

99 High Street, 6th Floor

Boston, MA 02110

- [3] All subdivision proposal must be designed to assure that:

- [a] Such proposals minimize flood damage;

- [b] All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and

- [c] Adequate drainage is provided to reduce exposure to flood hazards.

- [4] Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A Zones.

- [5] 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.

§ 255-12.3. Senior Housing Overlay District (SHOD).

- A. 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, multifamily residences for persons over the age of 55, such housing to be owned and controlled only by a nonprofit 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.
- B. Applicable definitions. For the purposes of the SHOD, the following terms shall be defined as set forth below:
- COOPERATIVE HOUSING CORPORATION — A corporation formed pursuant to MGL c. 157B, whose articles of organization contain limitations on the transfer value of its stock.
- NONPROFIT 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 MGL c. 180, as amended.
- C. 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 multifamily residences the site shall contain not less than 7.5 acres exclusive of any area of land lying in the Floodplain 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 Floodplain Overlay District.
 - (3) A portion of these total land areas may be within an abutting town.
- D. Permitted uses and uses requiring special permit. In an SHOD, no building or land shall be used and no buildings shall be erected or converted except under the following conditions:
- (1) Any of the uses permitted, as a matter of right, in the underlying residential district, provided that multifamily residence housing units comply in all respects with requirements of this bylaw that are applicable to the residential district.
 - (2) A housing incentive development consisting of multifamily residences for the persons over the age of 55 together on the same lot with nonrestricted multifamily residences. The multifamily residences for persons over the age of 55 shall constitute at least 30% of the total number of residences developed on the lot, and such multifamily residences for persons over the age of 55 shall be organized and controlled as provided herein.
- E. 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 15% of the residences in the housing incentive development shall be available to low- and moderate-income households in accordance with MGL c. 40B and its implementing regulations as they may from time to time be amended.
- F. 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.

G. Standards.

- (1) All senior housing shall be owned and controlled by a nonprofit 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.
- (2) All newly constructed housing developed in an SHOD shall have not more than seven 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 seven 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 floodplain.
- (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.
- (4) The proposed plan shall provide that there shall be on-site off-street parking containing at least five parking spaces for each three age-restricted dwelling units contained in the development, and at least two parking spaces for each nonrestricted multifamily residence.
- (5) Roads within the development shall be constructed in accordance with Planning Board Subdivision Regulations²³ with such waivers, if any, as the Planning Board deems appropriate.
- (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.
- (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.
- (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.
- (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.
- (10) Age-restricted dwellings constructed under this section shall not be eligible for subsequent conversion to conventional apartments.

23. Editor's Note: See Ch. 300, Subdivision of Land.

- (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) Sufficient financial surety must be provided to ensure completion of the development and continuing compliance upon its completion with the provisions of the approval.
- H. 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 nonflashing white-lighted.
- I. Permit process.
- (1) Site plan approval. In a SHOD no building shall be constructed, enlarged, or changed to accommodate multifamily residences for persons over the age of 55 or nonrestricted multifamily residences except in conformity to this bylaw 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 multifamily 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.
 - (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 MGL c. 40A, § 9, and with §§ 255-13.4 and 255-13.5 of this bylaw. Each application shall include:²⁴
 - (a) 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.²⁵
 - (b) Provisions for privacy and security.
 - (c) Provisions for parking.
 - (d) Proposed landscaping, exterior lighting, architectural exterior design and elevations, typical floor plan.
 - (e) 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.
 - (f) 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

24. Editor's Note: Amendment pending.

25. Editor's Note: See Ch. 300, Subdivision of Land.

MGL c. 40B and its implementing regulations as they may from time to time be amended.

