

# ZONING BY-LAWS



**WESTPORT, MASSACHUSETTS**

**Revised September 6, 2017**

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# ARTICLE XIV - ZONING BY-LAWS

## ARTICLE 1

### PURPOSE AND DEFINITIONS

#### **1.0**            PURPOSE

The purpose of this By-Law is declared to be the promotion of the public health, safety, convenience, and welfare by:

- A.            Encouraging the most appropriate use of land;
- B.            Preventing overcrowding of land;
- C.            Conserving the value of land and buildings, including the conserving of natural resources and the preventing of blight and polluting the environment;
- D.            Lessening the congestion of traffic;
- E.            Preventing undue concentration of population;
- F.            Providing for adequate light and air;
- G.            Reducing hazards from fire and other dangers;
- H.            Assisting in the economical provisions of transportation, water, sewerage, schools, parks, and other public facilities;
- I.            Encouraging housing for persons of all income levels;
- J.            Preserving and increasing the amenities of the Town;
- K.            Giving effect to the policies and recommended proposals of the Master Plan of Westport.

The use, construction, repair, alteration, extension, and height of buildings and structures and the use, or alteration or extension of use of premises in the Town are hereby regulated as hereinafter provided.

(1963 ATM, Article 38; 1978 ATM, Article 21)

**(Editorial Note):** Article 21 of 1978 completely rewrote this section.  
(For original, see Appendix)

#### **1.1**            DEFINITIONS (Formerly Section II)

In this By-Law, the following terms, unless a contrary meaning is required by the context or is specifically prescribed, shall have the following meanings: Words used in the present tense include the future, and the plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied." The word "person" includes a corporation as well as an individual.

**Accessory Apartment** - An independent dwelling unit of five hundred (500) to nine hundred (900) square feet contained within a single-family residence. The unit shall have a separate exterior entrance, a kitchen/living room, a bathroom and a maximum of one bedroom. Either unit shall be occupied by the owner.

**Accessory Use** - A use or building customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building. In buildings restricted to residence use, the office of a professional man, customary family occupations and workshops not conducted for compensation, shall be deemed accessory uses.

**Adult Entertainment Establishment** - The following uses, as defined in G.L. c.40A, §9A, shall be known as Adult Entertainment Establishments: Adult Bookstore, Adult Motion Picture Theatre, Adult Paraphernalia Store, Establishment Which Displays Live Nudity For Its Patrons, and Adult Video Store.

For purposes of this By-Law, the term "substantial or significant portion of stock in trade" shall be deemed to exist under any of the following circumstances:

- a. When the cost (either wholesale or retail) of the portion of the stock in trade on hand characterized or distinguished by depicting or concerning sexual conduct or sexual excitement, as defined in G. L. c. 272, §31, comprises more than ten percent (10%) of the total stock in trade on hand; or
- b. When monthly revenues, including rentals, from such stock in trade exceeds more than ten percent (10%) of the monthly revenues from all stock in trade; or
- c. When an area of more than ten percent (10%) of the floor area open to or observable by customers is wholly or partially used for the display or storage of such stock in trade; or
- d. When a business with any such stock in trade fails, upon request of the Inspector of Buildings to produce accurate information to determine whether the thresholds set forth in paragraphs (a), (b) or (c) have been exceeded, there shall be a presumption that such business comprises an Adult Entertainment Establishment.

**Adult Theater** - (2008 ATM, Article 45 deleted this section)

**Advanced Materials** - An emerging new category of operations generally described as: All new materials and modifications to existing materials to obtain superior performance in one or more characteristics that are critical for the application under consideration.

**Affordable Housing Restriction** - A deed restriction approved by the Board and Town Counsel that designates a Dwelling Unit as affordable housing pursuant to the statutory requirements of the General Laws of the Commonwealth of Massachusetts, regulations and guidelines adopted pursuant thereto by the Dept. of Housing and Community Development, as well as any applicable requirements of the Westport Zoning By-Laws and regulations promulgated thereunder and that renders the unit eligible for inclusion in the SHI maintained by DHCD or any successor agency. (2009 ATM, Article 28)

**Affordable Unit** - A housing unit that by deed restriction is and shall remain permanently affordable by being available, upon sale or resale, for purchase or rent to purchasers or renters so that the unit shall count towards the Town's Subsidized Housing Inventory as maintained by the Department of Housing and Community Development.

