

ZONING BYLAWS OF THE TOWN OF STOCKBRIDGE

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# TOWN OF STOCKBRIDGE

## ZONING BYLAWS

### CONTENTS

Section 1	Title, Authority and Purpose .....	4
Section 2	Definitions.....	5
Section 3	Zoning Districts.....	17
Section 4	Use Regulations .....	19
Section 5	Intensity Regulations.....	28
Section 6	Special Provisions .....	30
6.1	Nonconforming Structure, Uses and Lots .....	30
6.2	Off-Street Parking Requirements .....	32
6.3	Special Permits.....	33
6.4	Conservancy Districts .....	38
6.5	Lake and Pond Overlay District.....	41
6.6	Cottage Era Estate Adaptive Re-Use or Rehabilitation .....	47
6.7	Surface Water Supply Protection Overlay District.....	50
6.8	Sign Regulations .....	52
6.9	Multi-Family Dwelling .....	62
6.10	Conversion of an Existing One or Two-Family Dwelling Into Multi-Family Dwelling or Other Use .....	63
6.11	Performance Standards.....	64
6.12	Outdoor Display .....	65
6.13	Non-Profit Art Museum .....	65
6.14	Nonprofit Educational or Religious Use .....	65
6.15	Satellite Dishes.....	66
6.16	Driveways and Common Driveways.....	67
6.18	Fences and Walls.....	69
6.19	Home Occupations .....	70
6.20	Tent Sales .....	72
6.21	Outdoor Lighting.....	72
6.22	Noise .....	72
6.24	Cluster Subdivisions .....	72
6.25	Personal Wireless Service Facilities.....	74
6.26	Adult Business .....	81
6.27	Body Art Establishments .....	83
6.28	Commercial Solar Photovoltaic Installations.....	84
6.29	Registered Marijuana Dispensaries.....	87
6.30	Adult Marijuana Establishments .....	90
6.31	Residential Inclusionary Development.....	94
Section 7	Zoning Board of Appeals .....	98
Section 8	Administration and Enforcement.....	100
Section 9	Amendment and Validity .....	101

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

### **1.1 Title**

This Bylaw shall be known as the “Zoning Bylaw of the Town of Stockbridge, Massachusetts,” hereinafter referred to as “this Bylaw.”

### **1.2 Authority**

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

### **1.3 Purpose**

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

- a. To prevent overcrowding of land, to secure safety from fire, flood, panic and other dangers, to conserve health, and to lessen congestion in the streets;
- b. To facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space and other public requirements;
- c. To conserve the value of land and buildings including the conservation of natural resources and the prevention of blight and pollution of the environment;
- d. To preserve and increase amenities by the promulgation of regulations designed to:
  - Protect the town’s significant environmental features such as: flood plains and flood prone areas, wetlands, the Housatonic River, brooks, ponds, water resources, woodlands, areas of scenic beauty, and sites and structures of historic importance.
  - Preserve the natural, scenic and aesthetic qualities of the community.
  - Minimize the adverse effects of development on the town’s unique environmental and historic features.
  - Further the objectives of the town’s Comprehensive Plan.

- Employ cooperatively the various measures taken by the town's agencies, under diverse legislative authority, including the State Sanitary Code, Earth Removal Bylaw, Wetlands Protection Act, Subdivision Control Legislation, and the State Building Code, for the protection and enhancement of the town's existing small-town character, open spaces, low density of population, and in the interests of the town's orderly growth at deliberate pace.

## SECTION 2: DEFINITIONS

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

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

The words "used" or "occupied" include the words "designed," "intended," or "arranged to be used or occupied."

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

The word "shall" is mandatory; the word "may" is permissive.

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

For words not specifically defined herein, reference shall be made to the most recent edition of Webster's Unabridged Dictionary.

- 2.2** For the purposes of this Bylaw, the following words and terms as used herein shall have the meanings or limitations of meaning hereunder defined, explained or assigned:

**ACCESSORY USE OR STRUCTURE:** A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

**ADEQUATE ACCESS:** Adequate access allows entrance to the property by the fire department, police department, and other agencies charged with the responsibility of protecting the public peace, safety and welfare.

**AFFORDABLE HOUSING:** Where requirements have been eased by the provision of "affordable housing," the following requirements must be met:

- a. Unless otherwise stated, a minimum of 30% of the additional residential units created, but in no case less than one unit, must be offered at rents or selling prices

not higher than specified in paragraph b., below. Example: Conversion of an existing single family residence to a five unit multifamily residence: Four additional units are created. Thirty percent of four is 1.2. Thus, two units must be offered at “affordable” prices.

- b. To be regarded as “affordable” units must meet the following criteria:
  - 1. Rental units - rental units must be first offered to low-moderate income individuals selected from a waiting list maintained by the Stockbridge Housing Authority. Rents charged cannot exceed 100% of the current “Fair Market Rents” for the US Department of Housing and Urban Development Section 8 Rental Certificate and Voucher Program.
  - 2. Homeownership units - units offered for sale must be first offered to individuals eligible for participation in the Massachusetts Homeownership Opportunity Program as is determined by the most recent regulation and policies issued by EOCD. Maximum purchase prices charged for such units may not exceed those established by the Massachusetts Homeownership Opportunity Program. In the event that no qualified buyers in the target group are found, the income limitation may be raised in 10% increments under the administration of the Stockbridge Housing Authority until a qualified buyer is found.
- c. The restriction of affordability shall remain in force for a period of ten years from the date of initial occupancy of each unit.

**AREA OF SPECIAL FLOOD HAZARD:** The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

**BANK:** The portion of the land surface that normally abuts and confines a water body; it lies between a water body and a bordering vegetated wetland and adjacent flood plain or, in the absence of these, it lies between a water body and an upland; the upper boundary of a bank is the first observable break in the slope or the mean annual flood level, whichever is lower; the lower boundary of a bank is the mean annual low flow level.

**BED AND BREAKFAST:** An accessory use to a dwelling occupied as the owner’s principal legal residence, in which at least one (1) and not more than five (5) rooms are commercially offered for transient occupants. Transient occupancy shall be defined as for not more than 90 consecutive days.

**BILLBOARD -** A sign that directs attention to a business, commodity, service, or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

**BOATHOUSE** - A structure with direct access to a navigable body of water which is used for the storage of boats and associated equipment and which does not have bathroom or kitchen facilities and is not designed or used for lodging or residency.

**BODY ART** - Any method of inserting a needle into the body to place jewelry and/or indelible colors in the perforation produced by the needle so as to leave permanent marks or designs, or other method of making or leaving permanent marks on, or alterations to, the body for adornment purposes. This definition includes, but is not limited to, body piercing, tattooing, cosmetic tattooing, branding, scarification and any other technique of physical body adornment. This definition also includes piercing of the outer perimeter of the ear, but does not include piercing of the earlobe with pre-sterilized single-use stud-and-clasp ear-piercing systems.

**BODY ART ESTABLISHMENT** - Any place where body art procedures are practiced or where the business of body art is conducted, or any part thereof.

**BUILDING:** Any structure having a roof intended for shelter, housing, or enclosure of any person, process, equipment, animals or goods.

**BUILDING HEIGHT** - The vertical distance to the highest point of flat or mansard roofs including the top of a parapet or, in the case of pitched roofs, to the highest point of the ridge or top of the roof from the lowest existing grade that is both within six (6) feet of the walls of a building and more than six (6) feet from a creek, river, stream, pond or lake.

**CHILD CARE FACILITY** - A private or public establishment which provides child care for a fee for children placed there by parents, guardians, or other individual(s) responsible for their care. The term child care facility shall mean a day care or a school age child care program, as these terms are defined in Section Nine of Chapter 28A of the general laws of the Commonwealth of Massachusetts.

**COMMERCIAL GAMBLING ESTABLISHMENT** - Any premises wherein or whereon legal gaming is done. This term shall not include convenience stores or package stores which sell lottery tickets. This term does include commercial race tracks.

**COMMERCIAL GARAGE** - The use of any building, land area or other premises for the display and sale of new or used automobiles, trucks, vans, trailers, or recreation vehicles; or for the sale of gasoline or other motor vehicle fuel which may include facilities for lubricating, washing, cleaning or otherwise servicing of motor vehicles or for the commercial purpose of painting or repairing motor vehicles.

**COMMERCIAL SOLAR PHOTOVOLTAIC INSTALLATION:** A solar photovoltaic system that is not accessory to a permitted use.

**COMMON DRIVEWAY:** A driveway, or segment of a driveway, that serves more than one lot.

**COTTAGE ERA ESTATE** —A single lot in the R-4 or R-2 Districts consisting of no less than 80 contiguous acres, having a principal one-family dwelling dating from “America’s Gilded Age” of approximately 1870-1920.

**CRAFT MARIJUANA COOPERATIVE.** A Marijuana Cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth, and licensed to cultivate, obtain, manufacture, process, package or brand cannabis or marijuana products or to transport marijuana to Marijuana Establishments, but not to consumers.

**CUTTING OR REMOVAL OF TREES** - Cutting or removal of trees shall mean the removal of one or more trees, trimming of major branches or cutting of roots.

**DEVELOPMENT:** Any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**DISTANCE:** - The length between objects as measured on a horizontal plane.

**DRIVE-IN-THEATER** - An open lot devoted primarily to the showing of motion pictures or theatrical productions on a paid admission basis to patrons seated in automobiles.

**DRIVEWAY:** An area, other than a Street or Road, that is intended or used for vehicles to pass and re-pass to any portion of a lot from the surface of a Street or Road.

**DUMP** - A sanitary landfill, a refuse transfer station, a refuse incinerator rated by the Massachusetts Department of Health at more than one ton of refuse per hour, a resource recovery facility, a refuse composting plant, a dumping ground for refuse or any other works for treating, storing or disposing of refuse.

**DWELLING, ONE-FAMILY:** A detached residential building designed for and occupied by one (1) family only, but not including mobile homes whether placed on a foundation or not.

**DWELLING, TWO-FAMILY:** A detached residential building containing two (2) dwelling units designed for occupancy by not more than two (2) families with not more than one (1) family in each unit.

**DWELLING, MULTI-FAMILY:** A residential building designed for or occupied by three (3) or more families, with not more than one (1) family in each unit.



**DWELLING UNIT:** One or more rooms constituting a separate, independent housekeeping establishment with cooking, living, sanitary and sleeping facilities for the use of one (1) family.

**EXISTING LICENSEE TRANSPORTER.** An entity that is otherwise licensed by the Cannabis Control Commission and also licensed to purchase, obtain, and possess cannabis or marijuana products solely for the purpose of transporting, temporary storage, sale and distribution on behalf of other Marijuana Establishments to other establishments, but not to consumers.

**FAMILY:** One (1) or more individuals related by blood, marriage or adoption, or not more than five (5) individuals who are not so related living in a single dwelling unit.

**FAST FOOD ESTABLISHMENT:** An establishment whose primary business is the sale of food for consumption on or off the premises and which has generally the following characteristics:

- a. The food is served over a service counter.
- b. The food is available upon a short waiting time.
- c. The food is packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.
- d. The food is intended for immediate consumption rather than for use as an ingredient or component of meals.
- e. The food is served in disposable containers and utensils.
- f. The food is of a very specialized nature.
- g. Places which are commonly known as fast food establishments.

**FUNERAL HOME** - A building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation and subject to all pertinent laws regulating such use.

**HALF-STORY:** That portion of a building under a sloping roof the cubic contents of which are never more than one-half (1/2) of that of the story below. If the cubic contents are greater it shall be deemed a story.

**HEALTH CARE FACILITY** - A facility or institution, whether public or private, principally engaged in providing services for health maintenance and the treatment of mental or physical conditions. This term shall include, but not be limited to, hospitals, medical clinics, residential care facilities, long-term care facilities, and massage/health/fitness centers.

**HOME OCCUPATION** - Any service or business use conducted entirely within a dwelling or customary accessory building and carried on by the residents thereof, which use is clearly incidental and secondary to the use of the property for residential purposes and does not change the residential character thereof or have any exterior evidence of such secondary use except as permitted by this Bylaw.

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

**JUNK YARD** - Any area, lot, land, parcel, building or structure or part thereof, used for the storage, collection, processing, purchasing, sale, salvage or disposal of second hand parts and materials, including automobiles, trucks, tractor trailers, buses, motorcycles, or other vehicles as well as tractors, bulldozers, machinery and other equipment.

**KENNEL:** Structure and other facilities for the keeping of more than three (3) dogs, more than six (6) months old, or other household mammal pets for sale or boarding purposes.

**LIBRARY** - A structure open to the general public whose principal use is a repository for literary and artistic materials, such as books, records, prints, videotapes, etc.

**LIGHT MANUFACTURING** - A use involving the manufacture of a product, but not producing heavy, noisy or otherwise objectionable disturbances such as vibration, dust, odors, and heavy truck traffic, and not involving the use of heavy machinery.

**LOT:** A single tract of land held in identical ownership throughout, defined by metes and bounds or lot lines in a deed conveyance, or shown on a duly recorded plan.

**LOT FRONTAGE** - The shortest continuous distance measured along the way between the side lot lines at their intersection with the street from which “adequate access” is possible. See definition of “adequate access” above.

**LOT WIDTH** - The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front line at the minimum required building setback line.

**MANUFACTURING** - Any industrial process whereby the nature, size or shape of an article is changed into a product which generally shall be a finished product.

**MARIJUANA CULTIVATOR.** An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Establishments, but not to consumers.

**MARIJUANA ESTABLISHMENT AGENT.** A board member, director, employee,

executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. As used in this definition, the term “employee” shall include a consultant or contractor who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of marijuana.

**MARIJUANA ESTABLISHMENT.** A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Marijuana Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a Medical Marijuana Treatment Center.

**MARIJUANA MICRO-BUSINESS.** A co-located Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator, as defined in 935 CMR 500.050, or a Marijuana Product Manufacturer or both, in compliance with the operating procedures for each license; provided, however, that a Marijuana Micro-Business that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

**MARIJUANA PRODUCT MANUFACTURER.** An entity licensed to obtain, manufacture, process and package cannabis or marijuana products and to transfer these products to other Marijuana Establishments, but not to consumers.

**MARIJUANA RESEARCH FACILITY.** An entity licensed to engage in research projects by the Cannabis Control Commission.

**MARIJUANA RETAILER.** An entity licensed to purchase and transport marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers.

**MARIJUANA INDEPENDENT TESTING LABORATORY.** An entity that is licensed to test marijuana in compliance with 935 CMR 500.

**MARIJUANA TRANSPORTER.** An entity, not otherwise licensed by the Cannabis Control Commission, that is licensed to purchase, obtain, and possess marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers. Marijuana Transporters may be an Existing Licensee Transporter or Third Party Transporter.

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

**MOBILE HOME PARK** - A parcel of land used or intended to be used, let or rented for occupancy, by mobile homes for living purposes, regardless of whether such structures actually are occupied seasonally or otherwise.

**MUNICIPAL/GOVERNMENTAL USE** – Any land, structure, or combination thereof used or controlled predominantly for public purposes by any department or branch of the Town of Stockbridge, Berkshire County, the Commonwealth of Massachusetts, or federal government whether or not such department or branch owns the building or structure and/or the land on which it is situated.

**Municipally Owned Directory Sign** – A permanent sign erected and maintained by the Town of Stockbridge, with space available on a rental basis on such terms as the Board of Selectmen may, from time to time establish.

**MUSEUM** - A building or structure, whether public, private, commercial or non-commercial, used for education and display of matters of a historical, artistic, scientific, technological, natural or similar nature.

**OPEN SPACE RECREATION** - Any recreational activity, particularly oriented to and utilizing the outdoor character of an area including, but not limited to golf, tennis, swimming or skiing, sportsmen’s club, livery or riding stable. Open space recreation does not include the use of property for sales or for events such as fairs or carnivals.

**PENAL INSTITUTION** - A place where persons convicted or accused of crimes are confined.

**PLACE OF AMUSEMENT OR ASSEMBLY** - An establishment engaged in providing entertainment for a fee and including such activities as studios, theatrical productions, musical entertainment and bowling alleys.

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

**PUBLIC UTILITY** - A private or public enterprise that supplies or transmits gas, water, electricity or communications to any or all members of the public, and that is closely regulated by federal, state or town regulations because of its natural or legal monopoly; but not including any enterprise that provides wireless telecommunications services.

**REGISTERED MARIJUANA DISPENSARY (RMD).** An entity registered under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana-infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, the term RMD shall include RMD Retailers, as defined herein, and shall refer to the sites of dispensing, cultivation and preparation of marijuana.

**REPAIR, MAINTENANCE, RECONSTRUCTION OR PAVING WORK** - Any work done within the right-of-way by any person or agency, public or private. Within this definition is any work on any portion of the right-of-way which was not physically commenced at the time the road was designated as a scenic road. Construction of new driveways or alteration of existing ones is also included, in so far as it takes place within the right-of-way.

**RESEARCH LABORATORY** - An establishment or other facility for carrying on investigation in the natural, physical, or social sciences, which may include engineering and product development.

**RESTAURANT** - An establishment where food and drink are prepared, served, and consumed, primarily within the principal building. The serving of alcoholic beverages may be permitted only as accessory to the primary use.

**RIDING STABLE** - An establishment where horses are boarded and cared for and where instruction in riding, jumping and showing is offered and where horses may be hired for riding.

**ROAD** - A right-of-way of any way used and maintained as a public way including the vehicular traveled way plus necessary appurtenances within the right-of-way such as bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not intersecting streets or driveways. When the boundary of the right-of-way is in issue so that a dispute arises as to whether or not certain trees or stone walls or portions thereof are within or without the way, the trees or stone walls shall be presumed to be within the way until the contrary is shown.

**RMD RETAILER.** A type of RMD that only sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials directly to registered qualifying patients or their personal caregivers. RMD Retailers shall not cultivate or process marijuana on the premises.

**SCREENING:** A screen shall consist of one of the following as determined by the Stockbridge Planning Board.

- a. Plant materials such as shrubs, trees or plants at least three feet in height at time of planting to reach a minimum height of five feet at maturity and that will form a dense year-round screen.
- b. A masonry wall, or a wooden or fabricated fence at least five feet in height, at least 50% solid design to obscure any view.
- c. Any existing growth of shrubs, trees or plants at least five feet in height, judged to provide adequate dense growth to obscure any view.

**SIGN** - Any structure or device used for the purposes of visual communication, which identifies or calls attention to any premises, person, product, activity, business or use of a property. For the purposes of this Bylaw the following shall not be included in the application of the regulations herein:

- a. Legal notices, identifications, information, directional or warning signs erected or required by governmental agents or bodies; or various warning signs as commonly used by property owners;
- b. Memorial signs or tablets not exceeding one (1) square foot in area;
- c. Signs directing, guiding or controlling traffic and parking on private property but bearing no advertising matter;
- d. Signs painted on or attached to duly registered motor vehicles except when the primary use of the vehicle is for a display rather than transportation and when the vehicle is usually within sight of a public way;
- e. Temporary signs on the inside of glass of store windows as commonly used in retail business, or such signs of special events or for political candidates.

**SIGN, ACCESSORY** - Any sign that advertises or indicates the person occupying the premises on which the sign is erected or maintained, or the business transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter. Signs located inside a building which are visible from outside the building are subject to all restrictions contained herein as to size and number of signs permitted.

**SIGN, NON-ACCESSORY** - Any sign that is not an accessory sign.

**SIGN, AREA** -

- a. The area of a sign shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background on which they are displayed, any frame around the sign and any “cutouts” or extensions, but shall not include any supporting structure or bracing.
- b. The area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall or window, shall be considered to be that of the smallest quadrangle or triangle which encompasses all of the letters and symbols.
- c. The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross section of that object.

- d. In computing the area of signs, both sides of V-shaped signs, but only one side of back-to-back signs, shall be counted.

**STORY:** That portion of a building contained between any floor and the floor or the ceiling next above it, but not including any portion so contained if more than one-half (1/2) of such portion vertically is below the average finished grade of the ground adjoining such building.

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

**STRUCTURE:** Any construction or any production or piece of work artificially built up or composed of parts joined together in some definite manner including but not limited to tents, reviewing stands, platforms, satellite TV antennas, tennis courts, stagings, towers, display signs, fences, and swimming pools, but not including those fences which delineate property lines.