- (g) Projected revenues to the Town in taxes or payments in lieu of taxes.
- (3) Decision. The Planning Board shall render its decision after consideration of the following factors, in addition to those set forth in § 255-13.4:
- (a) The plan promotes the more efficient use of land in harmony with its natural features, watercourses, scenic areas, natural vistas, existing rural character, and similar community assets within the general intent of the Zoning Bylaw and the long-range plan of the Town.
 - (b) 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.
 - (c) 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.
 - (d) The plan provides for adequate methods of disposal of refuse and other wastes.
 - (e) 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.
- (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.

§ 255-12.4. Personal wireless service facilities.

- A. 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 bylaws 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 bylaws 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.

B. 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.

RADIO FREQUENCY (RF) ENGINEER — An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

RADIO FREQUENCY 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.

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

- (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.
- (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.
- (3) A PWSF that exceeds the height restrictions of this section may be permitted by special permit in accordance with § 255-12.4E(6) below. **[Amended 4-23-2018 ATM by Art. 24]**

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

- (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.
- (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.

- (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.

E. Height requirements. A PWSF shall comply with the following requirements:

- (1) Height, general. Regardless of the type of mount, PWSFs shall be no higher than 10 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 10 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 nonconforming with respect to height, provided that the facility does not project above the existing building height.
- (2) Height, ground-mounted facilities. A ground-mounted PWSF shall not project higher than 10 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 10 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.
- (3) Height, side- and roof-mounted facilities. Side- and roof-mounted PWSFs shall not project more than 10 feet above the height of an existing building nor project more than 10 feet above the height limit of the zoning district within which the facility is located.
- (4) Height, existing structures. New antennas located on any of the following structures existing on the effective date of this bylaw shall be exempt from the height restrictions of this bylaw, 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.
- (5) Height, existing structures (utility). New antennas located on any of the following existing structures shall be exempt from the height restrictions of this bylaw, provided that there is no more than a twenty-foot 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.
- (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 Services Facility Overlay District Parcels" dated November 14, 2000, attached to and made a part of this bylaw.²⁶ Monopoles are the

26. Editor's Note: See Appendix B included as an attachment to this chapter.

preferred type of mount for such taller structures. Such structures shall comply with all setback and special permit regulations set forth in this bylaw.²⁷

- F. 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:
- (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 1/2 the height of the facility/mount, including any antennas or other appurtenances. This setback is considered a "fall zone."
 - (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 preexisting nonconforming structures, PWSFs and their equipment shelters shall not increase any nonconformities.
 - (3) In addition, no ground-mounted facility shall be located less than 200 feet from a neighboring residential building.
 - (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.
- G. Camouflage standards. Personal wireless service facilities will be located so as to have the least visibility and the least impact on community character. A PWSF shall be camouflaged as follows:
- (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.
 - (2) Camouflage by consistent material. Personal wireless service facilities which are side mounted shall blend with the existing building's architecture and, if over five square feet, shall be painted or shielded with material which is consistent with the design features and materials of the building.
 - (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

27. Editor's Note: Amendment pending.

materials and depth of the needed buffer based on site conditions. Vegetation will be maintained with respect to depth, height, density and species according to the requirements of the SPGA.²⁸

- (4) Color.
 - (a) Personal wireless service facilities which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.
 - (b) To the extent that any PWSF extends above the height of the vegetation immediately surrounding it, it shall be painted in a light grey or light blue hue which blends with sky and clouds.
- H. 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.
- I. Lighting, signage and security.
 - (1) Personal wireless service facilities 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 cutoff of all light at the property lines of the parcel to be developed.
 - (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.²⁹
 - (3) Security. All ground-mounted PWSFs shall be surrounded by a security barrier.
- J. Historic buildings and districts.
 - (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.
 - (2) Any alteration made to an historic structure to accommodate a PWSF shall be fully reversible.

28. Editor's Note: Amendment pending.

29. Editor's Note: See Art. 7, Signs, of this bylaw.

- (3) Personal wireless service facilities 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.

K. Environmental standards.

- (1) Personal wireless service facilities 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.
- (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.
- (3) Stormwater runoff shall be contained on site.
- (4) Ground-mounted equipment for PWSFs shall not generate noise in excess of 50 dB at the property line.
- (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.
- (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.
- (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.