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

**Agri-commercial** - means commercial activities designed to market to and bring the public to a Farm Enterprise for a farm related experience, and increase the sale of agricultural products to the public with the express purpose of enhancing the agricultural viability of a Farm Enterprise.

**Agri-entertainment** - means entertainment, such as a seasonal event, festival, contest, music, party, or other time-specific event, designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of the agricultural operations with the ultimate goal to encourage the purchase of agricultural products. Agri-entertainment is designed to enhance the agricultural viability of farm operations.

**Agri-tourism** - means tourism designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of agricultural operations with the ultimate goal to encourage the purchase of agricultural products. Agricultural tourism shall include Farm-Stay programs, entertainment events on the farm, fundraising activities, and community

events. Agri-tourism is designed to enhance the agricultural viability of the farm operations.

**Alter** - Activities such as demolition, construction, clearing, excavation, grading, filling, and reconstruction that result in a change in the natural cover or topography.

**Analytical Laboratory Instrument Manufacturing** - (NAICS 334516) This group covers establishments primarily engaged in manufacturing laboratory instruments and instrumentation systems for chemical or physical analysis of the composition or concentration of samples of solid, fluid, gaseous, or composite material.

**Animal (except Poultry) Slaughtering** - (NAICS 311611) This U.S. industry comprises establishments primarily engaged in slaughtering animals (except poultry and small game). Establishments that slaughter and prepare meats are included in this industry.

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

**Area Median Income** - Median income as reported by the most recent information from the United States Department of Housing and Urban Development and/or DHCD for the Providence-Fall River, RI-MA HUD Metro FMR Area.

**Area Of Special Flood Hazard** - Is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated on a FIRM as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

**Assembly Line Operations** - Fabrication of raw materials or assembly of parts or materials fabricated offsite.

**Assisted Living Facility (ALF)** - A facility as defined in 651 CMR 12.02.

**As of Right Siting** - Development may proceed with the issuance of a building permit.

**Bank** - A financial institution that is open to the public and engaged in deposit banking, and that performs closely related functions such as making loans, investments, and fiduciary activities.

**Bank Branch** - A banking service(s) office, which may or may not include automated teller machines, that does not include drive-through services of any kind.

**Base Flood** - The flood having a one percent chance of being equaled or exceeded in any given year.

**Bed & Breakfast (homestay)** - A private owner occupied residence with one to three guestrooms. The bed and breakfast homestay is subordinate and incidental to the main residential use of the building. The home is to be the primary and legal residence of the owner, is a single-family residence, and the owner shall be responsible for the operation of the property and shall be a resident of the property when the Bed and Breakfast establishment is in operation. Individual guests are prohibited from staying at a particular bed and breakfast establishment for more than fourteen (14) days in any 30-day period.

**Big Box Retail** - A singular retail or wholesale user who occupies no less than 75,000 square feet of gross floor area, typically requires high parking to building area ratios, and has a regional sales market. Regional retail/wholesale sales can include but are not limited to membership warehouse clubs that emphasize bulk sales, discount stores, and department stores.

**Biofiltration, Bioretention and/or Rain Garden** - A stormwater treatment practice that uses soils, plants, and microbes to treat storm water before it is infiltrated and/or discharged. Bioretention cells are shallow depressions filled with sandy soil topped with a thick layer of mulch and planted with dense native vegetation.

**Biotechnology** - The fusion of biology and technology. Biotechnology is the application of biological techniques to product research and development. In particular, biotechnology involves the use by industry of recombinant DNA, cell fusion, and new bioprocessing techniques. Biotechnology uses are subject to all federal, state and local regulations.

**Buffer Area** - An area of land, including landscaping, berms, walls, fences, and building setbacks, that is located between land uses of different character and is intended to mitigate negative impacts of the more intense use on a residential or vacant parcel.