**STREET LINE:** The right-of-way line of a street as established under public authority, or as shown on a plan approved by the Planning Board, or if neither of the above apply, a line parallel to the center line of the street measured back a distance equal to one-half (1/2) of the normally required right-of-way.

**SUBSTANTIAL IMPROVEMENT:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

**SUMMER CAMP** - A location away from home, often in a rural or country setting, where campers spend all or part of the summer living in tents, barracks, or dormitories, participating in organized activities, sports, and arts and crafts, and usually eating together in a central dining facility. A summer camp must comply with all applicable regulations of the state Sanitary Code Articles IV and VIII.

**TAVERN/BAR** - An establishment used primarily for the serving of liquor by the drink to the general public and where packaged liquors may be served or sold only as accessory to the primary use. Taverns and bars must serve food. Inn holders may operate a tavern/bar.

**TEMPORARY STRUCTURE** - Any tent, membrane structure, car port, storage unit, rigid canopy or similar portable or demountable structure, supported in whole or in part

by members resting on the ground and lacking a permanent foundation, of a size and design sufficient and appropriate to allow the parking of an automobile therein.

**THIRD PARTY TRANSPORTER.** An entity that is licensed to transport marijuana or marijuana products and that does not hold another Marijuana Establishment license and is not registered as an RMD.

**TENT SALE** - An outdoor event at which food and/or merchandise is sold, whether or not held under a tent, tarp or similar shelter. The term tent-sale includes events commonly known as tag, garage, lawn or porch sales. The term tent sale does not include carnivals, fairs or events where games of chance are held, all of which are specifically prohibited.

**TREES** - A tree whose trunk has a diameter of four inches or more as measured one foot above the ground.

**TRIBUTARY:** Any body of running, or intermittently running, water that moves in a definite channel, naturally or artificially created, in the ground due to a hydraulic gradient, and that ultimately flows into a larger body of water.

**VETERINARY HOSPITAL** - A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. A veterinary hospital may include a kennel.

**WAREHOUSE** - A building used to temporarily store or hold products or articles for use in assembly or manufacturing or for future transfer of said product or article to another location.

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

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

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

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



## SECTION 3: ZONING DISTRICTS

### 3.1 Establishment of Districts

For the purpose of this Bylaw the Town of Stockbridge is hereby divided into the following districts:

#### Zoning Districts

R-4	4 Acre Residence
R-2	2 Acre Residence
R-1	1 Acre Residence
R-C	Central Residence
B	Business
M	Manufacturing

#### Overlay Districts

LPOD	Lake and Pond Overlay District
FPOD	Flood Plain Overlay District
SWSPOD District	Surface Water Supply Protection Overlay District

### 3.2 Location of Districts

The location and boundaries of these districts shall be described below.

- 3.2.1 Zoning districts R-4, R-2, R-1, R-C, B and M shall be as shown on the Zoning Map of Stockbridge, Massachusetts, dated April 11, 1989, and bearing the signatures of the members of the Planning Board, which map, with all explanatory matter thereon, is hereby made a part of this Bylaw.
- 3.2.2 The Flood Plain Overlay District shall include all special flood hazard areas designated on the Town of Stockbridge Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated July 5, 1982 as Zone A and AI-30 and the FEMA Flood Boundary & Floodway Map dated July 5, 1982, both maps which indicate the 1 00-year regulatory floodplain. The exact boundaries of the District may be defined by the 1 00-year base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated July 5, 1982. The FIRM, Flood Boundary & Floodway Map, and FIS report are incorporated herein by reference and are on file with the Town Clerk.
- 3.2.3 Overlay Districts LPOD is as described in Section 6.5 of this Bylaw.  
Overlay District SWSPOD is described in Section 6.7 of the Zoning Bylaws.

### **3.3 District Boundary Lines**

- 3.3.1 The district boundary lines shall be as shown on the Zoning Map and indicated by the dimensions entered thereon.
- 3.3.2 For purposes of interpretation of district boundaries as shown on the Zoning Map, the following rules shall apply:
  - 3.3.3 Boundaries which appear to follow the center lines of streets, railroads or streams shall be construed to follow such lines.
  - 3.3.4 Boundaries indicated as following shore lines of lakes or ponds shall be construed to follow such shore lines.
  - 3.3.5 Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines.
  - 3.3.6 Boundaries which appear to run parallel to the features indicated above shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.
  - 3.3.7 Where a district boundary appears to be parallel to a street line and no dimension is given, the boundary shall be interpreted as being 200 feet from said street line.
  - 3.3.8 Where a district boundary line divides a lot in single ownership at the time such district is established, the Planning Board may allow by special permit the extension of the regulations for either portion of the lot not to exceed twenty (20) feet beyond the district line into the remaining portion of the lot. The yard requirements of the district in which the lot has road frontage shall apply to the entire lot.
  - 3.3.9 In cases of uncertainty or disagreement concerning the exact location of a district boundary line or where physical features existing on the ground are at variance with those shown on the Zoning Map or in other circumstances not covered herein, the district boundary shall be determined by the Building Inspector.

## **SECTION 4: USE REGULATIONS**

**4.1** Except as provided by law or in this Bylaw, no building or structure shall be erected and no building, structure or land, or part thereof shall be used for any purpose or in any manner other than for one or more of the uses set forth in the accompanying Table of Use Regulations, Section 4.11, as permitted by right in the district in which such building, structure or land is located, or which may be permitted in said district and so authorized by special permit granting authority as designated in Section 4.3 herein.

### **4.2 Repealed**

**4.3** Special permit granting authority and symbols used in the Table of Use Regulations, Section 4.11 herein, shall mean the following:

YES - Use permitted by right.

SPA - Use which may be authorized by special permit from the Board of Appeals in accordance with the provisions of Section 6.3 herein.

SPP - Use which may be authorized by special permit from the Planning Board in accordance with the provisions of Section 6.3 herein.

SPS - Use which may be authorized by special permit from the Board of Selectmen in accordance with the provisions of Section 6.3 herein.

NO - Specifically excluded or prohibited use.

**4.4** No more than one (1) principal building or use per lot shall be permitted.

**4.5** Every use permitted by right or authorized by special permit under the provisions of this Bylaw shall be subject to the State Building Code, State Sanitary Code and the town's Board of Health regulations and all other applicable statutes, bylaws, and regulations, including off-street parking, sign regulations, flood plain and wetland regulations and Section 4.3 as set forth in this Bylaw.

**4.6** Any use permitted in the portion of any zoning district overlaid by a Flood Plain District or Groundwater Recharge Area shall be permitted as regulated, subject to the restrictions set forth in Section 6.4 of this Bylaw.

**4.7** Where a structure or use might be classified under more than one of the listed uses, the morespecific classification shall determine permissibility; if equally specific the more restrictive shall govern.

**4.8** Subject to the limitations contained in this Bylaw a related minor use, building or structure which is customarily incidental and subordinate to any lawful principal use shall be permitted on the same lot with the building to which it is accessory, provided that it does not alter the character of the premises nor be detrimental to the neighborhood. Conditioned upon compliance with all applicable rules and regulations, there is no limit to the number of accessory uses and structures normally associated with the use and/or operation of the principal use.

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

**4.10** PROHIBITED USES

Notwithstanding any other provision of these bylaws, the following uses shall be prohibited in association with any building or land in any district of the Town, except as required to be permitted under applicable State or Federal Law:

- A. Any use of land, buildings or structures which creates excessive objectionable noise, fumes, odor, dust, electrical interference or undo traffic.
- B. The storage of any materials, supplies or equipment at any construction or demolition site for more than seven days prior to its use or more than seven days after completion of its use.
- C. The storage of any waste (including but not limited to damaged or excess materials and supplies or ruins, rubble or building fragments) created on any construction or demolition site, for longer than seven days after the completion or temporary termination of construction or demotion.
- D. The storage of any unregistered motor vehicle in a location visible from any abutting roadway.
- E. Any business or commercial activity that:
  - 1. Constitutes a significant hazard to the public health, welfare or safety;
  - 2. Presents a significant potential for fire or explosion; or
  - 3. Is significantly detrimental or injurious to the community, neighborhood, environment, or nearby property due to any emission, discharge or release of any noxious or offensive odor, fumes, smoke, gas, vapor, particulate matter, toxic substances, poisonous fluids or solids, radiation, bacterial or viral agent, excrement, refuse, organic matter, chemicals, cinders, dust, vibration, lighting, glare, noise, or signals that interfere with radio and/or television reception or broadcast.

4.11

**Table of Use Regulations**

A. PRINCIPAL USES DISTRICTS	DISTRICTS					
<u>Residential Uses</u>	R-4	R-2	R-1	R-C	B	M
1. One-Family Dwelling	YES	YES	YES	YES	NO*	YES
2. Two-Family Dwelling (new or conversion to two family) provided that the minimum lot area requirement shall be R-4 - 5 acres; R-2 - 3 acres; R-1 - 2 acres; R-C - 0.75 acres; R-C with a town sewer connection - 20,000 square feet. The lot area requirement shall be reduced to 1.5 acres in R-1 and to 0.75 acres in R-C if one “affordable” unit is created (see definition in Sec. 2.2). *One family dwelling and two-family dwelling units are permitted as of right to be located on a premise in the business district when all residential living areas are located above the ground floor of the structure.	SPP	SPP	SPP	SPP	NO*	SPP
3. Multi-Family Dwelling as regulated in Section 6.9 of this Bylaw	SPP	SPP	SPP	SPP	NO	NO
4.1 Conversion of a One or Two-Family Dwelling existing on January 1, 1976, and containing 2,000 square feet or more of livable floor area into a Multi-Family Dwelling or any use which may be authorized under this Bylaw by special permit in the district, or any combination of such uses, as regulated in Section 6.10 of this Bylaw.	NO	NO	NO	SPP	SPP	SPP
4.2 Conversion of a One or Two-Family Dwelling existing on January 1, 1976, and containing 4,000 square feet or more of livable floor area into a Multi-Family Dwelling or any use which may be authorized under this Bylaw by special permit in the district, or any combination of such uses, as regulated in Section 6.10 of this Bylaw.	SPP	SPP	SPP	N/A	N/A	N/A
4.3 Conversion of One or Two-Family Dwelling existing on January 1, 1990, into multi-family dwelling meeting the criteria for affordable housing (see definition in Sec. 2.2) provided that the house has at least 800 square feet average livable area per unit and the conversion meets the requirements of section 6.10.	SPP	SPP	SPP	SPP	SPP	SPP

<p>4.4 Conversion of an accessory structure existing before January 1, 1990, into one or more dwelling units provided:</p> <ol style="list-style-type: none"> <li>1. the minimum livable area is 300 sq. ft. for one unit and averages a minimum of 500 sq. ft. for two or more units</li> </ol>						
<b>A. PRINCIPAL USES</b>	<b>DISTRICTS</b>					
<u>Residential Uses</u>	R-4	R-2	R-1	R-C	B	M
<ol style="list-style-type: none"> <li>2. The minimum area of the lot on which it is situated conforms to the requirements under 2. above</li> <li>3. That alterations do not increase the size of the footprint of such pre-existing structure by more than 20%. Greater enlargements may not be used for housing.</li> <li>4. That 50% of all rental units so created be rented as affordable housing (see definition in Sec. 2.2.).</li> </ol>	SPP	SPP	SPP	SPP	SPP	SPP
<u>Institutional, Municipal and Community Uses</u>						
<ol style="list-style-type: none"> <li>5. Religious or educational use on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by religious sect or denomination, or by a non-profit educational corporation, as regulated in Section 6.14 of this Bylaw.</li> </ol>	YES	YES	YES	YES	YES	YES
<ol style="list-style-type: none"> <li>6. Municipal or governmental use, except as otherwise prohibited in this Bylaw.</li> </ol>	SPA	SPA	SPA	SPA	SPA	SPA
<ol style="list-style-type: none"> <li>7. Public utilities</li> </ol>	SPS	SPS	SPS	SPS	SPS	SPS
<ol style="list-style-type: none"> <li>8. Non-profit library or museum other than an art museum.</li> </ol>	SPS	SPS	SPS	SPS	SPS	SPS
<ol style="list-style-type: none"> <li>9. Non-profit art museum subject to special provisions set forth in Section 6.13.</li> </ol>	SPS	YES	SPS	SPS	SPS	SPS
<ol style="list-style-type: none"> <li>10. Health Care Facility, or other similar use established and operated under the State Environmental Code.</li> </ol>	SPS	SPS	SPS	SPS	SPS	SPS
<ol style="list-style-type: none"> <li>11. Child care facility.</li> </ol>	YES	YES	YES	YES	YES	YES
<u>Recreational Uses</u>						
<ol style="list-style-type: none"> <li>12. Golf, tennis, swimming, or skiing or sportsmen's club, livery or riding stable or other open space recreational use of similar character.</li> </ol>	SPS	SPS	SPS	SPS	SPS	SPS

13. Summer camp for children or family-type camp grounds established and operated under the State Sanitary Code Articles IV and VIII.	SPS	SPS	SPS	SPS	SPS	SPS
14. Private club, as defined in this Bylaw.	SPS	SPS	SPS	SPS	SPS	SPS
15. Boat house for rental of boats and canoes	SPS	SPS	SPS	SPS	SPS	SPS

A. PRINCIPAL USES	DISTRICTS					
	R-4	R-2	R-1	R-C	B	M
<u>Business, Industrial and Other Uses</u>						
16. Hotel or restaurant where food is served primarily for consumption within the building.	NO	NO	NO	NO	SPS	SPS
17. Tavern/Bar.	NO	NO	NO	NO	NO	NO
18. Boutique.	NO	NO	NO	NO	SPP	SPP
19. Commercial garage.	NO	NO	NO	NO	SPS	SPS
20. Place of amusement or assembly not otherwise provided for.	NO	NO	NO	NO	SPS	SPS
21. Sale or storage of feed, fuel, lumber or building supplies	NO	NO	NO	NO	SPS	SPS
22. Research laboratory or light manufacturing activity where the major portion of the product is retailed on the premises or by mail	NO	NO	NO	NO	SPS	SPS
23. The removal of sand, gravel, rock, loam, topsoil or other earth material as regulated in the Earth Removal Bylaw.	SPS	SPS	SPS	SPS	SPS	SPS
24. Office, bank, retail business or consumer service establishment, unless specifically otherwise regulated in this Bylaw.	NO	NO	NO	NO	YES	YES
25. Any lawful industrial, manufacturing, warehouse or utility use, including processing, fabrication, assembly or storage unless specifically otherwise regulated in this Bylaw. (a) Subject to the provisions of Section 6.3.12.	NO	NO	NO	NO	NO	SPS <sup>(a)</sup>
26. Commercial greenhouse, nursery, or landscape gardening.	NO	NO	NO	NO	YES	YES
27. The use of land or structures for the primary purpose of commercial agriculture, as defined by M.G.L. c.40A, §3, provided that: a. Any structures used as shelters for livestock or poultry are at least 100 feet from any lot boundary;						

<p>b. All grounds used for pasturing or other purposes involving unrestrained animals are properly fenced;</p> <p>c. The area of land under any such activity is at least five acres or is at least two acres if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generated at least \$1,000 per cultivated acre based on gross sales dollars. For such purposes land divided by a public or private way or a waterway shall be construed as one parcel.</p>	YES	YES	YES	YES	YES	YES
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A. PRINCIPAL USES	DISTRICTS					
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	R-4	R-2	R-1	R-C	B	M
28. Kennel or veterinary hospital	SPS	SPS	SPS	NO	NO	SPS
29. Cemetery	SPS	SPS	SPS	SPS	SPS	SPS
30. Funeral home	NO	NO	NO	SPP	SPP	NO
31. Junk yards, commercial race tracks, drive-in theaters, mobile home parks, billboards or off-premises signs, commercial gambling establishments.	NO	NO	NO	NO	NO	NO
32. Used car lots or other automobile establishments where vehicles for sale are stored outdoors.	NO	NO	NO	NO	NO	NO
33. Dump or other area for the disposal of rubbish, except officially designated areas for such purposes by the Town.	NO	NO	NO	NO	NO	NO
34. Penal institutions	NO	NO	NO	NO	NO	NO
35. Fast Food establishments	NO	NO	NO	NO	NO	NO
36. Adaptive re-use or rehabilitation of the principal buildings, associated outbuildings and structures, amenities or grounds of a Cottage Era Estate and the construction of improvements at a Cottage Era Estate, subject to the requirements of section 6.6.	SPS	SPS	NO	NO	NO	NO
37. Adult bookstore, adult motion picture theater, adult paraphernalia store, adult video store, establishment that displays live nudity for its patrons, or other form of adult business as described in <i>M.G.L. c.40A, §9A</i> , subject to the requirements of Section 6.26.	NO	NO	NO	NO	NO	SPS



38. Body Art Establishment holding a valid permit from the Tri-Town Health Department, subject to the requirements of Section 6.27.	NO	NO	NO	NO	NO	SPS
39. Commercial Solar Photovoltaic Installations, subject to the requirements of Section 6.28	SPS	SPS	SPS	SPS	SPS	SPS
40. Registered Marijuana Dispensary other than An RMD Retailer, subject to the requirements of Section 6.29	R-4 NO	R-2 NO	R-1 NO	R-C NO	B NO	M SPS
41. RMD Retailer, subject to the requirements of Section 6.29	R-4 NO	R-2 NO	R-1 NO	R-C NO	B SPS	M SPS
42. Marijuana Establishment other than a Marijuana Retailer, subject to the requirements of Section 6.30.	R-4 NO	R-2 NO	R-1 NO	R-C NO	B NO	M SPS
43. Marijuana Retailer, subject to the requirements of 6.30.	NO	NO	NO	NO	SPS	SPS
<b>B. ACCESSORY USES</b>						
1. Use of the upper story or stories of a building, whose principal use is commercial, for residential purposes.	R-4 NO	R-2 NO	R-1 NO	R-C NO	B YES	M NO
2. Home Occupations not otherwise provided for in Section 4.11.B.						
a. Type I (See Section 6.19.3)	YES	YES	YES	YES	YES	YES
b. Type II (See Section 6.19.4)	SPP	SPP	SPP	SPP	YES	YES
c. Type III (See Section 6.19.5)	YES	YES	YES	YES	YES	YES
<b>B. ACCESSORY USES</b>						
<b>DISTRICTS</b>						
3. Bed and Breakfast, provided that no kitchen facilities are maintained in the rooms; the accessory use is for the purpose of overnight lodging and breakfast by registered guest-occupants exclusively; and the premises shall not be commercially offered for meetings, luncheons, banquets, parties, weddings, fund-raising activities or similar functions or events.	R-4 YES	R-2 YES	R-1 YES	R-C YES	B YES	M YES
3.1 A structure accessory to a one-family or two-family dwelling that has been occupied without significant interruption as a dwelling since January 1, 1978, and has not been the subject of enforcement pursuant to Section 8.1 of this bylaw during this time.	SPP	SPP	SPP	SPP	SPP	SPP

4. Roadside farm stand serving agricultural, viticultural, horticultural, or floricultural products raised on the premises, provided that no products are displayed for sale within 20 feet of the street.	YES	YES	YES	YES	YES	YES
5. Greenhouse, tennis court, private garage, swimming pool, <i>boathouse</i> or any such other accessory facility not for commercial purposes.	YES	YES	YES	YES	YES	YES
6. The removal of earth materials, including stripping of topsoil, only when incidental to or required in connection with any of the following operations: a. The erection of a building or structure on the lot for which a building permit has been properly issued, and the construction of a private driveway. b. Any accessory use incidental to a permitted use, including cultivation, planting, or drainage of land, or landscaping. c. The construction of a private street in a subdivision approved by the Planning Board under the Subdivision Control Law. d. Municipal or governmental construction or operation.	YES	YES	YES	YES	YES	YES
7. The display of a sign or signs pertaining to a permitted use as regulated in Section 6.8 of this Bylaw.	YES	YES	YES	YES	YES	YES
8. The raising or keeping of domestic animals for use by the residents of the premises, not as a commercial venture, subject to the regulations of the Board of Health, provided all grounds used for pasturing or other purposes involving unrestrained animals shall be properly fenced.	YES	YES	YES	YES	YES	YES