L. Safety standards.

- (1) Radio frequency 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).

M. 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.

N. Preapplication 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.

- (1) Preapplication 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 preapplication 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.

- O. Application filing requirements. Applications for a special permit for all PWSFs shall include the items identified in the subsections below. Ten copies of the application for special permit shall be filed with the Planning Board.
- (1) General filing requirements.
 - (a) Application fee for special permit.
 - (b) An amount of money to be placed in an engineering review escrow account. The Planning Board may enact regulations setting such fees.
 - (c) Name, address, and telephone number of applicant and any coapplicants as well as any agents for the applicant or coapplicants. Coapplicants 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 coapplicant.
 - (d) Original signatures for the applicant and all coapplicants applying for the special permit. If the applicant or coapplicant will be represented by an agent, original signature authorizing the agent to represent the applicant and/or coapplicant. Photo reproductions of signatures will not be accepted.
 - (e) A copy of the lease agreement, if any.
 - (2) Personal wireless service facilities on municipal property. If a freestanding, exterior PWSF is to be placed on municipal property the following conditions must be satisfied:
 - (a) 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.
 - (b) 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.
 - (c) 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 was 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 conditions in § 255-12.4S(2) below.³⁰
 - (3) Location filing requirements.
 - (a) Identify the subject property by name of the nearest road or roads, and street address, if any.
 - (b) Tax Map and parcel number of subject property.

- (c) Zoning district designation for the subject parcel (submit copy of Town Zoning Map with parcel identified).
 - (d) 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.
 - (e) A Town-wide map showing the other existing PWSFs in the Town and outside the Town within one mile of its corporate limits.
 - (f) The locations of all existing and proposed future PWSFs in the Town on a Town-wide map for this carrier.³¹
- (4) Siting filing requirements. One inch equals 40 feet (or other if preapproved by the SPGA) vicinity plan showing the following:
- (a) Property lines for the subject property.
 - (b) 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.
 - (c) 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.
 - (d) Proposed location of antenna, mount, and equipment shelter(s).
 - (e) Proposed security barrier, indicating type and extent as well as point of controlled entry.
 - (f) 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.
 - (g) Distances, at grade, from the proposed PWSF to each building on the vicinity plan.
 - (h) Contours at each two feet above mean sea level (AMSL) for the subject property and adjacent properties within 300 feet.
 - (i) All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
 - (j) 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.
 - (k) Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from "sight lines" Subsection O(5) immediately below.

31. Editor's Note: Amendment pending.

- (5) Sight lines and photographs as described below.
- (a) 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.
 - (b) 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.
 - (c) 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.
 - (d) Siting elevations, or views at grade from the north, south, east and west for a fifty-foot radius around the proposed PWSF plus from all existing public and private roads that serve the subject property. Elevations shall be at either 1/4 inch equals one foot or 1/8 inch equals one foot scale and show the following:
 - [1] Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.
 - [2] 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.
 - [3] Any and all structures on the subject property.
 - [4] Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.
 - [5] Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours above mean sea level.
- (6) Design filing requirements.
- (a) 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.
 - (b) 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.
 - (c) 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.

- (d) 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.
 - (e) 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.
 - (f) Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species.
 - (g) 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.
 - (h) 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 25 feet beyond the property lines. The printout shall indicate the locations and types of luminaires proposed.
- (7) Noise filing requirements.
- (a) 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.
 - (b) Such statement shall be certified and signed by an acoustical engineer, stating that noise measurements are accurate and meet the noise standards of this bylaw.³²
- (8) Radiofrequency radiation (RFR) filing requirements.
- (a) 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.

32. Editor's Note: See § 255-12.4K(4) and (5).

- (b) Certification signed by an RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the radio frequency radiation standards subsection of this bylaw.³³

P. Co-location.

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

Q. 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 coapplicant 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 coapplicant wants to add any equipment or additional height not specified in the original design filing.