**Building** - An independent structure having a roof supported by columns or walls, resting on its own foundations and designed for the shelter, housing or enclosure of persons, animals, chattel or property of any kind.

**Building Height** - The vertical dimension from the lowest point of the building, structure, or wall exposed above the ground surface to the highest point of the roof, parapet wall, or uppermost part. Chimneys, vents, or utility service structures shall not be included in the measurement of vertical dimensions.

**Building Permit** - A construction permit issued by the Building Inspector; the building permit evidences that the project is consistent with the state and federal building codes as well as local Zoning By-Laws.

**Business and Secretarial Schools** - (NAICS 611410) This category includes establishments offering courses in business machine operation, office procedures, and secretarial and stenographic skills.

**Coastal High Hazard Area** - An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V, V1-30, VE.

**Corporate Offices** - The business offices of local, national or international companies.

**Cutting Tool and Machine Tool Accessory Manufacturing** - (NAICS 333515) This category covers establishments primarily engaged in manufacturing cutting tools, machinists' precision measuring tools, and attachments and accessories for machine tools and for other metalworking machinery, not elsewhere classified. Establishments primarily engaged in manufacturing hand tools, except power-driven types, are classified in the cutlery, hand tools, and general hardware industries.

**Data Processing, Hosting, and Related Services** - (NAICS 518210) This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting, provide application service provisioning, or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services.

**Day Care Center** - Any facility operated for the purpose of providing care, protection and guidance to individuals during only part of a 24-hour day. This term includes nursery schools, preschools, day care centers for children or adults, and other similar uses but excludes public and private educational facilities or any facility offering care to individuals for a full 24- hour period.

**Dental Equipment and Supplies Manufacturing** - (NAICS 339114) This classification comprises of establishments primarily engaged in manufacturing artificial teeth, dental metals, alloys, and amalgams, as well as a wide variety of equipment, instruments, and supplies used by dentists, dental laboratories, and dental colleges.

**Dental Laboratories** - (NAICS 339116) This classification comprises establishments primarily engaged in making dentures, artificial teeth, and orthodontic appliances to order for the dental profession.

**Designated Location for Solar Energy Systems** - The zoning districts designated by Article 24.

**Detention** - The temporary storage of stormwater runoff in a stormwater management facility with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

**Detention Facility** - A detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

**Developer** - A person who undertakes land disturbance activities.

**Development** - Any man made 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.

**Distribution Center** - (See also warehouse) A use where goods are received and/or stored for delivery to the ultimate customer at remote locations.

**Disturbance Of Land** - Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material. See Land Disturbance Activity.

**Dwelling** - A building designed or used as the living quarters for one or more families as the principal use.

**Dwelling, Multi-Family** - A building containing more than two dwelling units, with each unit containing its own sleeping, cooking and sanitary facilities.

**Dwelling, One-Family** - A detached building containing one dwelling unit only and having two side yards.

**Dwelling, Two-Family** - A detached building containing two (2) dwelling units, with each unit containing its own sleeping, cooking and sanitary facilities.

**Easement** - A legal right granted by a landowner to a third party grantee allowing the use of private land for stormwater management purposes.

**Electromedical and Electrotherapeutic Apparatus Manufacturing** - (NAICS 334510) This classification covers establishments primarily engaged in manufacturing orthopedic, prosthetic, and surgical appliances and supplies; arch supports and other foot appliances; fracture appliances, elastic hosiery, abdominal supporters, braces, and trusses; bandages; surgical gauze and dressings; sutures; adhesive tapes and medicated plasters; and personal safety appliances and equipment.

**Electronic Connector Manufacturing** - (NAICS 334417) This industry is comprised of manufacturers of electronic connectors, such as coaxial, cylindrical, rack and panel, and printed circuit connectors. Establishments primarily engaged in manufacturing electrical connectors are classified in SIC 3643: Current-Carrying Wiring Devices, those manufacturing electronic capacitors are classified in SIC 3675: Electronic Capacitors, and those manufacturing electronic coils, transformers, and other inductors are classified in SIC 3677: Electronic Coils, Transformers, and Other Inductors.