**B. ACCESSORY USES** **DISTRICTS**

	R-4	R-2	R-1	R-C	B	M
9. The raising or keeping of household pets by the residents of the premises not as a commercial venture.	YES	YES	YES	YES	YES	YES
10. Temporary use of a mobile home for living purposes while a permanent dwelling is actively under construction on the same lot, for a period not exceeding six months, subject to the approval of the Board of Health, provided off-street parking requirements and yard requirements are met.	SPS	SPS	SPS	SPS	SPS	SPS

11. Mobile home of a type intended only for camping purposes, stored within sight of a public way in excess of 30 days in any calendar year provide it is not for living purposes.	SPS	SPS	SPS	SPS	SPS	SPS
12. Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in connection with scientific research and development or related production, provided the Planning Board finds that the proposed accessory use does not substantially derogate from the public good.	SPS	SPS	SPS	SPS	SPS	SPS
13. Off-street parking for residential vehicles registered on the premises.	YES	YES	YES	YES	YES	YES
14. Off-street parking - See regulations in Section 6.2.	YES	YES	YES	YES	YES	YES
15. Satellite dishes as regulated in Section 6.5 of this Bylaw.	YES	YES	YES	YES	YES	YES
16. Driveway with a maximum grade of ten (10) percent or less for any portion of its length as regulated by Section 6.16 of this Bylaw.	YES	YES	YES	YES	YES	YES
17. Driveway with a maximum grade of more than ten (10) percent for any portion of its length as regulated by Section 6.16 of this Bylaw.	SPP	SPP	SPP	SPP	SPP	SPP
17.1. Driveway exceeding 500 feet in length as regulated by Section 6.16 of this Bylaw.	SPP	SPP	SPP	SPP	SPP	SPP
18. Common driveway serving not more than two (2) lots with a maximum grade of ten (10) percent or less or any portion of its length as regulated by Section 6.16 of this Bylaw.	YES	YES	YES	YES	YES	YES
19. Common driveway serving more than two (2) lots but not more than size (6) lots as regulated by Section 6.16 of this Bylaw.	SPP	SPP	SPP	SPP	SPP	SPP
<b>B. ACCESSORY USES</b>	<b>DISTRICTS</b>					
	<b>R-4</b>	<b>R-2</b>	<b>R-1</b>	<b>R-C</b>	<b>B</b>	<b>M</b>
20. Temporary construction trailer to be used by workers on large projects.	SPS	SPS	SPS	SPS	SPS	SPS
21. Personal Wireless Service Facility as regulated in Section 6.25 of this Bylaw.	SPS	SPS	SPS	SPS	SPS	SPS
22. Temporary Structures erected for a period of less than 180 days	SPP	SPP	SPP	SPP	SPP	SPP

23. Craft Marijuana Cooperative, subject to the requirements of 6.30.	NO	NO	NO	NO	NO	SPS
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**SECTION 5: INTENSITY REGULATIONS**

- 5.1** Any building used for dwelling purposes, and any building or structure housing a principal permitted use, including any use authorized by a special permit, shall be so constructed and located on a lot as to meet the minimum requirements for lot area, frontage, the required front, side and rear yards, and the maximum height and maximum lot coverage by buildings as set forth in the Table of Dimensional Requirements, Section 5.5 herein, except as otherwise specifically provided in this Bylaw.
- 5.2** The land and yard space required for any new building or structure, or use, shall not include any lot area, frontage or yard area required by any other building, structure or use to meet the minimum requirements of this Bylaw.
- 5.3** No lot, nor any building or structure thereon shall be changed in size so as to violate lot area, frontage or yard requirements of this Bylaw.
- 5.4** The height regulations of buildings and structures shall not apply to buildings and structures used for commercial agriculture, churches, spires, chimneys, antennas, or other appurtenances usually required to be placed above roof level and not intended for human occupancy. Satellite television antennae shall conform with requirements in Section 6.15. Wireless telecommunications antennas and any associated structures shall conform with requirements in Section 6.25.

**5.5 Table of Dimensional Requirements**

District	<u>Minimum Lot</u>		<u>Min. Yards (ft.)</u>			<u>Maximum Bldg. Height</u>		<u>Max. Lot Coverage %</u> by Building
	<u>Area</u> (Sq.ft.)	<u>Width and Frontage</u> (feet)	Front	Side	Rear	Stories	Feet	
Residence R-4 (c) (d) (f) (h) (i)	174,240	300	50	50	50	2 1/2	35	10
Residence R-2 (c) (d) (f) (h) (i)	87,120	250	40	35	35	2 1/2	35	10
Residence R-1 (c) (d) (f) (h) (i)	43,560	175	40	35	35	2 1/2	35	10

Residence R-C (c) (d) (f) (i)	20,000	125	30	15	15	2 1/2	35	25
Business B (a) (b) (c) (d) (e) (i)	-----	-----	10	15	15	2 1/2	35	50
Manufacturing M (a) (b) (c) (d)	43,560	200	100	15	50	3	50	25

FOOTNOTES

- (a) All dimensional requirements prescribed for R-1 Districts shall also apply to dwellings hereafter erected in B or M Districts.
- (b) Side yards and/or rear yards shall be at least fifty (50) feet when adjacent to a Residence District.
- (c) Detached accessory buildings and garages shall conform to the setback requirements as set forth herein.
- (d) When a side or rear yard borders on a street, the minimum distance between the street and any type of building shall be as follows: R-1 - 40 feet, R-2 - 40 feet, R-4 - 50 feet, R-C - 30 feet, B - 10 feet and M- 100 feet.
- (e) Except that newly constructed building(s), except dwellings, in the Business Zone can only occupy thirty-five (35) percent coverage of the lot.
- (f) There will a 100-foot setback from the mean high-water line of Lake Averic, Lily Pond, Lake Mohawk and Lake Agawam for a structure, other than docks. There will be a 150-foot setback from the mean high-water line of the Stockbridge Bowl for a structure other than docks. Docks are not to extend into the lake more than twenty-five (25) feet from the mean high water line. Docks shall be a minimum of twenty (20) feet from any adjoining property and shall not exceed 200 sq. ft. in area.
- (g) An accessory building shall not exceed thirty (30) feet in building height or be larger in floor area than the ground floor area of the principal building; provided, however, that the Planning Board may, by Special Permit, authorize an accessory building not to exceed thirty-five (35) feet in building height.
- (h) The ratio of the combined floor areas of all buildings or structures on a lot to the area of the lot on which they are located shall not exceed 20%. Floor areas shall not include uninhabitable basement utility space but shall include porches and deck space.

- (i) In the event that a building is less than six (6) feet from a creek, river, stream, pond, or lake, the maximum building height shall be two and one half stories but not more than 25 feet maximum.

## **SECTION 6: SPECIAL PROVISIONS**

### **6.1 Nonconforming Structures, Uses and Lots**

#### **6.1.1 Exemptions**

Except as herein provided this Bylaw shall not apply to:

- a. Structures and uses lawfully in existence prior to the effective date of this Bylaw.
- b. A structure lawfully begun under a building permit or special permit issued before the first publication of notice of the required public hearing by the Planning Board on the applicable zoning bylaw or amendment.
- c. Any alteration, reconstruction, extension, or structural change to a one-family or two-family structure provided this does not increase the non-conforming nature of such structure. In the following circumstances an alteration, reconstruction, extension or structural change to a one-family or two-family structure shall not be considered an increase in the non-conforming nature of the structure and shall be permitted under zoning as by right.
  - 1) An alteration, reconstruction, extension or structural change which would comply with all current yard dimensional requirements, maximum building height, and percent lot coverage as regulated in Table 5.5 Table of Dimensional Requirements.
- d. The expansion or reconstruction of existing structures for the primary purpose of agriculture, horticulture, viticulture or floriculture.
- e. Nonconforming lots on record and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Law are exempt from the provisions of this Bylaw to the extent as provided in Section 6, Chapter 40A of the General Laws.

#### **6.1.2 Requirements for Extension, Reconstruction or Change In Use**

The Board of Selectmen may authorize by special permit, any change, extension, alteration or reconstruction of a pre-existing nonconforming structure or use to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent, if such change, extension, alteration or reconstruction will not be in greater nonconformity with open space, yard and off-

street parking requirements or any other requirement of this bylaw, provided that the Selectmen find in accordance with Chapter 40A of the General Laws, that such extension, alteration, reconstruction will not be more detrimental than the pre-existing nonconforming structure or use to the neighborhood. A special permit issued pursuant to this section may authorize the reconstruction of a pre-existing nonconforming structure that has been voluntarily or intentionally damaged or demolished only if such special permit is issued prior to such damage or demolition. For purposes of this subsection, the following examples shall be deemed not to be in greater nonconformity with open space and yard requirements:

- a. Enclosure up to a height of one story of a pre-existing deck, porch or comparable part of a pre-existing nonconforming structure provided that the structure's footprint does not change.
- b. Addition of a second story to a pre-existing nonconforming structure provided that the structure's footprint does not change.
- c. An extension, alteration or reconstruction that increases the footprint of a pre-existing nonconforming structure if said extension, alteration or reconstruction is no closer to the lot line than the closest point of the existing structure and the resulting structure complies with the applicable maximum lot coverage requirement set forth in Section 5.5.

#### 6.1.3 Reconstruction of Structures Damaged by Fire, Explosion or Other Catastrophe

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

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

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

#### 6.1.5 Abandonment

Any nonconforming use which has been abandoned or not used for two (2) years or more shall not be reestablished, and any future use of such premises shall conform to the provisions of this Bylaw.

### 6.1.6 Conditions, Safeguards and Limitations

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

## 6.2 Off-Street Parking Requirements

6.2.1 Off-street parking spaces shall be provided for every new structure, the enlargement of an existing structure, the development of a new use or any change in an existing use, in accordance with the following schedule:

- a. Hotel – two (2) parking spaces, plus one (1) parking space for each sleeping room.
- b. Accessory Home Occupation, Office or Roadside Stand -- one (1) space for each non-resident employee plus adequate off-street parking for clients or customers.
- c. Business District -- one (1) parking space for each 500 feet of gross floor area plus adequate space for employees, service and supply vehicles.
- d. Manufacturing or Wholesale Establishments -- one (1) parking space for each four (4) employees plus adequate space for customers, service and supply vehicles.
- e. Multi-Family Dwelling -- one and a half (1 1/2) parking spaces for each dwelling unit and adequate space for service and supply vehicles.
- f. Eating Establishments -- one (1) space for each three (3) seats based on the legal capacity of the facility plus two (2) spaces for each three (3) employees.
- g. Religious Uses -- one (1) space for every three (3) seats or fifty (50) square feet of seating area where fixed seating is not provided.
- h. Educational Uses -- one (1) space for every twelve (12) classroom seats or one (1) space for every three (3) auditorium seats, whichever is greater.
- i. Library/Museum -- one (1) space for each three hundred (300) square feet of gross floor area plus one (1) space per employee.
- j. Non-Residential Health Care Facilities -- five (5) spaces for each professional on duty plus one space per employee.
- k. Residential Health Care Facilities -- one (1) space for every two (2) beds.



- l. Funeral Home -- one (1) space for each one hundred (100) square feet of gross floor area plus one (1) space per employee.
- m. Bed & Breakfasts -- two (2) parking spaces plus one (1) for each guest room.

For uses not specifically listed, the special permit granting authority, or, if no special permit is required, the building inspector, shall determine the number of spaces required based upon the most similar use(s) that is(are) listed and the most recent edition of the ITE Parking Generation Manual. In all cases, sufficient parking shall be provided to accommodate all visitors, patrons and customers on an average peak day.

- 6.2.2 The minimum number of required off-street parking spaces as set forth in Section 6.2.1. may be reduced by special permit from the Planning Board upon determination that special circumstances render a lesser provision adequate for the parking needs in any particular case.
- 6.2.3 In cases when two (2) or more uses are in close proximity to a parking area capable of accommodating parking demand in terms of numbers and use patterns, shared parking may be approved by the special permit granting authority, or, if no special permit is required, the building inspector, conditioned on permission of the parking lot owners, evidence of sufficient parking, legal documentation establishing an operations and maintenance agreement, and such other documentation that the special permit granting authority or, if no special permit is required, the building inspector, determines is needed to demonstrate that the shared parking can be accomplished safely and without adverse impact to the public convenience.
- 6.2.4 An area of 162 square feet (9' x 18') shall be considered as one (1) off-street parking space.
- 6.2.5 All required parking spaces shall be provided with unobstructed access to and from a street and shall be properly maintained in such manner as to permit them to be used at all times.
- 6.2.6 Any parking area of more than five (5) parking spaces shall be located to the rear of the building setback line and at least fifty (50) feet from any side or rear property line, unless specifically otherwise authorized by special permit from the Planning Board. Such parking area shall be suitably screened on any property line which abuts upon a residential district or a site in residential use.

### **6.3 Special Permits**

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

Any board designated as the special permit granting authority in this Bylaw may hear and decide applications for special permits upon which such board is specifically authorized to act under this Bylaw in accordance with the provisions of Section 9, Chapter 40A of the General Laws.

### 6.3.2 Sketch Plan Review

The purpose of sketch plan review is to give the special permit granting authority, or, if no special permit is required, the building inspector, and the applicant an opportunity to discuss the proposed project prior to the submission of a formal application and a significant commitment of time and money on the part of the applicant.

The Town Clerk, upon receipt of sketch plan materials, shall forward them to the appropriate permit granting authority. The permit granting authority shall place the proposed project on its next available meeting agenda at which time the project shall be discussed.

At a minimum, the applicant shall submit:

- \* a map showing the important existing natural and manmade features in and around the site; and
- \* a sketch plan showing the major features of the proposal.

### 6.3.3 Required Hearing and Notice

Special permits may only be issued following public hearings held within sixty-five (65) days after filing of an application with the special permit granting authority. Notice of public hearing shall be given by the Board holding the hearing by publication in a newspaper of general circulation in the town once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing and by posting such notice in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of such hearing, and by mailing it to "Parties in Interest" as provided in Section 11, Chapter 40A (G.L.) which include the petitioner, abutters, owners of land directly opposite any public or private street or way and abutters to abutters within 300 feet of the property line, all as they appear on the most recent applicable tax list, the Planning Board, and the Planning Board of every abutting municipality.

### 6.3.4 Review By Other Boards and Agencies

The special permit granting authority shall within five (5) days after receipt of an application for a special permit transmit a copy thereof for review to the Board of Health, Board of Selectmen (if applicable), the Planning Board (if applicable), the Conservation Commission, the Sewer and Water Commission, and any other municipal board or agency, at the discretion of the special permit granting authority, by placing a copy of the

application in the Board's mail box. At the same time, the special permit granting authority shall send notice to the chairman of each board at his or home address (1) indicating that the application has been so transmitted and (2) notifying the chairman of the date of the public hearing on the application. The public hearing shall be held at least thirty-five (35) days after the application has been transmitted to the boards. Any board not ready with its recommendations by the date of the public hearing may request prior to the hearing or at it that the special permit granting authority continue the hearing for the purpose of receiving that board's recommendations. In the event that any such board or agency fails to make recommendations within thirty-five (35) days of receipt by such board or agency of the petition or fails to request additional time as provided above, its failure to respond shall be deemed lack of opposition thereto.

#### 6.3.5 Review by Town Departments

Within five (5) days of receipt of an application for a special permit, the special permit granting authority may refer an application for a special permit to any municipal department for review and comment. Such review and comment shall be made within thirty five (35) days of receipt by the department of the special permit application. In the event that any such municipal department fails to comment within thirty-five (35) days of receipt by such municipal department of the application, its failure to respond shall be deemed to constitute lack of opposition to the special permit.

#### 6.3.6 Findings Required

Before granting a special permit for any use requiring such permit under the provisions of this Bylaw, the special permit granting authority shall find that the proposed use:

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

#### 6.3.7 Conditions, Safeguards and Limitations

Special permits may be issued subject to such conditions, safeguards or limitations as the special permit granting authority may impose for the protection of neighboring uses or otherwise serving the purposes of this Bylaw. Such conditions, safeguards or limitations may include, but are not limited to, the following:

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

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

#### 6.3.8 Site Plan Required

A site plan is required for any principal non-residential use in a residential zoning district.

Applicants will submit application on forms established by the Board of Selectmen to the appropriate special permit granting authority and Town Clerk. The site plan prepared by a registered professional engineer or registered landscape architect on a 1" = 40', scale shall clearly illustrate the following:

- a. Grading and drainage plan showing existing and proposed contours. Two (2) foot contour intervals shall be required on areas proposed for development and five (5) foot contours shall be required elsewhere on the property. Drainage shall be analyzed utilizing either the TR-20 or TR-55 method and the plan shall show compliance with the Commonwealth of Massachusetts Stormwater Management Policy.
- b. Location, size and height of all proposed and existing structures and buildings together with schematic elevations;
- c. Location, size and height of all signs;
- d. Complete proposed landscaping plan;
- e. Location and extent of all open space;
- f. Location, size and type of all utilities and sewage disposal systems, including soil and percolation tests demonstrating the suitability of a specific location(s) for sub-surface sewage disposal in compliance with the State Sanitary Code.

- g. Test well results or other data suitable to demonstrate the presence of an adequate water supply.
- h. Location, size and number of parking spaces of parking lot, of entrances, exits, aisles, circulation patterns and directional signage; and
  - 1. A written statement describing in detail the parking generating characteristics of the land use.
  - 2. A plan drawn to scale showing the various uses within respective floor areas of the building or structure.
  - 3. The number of employees during the largest work shift.
  - 4. The number of customers, patrons or other visitors expected to be served.
  - 5. Any other statements to show the actual extent of off-street parking space required or generated by particular use.
- i. Location, size, number and type of all lights.
- j. Every plan for a proposed new, altered, or expanded use which provides for a total of thirty-five (35) or more parking spaces shall indicate thereon the location of and provision for:
  - 1. Parking spaces and access routes
  - 2. Curbing and wheel stops
  - 3. Pavement markings
  - 4. Surfacing
  - 5. Screening and landscaping
  - 6. Lighting
  - 7. Drainage
  - 8. Loading areas/facilities
  - 9. Other pertinent data reasonably required by the special permit granting authority or its designee.
- k. Any land use involving a fleet of vehicles for operation of the use shall be required to provide information demonstrating provision of space for such fleet before issuance of an occupancy permit for said use.
- l. In addition, applicants shall submit reports to the special permit granting authority regarding off-site and on-site traffic generation and levels of service during construction and projections for such generations and levels of service for two (2),

five (5), ten (10) years after completion of a project, prepared by qualified engineers.

An application for special permit review shall be accompanied by a fee in an amount which shall be established by the Board of Selectmen and posted in the Town Hall.

Any application for a special permit which does not require a site plan as set forth above shall be accompanied by a plan drawn to scale indicating the location, size and height of proposed buildings, site improvements, and containing such other information as may be required by the special permit granting authority.

#### 6.3.9 Decisions and Vote Requirements

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

A special permit issued by a special permit granting authority shall require a two-third vote of boards with more than five (5) members, a vote of at least four (4) members of a five (5) member board and a unanimous vote of a three (3) member board.

#### 6.3.10 Expiration of a Special Permit

The rights granted by any special permit granting authority shall not take effect until the notice of decision filed with the Town Clerk has been recorded in the Registry of Deeds, as required in MGL 40A Section 11. A special permit shall lapse two (2) years from the date of decision if a substantial use or construction has not begun under the permit by such date, except for good cause as determined by the special permit granting authority.

#### 6.3.11 Performance Guarantees

The special permit granting authority may, in appropriate cases, require an applicant to furnish a financial guarantee for performance of any conditions set forth in the special permit. The special permit granting authority may adopt rules and regulations governing standards and procedures for approving and releasing such financial guarantees.

### **6.4 Flood Plain Overlay District**

#### 6.4.1 Purposes

The Purposes of the Flood Plain Overlay District (FPOD) are to:

- a. Ensure public safety through reducing the threats to life and personal injury;
- b. Eliminate new hazards to emergency response officials;
- c. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- d. Eliminate costs associated with the response and cleanup of flooding conditions;
- e. Reduce damage to public and private property resulting from flooding waters; and
- f. To ensure compliance with the National Flood Insurance Program (NFIP).