R. Monitoring and maintenance.

33. Editor's Note: See § 255-12.4L(1).

- (1) 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 an RF engineer, stating that RFR measurements are accurate and meet FCC guidelines as specified in the radio frequency standards section of this bylaw.³⁴
 - (2) 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 subsection of this bylaw.³⁵ The applicant and coapplicant 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.
- S. Abandonment or discontinuance of use.
- (1) 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.
 - (2) 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 bylaw, 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.
- T. 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 bylaw 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 20 feet.

34. Editor's Note: See § 255-12.4L(1).

35. Editor's Note: See § 255-12.4K(4) and (5).

§ 255-12.5. Independent Living Overlay District (ILOD).

A. 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 55, subject to the age restriction definition in Subsection B 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.

B. 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: 80% of the occupied units shall be occupied by at least one person who is age 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 U.S.C. § 3607(b), as amended, the regulations promulgated thereunder, 24 CFR Subtitle B, Chapter 1, Section 100.300 et seq., and MGL c. 151B, § 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 them/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 MGL c. 131, §§ 40 and 40A, and the Wenham Water Resources Protection Bylaw, Chapter 242 of the General Bylaws.

- C. 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.
- D. 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.
- E. 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.
- F. 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 MGL c. 44, § 53G. The application shall be accompanied by all of the information required for site plan review, as set forth in § 255-13.5D and E of the Zoning Bylaw.
- G. 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:
- (1) Parcel size and frontage. Minimum parcel size for an ILF shall be 10 acres, with land underwater being excluded from this computation. Minimum frontage for an ILF shall be 200 feet.
 - (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 stormwater 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 where:

- (a) The land abutting the site is the subject of a permanent restriction for conservation or recreation; or
 - (b) The land abutting the site is held for conservation or recreation purposes; or
 - (c) The Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.
- (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.
 - (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.
 - (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 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.
 - (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.
 - (7) Stormwater management. The stormwater management system shall be designed in accordance with Massachusetts Department of Environmental Protection stormwater management regulations.
 - (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.
 - (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.

- (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.
 - (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) Emergency access. When the ILF has a single access road with a length greater than 1,000 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.
 - (13) Further subdivision. After a special permit is issued for an ILF, no further subdivision of land shall be permitted.
 - (14) Density. The aggregate number of dwelling units shall not exceed five times the total number of acres in the ILOD.
 - (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.
- H. 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.
- I. 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.
- J. 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.
- K. 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 § 255-13.4C of this bylaw. Except as set forth in Subsection F above, § 255-13.5, 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).
- L. Lapse. Notwithstanding the provisions of § 255-13.4G, a special permit for an ILF shall lapse after 24 months if substantial use or construction as granted under a permit has not commenced without good cause. This time limit excludes the time required to pursue or await the determination of an appeal.

ARTICLE 13
Administration

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

§ 255-13.1. Office of the Building Inspector.

- A. Appointment. The Board of Selectmen shall, within 30 days after this bylaw becomes effective and thereafter in March, appoint a Building Inspector, who shall hold office for the term of one year. Their compensation shall be regulated by the Selectmen unless determined by a vote of the Town at the Annual Town Meeting preceding their appointment. They shall not be interested in any contract or in the furnishing of materials for any buildings.
- B. Removal. The Board of Selectmen shall have the power to discharge the Inspector for failure to perform their duties, and to fill any vacancy in the office, during the period of their appointment.
- C. Powers and responsibilities. Except as otherwise provided, this bylaw 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 bylaw.
- (1) If the Building Inspector shall refuse to issue a permit, the applicant may appeal to the Zoning Board of Appeals.
 - (2) If the Building Inspector is requested, in writing, to enforce the bylaw against any person allegedly in violation thereof, and they decline to act, they shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within 14 days of receipt of such request.
 - (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.
- D. 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 Article 5, Dimensional Requirements, and showing the Floodplain District boundary and wetlands boundaries, if any, on the site.³⁶
- (1) Permit approval. The Building Inspector shall issue a building permit when satisfied that the plan complies in all respects with this bylaw, and where applicable when the approval of the Board of Health, Planning Board, Conservation Commission, Water Department, Tree Warden, and the Director of Public Works has been obtained,

36. Editor's Note: Amendment pending.

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.