**Electronic Data Processing (EDP)** - The use of automated methods to process commercial data. Typically, this uses relatively simple, repetitive activities to process large volumes of similar information. For example: stock updates applied to an inventory, banking transactions applied to account and customer master files, booking and ticketing transactions to an airline's reservation system, billing for utility services.

**Eligible Household** - A household whose total income does not exceed 80% of the area median income, adjusted for household size, as reported by the most recent information from the United States Department of Housing and Urban Development and/or DHCD.

**Engineering Services** - (NAICS 541330) This category covers establishments engaged primarily in providing professional engineering services. Civil, mechanical, electrical and electronic, chemical, sanitary, industrial, petroleum, mining, aeronautical, and marine engineering are among the disciplines included. Establishments primarily providing and supervising their own engineering staff on temporary contract to other firms are included in this industry.

**Facility** - A structure or place, which is built, installed, or established to serve a particular purpose.

**Family** - One or more persons occupying a dwelling unit and living, sleeping, cooking and eating on the same premises as a single housekeeping unit.

**Farm Enterprise** - means a farming operation that is entitled to protection under M.G.L. Chapter 40A, Section 3.

**Farm Management Services** - (NAICS 115116) This category describes establishments primarily engaged in providing farm management and maintenance services for farms, citrus groves, orchards, and vineyards. Such activities may include supplying contract labor for agricultural production and harvesting, inspecting crops and fields to estimate yield, determining crop transportation and storage requirements, and hiring and assigning workers to tasks involved in the harvesting and cultivating of crops; but establishments primarily engaged in performing such services without farm management services are classified in the appropriate specific industry within Industry Group 072. Workers with similar functions include agricultural engineers, animal breeders, animal scientists, county agricultural agents, dairy scientists, extension service specialists, feed and farm management advisors, horticulturists, plant breeders, and poultry scientists.

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

**Finfish Farming and Fish Hatcheries** - (NAICS 112511), **Shellfish Farming** – (NAICS 334516), **Other Aquaculture** – (NAICS 112519) This industry classification includes establishments engaged in the production of finfish and shellfish within a confined space and under controlled growing and harvesting procedures. It includes farmed aquatic animals intended as human food (catfish, trout, and oysters), bait (minnows), and pets (goldfish and tropical aquarium fish).

**First Flush** - Pollutant concentrations, including suspended sediments, carried by storm water in the beginning of a storm. These concentrations are typically higher than at the middle or end of the storm. To determine "first flush", see Water Quality Volume

definition.

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

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

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

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

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

**Frontage** - That portion of a lot fronting upon a street or way, said frontage to be measured continuously along one street line between its side lot lines and their intersection with the street line.

**Front Yard** - A "front yard" is a required open unoccupied space, within and extending the full width of the lot, between the street line and the front of a building.

**Glass Product Manufacturing Made of Purchased Glass** - (NAICS 327215) This category covers establishments primarily engaged in manufacturing glass products from purchased glass.

**Green Roof** - The roof of a building that is partially or completely covered with vegetation and soil, or a growing medium, planted over a waterproofing membrane. A green roof is used to mitigate the effects of urbanization on water quality by filtering, absorbing or detaining rainfall.

**Heat Island Effect** - Built up areas that are hotter than nearby rural areas. Common strategies for reducing the heat island effect are: 1) increasing tree and vegetative cover, 2) installing green roofs 3) installing cool, mainly reflective, roofs, and 4) using cool pavements.

**Health Club** - A facility where members or nonmembers use equipment or space for the purpose of physical exercise.

**Height** - The height is described as the vertical distance between the highest point of the

roof and the average elevation of the naturally existing mean grade (the measurements taken at the corners of the lot) prior to any excavation, leveling, grading, or filling at the building foundation, exclusive of chimneys, air shafts, ventilators, vents, lightning rods, or similar items which may be of the height required for proper operation or use. Building height applies to all buildings and/or structures. The building shall remain in compliance with the height requirement after final grading.

**Hot Spot** - A stormwater hotspot is an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. Infiltration basins should never receive runoff from stormwater hotspots, unless the stormwater has already been fully treated by another stormwater treatment practice. This is due to potential groundwater contamination.