#### 6.4.2 District Boundaries

The Flood Plain Overlay District is herein established as an overlay district. Where there is an inconsistency between the requirements of this section and the regulations otherwise applicable in the underlying district or other applicable overlay district, the more restrictive provision shall be deemed to apply.

#### 6.4.3 Requirements for Development in the FPOD

- a. All development in the FPOD, including structural and non-structural activities, whether permitted by right or by Special Permit must be in compliance with the following requirements:
  - 1. In the regulatory floodway, designated on the Flood Boundary and Floodway map, and in Zones A1-30, designated on the FIRM, encroachments, including fill, new construction, substantial improvements, and other development are prohibited, unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
  - 2. In Zones A and A1-30, 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.
  - 3. Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant shall produce any already existing, reasonable, base flood elevation data

to be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation data to be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the Massachusetts Building Code.

4. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.
  5. All subdivision proposals 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.
  6. All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated to or above the base flood level, and all new construction or substantial improvements of non-residential structures must have the lowest floor (including basement) elevated or floodproofed to or above the base flood level.
  7. Where watertight floodproofing of a structure is permitted, a registered professional engineer or architect shall certify to the Building Inspector that the methods used are adequate to withstand the flood depths, pressure and velocities, impact and uplift forces and other factors associated with the 100-year flood.
  8. No development shall obstruct or divert the flood flow, reduce natural storage or increase storm water runoff in such a manner that water levels on other land are substantially raised or danger from flooding increased;
  9. The carrying capacity of any altered watercourse shall be maintained;
  10. The proposed development, including public utilities and facilities, shall be designed to provide adequate drainage and minimize any potential flood damage. Any new and replacement water and sewer systems shall be so located and designed as to avoid impairment from floodwaters.
  11. Safe vehicular and pedestrian movement to, over and from the premises is provided in the event of flooding.
- b. The Building Inspector shall obtain and maintain records of elevations and flood proofing levels for all new or substantially improved structures as provided in the State Building Code, and keep records whether elevated structures contain a basement or not.

#### 6.4.4 Notification Requirements



The Building Inspector shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities
- NFIP State Coordinator, Massachusetts Department of Conservation and Recreation
- NFIP Program Specialist, Federal Emergency Management Agency, Region I

## **6.5 Lake and Pond Overlay District (LPOD)**

### **6.5.1 Purpose**

The Lake and Pond Overlay District (LPOD) is intended to protect and enhance the principal lakefronts and shorelines of the Town of Stockbridge; to maintain safe and healthful conditions; to prevent and control water pollution; and to preserve habitat, vegetative cover and natural beauty.

### **6.5.2 Description**

This LPOD shall include:

- The lakefront of the Stockbridge Bowl, Lily Pond, Echo Lake, Mohawk Lake and Agawam Lake and one hundred fifty (150) feet back from the high water mark of these waterbodies;
- The shoreline of the Housatonic River and its permanent tributaries and one hundred fifty (150) feet back from the high water mark of the River and its permanent tributaries; and
- Kampoosa Bog, which shall include all the contiguous or hydrologically connected Wetland Resources Areas as defined under the Massachusetts Wetland Protection Act and Regulations (310 CMR 10), draining ultimately into Kampoosa Brook, upstream of the earthen berm that extends easterly from Route 7 shown on Stockbridge tax map #26, lot #49 and one hundred fifty (150) feet back from their boundaries.

### **6.5.3 Relation to Other Districts**

The LPOD is an overlay district mapped over other districts. Where there is an inconsistency between the requirements of Section 6.5 and the regulations otherwise applicable in such other districts, the more restrictive provision shall be deemed to apply.

### **6.5.4 Applicability**

a. Jurisdictional Activities

Except as otherwise provided in Section 6.5, no building, structure or land use activity shall be permitted except pursuant to a special permit issued by the Planning Board pursuant to the requirements of Sections 6.3 and 6.5.

For the purposes of Section 6.5, “land use activity” shall mean any significant change in the physical characteristics of land or the physical or chemical characteristics of the wastewater produced from a building or structure, but excluding any exempt uses listed in paragraph b of this subsection. Except as otherwise provided in said paragraph b, “land use activity” shall include, but not be limited to: any extension or alteration of an existing structure; any removal of vegetation; any road or driveway; any excavation for the purpose of removing earth materials off-site; and any facility designed to prevent or mitigate the impacts of stormwater or associated drainage.

b. Exempt Activities

The following activities do not require a special permit, but must nevertheless comply with the requirements of subsection 6.5.9:

- Any principal or accessory use, otherwise permitted by this Bylaw, to be located within an existing structure, provided that any extension or alteration of such structure does not increase the height of the structure and is no closer to the high water mark than the existing structure; the resulting structure complies with applicable yard, lot coverage and floor area requirements of Section 5.5; and the chemical characteristics of any wastewater produced from such use are not significantly changed;
- Ordinary repair or maintenance of, or interior alterations to, existing structures;
- Removal of dead, diseased or dying trees and vegetation;
- Ordinary pruning or maintenance of shrubs or trees;
- Other gardening uses that do not involve the cutting of shrubs or trees;
- Structures under one hundred (100) square feet in footprint area; and
- Recreational, municipal or governmental uses that, by their nature, must be located within the LPOD.

6.5.5 Prohibited Activities

The following activities shall be prohibited within the LPOD:

- The storage or dumping of any waste material, junk, refuse, or other debris;
- The discharge or application of wastewater or any pollutant except as specifically permitted by the Board of Health; and
- The relocation of perennial or intermittent watercourses, the filling or reclaiming of wetlands and watercourses, the mining or off-site removal of topsoil, subsoil, clay, peat, gravel, sand, shale or other similar materials.
- The painting of a dock with creosote or oil-based paint.
- The installation or construction of on-lot sewage disposal systems, such as septic tanks, cesspools, leaching fields, or drainage systems for waste water from showers, sinks or other indoor or outdoor sources; provided, however, that such a system may be authorized by special permit if the Planning Board determines that there is no practical way to locate it outside the LPOD.

#### 6.5.6 Required Findings

The Planning Board shall approve a special permit for any building, structure or land use activity within the LPOD if it finds that the building, structure or land use activity meets all application and site plan requirements set forth in Section 6.3 and subsection 6.5.8 and all applicable land use and development standards set forth in subsection 6.5.9.

#### 6.5.7 Procedure

The procedure for review and approval under this section shall be as set forth in Sections 6.3 and 6.5.

A Site Plan satisfying the requirements of subsections 6.3.7 and 6.5.8 is required for any proposed building, structure or land use activity within the LPOD for which a special permit is required.

Special permit applications and site plans shall be submitted to the Board of Selectmen for its review and comment to the Planning Board.

#### 6.5.8 Application and Site Plan Requirements

In addition to the application and site plan data required by Section 6.3, an Applicant for a special permit pursuant to Section 6.5 shall submit the following information to the Planning Board for its review:

- Boundaries of the property plotted to scale;

- Existing watercourses;
- A grading and drainage plan, showing existing and proposed contours at a two (2) foot contour in the area of activities for which a special permit under section 6.5 is being sought, and a five (5) foot contour elsewhere;
- The location and description of existing and proposed features;
- The location, design, and construction materials of all driveway, parking and loading areas;
- The location of all stormwater drainage areas (catchments) for each distinct receiving water/wetland area within and/or downgradient of activities for which a special permit under section 6.5 is being sought;
- Soils-based stormwater infiltration rates using the following table:

<b>Texture Class</b>	<b>NRCS Hydrologic Soil Group</b>	<b>Design Infiltration Rate (inches per hour)</b>
Sand	A	8.27
Loamy Sand	A	2.41
Sandy Loam	B	1.02
Loam	B	0.52
Silt Loam	C	0.27
Sandy Clay Loam	C	0.17
Clay Loam	D	0.09
Silty Clay Loam	D	0.06
Sandy Clay	D	0.05
Silty Clay	D	0.04
Clay	D	0.02

- Plans and specifications for soil erosion and sedimentation control measures;
- A timing schedule indicating anticipated starting and completion dates, the sequence of anticipated tasks, and the duration of exposure of each disturbed area prior to the completion of effective erosion and sediment control measures;
- For any land use activity involving the construction or expansion of a building or structure, the paving of roads, or the creation of driveway, parking and loading area, the results of a pollutant loading model demonstrating that stormwater flow on or from the site will not result in a discharge of any pollutant in violation of subsection 6.5.5. Such model shall evaluate the loadings of nutrients (nitrogen and phosphorus), bacteria, metals and total suspended solids, the expected removal rates associated with any stormwater treatment facility and the resulting loads to the LPOD.

The site plan shall be developed subsequent to, and in accordance with an existing natural resources conditions inventory that shows topography including steep slopes (greater than 10%), severe slopes (greater than 20%), soils limitations (constraints related to septic system suitability and erosive characteristics as mapped by the USDA, Natural Resources Conservation Service) and vegetation.

#### 6.5.9 Land Use and Development Standards

All buildings, structures and land use activities shall comply with the following standards:

##### a. Development of Lots

- The minimum setback from the high water mark for buildings and structures shall be one hundred (100) feet.
- The maximum lot coverage by buildings, structures and impermeable surfaces within the LPOD shall be fifteen (15) percent of the total lot area within the LPOD.
- All driveway, parking and loading areas shall be constructed of permeable materials.

##### b. Erosion and Sedimentation Control

- Natural vegetation shall be maintained on at least seventy-five percent (75%) of the total lot area within the LPOD.
- Grading shall not result in the creation of slopes greater than twenty percent (20%) within the LPOD.
- Activities that result in slopes exceeding ten percent (10%) shall incorporate the use of staked haybales, siltation fences, sedimentation basins and silt traps to control sedimentation and erosion during construction. Such practices shall be implemented within twenty-four (24) hours of clearing and excavation and shall be maintained until completion of all such activities.
- All activities shall be completed within 90 days from original clearing and excavation, except as otherwise authorized by the Building Inspector, in order to minimize exposure to sedimentation and erosion.
- In cleared areas surrounding the creation of new impermeable surfaces, temporary or permanent vegetative landscaping shall be employed within seven (7) days of initial clearing and excavation.

- Stockpiled soils or other erodible materials shall be securely covered and/or vegetated to avoid erosion and sedimentation during construction.

c. Stormwater Management

- Upon completion of activities for which a special permit under Section 6.5 has been granted, stormwater runoff rates shall match pre-development (natural) conditions for the two-, twenty-five- and one-hundred- (2-, 25- and 100-) year events in each catchment area.
- Upon completion of activities for which a special permit under Section 6.5 has been granted, annual groundwater recharge rates shall match pre-development (natural) conditions to preserve groundwater supplies and to protect baseflow to downgradient streams, lakes and wetlands.
- Upon completion of activities for which a special permit under Section 6.5 has been granted, additional stormwater recharge shall be provided in an amount equal to the total volume of consumptive uses of groundwater withdrawals, such as drinking water and irrigation, on the site.
- Stormwater treatment using bioretention areas, constructed wetlands or organic filters shall be provided for the first flush (one-inch) rainstorm from roads, other paved areas and metallic roofs prior to infiltration/recharge. Stormwater treatment facilities may be designed to include both static storage and dynamic infiltration (infiltration that occurs during the peak 2 hours of the design storm event).
- Pollutant loading shall be less than the following receiving water standards:
 

a. Phosphorus	0.08 mg/liter
b. Bacteria	200 colonies/100 milliliters
c. Metals	applicable federal and state drinking water standards

d. Cutting

- Except as otherwise permitted by this subsection, no vegetation may be removed within thirty-five (35) feet extending inland from any point along the high water mark. This area shall be maintained as an undisturbed natural buffer strip.
  - For the purpose of water access, a contiguous clear-cut opening in the buffer strip, not to exceed thirty-five (35) feet in width or twenty percent (20%) of the lot's frontage along the water, whichever is less, shall be permitted. Such opening shall not be less than thirty (30) degrees from perpendicular to the water's edge.

e. Docks

- All docks shall be kept in good repair and free from defects that might cause a hazard to person or watercraft.

**6.6 Cottage Era Estate Adaptive Re-Use or Rehabilitation**

6.6.1 Purpose

The purpose of this section is to authorize the Board of Selectmen to permit, by Special Permit, the adaptive re-use or rehabilitation of certain Cottage Era Estates in the R-4 and R-2 Districts, while encouraging the preservation, restoration or improvement of the original features and character of their principal buildings, associated outbuildings and structures, open spaces, views, landscape features, gardens and recreational facilities. Any Special Permit issued pursuant to this section may authorize new construction, provided that such construction is harmonious with such original features of the Cottage Era Estate.

6.6.2 Applicability

The Board of Selectmen may issue a Special Permit pursuant to this section to authorize any, or a combination of, the following uses as part of an adaptive re-use or rehabilitation of a Cottage Era Estate, whether or not such uses are otherwise permitted under section 4.11:

- a. One-family dwelling, as provided in section 4.11.A.1.
- b. Open space recreational use, as provided in section 4.11.A.12.
- c. Hotel or restaurant where food is served primarily for consumption within the building, as provided in section 4.11.A.16.
- d. Commercial greenhouse, nursery, or landscape gardening, as provided in section 4.11.A.27.
- e. Agriculture, viticulture, horticulture or floriculture satisfying the requirements of section 4.11.A.28.
- f. Conference and retreat facilities, including facilities for private parties and weddings.
- g. Studio where artists can work and display their art.
- h. Resort; provided, however, that for the purposes of this Section, a Resort shall be

defined as a use that includes a building or group of buildings with sleeping rooms for 20 or more transient guests; food service in a public dining room; indoor and outdoor recreational facilities; and a range of activities and amenities intended to be provided to guests predominantly on-site for the duration of their stay.

### 6.6.3 Procedure

- a. The procedure for review and approval of a Special Permit under this section shall be as set forth in this section and section 6.3.
- b. An applicant seeking a Special Permit pursuant to this section shall be required to submit to the Board of Selectmen a site plan for any proposed use to be authorized by Special Permit pursuant to this section. In addition to the application and site plan data required for a Special Permit by other sections of this Bylaw, the applicant shall submit the following information, if applicable, to the Board of Selectmen for its review:
  - Except when the re-use or rehabilitation involves only minor changes in architectural features, a site plan shall contain property lines, the buildings' footprints, significant site features such as fences, masonry walls, walkways, driveways and other accessory uses;
  - All adaptive re-use or rehabilitation involving (i) new construction at a Cottage Era Estate, or (ii) a change to the exterior of a building, shall require a façade elevation drawing for every façade elevation that is being changed or re-designed, showing such proposed changes or new designs. Each change or new element and all new materials shall be clearly identified on the elevation.
- c. Any Special Permit issued pursuant to this section may contain conditions, safeguards or limitations, pursuant to section 6.3.7, restricting the number of persons who may be on the premises at any one time.
- d. Any special permit issued pursuant to this section in connection with a Cottage Era Estate that has a principal structure located entirely within the R-4 District may authorize an addition to the principal structure located entirely within the R-4 District, as such principal structure existed on May 20, 2002, or a new structure that is connected to the principal structure by an enclosed connector, to exceed the applicable Maximum Building Height specified in Section 5.5 by three (3) feet for every fifty (50) feet (prorated) that such addition or new structure is horizontally distant from the closest point of any lot line, up to a maximum of four (4) stories but not to exceed fifty (50) feet; provided, however that the



elevation above sea level of the roof of the addition or new structure at its highest point shall not exceed the elevation above sea level of the highest point of the roof of such principal structure, as it existed on such date; and, provided further that any waiver of the Maximum Building Height pursuant to this paragraph may be applied to not more than one addition or new structure on the entire Cottage Era Estate. No special permit issued pursuant to this section may authorize an addition or new structure that contains a gross floor area larger than that of the principal structure, as it existed on May 20, 2002.

#### 6.6.4 Required Findings

The Board of Selectmen may issue a Special Permit pursuant to this section only if it finds that:

- a. The property qualifies as a Cottage Era Estate, as defined in section 2.2;
- b. The Lot on which the proposed use(s) will be located is at least 75 percent of the total combined area of all contiguous land held in common ownership with the Lot on the effective date of this section and has at least 75 percent of the total combined frontage of all contiguous land held in common ownership within the Lot on the effective date of this section;
- c. No new structures will be erected in the area between the two shortest lines beginning at a point on either side of the principal building closest to its respective side lot line and extending to a street upon which the lot has frontage;
- d. The proposed use will alter existing buildings, structures, or grounds to the least extent practicable;
- e. The distinguishing original qualities or character of the principal building will not be destroyed; and the removal or alteration of stylistic features or examples of skilled craftsmanship that characterize a building or structure or the grounds will be treated with sensitivity;
- f. Except as specifically authorized by the Special Permit, no historic material or distinctive architectural features will be removed or altered;
- g. Except as specifically authorized by the Special Permit, deteriorated architectural features will be repaired rather than replaced; and, in the event replacement is authorized, the new material will match the material being replaced in composition, design, color, texture, and other visual qualities;
- h. Repair or replacement of missing architectural features will be based to the extent practicable on accurate duplications of features, substantiated by historic, physical, or pictorial evidence;

- i. All off-street parking will be screened from abutters and adjoining streets;
- j. Unless required by the Building Code, no new detached structures will be erected within two hundred (200) feet of the principal building on the Lot, except for minor accessory structures, the function of which cannot be practicably achieved outside such two hundred (200) foot area;
- k. Outdoor lighting will be kept to the minimum intensity needed. All outdoor lighting fixtures or lamps will be shielded in such a manner that:
  - The edge of the lamp shield is below the light source;
  - Direct radiation (glare) from the light source is confined within the boundaries of the property;
  - Direct radiation is prevented from escaping toward the sky; and
  - No high intensity discharge lighting will be used;
- l. There shall be no outside broadcasting of amplified sound, including from under tents or other temporary structures; and
- m. The proposed use(s) will meet all applicable standards set forth elsewhere in this Bylaw.

## **6.7 Surface Water Supply Protection Overlay District**

### **6.7.1. Purpose**

The purpose of the Surface Water Supply Protection Overlay District (SWSPOD) is to protect the drinking water supply of the Town of Stockbridge by restricting and controlling activities that are likely to have a significant adverse impact, immediate or cumulative, upon the water quality of surface waters used as sources of drinking water supply.

### **6.7.2 Description**

The SWSPOD shall include (a) the land area between Echo Lake (also known as Lake Averic) and the upper boundary of its bank; (b) the land area within a 400 foot lateral distance from the upper boundary of the bank of Echo Lake; and (c) the land area within a 200 foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body of Echo Lake.

The SWSPOD is an overlay district mapped over other districts. It is shown on a map entitled Surface Water Supply Protection Overlay District (prepared for Annual Town Meeting, May 20, 2013), which is incorporated into these Zoning Bylaws by reference.

Where there is an inconsistency between the requirements of Section 6.7 and the regulations otherwise applicable in such other districts, the more restrictive provision shall be deemed to apply.

### 6.7.3 Prohibited Uses

The following uses and activities are prohibited within the SWSPOD:

- a. All underground fuel storage tanks;
- b. Above-ground storage of liquid hazardous material as defined in Chapter 21E of the *Massachusetts General Laws*, or liquid propane or liquid petroleum products, except as follows:
  1. The storage is incidental to:
    - a. Normal household use, outdoor maintenance, or the heating of a structure;
    - b. Use of emergency generators; or
    - c. A response action conducted or performed in accordance with said Chapter 21E and 310 CMR 40.000 and that, pursuant to 314 CMR 5.05(14), does not require a ground water discharge permit; and
  2. The storage is either in container(s) or above-ground tank(s) within a building, or outdoors in covered container(s) or above-ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater. However, these storage requirements do not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline if the replacement is performed in accordance with applicable state and local requirements.
- c. Wastewater treatment or disposal works subject to 314 CMR 3.00 or 5.00, except the following:
  1. The replacement or repair of an existing wastewater treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works;
  2. Wastewater treatment or disposal works, permitted in accordance with 314 CMR 5.00, for the treatment of existing sanitary sewage discharges that are not in compliance with 310 CMR 15.000, if the facility owner demonstrates that there are no feasible siting alternatives outside of the

SWSPOD; provided, however, that any such facility shall disinfect the effluent;

3. Wastewater treatment works, approved by the Massachusetts Department of Environmental Protection, for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.05(13);
  4. Discharges by public water suppliers of waters incidental to water treatment processes.
- d. Sand and gravel excavation operations;
  - e. Uncovered or uncontained storage of fertilizers;
  - f. Uncovered or uncontained storage of road or parking lot de-icing and sanding materials;
  - g. Storage or disposal of snow or ice, removed from highways and streets outside the SWSPOD, that contains deicing chemicals;
  - h. Uncovered or uncontained storage of manure;
  - i. Cemeteries (human and animal) and mausoleums;
  - j. Burial within 100 feet of the high water mark of Echo Lake or of any tributary thereto;
  - k. Land uses that result in the rendering impervious of more than 15% or 2500 square feet of any lot, whichever is greater;
  - l. Stabling, hitching, standing, feeding or grazing of livestock or other domestic animals within 100 feet of the bank of Echo Lake or of any tributary thereto.