- (2) Lapse. A building permit shall become void unless construction is commenced within one year of the date of issue and completed within two years of the date of issue, unless for good cause such time shall have been extended by the Building Inspector, in writing.
 - (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.
- E. 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.
- F. Penalties. The penalty for violation of any provision of this bylaw, of any of the conditions under which a permit is issued, or of any decision rendered by the Zoning Board of Appeals shall be \$300 for each offense. Each day that each violation continues shall constitute a separate offense.

§ 255-13.2. Zoning Board of Appeals.

- A. Establishment. There shall be a Zoning Board of Appeals consisting of up to three members and up to three associates, 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 Zoning 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 Zoning Board of Appeals, their place shall be taken by an associate member designated by the Selectmen.³⁷
- B. Powers. The Zoning 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 bylaw. The Board's powers are as follows:
- (1) To hear and decide applications for special permits. Unless otherwise specified herein, the Zoning 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 bylaw, with respect to particular land or structures, as set forth in MGL c. 40A, § 10. The Zoning Board of Appeals shall not grant use variances.

37. Editor's Note: Amendment pending.

- (3) To hear and decide appeals taken by any person aggrieved by reason of their inability to obtain a permit or enforcement action from any administrative officer under the provisions of MGL c. 40A, §§ 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 nonprofit corporation, as set forth in MGL c. 40B, §§ 20 to 23.
- C. Regulations. The Zoning Board of Appeals may adopt rules and regulations for the administration of its powers.
 - D. 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 bylaw and to ensure that results arising from the variance remain in harmony with the general purposes of this bylaw, except that such conditions cannot require continued ownership of the land or structure to which the variance pertains by the applicant, petitioner or owner.
 - E. Fees. The Zoning Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits under MGL c. 40B.
 - F. Lapse. Rights authorized by variance not exercised within one year of the date of granting shall lapse.

§ 255-13.3. Planning Board.

- A. Establishment. A Planning Board is established under the provisions of MGL c. 41, § 81A (Acts of 1936, Chapter 211), to consist of five members, one member to be elected each year at the Annual Town Meeting.
- B. 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 bylaw. 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 § 255-13.5 herein.
- C. Regulations. The Planning Board may adopt rules and regulations for the administration of its powers.
- D. 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 bylaw and to ensure that results arising from the permit or approval remain in harmony with the general purposes of this bylaw.
- E. Fees. The Planning Board may adopt reasonable administrative and technical review fees for petitions for special permits and site plan review.

§ 255-13.4. Special permits.

- A. Application. An application for a special permit shall be filed in accordance with the rules and regulations of the special permit granting authority.
- B. Plans. Unless otherwise provided in 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 § 255-13.1D herein.
- C. 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 bylaw, 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.
- D. Conditions.
- (1) 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 bylaw and to ensure that uses permitted by special permit remain in substantial harmony with the general purposes and intent of this bylaw.
 - (2) 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.
- E. Regulations. The special permit granting authority may adopt rules and regulations for the administration of this section.
- F. Fees. The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.
- G. 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.