**Impervious Cover** - Those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

**Independent Living Facility (ILF)** - A facility reserved by deed for occupancy by persons over the age of fifty-five who are able to care for themselves, but with some common facilities as described herein.

**Industry, Heavy** - The production, assembly, processing, finishing or manufacture of any object or material which results in or would result in noise, dust, odor, vibration, gases, or any objectionable feature that can or could be detected at any time off the premises upon which located.

**Industry, Light** - Fabrication, assembly, processing, finishing work or packaging in such a manner that noise, dust, odor, vibration, or similar objectionable features are confined to the premises and are in no way objectionable to abutting property.

**Infiltration** - The flow of water from the ground surface down into the soil.

**Infiltration Facility** - Any structure or device designed to infiltrate retained water to the ground. These facilities may be above grade or below grade.

**Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables** - (NAICS 334513) This U.S. industry comprises establishments primarily engaged in manufacturing instruments and related devices for measuring, displaying, indicating, recording, transmitting, and controlling industrial process variables. These instruments measure, display or control (monitor, analyze, and so forth) industrial process variables, such as temperature, humidity, pressure, vacuum, combustion, flow, level, viscosity, density, acidity, concentration, and rotation.

**Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals** - (NAICS 334515) This industry is made up of companies that manufacture a multitude of analytical devices. Examples of industry output include voltmeters, ammeters, wattmeters, watt-hour meters, semiconductor test equipment, and circuit testers.

**Land Disturbance Activity** - Any activity that changes the volume or peak flow discharge rate of rainfall runoff from the land surface, including: grading, digging, cuffing, scraping, excavating of soil, placement of fill materials, paving construction, substantial removal of vegetation, any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

**Landowner/Owner** - The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding propriety rights in the land.

**Land Uses With Higher Potential Pollutant Loads ("LUHPPL")** - Defined in 310 CMR 10.04 and 314 CMR 9.02 to include the following: Land uses identified in 310 CMR 22.208(2), 310CMR 22.20C(2)(a-k) and (m), 310 CMR 22.21 (2)(a)(1 -8) and 310 CMR 22.21 (2)(b)(1 -6), areas within a site that are the location of activities that are subject to an individual National Pollutant Discharge Elimination System ("NPDES") permit or the NPDES Multi-Sector General Permit; auto fueling facilities (gas stations); exterior fleet storage areas; exterior vehicle service and equipment cleaning areas; marinas and boatyards; parking lots with high-intensity-use; confined disposal facilities and disposal sites.

**Lot** - An area of land in one ownership with definite boundaries, used, or available for use, as the site of one or more buildings.

**Lot Area** - The horizontal area of a lot exclusive of any area in a street or recorded way open to public use.

**Lot Coverage** - A measure of intensity of land use that represents the portion of a site that is impervious (i.e., does not absorb water). This portion includes but is not limited to all areas covered by buildings, parked structures, driveways, roads, sidewalks, and any area of concrete asphalt.

**Low Impact Development (LID)** - A comprehensive land planning and engineering design strategy that emphasizes conservation and use of existing natural site features integrated with distributed small-scale storm water controls to closely mimic natural hydrological patterns.

**Low Impact Development (LID) Management Plan** - A plan required to be submitted as part of this bylaw.

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

**Manufacture of Medical and Electronic Products** - A use, which produces from raw

materials or assembles from pre-made parts, medical or electronic products, where such production or assemblage requires the employment of skilled technicians. Any such manufacturing process is to take place within a building.

**Manufacturing** - To bring something into being by forming, shaping, combining, or altering materials.

**Manufacturing, Heavy** - The manufacture or compounding process of raw materials. These activities or processes would necessitate the storage of large volumes of highly flammable, toxic matter or explosive materials needed for the manufacturing process. These activities may involve outdoor operations as part of their manufacturing process.

**Manufacturing, Light** - The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment and packaging of such products, and incidental storage, sales, and distribution of such products, but excluding basic industrial processing and custom manufacturing.

**Market Rate Dwelling Unit** - A Dwelling Unit available for sale or rent within a project or development at an unsubsidized price commensurate with the fair market value of said dwelling unit.