## **6.8 Sign Regulations**

### **6.8.1 Introduction**

The Town of Stockbridge is a classic New England town with a strong central village consisting of a well-balanced mix of residential and commercial uses sharply contrasting with and benefitting from the openness and beauty of the surrounding lands. The village center and the surrounding lands create a visually rich and satisfying community character that all new signs should seek to complement and enhance.

### 6.8.2 Purpose

The purpose of these sign regulations is to encourage the effective use of signs as a means of communication; to maintain and enhance the existing community character of the Town; to encourage and support the Town's ability to attract sources of commerce; and to improve pedestrian and traffic safety.

### 6.8.3 Applicability

No signs or advertising devices of any kind or nature shall be erected on any premises or affixed to the outside of any structure or be visible from the outside of any structure and/or placed on or over public property, except as specifically permitted by Section 6.8.

### 6.8.4 Definitions Applicable to Section 6.8

**Billboard** – A sign that directs attention to a business, commodity, service, or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

**Directional Sign** – A sign directing, guiding, or controlling traffic and parking on private property but bearing no advertising matter. Note: A business name, organization name, or other name, text, or logo is considered advertising matter.

**Municipally Owned Directory Sign** – A permanent sign erected and maintained by the Town of Stockbridge, with space available on a rental basis on such terms as the Selectmen may, from time to time establish.

**Parapet Wall** – A parapet wall is a wall or part of a wall which extends above the roof of a building.

**Public Way** – a street, road, or path that has been accepted by the Town or which is a private street, road, or path that is open to public use.

**Sign** – Any structure or device used for the purposes of visual communication, which identifies or calls attention to any premises, person, product, activity, business or use of a property.

The following shall not be included in the application of the regulations herein for the purposes of this Bylaw Section:

- a. Legal notices, identifications, information, directional or warning signs erected or required by governmental agents or bodies; or various warning signs as commonly used by property owners;
- b. Memorial signs or tablets not exceeding one (1) square foot in area;

- c. Signs directing, guiding or controlling traffic and parking on private property but bearing no advertising matter. Note: A business name, organization name or other name, text or logo is considered advertising matter;
- d. Signs painted on or attached to duly registered motor vehicles except when the primary use of the vehicle is for a display rather than transportation and when the vehicle is usually within sight of a public way;
- e. Temporary signs on the inside of glass of store windows as commonly used in retail business, or such signs of special events or for political candidates.

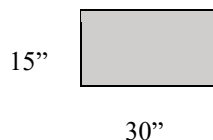
**Sign, Accessory** – Any sign that advertises or indicates the person occupying the premises on which the sign is erected or maintained, or the business transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter. Signs located inside a building which are visible from outside the building are subject to all restrictions contained herein as to size and number of signs permitted.

**Sign, Non-Accessory** – Any sign that is not an accessory sign.

**Sign, Area** –

- a. The area of a sign shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background on which they are displayed, any frame around the sign and any “cutouts” or extensions, but shall not include any supporting structure or bracing.
- b. The area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall or window, shall be considered to be that of the smallest quadrangle or triangle which encompasses all of the letters and symbols.
- c. The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross section of that object.
- d. In computing the area of signs, both sides of V-shaped signs, but only one side of back-to-back signs, shall be counted.

To compute inches to feet using an example for a flat sign with the dimensions 15” x 30”:



Multiply: 15" x 30" = 450" (area in square inches)

Multiply: 450" x .006944 = 3.13' (area in square feet)

### 6.8.5 General Regulations

Except as otherwise provided in Section 6.8, all permanent signs or alterations of existing signs require a sign permit in all zoning districts. The Planning Board is the authority that issues permanent sign permits. The Board of Selectmen is the authority that issues sandwich board and temporary sign permits.

- a. All signs shall be kept in safe and good repair.
- b. No sign shall be placed on the roof of any building.
- c. No sign shall be erected so as to obstruct the traffic sight lines for motorists or pedestrians.
- d. No sign shall be placed on light poles, utility poles or street identification signs except for those signs erected by the Town of Stockbridge or the Commonwealth of Massachusetts for traffic or pedestrian safety.
- e. No sign shall be designed or constructed to mimic a government directional, public safety or informational sign, including, but not limited to, the signs depicted in the current version of the United States Federal Highway Administration's "Standard Highway Signs," (2004 ed., 2012 Supp.).
- f. A free-standing sign shall not exceed ten (10) feet in height above grade.
- g. Except for Municipally Owned Directory Signs, sandwich board signs and temporary signs allowed by the Board of Selectmen pursuant to Section 6.8.14 (b), no permanent non-accessory signs or billboards are permitted.
- h. Signs located inside a building which are visible from outside the building are subject to all restrictions contained herein as to size and number of signs permitted.

### 6.8.6 Standards

- a. No sign shall be illuminated by other than shaded or indirect white light of constant intensity.
- b. No sign shall be illuminated by flashing, intermittent, rotating or moving light or lights.

- c. No sign shall have any visibly moving parts or noise-making devices.
- d. No illuminated sign or lighting device shall be placed, directed or beamed upon a public way or adjacent premises as to cause glare or reflection that may constitute a traffic hazard or nuisance.
- e. All lighting devices shall be installed to illuminate the sign at such an angle as to minimize light pollution.

#### **6.8.7 Permanent Signs in all Zoning Districts**

a. The following permanent signs may be displayed on private property in all zoning districts subject to the regulations contained in Section 6.8 without the need to obtain a sign permit:

- 1. For any residential principal use, one sign not to exceed two (2) square feet in area.

#### **6.8.8 Permanent Signs in Residential Zoning Districts**

a. The following permanent signs may be displayed in any Residence (R-4, R-2, R-1 or R-C) Zoning District subject to the regulations contained in Section 6.8 only after obtaining a permanent sign permit in accordance with Section 6.8.16. The Planning Board is the permitting authority for permanent signs in the residential zoning districts.

- 1. For any non-residential principal use, one sign not to exceed four (4) square feet in area. If the principal building is located thirty (30) feet or more from the street on which the lot has frontage, one additional sign not to exceed four (4) square feet in area may be displayed at an entrance to the lot.

#### **6.8.9 Permanent Signs in the Business Zoning District**

a. The following permanent signs may be displayed in the Business (B) Zoning District subject to the regulations contained in Section 6.8 only after obtaining a permanent sign permit in accordance with Section 6.8.16. The Planning Board is the permitting authority for permanent signs in the business zoning district.

- 1. For a building with a single establishment, no more than three (3) signs, not to exceed thirty (30) square feet in total combined area. All such signs shall be attached flat against the wall of the building and no sign shall project over a parapet wall. For exception providing for one projecting sign, see 6.8.9.a.3.



2. For a single building with multiple establishments, each establishment is permitted one sign not to exceed sixteen (16) square feet in area for each separate establishment provided that all such signs shall be attached flat against the wall of the building and no sign shall project over a parapet wall. For exception providing for one projecting sign, see 6.8.9.a.3.
3. Instead of not more than one (1) wall sign per lot allowed by 6.8.9.a.1. or 6.8.9.a.2., one projecting sign not to exceed four (4) square feet in area, subject to the following requirements:
  - (i) A projecting sign may project over a public or private way only if the Planning Board has given its written approval, which shall include a statement briefly summarizing the results of the Planning Board's consultations with the Building Inspector, Police, Fire, and Highway Departments as to public safety.
  - (ii) A projecting sign shall be at least seven (7) feet above the surface of the way or at such other height that the Planning Board shall set after a consultation with Police, Fire, and Highway Departments to help protect the public safety.
  - (iii) A projecting sign shall be securely fastened to a building, signpost or other structure and project out no more than six (6) feet.
  - (iv) Prior to the issuance of a permanent sign permit for a projecting sign:
    - a) The Building Inspector must determine, based in part on the Massachusetts State Building Code, that the projecting sign poses no danger or threat to the public or the use made of the way and must report that determination to the Planning Board in writing within thirty (30) days after the application for a projecting sign permit; and
    - b) For projecting signs over a public way, the permittee shall establish and maintain liability insurance in the amount and form specified in Section 6.8.13.

#### **6.8.10 Permanent Signs in the Manufacturing Zoning District**

a. The following permanent signs may be displayed in the Manufacturing (M) Zoning District subject to the regulations contained in Section 6.8 only after obtaining a permanent sign permit in accordance with Section 6.8.16. The Planning Board is the permitting authority for permanent signs in the manufacturing district.

For any non-residential principal use:

1. No more than three (3) signs, not to exceed one-hundred (100) square feet in total combined area, attached flat against the wall of the building; and
2. No more than two (2) additional signs, not to exceed sixteen (16) square feet in total combined area that need not be attached flat against the wall of the building; provided, however, that no signs shall project more than six (6) feet over a parapet wall.

### **6.8.11 Sandwich Board Signs**

a. A sandwich board sign may be displayed in the Business (B) Zoning District subject to the regulations contained in this Section and only after issuance of a permit and payment of the annual sandwich board sign fee established pursuant to Section 6.8.16. The Board of Selectmen is the permitting authority for sandwich board signs.

1. A sandwich board sign shall not exceed six (6) square feet in area per panel.
2. A sandwich board sign shall not exceed 48 inches in height. The height of the sandwich board sign shall not be artificially raised.
3. A sandwich board sign shall be of framed and rigid construction and may include a chalkboard in the frame. Insertable plastic lettering is prohibited.
4. Only one (1) sandwich board sign may be displayed at one time per business establishment that has a current sandwich board sign permit.
5. A sandwich board sign may be displayed only while the establishment is open and shall be stored indoors when the establishment is closed.
6. A sandwich board sign may be displayed only in the location approved in the sandwich board sign permit.
7. A sandwich board sign may be displayed only adjacent to the building in which the establishment is located and not more than twelve (12) feet from an entrance to the establishment, except that a sandwich board sign may be displayed on property not owned or otherwise controlled by the permittee only if:
  - i. The permittee provides a letter from the property owner granting permission for the sandwich board sign to be located on the property. For sandwich board signs proposed to be located on public property the permittee must provide a letter from the Board of Selectmen granting such permission; and

- ii. The Board of Selectmen determines the proposed location to be in as close proximity to the establishment as practicable for the preservation of the public safety.
8. For sandwich board signs to be displayed on public property the permittee shall establish and maintain liability insurance in the amount and form set forth in Section 6.8.13.
9. No sandwich board sign shall be displayed in a manner that reduces the usable width of the sidewalk to less than four (4) feet.
10. There shall be a minimum distance of four (4) feet between sandwich board signs.
11. No additional attachments to sandwich board signs are allowed, including but not limited to flags, balloons, streamers and pennants.
12. A sandwich board sign shall not be anchored, tethered, tied or otherwise affixed to the ground or to any building, sidewalk, tree, post, bench, fire hydrant or any other structure, but rather shall be weighted at the bottom to prevent the sign from becoming a hazard to persons and property.
13. In response to specific safety concerns, the Stockbridge Police Department may prohibit the display of sandwich board signs on public property in designated areas during specific periods of time when sidewalk congestion is expected to be high, including but not limited to parades and other community events. The Highway Department Superintendent may also prohibit the display of sandwich board signs on public property in designated areas during specific periods of time during or in anticipation of all storm or other weather events. Both the Stockbridge Police Department and the Highway Department shall have the authority to require the removal of any sandwich board signs displayed in violation of such prohibitions.
14. A sandwich board sign permit shall be valid for twelve (12) months from the date of issuance.
15. The Board of Selectmen may refuse to issue a sandwich board sign permit to an establishment whose display of a sandwich board sign has violated Section 6.8 or caused a nuisance and that resulted in the imposition of a fine or penalty in prior years unless such fine or penalty was subsequently overturned by the Zoning Board of Appeals or a court of competent jurisdiction.
16. Nothing contained in Section 6.8.11 shall be construed to diminish the Selectmen's authority over the placement or maintenance of structures or objects in public rights of way.

### **6.8.12 Municipally Owned Directory Signs**

a. Municipally Owned Directory Signs may be erected and maintained by the Town of Stockbridge without a sign permit in all Zoning Districts subject to the regulations contained in Section 6.8. An application to obtain space for a business sign on a Municipally Owned Directory Signs shall be submitted to the Board of Selectmen.

1. All Municipally Owned Directory Signs shall be of uniform design throughout the Town and shall complement and enhance the surrounding area.
2. An establishment is limited to one business sign on each Municipally Owned Directory Signs.
3. The Board of Selectmen may establish and from time to time review and amend the annual fee for space on a Municipally Owned Directory Sign.

### **6.8.13 Liability Insurance Requirements for Sandwich Board Signs and Projecting Signs on Public Property**

- a. For sandwich board signs and projecting signs on or over public property, the permittee shall establish and maintain liability insurance coverage naming the Town of Stockbridge as an additional insured with liability limits per claim and per occurrence determined periodically by the Board of Selectmen, for any claims that may arise for any reason as a result of the placement of a sandwich board sign or projecting sign on or over public property.
- b. If the insurance coverage required by Section 6.8.13.a is terminated, reduced or cancelled, the permittee shall promptly provide written notice to the Building Inspector and shall remove the sandwich board sign or projecting sign from public property until proof of current insurance in the amounts required is provided to the Building Inspector.

### **6.8.14 Temporary Signs**

- a. The following signs may be temporarily displayed in all zoning districts, except on public property, subject to the regulations contained in Section 6.8 without the need to obtain a sign permit:
  1. One temporary, unlighted sign not over six (6) square feet in area on property that is for sale or lease on which it is displayed.
  2. One temporary, unlighted sign, to be displayed on the premises for not more than one (1) week, not exceeding ten (10) square feet in area.

- b. Temporary signs that do not comply with the dimensional or temporal requirements of Section 6.8.14.a may be authorized for a period of not over ten (10) days by the Selectmen through a temporary sign permit for special events. If such signs are not removed promptly after expiration of the permit, the Selectmen may, in their discretion, cause the removal of a noncompliant sign and bill the permittee for the costs of removal, and may additionally impose a penalty of fifty dollars (\$50) per day that the sign is displayed after the expiration of the sign permit term.

### **6.8.15 Abandoned Signs**

Any sign that has been abandoned or relates to a business establishment that has been discontinued shall be removed within thirty (30) days after written notice from the Building Inspector.

### **6.8.16 Administration & Enforcement**

- a. Permanent Sign Permits: The Planning Board shall be responsible for reviewing applications to erect permanent signs and for issuing permanent sign permits for those proposed permanent signs that comply with this bylaw. The Planning Board may establish, review, and amend the form and contents of the permanent sign application and may adopt and amend reasonable regulations including an applicable fee schedule.
- b. Sandwich Board Sign Permits: The Board of Selectmen shall be responsible for reviewing applications to display sandwich board signs and for issuing sandwich board sign permits for those proposed sandwich board signs that comply with this bylaw. The Board of Selectmen may establish, review, and amend the form and contents of the permanent sign application and may adopt and amend reasonable regulations including an applicable fee schedule.
- c. Temporary Sign Permits: The Board of Selectmen shall be responsible for reviewing applications to erect temporary signs and for issuing temporary sign permits for those proposed temporary signs that comply with this bylaw or that the Selectmen has allowed under Section 6.8.14.b. The Board of Selectmen may establish, review and amend the form and contents of the temporary sign application and may adopt and amend reasonable regulations including an applicable fee schedule.
- d. Enforcement. This Section 6.8 shall be enforced by the Building Inspector or by a designee of the permit issuing board pursuant to Section 8.4.

**6.9 A Multi-Family Development**

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

Development Standards

a. The minimum lot area, in square feet, shall be as follows:

District	Area Per Unit Column A	For Developments Providing Affordable Housing - Area required is that in Column A plus the following for each unit over one
R-4 District	174,240	87,120
R-2 District	87,120	43,560
R-1 District	43,560	21,780
R-C District	20,000	10,000

b. The required front, side and rear yard dimensions shall be twice the minimum requirements for the district.

c. No more than six (6) dwelling units shall be provided for each such development. The maximum number of units shall be 9 where affordable housing is provided (see Definitions).

d. The minimum area of developed playgrounds, recreational areas or other usable, suitably landscaped open space shall be at the rate of 1,000 square feet per bedroom. This requirement is reduced to 400 square feet per bedroom if the development is “affordable housing” and in R-C or R-1 district (see definition in Sec. 2.2.).

e. Front yard and all open areas shall be suitably landscaped and maintained with grass, trees, shrubs or walks.

f. Any driveway within the development shall be set back from any side or rear property line not less than fifty (50) feet.

g. Off-street parking space shall be located to the rear of the building setback line and at least fifty (50) feet from any side or rear property line, and shall conform to the standards set forth in section 6.2 of this Bylaw.

6.9.2 Site Plan Review

Any multi-family development authorized under this section shall be subject to the site plan review as provided in Section 6.3.7. and approved by the Planning Board.

### 6.9.3 Bonding

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

### 6.10 Conversion Of An Existing One or Two-Family Dwelling Into Multi-Family Dwelling Or Other Use

The conversion of a one or two-family dwelling existing on January 1, 1976, and containing 4,000 square feet or more of livable floor area, may be authorized into a multi-family dwelling or any use which may be authorized under this Bylaw by special permit in the district, or any combination of such uses, subject to the following special requirements if applicable.

- a. The minimum lot area requirements per dwelling unit shall be as follows, unless specifically otherwise authorized under special permit:

R-4 District	85,000 square feet
R-2 District	50,000 square feet
R-1 District	20,000 square feet
R-C District	10,000 square feet
- b. The livable floor area of such dwelling shall not be increased and no exterior changes made which would alter the residential character of the building. There shall be no change in the exterior dimensions of the building at ground level, including supporting structures but not including fire escapes.
- c. The required yards and off-street parking space shall be in compliance with the provisions of this Bylaw.
- d. The Planning Board may impose such additional reasonable conditions as it finds necessary for the protection of neighboring uses, including fencing, screening and the maintenance of existing ground improvements and landscaping.

6.10.1 Conversion of an Existing One or Two-Family Dwelling into Multi-Family Dwelling Providing Affordable Housing

The conversion of a one or two-family dwelling existing on January 1, 1990, into a multi-family dwelling meeting the criteria for affordable housing (see definition in Sec. 2.2.) may be authorized if the building contains at least 800 square feet average livable area per proposed unit subject to the following requirements.

a. The minimum lot area in square feet shall be as follows:

R-4 District	85,000 plus 42,000 per unit over one
R-2 District	50,000 plus 25,000 per unit over one
R-1 District	20,000 plus 10,000 per unit over one
R-C District	10,000 plus 5,000 per unit over one

b. It must meet the requirements of 6.10.b., c., and d. above.

**6.11 Performance Standards**

6.11.1 Hereafter, no land, building or structure in any district shall be used or occupied for manufacturing or other non-residential purposes in such a manner so as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosion or other hazard or noise or vibration, smoke, dust, dirt or other form of air pollution; electrical or other disturbance; glare, or any other dangerous or objectionable substance, condition or element in such amount as to affect adversely the surrounding area or premises or groundwater supply.

6.11.2 The determination of the existence of any dangerous or objectionable elements shall be made at or beyond the property lines of the use creating such elements, wherever the effect is greatest. Any use already established on the effective date of this Bylaw shall not be so altered or modified as to conflict with, or further conflict with, these performance standards.

6.11.3 No materials or wastes shall be deposited or stored upon a lot in such form or manner that they may be transferred off the lot or into the ground by natural causes or forces.

a. All materials or wastes which constitute a fire hazard or which may be edible by or attractive to rodents or insects, or which may pollute groundwater supply shall be stored outdoors only in closed containers.