§ 255-13.5. Site plan review. [Amended 4-2-2016 ATM by Art. 18]

- A. 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; and
 - (2) Any change of use from residential, including single-family, to municipal, institutional, commercial, or industrial use; and **[Added 4-6-2019 ATM by Art. 15]**
 - (3) Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or residential structure with two or more dwelling units.
 - (4) For the following Institutional and Exempt Uses set forth in the Table of Use Regulations: educational, religious, and child-care facility, see § 255-13.7, Site plan review, for certain institutional and exempt uses (collectively, "Dover Amendment Uses"), subject to the limitations on the scope of review as set forth hereunder.
- B. Approval required. An application for a building permit to perform work as set forth in Subsection A shall be accompanied by an approved site plan. Prior to the commencement of any such activity, the project proponent shall obtain written site plan approval from the Planning Board.
- C. Procedures.
- (1) Applicants for site plan approval shall submit 10 copies of the site plan to the Planning 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 35 days of submittal shall be deemed a lack of opposition thereto.
 - (2) The Planning Board shall hold a public hearing on each application for site plan approval. The public hearing procedures set forth in MGL c. 40A, §§ 9 and 11, for special permits shall be followed by the Board. The Planning Board shall review and act upon each site plan application and impose appropriate conditions within 90 days of the close of the public hearing, and provide written notice to the Town Clerk and 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 close of the public hearing without final action as set forth above.
 - (3) The applicant may request, and the Board may grant by majority vote, an extension of the time limits set forth herein.
 - (4) No deviation from an approved site plan shall be permitted without such modification being subject to Planning Board approval.
- D. Preparation of plans. Applicants are invited to submit a preapplication 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 twenty-four-inch by thirty-six-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 one inch equals 20 feet.

E. Contents of plan. **[Amended 4-6-2019 ATM by Art. 15]**

- (1) Five separate plans prepared at a scale of one inch equals 20 feet or such other scale as may be approved by the Board. The plans are as follows:
 - (a) 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 inch equals 100 feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of 1,000 feet from the project boundaries or such other distance as may be approved or required by the Board.
 - (b) Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling stormwater drainage.
 - (c) Utility and landscaping plan, which shall include all facilities for refuse and sewage 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.
 - (d) Architectural plan, which shall include the ground-floor plan and architectural elevations of all proposed buildings and a color rendering.
 - (e) 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.
 - (f) Dover Amendment Uses shall be required to provide only information that is relevant to the limited scope of site review of the use as provided for under MGL c. 40A, § 3.
- (2) The site plan shall be accompanied by:
 - (a) 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.
 - (b) 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 bylaw.

- (c) Drainage calculations by a registered professional engineer. Storm drainage design must conform to the Town's Subdivision Rules and Regulations and to the Planning Board's Rules and Regulations.
 - (d) If the Board requires, narrative assessments of the on-site and off-site impacts of the proposed use and structures.
 - (e) Certification that the proposal is fully compliant with the provisions, if applicable, of the Americans with Disabilities Act³⁸ and the Massachusetts Architectural Barriers Board.
 - (f) Dover Amendment Uses shall be required to provide only information that is relevant to the limited scope of site review of the use as provided for under MGL c. 40A, § 3.
- F. 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.
- G. 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 stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations.
- (1) 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:
 - (a) Minimize the volume of cut and fill, the number of removed trees six inches caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;
 - (b) Maximize pedestrian and vehicular safety both on the site and egressing from it;
 - (c) Minimize obstruction of scenic views from publicly accessible locations;
 - (d) 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;
 - (e) Minimize glare from headlights and lighting intrusion;
 - (f) Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;

38. Editor's Note: See 42 U.S.C. § 12101 et seq.

- (g) Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances; and
 - (h) Ensure compliance with the provisions of this Zoning Bylaw, including parking and landscaping.
- (2) Dover Amendment Uses shall be designed to address the requirements set forth under MGL c. 40A, § 3.
- H. 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.
- I. Regulations. The Board may adopt additional reasonable regulations for the administration of site plan review.
- J. Fees. The Board may adopt reasonable administrative fees and technical review fees for site plan review.
- K. Appeal. Any decision of the Board pursuant to this section may be appealed in accordance with MGL c. 40A, § 17, to a court of competent jurisdiction.

§ 255-13.6. Variance.