**Median Income** - The area median income, adjusted by household size, reported by the most recent information from the U.S. Department of Housing and Urban Development and/or DHCD.

**Medical Laboratories And Diagnostic Facilities** - Uses, which provide an opportunity for experimentation, observation, testing, and analysis concerning the practice of medicine.

**Medical Marijuana Treatment Center** - shall mean a “not-for-profit entity, as defined by Massachusetts law only, registered by the Department of Public Health, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.”

**Medical Offices** - A business that provides physical or mental health care or medical services, including, but not limited to, general practitioner's offices, dentists, optometrists, and medical clinics. Veterinarian offices are also allowed as medical offices.

**Municipal Storm Drain System or Municipal Separate Storm Sewer System (MS4)** - The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Westport.

**Musical Instrument Manufacturing** - (NAICS 339992) This category covers

establishments primarily engaged in manufacturing musical instruments and parts and accessories for musical instruments. The primary products in this category are pianos, with or without player attachments, and organs. This industry also includes string, fretted, wind, percussion, and electronic instruments.

**NAICS** - The North American Industry Classification System or NAICS is used by business and government to classify business establishments according to type of economic activity (process of production) in Canada, Mexico and the United States.

**Natural Gas Distribution** --(NAICS 221210) This industry comprises: (1) establishments primarily engaged in operating gas distribution systems (e.g., mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers.

**Net-Zero Impact Development** - A building with zero net energy consumption and zero carbon emissions annually.

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

**Newsstand** - A temporary structure, manned by a vendor, which sells newspapers, magazines, and other periodicals.

**Non-Conforming Use** - A building or land lawfully occupied by a use that does not conform to the regulations of the district in which it is situated.

**Nonpoint (NPS) Source Pollution** - Pollution from any source other than from any discernible, confined, and discrete conduit or waterway, and shall include, but not be limited to, pollutants from agricultural, mining, construction, subsurface disposal and urban runoff sources.

**North American Industry Classification System** (NAICS) - The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

**Office Park (a.k.a Business Park)** - A large tract of land that has been planned, developed, and operated as an integrated facility for a number of separate office buildings and supporting ancillary uses with special attention to circulation, parking, utility needs, aesthetics, and compatibility.

**One-Hundred-Year Flood** - See Base Flood

**Open Space Residential Development (OSRD)** – A residential development of one-family and two-family dwellings in which the buildings and accessory uses are grouped together with reduced lot sizes into one or more areas. The land not included in the building lots shall be permanently protected as open space. The design of the development shall be in accordance with the four-step design process described in Article 18 of these By-Laws.

**Other Marine Fishing** - (NAICS 114119) This industry classification covers establishments primarily engaged in miscellaneous fishing activities, such as catching or taking of miscellaneous marine plants and animals. Plants and animals covered under this code include seaweed, sponges, sea urchins, terrapins, turtles, and frogs. Cultured pearl production also falls under this classification.

**Overlay Districts** - Zoning districts in which additional regulatory standards are superimposed on existing zoning. Overlay districts provide a method of placing special restrictions in addition to those required by basic zoning ordinances.

**Performance Zoning** - Establishes minimum criteria to be used when assessing whether a particular project is appropriate for a certain area; ensures that the end result adheres to an acceptable level of performance or compatibility. This type of zoning provides flexibility with the well-defined goals and rules found in conventional zoning.

**Permeable, Pervious or Porous Pavement** - is a paved surface with a higher than normal percentage of air voids to allow water to pass through it and infiltrate into the subsoil. Permeable paving techniques include porous asphalt, pervious concrete, paving stones, and manufactured "grass pavers" made of concrete or plastic.

**Permit Granting Authority** - Shall mean the Board of Appeals.

**Private or Unaccepted Way** - A street, which has not been accepted as a public way.

**Professional Offices** - A business that provides predominantly professional, administrative, or clerical services to a consumer, including, but not limited to, accounting, legal and real estate offices. Such services can be provided on or from the property.

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

**Rear Yard** - A "rear yard" is a required open unoccupied space, the full width of the lot lying between the extreme rear wall of the building and the rear line of the lot or the line of the public street or private way in case the lot borders on such street or way.