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



standards approved by the Massachusetts Department of Environmental Protection and in accordance with Town's Board of Health regulations.

6.11.4 Agricultural uses are exempt from the provisions of this section.

## **6.12 Outdoor Display**

The outdoor display of merchandise is prohibited in all zones with these exceptions:

- a. In the Business Zone, newspapers in racks, seeds in racks and plants in containers.
- b. At roadside farmstands, as permitted under 4.11.B.5., the products permitted for sale.

## **6.13 Non-Profit Art Museum**

6.13.1 Only an entity incorporated under Chapter 180 of Massachusetts General Laws and exempt from taxation under Section 501(c)(3) of the Internal Revenue Code shall qualify as "non profit" within the meaning of "non-profit art museum."

6.13.2 The minimum lot area shall be 35 acres.

6.13.3 The minimum frontage on a public road or roads shall be 2500 feet.

6.13.4 New building construction, excluding basement square footage, shall not exceed 12,000 square feet.

6.13.5 Parking for more than 100 cars and for more than ten (10) buses shall not be permitted.

6.13.6 Restaurant facilities shall not be allowed as an accessory use.

6.13.7 The conditions of 6.13.4., 6.13.5 and 6.13.6 may be waived by a special permit of the Selectmen in accordance with Section 6.3.

## **6.14 Nonprofit Educational or Religious Use**

A. Except as otherwise provided in Section 6.1, any nonprofit religious or educational use located 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 shall be subject to the following requirements:

1. The maximum height of any building shall be two and one-half (2½) stories and fifty (50) feet.
2. Unless explicitly provided otherwise in the Zoning Bylaws, all bulk, yard, lot area, setback, open space, floor area ratio and building coverage requirements shall apply.
3. Parking requirements shall be as provided in Section 6.2.
4. Parking areas subject to regular use day or night shall be paved. Major access driveways leading to such parking areas shall be eighteen (18) feet wide and shall not exceed a seven and one-half percent (7½%) grade.
5. Nothing in this section shall exempt such a use from otherwise applicable requirements of the Town's General Bylaws, rules and regulations, or state or federal statutes and regulations.

B. An applicant seeking to establish the applicability of *M.G.L. c.40A, §3* to a proposed use shall submit an application to the Building Inspector for a written determination of such applicability. Unless the Building Inspector determines otherwise, any such application shall include:

1. A copy of the applicant's Articles of Organization and any Articles of Correction or Amendment or similar documents containing a current statement of the applicant's corporate purposes;
2. The most recent annual information return filed by the applicant with the U.S. Internal Revenue Service;
3. A narrative description of all uses proposed for the property, including a statement of the proportion of time and space dedicated to nonprofit religious or educational uses and the proportion of time and space dedicated to other uses; and
4. Any additional documents the Building Inspector may request as necessary to determine the applicability of *M.G.L. c.40A, §3* to the proposed use.

C. The Building Inspector shall make a written determination as to the applicability of *M.G.L. c.40A, §3* to the proposed use within thirty (30) days after all relevant information and documentation required by this section has been submitted.

## **6.15 Satellite Dishes**

The following regulations pertain only to satellite dishes in excess of 24 inches in diameter. Satellite dishes 24 inches in diameter or less are exempt from these regulations.

- a. No more than one (1) dish antenna shall be erected, constructed, installed or maintained on a single lot or premises.
- b. All dish antennae shall be affixed directly to the ground.
- c. No dish antenna shall be located on any mobile home or portable device.
- d. No dish antenna shall be connected to or placed upon any roof, building or part thereof; however, if no other site is available for reason(s) of accessibility,

reception, or code requirements, said dish antenna may be connected to or placed upon any roof, building, or part thereof upon a licensed engineer's certification of said antenna's structural soundness.

- e. Except otherwise permitted by this section, dish antennae shall be located in rear yards. When a rear yard is not accessible, does not get reception, or does not meet building specifications and a side yard meets the building code, a dish antenna may be located there. If said yard borders on a street, a screen of foliage shall be provided so as to shield said satellite antenna from the street and adjoining properties during the entire year.
- f. The color of the satellite dish and screening materials shall be in solid earth tones, so as to reduce or eliminate aesthetic concerns of the adjoining properties insofar as possible and that said color tones shall be maintained in such character during the usage of said satellite antenna. The colors shall be solid and in black, brown, green, beige, or similar muted colors, including solid mesh construction.
- g. A dish antenna shall not at any point, nor shall any part of the antenna including any platform or structure upon which it is mounted or affixed, be elevated to or reach a height of more than ten (10) feet above the natural grade of the subject premises. In no event shall the natural grade be changed by any means in order to increase the elevation of the dish antenna.

## **6.16 Driveways and Common Driveways**

### 6.16.1 Requirements Applicable to All New Driveways

The building inspector shall not issue a building permit for the principal structure on the lot served by a new driveway unless all of the conditions in Section 6.16.1 have been met. The building permit will be issued or denied within thirty (30) days of application. The minimum area and configuration of a new driveway shall be such to provide a minimum of two (2) off-street parking spaces as defined by Section 6.2.4 for each lot served by the driveway.

- a. Driveways shall connect the lot or lots they serve from the way on which such lot or lots have their frontage.
- b. The maximum length of any driveway shall not exceed 500 feet, measured from the edge of the surface of the Street or Road; provided, however, that a driveway exceeding 500 feet may be approved by special permit, if a greater length is necessitated by topography or special conditions for the public good which may include conservation, scenic landscape, or agricultural considerations.
- c. Driveways shall be constructed so that water from the driveway will not drain onto the

crown of the Street or Road. The edge of a driveway entering onto the surface of a Street or Road shall not impede the existing flow of surface water runoff.

d. Driveways shall be pitched downward from the Street or Road; provided, however, that, where topography prevents the driveway from being pitched downward in its entirety, the driveway shall be constructed on a downgrade from the Street or Road surface to the sideline of the Town right of way with a pitch of at least one-quarter (1/4) inch per foot and, beyond the sideline of the Town right of way, the driveway may be pitched in a manner approved by the Highway Superintendent.

e. Driveways shall be not less than eight (8) feet and not more than sixteen (16) feet in width within the Town right of way. Any curb at the entrance of a driveway shall be rounded off with a radius of three (3) feet.

f. Driveways shall be located to the best advantage with regard to profile, alignment with the Street or Road, and sight distance conditions. No driveway shall intersect the Street or Road surface at less than a sixty (60) degree angle.

g. Culverts under driveways shall be approved by the Highway Superintendent and shall be not less than fifteen (15) inches in diameter.

h. Driveways entering onto state highways shall conform to all applicable standards, specifications and regulations of the Highway Division of the Massachusetts Department of Transportation.

i. During construction of a driveway, any adjacent disturbed areas shall be stabilized and planted with ground cover as needed. Upon completion of construction, such areas shall be returned to their preconstruction condition.

#### 6.16.2 Requirements Applicable to Common Driveways

a. Common driveways can never be used to satisfy zoning frontage requirements. Each lot served shall have frontage on ways which serve to satisfy frontage requirements under the Zoning Bylaw.

b. No common driveway shall serve more than six (6) lots.

c. No common driveway shall be located within one hundred (100) feet of an intersection.

d. The owners of all lots served by a common driveway shall have rights, either in fee simple or by perpetual easement, to pass and re-pass along the common driveway.

#### 6.16.3 Requirements Applicable to Driveways Requiring a Special Permit

- a. The Planning Board, by special permit issued pursuant to the procedures and standards of Section 6.3 as supplemented by this section, may authorize:
  1. Driveways with a maximum grade of more than ten (10) percent;
  2. Driveways with a maximum length greater than 500 feet, and
  3. Common driveways serving more than two (2) lots but not more than six (6) lots.
- b. The design of a driveway requiring a special permit shall ensure adequate safety for emergency vehicles, including fire and police vehicles.
- c. The Planning Board shall request the recommendations of the Highway Superintendent, Fire Chief and Police Chief prior to issuing a driveway special permit.
- d. The Highway Superintendent shall be notified prior to the commencement of the construction of a driveway requiring a special permit, and shall inspect the work from time to time as necessary to determine compliance with the special permit.
- e. Upon granting a special permit, the Planning Board shall endorse its approval on a plan of land showing the location of the common driveway, which plan shall be recorded in the Registry of Deeds. No building permit authorizing work on a lot to be served exclusively by a driveway requiring a special permit may be issued until the driveway has been constructed in accordance with the approved and recorded plan.

#### **6.18 Fences and Walls**

- a. Chain link and wire mesh fences are prohibited in all but the Manufacturing District unless said fence is visually screened from adjacent properties, including roadways, throughout the entire year.
- b. The side of the fence or wall designed to be viewed shall face outward, away from the area/use being enclosed.
- c. In all districts but the Manufacturing District, no fence or wall erected within an applicable Required Yard shall exceed six (6) feet in height; provided, however, that no such fence or wall erected within an applicable Front Yard and along a public way shall exceed four (4) feet in height.
- d. Snow fences shall be prohibited, except that temporary snow fences conforming to the height requirements of this section shall be permitted between November 15 and April 15.

## **6.19 Home Occupations**

The conduct of home occupations may be permitted under the provisions of this section. It is the intent of this section to:

- a. Ensure the compatibility of home occupations with other uses permitted in the Town;
- b. Maintain and preserve the character of residential neighborhoods and areas; and
- c. Provide peace, quiet, and domestic tranquility within all residential neighborhoods or areas, and guarantee to all residents freedom from excessive noise and traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in residential areas.

### **6.19.1 General Information**

- a. A home occupation shall be incidental and secondary to the lot's residential purpose. It shall be conducted in a manner which does not give outward appearance of a business.
- b. The maximum number of home occupations permitted is one (1) per [property] resident family member.

### **6.19.2 Specific Information**

For the purposes of this Bylaw, there are three (3) types of home occupations in Stockbridge: Type I, Type II, and Type III.

### **6.19.3 Type I**

- a. The following home occupations are permitted in all districts provided they are carried on in a manner which complies with the standards in subsection (b) of this Section.
  - (1) home crafts including ceramics with kiln up to six (6) cubic feet;
  - (2) art restoration;
  - (3) telephone answering, switchboard, and call forwarding;
  - (4) typing; word processing;
  - (5) writing; computer programming

- b. The home occupation is to be conducted only by members of the family residing in or maintaining the dwelling unit plus no more than two (2) non-resident employees.

It shall not involve the on-premise sale of goods or services or public exhibits or displays.

There shall be no external evidence of the conduct of such occupation

The home occupation, shall occupy no more than 25% of the gross floor area of the structure or five hundred (500) square feet, whichever is more restrictive.

#### 6.19.4 Type II

The following home occupations shall occur only in the principal dwelling and, when located in the R-4, R-2, R-1 or R-C district, require special permit review by the Planning Board.

1. The home occupations listed in 6.19.3.a., above, when the on-premise provision of services or sale of products, articles, or goods is involved.
2. The office of a person who is engaged in a recognized profession and who is offering skilled services to clients but not engaged in the purchase or sale of economic goods
3. Instrument lessons and training

There shall be no external evidence of the conduct of such business or occupation except the permitted sign as regulated in Section 6.8. of this Bylaw.

#### 6.19.5 Type III

Those involved in trades, including carpenters, electricians, plumbers and painters, may use their premises for incidental work in connection with an off-premise occupation provided that:

- no manufacturing or business requiring substantially continuous employment may be carried on;
- storage of materials, commercial vehicles or equipment shall be within the principal or an accessory building on the rear portion of the lot and properly screened from view from the street and adjoining properties.

## **6.20 Tent Sales**

Each individual, commercial enterprise and not-for-profit organization in the Town of Stockbridge is permitted to hold no more than two (2) tent sales per year, with each sale extending no more than three (3) consecutive days. A tent sale must be held on premises which are owned or occupied by the person or entity holding the sale. A tent or other temporary structure associated with such sale may be erected no longer than one (1) day prior to the sale and must be removed within one (1) day of conclusion of the sale.

## **6.21 Outdoor Lighting**

Outdoor lighting shall be kept to the minimum intensity needed for ground and entryway lighting. All outdoor lighting facilities or lamps shall be shielded in such a manner that: a) the edge of the lamp shield is below the light source; b) direct radiation (glare) from the light source is confined within the boundaries of the property; and c) direct radiation is prevented from escaping toward the sky. (For the purposes of these provisions, light sources include any refractor, reflector, bulb, tube, or globe.) High intensity discharge lighting is prohibited. Any outdoor lighting fixture already installed on the effective date of this section shall be brought into compliance with these provisions within one (1) year of the effective date.

## **6.22 Noise**

Within the Town of Stockbridge, no land use shall produce a day time (7:00 a.m. - 7:00 p.m.) average sound level greater than 65dBa, as measured over an eight (8) hour period or a night time (7:00 p.m. - 7:00 a.m.) average sound level greater than 50dBa, as measured over an eight (8) hour period when measured at the property line.

This provision does not apply to uses directly related to the operation of a farm, musical events at facilities, permitted or to temporary construction projects. When applicable, noise level reduction measures shall be instituted to mitigate any noise-related impacts of construction projects and incorporated into the design and construction of structures.

## **6.24 Cluster Subdivisions**

### **6.24.1 Intent**

The intent of this section is to permit variation in conjunction with a proposed subdivision plat in lot size in suitable areas in order to encourage flexibility of design and enable land to be developed in such a manner as to promote its most appropriate use. It is further the intent of this section to promote energy conservation, harmonize architectural design, better use of existing topography and natural features, conservation of open



spaces, recreational development, solar access and design, and to provide for economies inherent with cluster development.

#### 6.24.2 Application

If the applicant makes written application for the use of this procedure it may be followed at the discretion of the Planning Board, if in the Board's judgment, its application would benefit the Town.

Clustering shall only apply to single family residential developments within the R-2 and R-4 zoning districts.

#### 6.24.3 Permitted Density

Density of dwelling units shall not exceed that permitted in the district in which the subdivision is located. For purposes of computing the permitted density, the following computations shall apply:

- a. Compute total area of development in square feet.
- b. Subtract 15 percent of total area for roads and utilities.
- c. Subtract land that is unsuitable for building such as wetlands, flood plains and slopes greater than 15 percent.
- d. Divide the remaining area by the minimum lot area permitted in the pertinent district for single family dwellings to obtain the maximum number of dwellings permitted.

#### 6.24.4 Area Requirement

The minimum area requirement to qualify for a cluster residential development shall be ten (10) contiguous acres of land.

#### 6.24.5 Conventional Plat Required

The Planning Board shall require the submittal of a plat-showing the subdivision of the property in both clustered and conventional fashion.

#### 6.24.6 Procedure

The procedure for reviewing the application should be the same as for a conventional subdivision.

#### 6.24.7 Open Space Requirements

The development shall have dedicated, as a minimum, for open space purposes the same percentage of the entire tract as that by which the lots have on an average been reduced. The area dedicated for open space purposes, including playgrounds and parks, shall be in a location and shape approved by the Planning Board during subdivision review. In addition, the Planning Board, as a condition of approval, may establish such conditions on the ownership, use and maintenance of such open space lands as it deems necessary to assure the preservation of such lands for their intended purpose.

### **6.25 Personal Wireless Service Facilities**

#### 6.25.1 Purposes:

The purposes of this Personal Wireless Service Facilities Bylaw are to:

- A. Preserve the character and appearance of the Town while simultaneously allowing Adequate Personal Wireless Services to be developed.
- B. Protect the scenic, historic, environmental, and natural or man-made resources of the community.
- C. Provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of Personal Wireless Service Facilities.
- D. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify Personal Wireless Service Facilities.
- E. Preserve property values.
- F. Locate Towers so that they do not have negative impacts, such as, but not limited to, visual blight, attractive nuisance, noise and falling objects, on the general safety, welfare and quality of life of the community.
- G. Require owners of Personal Wireless Service Facilities to configure them so as to minimize and mitigate the adverse visual impact of the Facilities.
- H. Require the clustering and camouflaging of Personal Wireless Service Facilities.

#### 6.25.2 Consistency with Federal Law:

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

### 6.25.3 Definitions:

**ACT** – The Telecommunications Act of 1996.

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

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

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

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

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

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

**DBM** - Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt.

**EMF** - Electromagnetic Frequency Radiation

**FACILITY SITE** - The location within a Wireless Telecommunications Overlay District leased by one or more Personal Wireless Service Providers and upon which one or more Personal Wireless Service Facility(s) and required landscaping are located.

**FACILITY/TOWER SPECIAL PERMIT (F/TSP)** - The Special Permit required to be obtained in order to install any Tower or Personal Wireless Service Facility or for any Major Modification Of An Existing Facility within the Wireless Telecommunications Overlay District.

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

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

**GHZ** - Gigahertz: One billion hertz.

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

**HERTZ** - One hertz is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

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

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

**MHZ** - Megahertz: One million hertz.

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

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

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

**PERSONAL WIRELESS SERVICES** - Commercial Mobile Services, unlicensed wireless services, and common carrier wireless exchange access services. These services include:

cellular services, personal communications services (PCS), Specialized Mobile Radio Services, and Paging Services.

**PERSONAL WIRELESS SERVICE FACILITY** - All equipment, including Repeaters, with which a Personal Wireless Service Provider broadcasts and receives the radio-frequency waves that carry their services, and all equipment, appurtenances and structures, including Towers, relating thereto.

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

**RADIATION PROPAGATION STUDIES OR RADIAL PLOTS** - Computer generated estimates of the radiation emanating from Antennas or Repeaters sited on a specific Tower or structure. The height above mean sea level, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tool for determining whether a site will provide Adequate Coverage for the Personal Wireless Service Facility proposed for that Site.

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

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

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

**SPECIAL PERMIT GRANTING AUTHORITY (SPGA)** - The Board of Selectmen shall be the SPGA for this Article.

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

**TOWER** - A Monopole that is designed to support Personal Wireless Service transmission, receiving and/or relaying antennas and/or equipment.

**WIRELESS TELECOMMUNICATIONS OVERLAY DISTRICT (WTOD)** - Specific area(s), determined by engineering analysis to contain sites where Adequate Service may be provided to the Town of Stockbridge, which, at the same time, have the potential of reducing or mitigating negative impacts in accordance with § 6.25.1 of this bylaw. The Overlay District is defined in §6.6.A of this Bylaw.

#### 6.25.4 Exempted Wireless Telecommunications Uses:

This Article specifically exempts the following wireless telecommunications facilities: police, fire, ambulance and other emergency dispatch; citizens band radio. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, are exempt, provided that (1) the tower is not used or licensed for any commercial purpose; and (2) the tower shall be removed upon loss or termination of said FCC license. No Personal Wireless Service Facility or Repeater shall be considered exempt from this Article for any reason whether or not said Facility or Repeater is proposed to share a Tower or other structure with such exempt uses.

#### 6.25.5 Provision of Independent Consultants:

When considering an application for a PWSF, the Board of Selectmen may determine that there is a need for the assistance of a consultant technical expert in matters involving the placement, construction and modification of PWSFs, under the Zoning Bylaws and the *Telecommunications Act of 1996*, 47 U.S. C. Sect.332(c)(7), at the Applicant's expense pursuant to Chapter 44, Section 53G of the *Massachusetts General Laws*. To make the most productive use of the limited time authorized by the FCC to hear the application, the SPGA may at its discretion engage a consultant immediately upon receipt of an application.

#### 6.25.6 Prohibition of Teleports:

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

#### 6.25.7 Application Requirements:

##### A. Adequate Coverage, Adequate Capacity, and Justification of Need

An Applicant for a special permit pursuant to this Section shall, as part of its application, provide:

1. Written documentation of any Facility Site(s) in Stockbridge and any sites in abutting towns located within 5 miles of the proposed location of the PWSF in which it has an interest, whether by ownership, leasehold, or otherwise. For each such Facility Site, it shall demonstrate with written documentation that the Facility Site is not already providing, or does not have the potential by adjusting the Site to provide Additional Coverage and/or Adequate Capacity to the Town of Stockbridge.
2. Written documentation that it has examined all existing Facility Sites located in Stockbridge and in any sites in abutting towns located within 5 miles of the proposed

location of the PWSF in which the Applicant has no interest, whether by ownership, leasehold or otherwise, to determine whether those existing Facility Sites can be used to provide Adequate Coverage and/or Adequate Capacity to the Town of Stockbridge.