- A. 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 bylaw 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 bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw. Except where local ordinances or bylaws 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 1, 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.
- B. Plans. Unless otherwise provided in the rules or regulations of the Zoning Board of Appeals, an applicant for a variance shall submit a plan in substantial conformance with the requirements of § 255-13.1D herein.
- C. 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.

- D. Regulations. The Zoning Board of Appeals may adopt rules and regulations for the administration of this section.
- E. Fees. The Zoning Board of Appeals may adopt reasonable administrative fees and technical review fees for applications for variance.
- F. 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 30 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.

§ 255-13.7. Site plan review for certain institutional and exempt uses. [Added 4-2-2016 ATM by Art. 19]

- A. Purpose. The purpose of this section is to provide for site plan review of certain institutional and exempt uses in the Table of Use Regulations, specifically: educational, religious, and child-care facilities otherwise governed by MGL c. 40A, § 3 (collectively, the "Dover Amendment Uses").
- B. Site plan review required. Prior to the issuance of any building permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of any Dover Amendment Use shall require site plan approval from the Zoning Board of Appeals pursuant to this section.
- C. Scope of site plan review. Under this section, site plan review shall be limited to two inquiries:
 - (1) Whether it has been determined that the proposed Dover Amendment Use qualifies for protection under MGL c. 40A, § 3; and, if so,
 - (2) Whether the proposed Dover Amendment Use satisfies the applicable dimensional requirements for the subject property as set forth in the underlying zoning district where the subject property is located, as to the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to the extent it has been determined that those requirements may be reasonably applied to the proposed Dover Amendment Use.
- D. Procedures.
 - (1) Applicants for site plan approval shall submit 10 copies of the site plan and required materials to the Zoning Board of Appeals (ZBA) for review. The ZBA shall provide a copy of the application to the Fire Department, Building Inspector, Planning Board, 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 35 days of submittal shall be deemed a lack of opposition thereto.

- (2) The ZBA shall hold a public hearing on each application for site plan approval. The public hearing procedures set forth in MGL c. 40A, §§ 9 and 11, for special permits shall be followed by the ZBA. The ZBA shall review and act upon the site plan and impose appropriate conditions within 90 days of the close of the public hearing, and provide written notice to the Town Clerk and applicant of its decision. The decision of the ZBA 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 ZBA, or unless 90 days lapse from the close of the public hearing without final action as set forth above.
 - (3) The applicant may request, and the ZBA may grant by majority vote, an extension of the time limits set forth herein.
 - (4) No deviation from an approved site plan shall be permitted without such modification being subject to ZBA approval.
- E. Required information. All applications for site plan review shall be in writing and provide, at a minimum, the following information:
- (1) Name and address of applicant person or entity;
 - (2) Name and address of property owner;
 - (3) Description of the proposed use and/or structure and determination that the proposed use is eligible for protection under MGL c. 40A, § 3;
 - (4) A Zoning Chart depicting "required" vs. "provided" for all applicable zoning standards concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements that are set forth in the zoning district for the subject property and the determination that such standards are reasonably applicable to the proposed Dover Amendment Use;
 - (5) As reasonably necessary to reach a decision on the application, the Zoning Board of Appeals may request further information from the applicant consistent with MGL c. 40A, § 3, specifying in detail the information required; provided, however, that it is the intent of this section to conduct site plan approval for Dover Amendment Uses only to comply with the provisions of MGL c. 40A, § 3.
- F. Decision. The ZBA may approve, approve with reasonable conditions, or deny an application for site plan approval. In making its decision, the ZBA shall be guided exclusively by MGL c. 40A, § 3, and shall not impose any requirement other than the requirements allowed to be applied under MGL c. 40A, § 3. The ZBA shall file its written decision with the Town Clerk within 90 days of the close of the public hearing. Failure to take such final action shall constitute approval of the site plan.
- G. Appeal. An appeal of the ZBA's decision may be made pursuant to MGL c. 40A, § 17, to a court of competent jurisdiction.