3. If the Applicant is seeking a special permit to authorize construction of a PWSF involving a Tower, written documentation of the feasibility of using Repeaters to provide Adequate Coverage and/or Adequate Capacity to the Town of Stockbridge.

B. Plans:

1. An Applicant shall, as part of its application, provide the Board of Selectmen with Site Plans and Maps, prepared by a registered professional engineer on a 1"=40' scale showing:

- a) Location of the PWSF and all appurtenances and equipment associated therewith.
- b) Property boundaries of the site.
- c) All structures within 1000' of the proposed PWSF, with distances to each such structure shown.
- d) Limits of areas where vegetation is to be cleared or altered.
- e) Proposed access driveway or roadway and parking area at the site, including a cross section of the access drive indicating the width, depth or gravel, paving or surface materials.

2. For any PWSF involving a Tower, an Applicant shall further provide plans showing:

- a) Elevations, sections and details at appropriate scales but no smaller than 1"=10'.
- b) Antenna mounting locations, including height above ground.
- c) Details of the typical Tower foundation, including cross sections and-details.
- d) Exterior finish and camouflage of the Tower.
- e) Relative height of the Tower to the tops of surrounding trees, as they presently exist.

6.25.8 Requirements for a PWSF

A. A PWSF shall minimize, to the greatest extent feasible, adverse visual impacts.

B. With the exception of Repeaters not located on Towers, no PWSF shall be located within any of the following prohibited areas:

1. Within a Massachusetts or federally regulated wetland or Massachusetts Vernal Pool;
2. Within the habitat of any State-listed Rare or Endangered Wildlife or Rare

Certified

Plant Species;

3. Within the Lake and Pond Overlay District;
4. Within 100 feet horizontally from any Massachusetts regulated wetland;
5. Within 1000 feet horizontally from any school buildings, playgrounds and athletic fields; and
6. Within 600 feet horizontally from any residential structure.

C. Notwithstanding any other provision of the Zoning Bylaws to the contrary, the area around Tower shall be completely fenced for security to a height of six feet, and gated. Use of razor wire is not permitted.

D. There shall be no signs except the following. A sign no greater than two square feet indicating the name of the PWSFs owner(s) and a 24hour emergency telephone number shall be posted at the entry gate. In addition, a no trespassing sign shall be posted on the fence.

E. To the extent feasible, all utilities and all network interconnections to and from the PWSF site shall be installed underground

#### 6.25.9 Approval Criteria:

A. A Special Permit may be issued pursuant to this Section if the Board of Selectmen finds:

1. The proposed PWSF will satisfy all requirements of this Section except those for which literal enforcement would have the effect of prohibiting the provision of personal wireless services.
2. The proposed PWSF is a necessary component of a comprehensive scheme to ensure the provision of personal wireless services in the affected area.
3. The proposed PWSF is the means of providing personal wireless services in the affected area that will least intrude upon the Town, the area in which it is proposed to be located, and the adjoining properties.
4. There are no less-intrusive available alternatives to the proposed PWSF.
5. The Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the proposed PWSF on the Town, the area in which it is proposed to be located, and the adjoining properties.

B. The general findings required by Section 6.3.6 shall not apply to a Special Permit granted pursuant to this Section.



C. The Board of Selectmen may waive any requirement of this Section and issue a Special Permit authorizing construction of a PWSF upon a determination that a denial of the application would have the effect of prohibiting the provision of personal wireless services in violation of Section 704 of the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7).

#### 6.25.10 Timing and Content of Decision

The Board of Selectmen shall take regulatory notice of the Federal Communications Commission (FCC) presumption that the final action of the Board of Selectmen on a new Antenna Tower should take no more than 160 days from the date of receipt of the completed application, and that final action on a collocation or site sharing application should take no more than 90 days from the date of receipt of the completed application except upon written extension of these timelines by mutual agreement between the Board of Selectmen and the Applicant, said written extension to be placed on file with the Town Clerk. (FCC Declaratory Ruling, Nov. 18, 2009). The Board of Selectmen shall comply with any relevant successor regulation or bulletin, as it may be amended from time to time.

The Decision of the Board of Selectmen shall be based upon substantial evidence in the written record.

#### 6.25.11 Removal Requirements and Performance Guarantee

Any PWSF that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such PWSF shall remove it within ninety (90) days of receipt of notice from the SPGA. At the time of removal, the PWSF site shall be remediated and all access drives or roads shall be removed and re-vegetated. If such PWSF is not removed within said ninety (90) days, the Town may cause it to be removed. As a condition of the Special Permit, the Applicant shall post an initial cash bond in an amount determined by the Board of Selectmen to be adequate to provide for the removal of the PWSF and remediation of the landscape.

### **6.26 Adult Businesses**

#### 6.26.1 Definitions

The definitions of adult bookstore, adult motion picture theater, adult paraphernalia store, adult video store, and establishment that displays live nudity for its patrons shall be those provided in *M.G.L. c.40A, §9A*.

#### 6.26.2 Special Permit Required

A Special Permit from the Board of Selectmen shall be required for any adult bookstore, adult motion picture theater, adult paraphernalia store, adult video store, establishment

that displays live nudity for its patrons, or other form of adult business as described in *M.G.L. c.40A, §9A*.

### 6.26.3 Special Permit Applications

An application for a Special Permit pursuant to Section 6.26 shall comply with the rules pertaining thereto, adopted by the Board of Selectmen and kept on file in the office of the Town Clerk, as well as with the requirements of Section 6.3.

An application for a Special Permit pursuant to Section 6.26 shall include a site plan, which shall comply with the requirements of subsection 6.3.8.

### 6.26.4 Special Requirements

No Special Permit pursuant to Section 6.26 may issue to any person convicted of violating *M.G.L. c.119, §63* or *M.G.L. c.272, §28*.

### 6.26.5 Location

Notwithstanding any provision of Section 5 to the contrary, no adult motion picture theater, adult paraphernalia store, adult video store, establishment that displays live nudity to its patrons, or other form of adult business as described in *M.G.L. c.40A, §9A* may be located:

- a. Within one hundred (100) feet of a public or private way;
- b. Within one hundred (100) feet of an R-4, R-2, R-1 or R-C Zoning District or residential use;
- c. Within one thousand (1000) feet of another adult business for which a Special Permit has previously been issued pursuant to Section 6.26;
- d. Within one thousand (1000) feet of an establishment licensed pursuant to the provisions of *M.G.L. c.138, §12*; or
- e. Within five hundred (500) feet from the nearest property line of any church or religious facility, public or private school, child care facility, public playground, park or conservation area in existence at the time of the application for a Special Permit pursuant to Section 6.26.

### 6.26.6 Adult Business Signs

No sign advertising an adult business shall be permitted unless each of the following standards is fully satisfied:

- a. No free-standing sign shall be permitted;
- b. A sign may be located only on a building in which there is an adult business operating under a Special Permit issued pursuant to Section 6.26;
- c. The size of the sign shall not exceed sixteen (16) square feet;
- d. No temporary signs and no window signs shall be permitted;

- e. No pictures, publications, videotapes, movies, covers, or other stock sold by, or advertising for material presented at an adult bookstore, adult motion picture theater, adult paraphernalia store, or establishment that displays live nudity to its patrons shall be displayed in the windows of, or on the building of, any adult use; and
- f. All requirements of Section 6.8 shall be satisfied.

#### 6.26.7 Lapse of Special Permit

Notwithstanding any provision of Section 6.3 to the contrary, a Special Permit issued pursuant to Section 6.26 shall lapse one year from the date of its issuance if substantial use or construction pursuant to its terms has not commenced, except for good cause.

#### 6.26.8 Conditions

The Board of Selectmen may impose reasonable conditions, safeguards and limitations on time or use of any Special Permit granted pursuant to Section 6.26. Any Special Permit granted pursuant to Section 6.26 shall be personal to the Applicant, shall not run with the land and shall expire upon sale, conveyance or transfer of the subject property.

#### 6.26.9 Expiration of Special Permit

A Special Permit granted pursuant to Section 6.26 shall expire after a period of one calendar year from the date of its issuance. The Special Permit shall be renewable for successive two-year periods thereafter, provided that the holder of the Special Permit submits to the Board of Selectmen, prior to said expiration, a written request for renewal, and provided also that no objection to said renewal is made and sustained by the Board of Selectmen based upon the public safety factors applied at the time that the original Special Permit was granted.

#### 6.26.10 Severability

If any provision of Section 6.26 shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of the Section shall be deemed to be amended to the minimum extent necessary to provide the Town substantially the benefits set forth in Section 6.26.

### **6.27 Body Art Establishments**

#### 6.27.1 Special Permit Required

A Special Permit from the Board of Selectmen shall be required for any Body Art Establishment. An application for such Special Permit shall comply with the requirements of Section 6.3.

### 6.27.2 Location

Notwithstanding any provision of Section 5 to the contrary, no Body Art Establishment may be located:

- a. Within one thousand (1000) feet of an establishment licensed pursuant to the provisions of *M.G.L. c.138, §12*; or
- b. Within five hundred (500) feet from the nearest property line of any church or religious facility, public or private school, child care facility, public playground, park or conservation area in existence at the time of the application for a Special Permit pursuant to Section 6.27.

### 6.27.3 Conditions

The Board of Selectmen may impose reasonable conditions, safeguards and limitations on time or use of any Special Permit granted pursuant to Section 6.27.

### 6.27.4 Severability

If any provision of Section 6.27 shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of the Section shall be deemed to be amended to the minimum extent necessary to provide the Town substantially the benefits set forth in Section 6.27.

## **6.28 Commercial Solar Photovoltaic Installations**

### 6.28.1 Purpose and Intent

The purpose and intent of Section 6.28 is to permit the creation of new commercial solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety and minimize impacts on residential neighborhoods and scenic, natural and historic resources.

### 6.28.2 Applicability

Except as otherwise provided herein, construction and use of a commercial solar photovoltaic installation or any part thereof shall be authorized by Special Permit in any zoning district subject to the requirements set forth in Sections 6.28.3 through 6.28.5. Construction and use of a commercial solar photovoltaic installation on a parcel located at 5A Glendale Middle Road, shown on Assessor's Map 223 as Lot 5, shall be permitted as-of-right, but shall be subject to the requirements set forth in Sections 6.28.3 through 6.28.5.

Nothing in Section 6.28 should be construed to prevent the installation of solar photovoltaic

installations that are permitted as-of-right in any zoning district as an accessory use.

### 6.28.3 Use Regulations

Commercial solar photovoltaic installations shall conform to the following provisions:

- a. A commercial solar photovoltaic installation may be erected, upon the issuance of a special permit by the Board of Selectmen, on a lot containing a minimum of fifteen (15) acres.
- b. A commercial solar photovoltaic installation including security fences surrounding the installation shall be set back from all property lines by a distance of not less than two hundred (200) feet.
- c. The height of any or all structures comprising the commercial solar photovoltaic installation shall not exceed fifteen (15) feet above the pre-existing natural grade underlying each particular structure. The height of any or all structures may be increased to twenty (20) feet above the pre-existing natural grade upon the applicant's demonstration to the Board of Selectmen of an economic necessity.
- d. The visual impact of the commercial solar photovoltaic installation, including all accessory structures and appurtenances, shall be mitigated. All accessory structures and appurtenances shall be architecturally compatible with each other. Whenever reasonable, structures shall be shielded by vegetation from view; and shall be joined and clustered to avoid adverse visual impacts. Landscaping, natural features and fencing may be utilized to mitigate such visual impacts.
- e. Lighting shall not be permitted at a commercial solar photovoltaic installation unless required by the Board of Selectmen or by the State Building Code. Where used, lighting shall be directed downward and full cut-off fixtures shall be used.
- f. All utility connections from the commercial solar photovoltaic installation shall be underground unless otherwise specifically permitted by the Board of Selectmen in the special permit. Electrical transformers and inverters to enable utility interconnections may be above ground if required by the utility provider.
- g. Clearing of natural vegetation shall be limited to the minimum necessary for the construction, operation and maintenance of the commercial solar photovoltaic installation except as otherwise prescribed by applicable laws, regulations and bylaws or the special permit.
- h. The owner or operator of a commercial solar photovoltaic installation shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, continued compliance with landscaping and screening requirements, and integrity of security measures. The owner or operator shall be responsible for the maintenance of any access roads serving the installation.

### 6.28.4 Administration

- a. A special permit is required from the Board of Selectmen to erect or install a commercial

solar photovoltaic installation. A record owner desiring to erect or install a commercial solar photovoltaic installation shall file with the Board of Selectmen an application for a special permit, together with such plans, drawings, specifications, fees and additional information as required by the Board of Selectmen.

b. The Board of Selectmen shall have the authority to waive specific provisions of Section 6.28.3 upon a determination that a waiver would not be inconsistent with the purpose and intent of Section 6.28, as set forth in Section 6.28.1.

c. In reviewing any application for a special permit pursuant to Section 6.28, the Board of Selectmen shall give due consideration to promoting the public health, safety, convenience and welfare; shall encourage the most appropriate use of land and shall permit no building or use that is injurious, noxious, offensive or detrimental to its neighborhood. Before the Board of Selectmen may issue such a special permit, it shall determine each of the following:

1. The commercial solar photovoltaic installation conforms to the provisions of this section.
2. The commercial solar photovoltaic installation will not be detrimental to the neighborhood or the Town.
3. Environmental features of the site and surrounding areas are protected, and specifically surrounding areas will be protected from the proposed use by provision of adequate surface water drainage.
4. The proposed use is in harmony with the purpose of this Bylaw as set forth in Section 1.3.

d. In reviewing any application for a special permit, the Board of Selectmen shall give due consideration to promoting the public health, safety, convenience and welfare; shall encourage the most appropriate use of land and shall permit no building or use that is injurious, noxious, offensive or detrimental to its neighborhood. In determining whether to issue a special permit, the Board of Selectmen shall consider all potential adverse impacts of the facility and efforts to mitigate them.

e. Any special permit issued pursuant to Section 6.28 shall be subject to such conditions and safeguards as the Board of Selectmen may prescribe. Such conditions may include the requirement of a performance bond, secured by deposit of money or negotiable securities, posted with the Town to guarantee proper maintenance and/or removal of the commercial solar photovoltaic installation. The amount of the performance bond shall not exceed the estimated cost of the commercial solar photovoltaic installation's removal. Such conditions may also include additional screening of the facility. In addition, the applicant may be required to replace up to 100% of any and all trees with a caliper of six (6) inches or over that are removed in order to facilitate construction of the commercial solar photovoltaic installation.

#### 6.28.5 Discontinuance

A commercial solar photovoltaic installation shall be deemed to have been discontinued if it has not been in service for a continuous 24-month period. Upon receipt of a Notice of Discontinuance from the Building Inspector, the owner shall have the right to respond to the Notice within 30 days of receipt. The Building Inspector shall withdraw the Notice of Discontinuance and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates to the satisfaction of the Building Inspector that the commercial solar photovoltaic installation has not been discontinued. If the commercial solar photovoltaic installation is determined to be discontinued, the owner shall remove the installation, including all structures, equipment, security barriers and transmission lines, and stabilize or re-vegetate the site as necessary to minimize erosion and sedimentation, at the owner's sole expense within three months of receipt of the Notice of Discontinuance. Failure to remove the installation and stabilize the site within said time period may subject the owner to enforcement pursuant to Section 8.1.

## 6.29 Registered Marijuana Dispensaries

### 6.29.1 Special Permit

- a. The Board of Selectmen shall be the Special Permit Granting Authority for any Registered Marijuana Dispensary (RMD). Applications for Special Permits shall conform to the Standards and Procedures of Section 6.3.6 and Section 6.29.
- b. No Special Permit for an RMD shall be issued to a person who has been convicted of a felony or a violation of a state or federal statute prohibiting the unlawful possession, sale or distribution of narcotic drugs or prescription drugs. Further, no Special Permit for an RMD shall be issued to a non-profit corporation in which an owner, shareholder, member, officer, manager, or employee has been convicted of a violation of a felony or a state or federal statute prohibiting the unlawful possession, sale or distribution of narcotic drugs or prescription drugs.
- c. Any Marijuana Establishment, licensed under *M.G.L. c.94G* and 935 CMR 500, that holds a Special Permit pursuant to 6.30 shall obtain a new Special Permit prior to converting to an RMD or commencing any operations regulated by 105 CMR 725.

### 6.29.2 Buffer Zone

- a. No RMD shall be located within the buffer zone of any pre-existing public or private school, child care facility, including preschools and daycare centers, or any facility in which children commonly congregate, including, but not limited to, a public library, a playground, an athletic field or recreational facility, a place of worship, or a Town-owned beach; provided, however, that a bus stop shall not be considered to be a facility for the purposes of this section. The buffer zones shall be as follows:

<b>District</b>	<b>Buffer Zone</b>
B	Twenty-five (25) feet
M	No Buffer Zone (0 feet)

### 6.29.3 Requirements

- a. No smoking, burning or other consumption of marijuana or marijuana-related products shall be permitted on the premises of an RMD unless the Town votes to authorize social consumption pursuant to *M.G.L. c.94G, §3* and the establishment holds a Social Consumption Establishment Primary or Mixed Use license, in accordance with Section 6.30 and all applicable state laws and regulations.
- b. No person under the age of 21 shall be permitted on the premises of an RMD unless that person is a qualified patient or accompanied by a caregiver or patient with a valid registration card.
- c. No RMD shall be located inside a building containing residential units, including transient housing
- d. No RMD shall be located in a movable or mobile structure such as a van or truck.
- e. No RMD shall be located in a building that contains any medical doctor's offices or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.
- f. An RMD shall be open and operational only during the times specified in its Special Permit. The hours of operation shall be reasonable given the type and location of the establishment.
- g. Any RMD Retailer sited within the Business District shall not have a gross floor area of more fifteen hundred (1,500) square feet.
- h. Signage shall require the written approval of the Planning Board in accordance with the provisions of Section 6.8, where applicable.
- i. All RMDs shall comply with requirements of the Americans with Disabilities Act (ADA) Accessibility Guidelines.
- j. RMDs shall comply with the security measures required by 10 CMR 725.110, including:
  1. Measures to deter or prevent unauthorized access and theft;
  2. Measures to protect the premises, registered qualifying patients, personal caregivers and dispensary agents;
  3. Sufficient lighting of the outside perimeter to facilitate surveillance; and
  4. Trees, bushes and other foliage outside of an RMD shall be maintained so as to prevent a person or persons from concealing themselves from sight.



5. A copy of the plan shall be provided to the Chief of Police and the Fire Chief. Any material modification to the security plan shall require an amendment to the Special Permit.

k. The Board of Selectmen shall require the Applicant to post a bond at the time of construction to cover costs for the removal of the RMD in the event the Town must remove the RMD. The value of the bond shall be based upon the ability to remove all the items and paraphernalia completely and to clean the RMD properly. The value of the bond shall be developed based upon the applicant's providing the Board of Selectmen with three (3) written bids to meet the noted requirements. An incentive factor of 1.5 shall be applied to all bonds to ensure compliance and adequate funds for the Town to remove the tower at prevailing wages

l. An RMD shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state-issued licenses or permits or within six months of ceasing operations, whichever comes first.

**6.29.4 Standards and Procedures Applicable to Special Permits for Registered Marijuana Dispensaries:**

- a. Applicants for an RMD Special Permit shall submit the following information in addition to all other required submissions:
  - 1. Names and address of all owners, managers, members, partners and employees;
  - 2. Sources of all marijuana that will be processed, packaged, sold or distributed at the facility;
  - 3. Projected quantity of marijuana that will be processed, packaged, sold or distributed at the facility;
  - 4. The name and contact information for a person on staff at the RMD whose responsibilities include community relations, to whom Town staff can provide notice if there are operating problems associated with the establishment.
  
- b. No Special Permit may be issued unless the Board of Selectmen find that the RMD is designed so as to minimize any adverse visual or economic impacts on the abutters or other parties in interest, as defined in M.G.L. c. 40A, §11.
  
- c. No Special Permit shall be issued until the Town and the Marijuana Establishment have executed a Host Community Agreement consistent with the requirements of *M.G.L. c.94G, §3* and governing the operations regulated under Section 6.29; provided, however, that a new Host Community Agreement shall not be required for a recreational Marijuana Establishment converting to or expanding into medical use, if the existing agreement contemplates such conversion or expansion. Compliance with such Host Community Agreement shall be a

condition of any Special Permit issued pursuant to this section.

- d. Each RMD receiving a Special Permit shall, as a condition of the Special Permit, file with the Board of Selectmen and the Town Clerk a copy of all reports submitted to any state agency, including the reports required by 105CMR 725.105(Q)(4) describing the RMD's liability insurance coverage and the annual security system audits required by 105 CMR 725.110(G).
- e. Special Permits for RMDs shall have a term limited to the duration of the applicant's ownership and the use of the premises as an RMD. Transfers of the Special Permit may occur only with the permission of the Board of Selectmen, and only in the form of an amendment to the Special Permit.

### **6.30 Adult Use Marijuana Establishments**

#### **6.30.1 Special Permit**

- a. The Select Board shall be the Special Permit Granting Authority for any Marijuana Establishment. Applications for Special Permits shall conform to the Standards and Procedures of Sections 6.30 and 6.3.6.
- b. Registered Marijuana Dispensaries (RMD) licensed under 105 CMR 725 and that hold a Special Permit pursuant to 6.29 shall obtain a new Special Permit prior to converting to a Marijuana Establishment or commencing any operations regulated by M.G.L. c.94G and 935 CMR 500.
- c. A Marijuana Establishment that seeks to expand or alter its operations so as to come within a new class or sub-class shall obtain a modification to its Special Permit prior to undertaking such expansion or alteration. License classes are as follows:
  - 1. Marijuana Cultivator; provided that each tier of cultivation, as defined in 310 CMR 500.050, shall be deemed a separate sub-class for purposes of this Chapter;
  - 2. Craft Marijuana Cooperative;
  - 3. Marijuana Product Manufacturer;
  - 4. Marijuana Retailer;
  - 5. Marijuana Research Facility;
  - 6. Marijuana Independent Testing Laboratory;
  - 7. Marijuana Transporter; provided that Existing License Transporter and Third Party Transporter shall each be deemed a separate sub-class for purposes of this Chapter);

- 8. Marijuana Micro-Business; and
- 9. Any other class or sub-class of license established by the Cannabis Control Commission and regulated under 935 CMR 500.

**6.30.2** Community Outreach and Host Community Agreement Requirement

- a. No Special Permit shall be issued unless the Applicant has conducted a Community Outreach Hearing consistent with the Cannabis Control Commission’s Guidance for License Applicants on Community Outreach. The Applicant shall contact the Select Board to schedule a mutually agreeable time for the Community Outreach Hearing.
- b. No Special Permit shall be issued until the Town and the Marijuana Establishment have executed a Host Community Agreement consistent with the requirements of M.G.L. c.94G, §3 and governing the operations regulated under Section 6.30; provided, however, that a new Host Community Agreement shall not be required for an RMD converting to or expanding into recreational use if the existing agreement contemplates such conversion or expansion. Compliance with such Host Community Agreement shall be a condition of any Special Permit issued pursuant to this section.

**6.30.3** Buffer Zones

- a. No Marijuana Establishment shall be located within the buffer zone of any pre-existing public or private school, child care facility, including preschools and daycare centers, or any facility in which children commonly congregate, including, but not limited to, a public library, a playground, an athletic field or recreational facility, a place of worship, or a Town-owned beach; provided, however, that a bus stop shall not be considered to be a facility for the purposes of this section. The buffer zones shall be as follows:

District	Buffer Zone
B	Twenty-five (25) feet
M	No Buffer Zone (0 feet)

- b. The distances specified by this section shall be measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed Marijuana Establishment.

#### **6.30.4** Requirements

- a. A Marijuana Establishment shall be open and operational only during the times specified in its Special Permit. The hours of operation shall be reasonable given the type and location of the establishment.
- b. Any Marijuana Retailers located within the Business District shall not have a gross floor area of more fifteen hundred (1,500) square feet.
- c. Signage shall require the written approval of the Planning Board in accordance with the provisions of Section 6.8, where applicable.
- d. All Marijuana Establishments shall comply with the requirements of the Americans with Disabilities Act Accessibility Guidelines.
- e. All Marijuana Establishments shall comply with a security plan approved by the Select Board and incorporated into the Marijuana Establishment's Special Permit, including:
  1. Measures to deter or prevent unauthorized access and theft;
  2. If applicable, measures to ensure that outdoor areas are not readily accessible to unauthorized individuals;
  3. Measures to protect the premises, customers, and Marijuana Establishment Agents and other individuals required to hold a registration card from the Cannabis Control Commission;
  4. Sufficient lighting of the outside perimeter to facilitate surveillance; and
  5. Trees, bushes and other foliage outside of the Marijuana Establishment shall be maintained so as to prevent a person or persons from concealing themselves from sight.

A copy of the plan shall be provided to the Chief of Police and the Fire Chief. Any material modification to the security plan shall require an amendment to the Special Permit.

- f. All Marijuana Establishments shall provide proof of compliance with the surety bond or escrow account requirements of the Cannabis Control Commission.
- g. A Marijuana Establishment shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state-issued licenses or permits or within six months of ceasing operations, whichever comes first.

#### **6.30.5** Standards and Procedures Applicable to Marijuana Establishments

- a. Applicants for a Special Permit shall submit the following information in addition to all other required submissions:

1. Names and address of all owners, managers, members, and partners, and Marijuana Establishment Agents and other individuals required to hold a registration card from the Cannabis Control Commission, if known at the time;
  2. Sources of all marijuana;
  3. Projected quantity of marijuana that the Marijuana Establishment will cultivate, process, manufacture, study, test, transport, or sell per month; and
  4. The name and contact information for a person on staff at the Marijuana Establishment whose responsibilities include community relations, to whom the Town staff can provide notice if there are operating problems associated with the establishment.
- b. The Applicant shall work cooperatively with the Select Board or its designee to develop a plan to prevent diversion to minors and to positively impact the community. The plan shall be presented during the Community Outreach Hearing.
  - c. No Special Permit may be issued unless the Select Board finds that the Marijuana Establishment is designed so as to minimize any adverse visual or economic impacts on the abutters or other parties in interest, as defined in M.G.L. c. 40A, §11.
  - d. As a condition of the Special Permit, each Marijuana Establishment shall:
    1. File with the Select Board and the Town Clerk a copy of all reports submitted to any state agency, including, but not limited to, the reports required by 935 CMR 500.105(10)(d) describing the establishment's liability insurance coverage and the annual security system audits required by 935 CMR 500.110(8);
    2. Provide documentation to the Select Board that each Marijuana Establishment Agent has completed training regarding the proper handling of marijuana prior to performing job functions. Such documentation must be provided to the Board within 10 business days of the completion of such training. Annually, the establishment shall provide documentation to the Board that all Marijuana Establishment Agents have received at least eight hours of on-going training; and
    3. Meet with the Select Board, upon its written request, to discuss the operation of the Marijuana Establishment and its impacts on the community and nearby residents.
  - e. Special Permits shall have a term limited to the duration of the Applicant's ownership and the use of the premises as a Marijuana Establishment. Transfers of the Special Permit may occur only with the permission of the Select Board, and only in the form of an amendment to the Special Permit.

## **6.31 Residential Inclusionary Development**

### **1.1. Purpose.**

The purpose of this bylaw is to promote the general public welfare, including but not limited to ensuring an economically integrated and diverse community by maintaining and increasing the supply of affordable and accessible housing in the Town of Stockbridge. This purpose includes:

1. Ensuring that new development generates affordable housing as defined in Section 1.2.
2. Ensuring that affordable housing created under this section remains affordable over the long term, with the majority of such housing remaining affordable in perpetuity, except as may be otherwise required under state or deferral programs.
3. Maintaining a full mix of housing types while providing affordable housing opportunities in Stockbridge.
4. To the extent allowed by law, ensuring that preference for new affordable housing is given to eligible persons who live or work in Stockbridge.

### **1.2. Definitions**

The following terms shall have the following definitions for the purposes of this Section 6.31:

1. “Affordable Housing” shall mean a unit that is affordable to and occupied by a low-or moderate-income household and meets the requirements for inclusion in the Chapter 40B Subsidized Housing Inventory.
2. “Maximum Resale Price” shall mean the sum of:
  - a. The initial sale price divided by the Area Median Income (AMI) for a four (4)-person household, then multiplied by the AMI for a four (4)-person household at the time that the Affordable Housing Unit is offered for resale; plus
  - b. 2% of the initial sale price for marketing and brokers’ fees; plus
  - c. The original cost of capital improvements as evidenced by receipts with proof of payment submitted to the Stockbridge Board of Selectmen (SBOS), depreciated by 10% per year from date of expenditure.
  - d. In no event shall the Maximum Resale Price exceed the purchase price for which a Qualified Purchaser earning 80% of the AMI for a household the size of the Qualified Purchaser’s household could obtain mortgage financing using the same methodology then used by Department of Housing and Community Development’s (DHCD) for its Local Initiative Program (LIP) or similar program.

3. “Qualified Purchaser” shall mean an individual or household earning no more than 80% Of Area Median Income as determined by Department of Housing and Urban Development (HUD) income limits which includes Stockbridge. To be considered a Qualified Purchaser, the individual or household must intend to occupy and thereafter must occupy the Unit as their principal residence. “Unit” shall mean a residential Housing unit.

### 1.3 Applicability

The provisions of this Section 6.31 shall apply to all new or substantial renovation of residential development in Stockbridge where the number of units exceeds 9.

### 1.4 Special Permit Authority

The development of any project under Section 6.31.1.3 shall require the grant of an Inclusionary Development Special Permit from the SBOS. The Special Permit shall conform to the requirements of this bylaw and to Massachusetts General Laws Chapter 40A, and to regulations which the Board of Selectmen may adopt for carrying out its requirements hereunder.

### 1.5 Minimum Requirements for Inclusionary Development

Development subject to this Section 6.31 shall provide at a minimum, at the applicant’s choice, one of the following:

1. a. Include onsite affordable housing units at the following minimum rates:

<b>Total Development Unit Count</b>	<b>Required Affordable Unit Provision</b>
10 – 19 units	Minimum one (1) dwelling unit
20 – 29 units	Minimum two (2) dwelling units
30 units and up	Minimum 10% of total unit count*

\*For developments of 30 or more units, calculation of the number of affordable units shall, if the required percent of the total results is a fraction, be rounded up to the next whole number where the fractional portion is equal to 0.5 or greater and shall be rounded down to the next whole number where the fractional portion is less than 0.5.

Affordable Housing Units provided under this subsection shall be dispersed throughout the buildings in the development and must be indistinguishable with regard to finishes, amenities, total square footage, room size, and construction from the development’s market rate units with the same number of bedrooms.

- b. Construct or rehabilitate one or more Affordable Housing Units off site that equal or exceed in construction cost the average construction cost of the development’s housing

units. The offsite Affordable Housing Units provided under this subsection must be comparable in finishes, amenities, total square footage, room size, and construction to that of the housing in the rest of the development.

- c. A cash payment equivalent to 5 times 80% of the AMI as determined by HUD income limits which includes Stockbridge for every ten (10) new units of market rate Units.

As a condition for granting of a Special Permit, all Affordable Housing Units shall be subject to an affordable housing restriction perpetuated in a deed in the form acceptable to the SBOS, enforceable in perpetuity under the applicable provisions of G.L. c. 184 and including the right of first refusal described in Section 1.10. b. *infra*. The affordable restriction shall be approved as to form by legal counsel to the SBOS. The Special Permit must be recorded at the Berkshire Middle Registry of Deeds and a copy noting the Book and Page of recording filed with the SBOS and Building Commissioner.

### 1.6 Types of Building

The development subject to this Section 6.31 may consist of any combination of single-family, two-family, multifamily residential structures or other allowable uses under the applicable zoning district of the Town of Stockbridge Zoning Bylaw.

### 1.7. Decision

The SBOS may approve with conditions or deny an application for an Inclusionary Development Special Permit after determining whether the Inclusionary Development promotes the purposes of this Section 6.31 and is otherwise consistent with the purposes of the Zoning Bylaw.

### 1.8 Relation to Other Requirements

The provisions of this Section shall be in addition to any other requirements of the Subdivision Control Law G.L. c. 41 or any other provisions of the Town of Stockbridge Zoning Bylaw. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw or provisions therein shall apply.

### 1.9 Maximum Incomes and Selling Prices: Initial Sale

1. The developer must ensure that only Qualified Purchasers purchase an Affordable Housing Unit.
2. The Affordable Housing Units shall initially be sold to a Qualified Purchaser for no more than the maximum price as established under affordability guidelines by DHCD or a successor agency in effect at the time the Unit is built.
3. The SBOS may condition the Special Permit on a requirement that the Affordable Housing Unit be first offered for sale to a Qualified Purchaser who is a current resident of Stockbridge.



1.10 Reservation of Affordability; Restrictions or Resale or Rent

1. Each Affordable Housing Unit created in accordance with this Section 6.31 shall be subject to resale restrictions through the use of a deed restriction or deed rider. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households.
  - a. Resale price. No sale after the initial sale shall be valid unless the aggregate value of all consideration and payments of every kind given or paid by the Qualified Purchaser is equal to or less than the Maximum Resale Price.
  - b. Right of first refusal to purchase. The purchaser of an Affordable Housing Unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the town, consistent with model riders prepared by Department of Housing and Community Development, granting, among other things, Stockbridge's right of first refusal to purchase the unit in the event that a subsequent qualified purchaser cannot be located within 365 days of the unit being offered for sale. The owner must notify the Board of Selectmen in writing when the 365 days have passed without sale. By vote of the Stockbridge Affordable Housing Trust, or any other governmental or non-profit organization committed to preserving and maintaining affordable housing. The right is exercisable by Stockbridge or its assignee within 150 days of offer.
  - c. The SBOS shall require as a condition for Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including execution of the deed rider.
  - d. In the event that a Qualified Purchaser cannot be found and the right of first refusal is not exercised, the Affordable Housing Unit may be sold at market rate and the Town shall take any and all steps necessary to extinguish the affordable restriction described in Section 1.5.
  - e. Units subject to an affordable restriction under this bylaw cannot be rented.

1.11 Severability

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or section or parts of any section of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw.

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

### **7.1 Membership and Authority**

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

### **7.2 Statutory Powers Of The Zoning Board of Appeals**

#### **7.2.1 Appeals**

The Board is authorized to hear and decide an appeal, as provided in Section 8, Chapter 40A (G.L.), taken by any person aggrieved by reason of his/her inability to obtain a permit for enforcement action from any administrative officer under the provisions of Chapter 40A (G.L.), by the Berkshire County Regional Planning Commission, or by any person including an officer or board of the Town of Stockbridge, or of an abutting town, aggrieved by an order of decision of the Building Inspector, or other administrative official, in violation of any provision of Chapter 40A (G.L.) or of this Bylaw. Any such appeal must be taken within thirty (30) days from the date of the order or decision which is being appealed, by filing a notice of appeal with the Town Clerk, as provided in Section 15, Chapter 40A (G.L.).

#### **7.2.2 Variances**

The Board may authorize upon appeal or upon petition with respect to a particular land or structure a variance from the terms of this Bylaw where the Board 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 structure but not affecting generally the zoning district in which it is located, literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.

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

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

### 7.2.2.2 Expiration of Variance

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 (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one (1) year period. If the permit granting authority does not grant such extension within thirty (30) days of the date of application therefore, and upon the expiration of the original one (1) year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section.

### 7.3 Special Permits

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

### 7.4 Conditions, Safeguards And Limitations

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

### 7.5 Appeals, Applications and Petitions To The Board Of Appeals

#### 7.5.1 Required Public Hearing

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

### 7.6 Decisions By The Board Of Appeals

The decision of the Board of Appeals shall be made within 100 days after the date of the filing of an appeal, application or petition with the Town Clerk except in regard to special

permits as provided in Section 6.3 of this Bylaw. Failure by the Board to act within said 100 days shall be deemed to be the grant of the relief, application or petition sought.

## **SECTION 8: ADMINISTRATION AND ENFORCEMENT**

### **8.1 Enforcement By Building Inspector**

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

- 8.1.1 No permit shall be issued by the Building Inspector unless the application for a permit indicates compliance with this Bylaw and any other applicable town bylaws and regulations, the State Sanitary Code and the Board of Health regulations, the Planning Board's Subdivision Control Regulations, and the Wetlands Protection Act, if applicable.
- 8.1.2 No permit or license shall be granted for a new use of a building, structure or land which use would be in violation of this Bylaw.
- 8.1.3 The Building Inspector shall give reasonable notice to the owner(s) of his/her intent to examine or inspect any building or property and shall enter only with the permission of the owner. At such time, the Building Inspector shall have the right to enter upon, examine, and inspect, or cause to be entered, examined and inspected, any building or property for the purpose of carrying out his or her duties, and to determine the compliance with the provisions of this Bylaw. If such permission is denied, the Building Inspector shall contact the Town Counsel to pursue appropriate legal action necessary to gain entry for the purposes of examination and inspection of the building or property in question.

### **8.2 Construction And Use To Be As Provided In Permits**

- 8.2.1 Special permits or building permits issued on the basis of plans and applications approved by the Board of Selectmen, Board of Health, Planning Board or the Board of Appeals authorized only the use, arrangement and construction as set forth in such approved plans and applications. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this Bylaw and punishable as provided herein.
- 8.2.2 Construction or operation under a building or special permit shall conform to any subsequent amendment of this Bylaw unless the permit is issued before the first publication of the required notice of public hearing by the Planning Board on such amendment, and the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

### **8.3 Frontage Requirement For Building Lots**

No building permit shall be issued by the Building Inspector unless the lot on which the construction is proposed has at least the required minimum frontage on an accepted public way, or on a way shown on an approved and recorded subdivision plan, or on a way otherwise qualifying or approved by the Planning Board under the Subdivision Control Law, or as exempt per Section 6.1.1.e. See definition of Lot Frontage.

### **8.4 Violation**

8.4.1 If the Building Inspector is requested in writing to enforce this Bylaw against any person alleged in violation of it and the Building Inspector declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen (14) days of receipt of such request.

#### **8.4.2 Criminal Disposition**

Whoever shall violate any provision of this Bylaw or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$300.00 for each offense. Each day such violation continues shall constitute a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as it deems necessary to prevent or remedy any violation.

#### **8.4.3 Non-Criminal Disposition**

In addition to the procedures for enforcement as described above, the provisions of this Zoning Bylaw, the conditions of any special permits granted under this Bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, may also be enforced by the Inspector of Buildings, acting as the Zoning Enforcement Agent, by non-criminal complaint pursuant to the provisions of MGL Ch. 40 Section 21-D. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for violation of any provision of this law shall be \$50.00 for the first offense, \$100.00 for the second offense, \$200.00 for the third offense, and \$300.00 for the fourth offense and each subsequent offense.

## **SECTION 9: AMENDMENT AND VALIDITY**

### **9.1 Amendment**

9.1.1 This Bylaw may be amended from time to time in an annual or special town meeting in accordance with Chapter 40A, Section 5 of the General Laws.

9.1.2 No zoning bylaw or amendment thereto shall be adopted until after the Planning Board has held a public hearing thereon, for which a notice has been published, posted, and

mailed as provided in MGL 40A Section 5, and a report with recommendations is sent to the Town Meeting, or twenty-one (21) days after the hearings has elapsed without submission of such report. If the town meeting fails to vote to adopt any proposed bylaw within six (6) months after the Planning Board meeting, no action shall be taken thereon until after a subsequent public hearing is held with notice and report provided.

## **9.2 Validity**

- 9.2.1 In their interpretation and application, the provisions of this Bylaw shall be held to be the minimum requirements. Wherever the requirements of this Bylaw are at variance with the requirements of any other lawfully adopted regulations or Bylaws, or with deed restrictions or covenants, the most restrictive or the one imposing the higher standards, shall govern.
- 9.2.2 This Bylaw, or any amendment thereto, shall take effect on the date on which such adoption or amendment is voted by the town meeting.
- 9.2.3 This Bylaw repeals and replaces the Zoning Bylaw adopted originally on February 12, 1934, and any subsequent amendments made thereto.
- 9.2.4 The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.