**Recharge** - The replenishment of water to aquifers.

**Recreation Active** - The refreshment of body and mind through forms of play,

amusement, or relaxation, such as boating, or organized sports.

**Recreation Passive** - The refreshment of body and mind through forms of play, amusement, or relaxation, such as enjoying the natural beauty of the shoreline, hiking, field trails or nature study.

**Redevelopment** - Any construction, alteration, or improvement exceeding one acre in area where existing land use is high-density commercial, industrial, institutional or multi-family residential.

**Regulatory Floodway** - See Floodway

**Renewable Energy** - Generation of power from naturally replenished resources such as sunlight, wind, and tides. Renewable energy technologies include solar power, wind power, hydroelectric power, geothermal, and biomass.

**Research and Development Business** - A business that engages in research, or research and development, of innovative ideas in technology-intensive fields. Examples include research and development of computer software, information systems, communication systems, transportation, geographic information systems, multimedia and video technology. Development and construction of prototypes may be associated with this use.

**Research and Development Laboratories and Facilities** - Uses which provide an opportunity for safe scientific experimentation, observation, testing and analysis, including, but not limited to, biotechnology uses.

**Resource Area** - Any area protected under the Massachusetts Wetlands Protection Act, Massachusetts Rivers Act, or Westport Conservation Commission regulations.

**Restaurant** - An establishment or part of an establishment devoted primarily to the service and consumption of food and beverages on the premises. Any such establishment shall be considered a restaurant if the service of food is its primary activity and the service of alcoholic beverages, if any, is incidental to the sale, service and consumption of food and non-alcoholic beverages.

**Retail Operations** - The selling of goods, wares, or merchandise directly to the ultimate consumer.

**Roof-Mounted Solar Energy Installation** - Solar photovoltaic arrays placed on the roof or wall of a structure.

**Scenic Roads** - Any road designated as a "Scenic Road," under G.L. c.40, §15C.

**Scientific, Technical, and Management Services** - Industries in the Professional, Scientific, and Technical Services subsector group establishments engaged in processes where human capital is the major input. These establishments make available the knowledge and skills of their employees, often on an assignment basis, where an individual or team is responsible for the delivery of services to the client. The

individual industries of this subsector are defined on the basis of the particular expertise and training of the services provider. The distinguishing feature of the Professional, Scientific, and Technical Services subsector is the fact that most of the industries grouped in it have production processes that are almost wholly dependent on worker skills. In most of these industries, equipment and materials are not of major importance, unlike health care, for example, where "high tech" machines and materials are important collaborating inputs to labor skills in the production of health care. Thus, the establishments classified in this subsector sell expertise. Much of the expertise requires degrees, though not in every case. Software and Communication Services is a sub category of this group

**Semiconductor and Related Device Manufacturing** - (NAICS 334413) This category covers establishments primarily engaged in manufacturing semiconductors and related solid-state devices. Important products of this industry are semiconductor diodes and stacks, including rectifiers, integrated microcircuits (semiconductor networks), transistors, solar cells, and light sensing and emitting semiconductor (solid-state) devices.

**Semiconductor Machinery Manufacturing** - (NAICS 333295) This U.S. industry comprises establishments primarily engaged in manufacturing wafer processing equipment, semiconductor assembly and packaging equipment, and other semiconductor making machinery.

**Sexually-Orientated Business** - (2008 ATM, Article 45 deleted this section)

**Side Yard** - A "side yard" is required open unoccupied space, within the lot within a side lot line, not a street line, and the parts of the building nearest to such lot line. Such a yard shall extend for its required width from the street line or its equivalent to the rear or its equivalent to another street.

**Sign** - Any structure or part thereof attached thereto or painted or represented thereon, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or advertisement. The word sign does not include the flag, pennant or insignia of any nation, state or other political unit, or of any educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event.

**Sign - Area Of** - The area of a free-standing sign includes all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed. The supporting framework, open or enclosed, may be part of the design, but for the purposes of this By-Law shall not be considered part of the sign area unless used for lettering, wording or symbols. When the sign consists of individual letters or symbols attached to or painted on a surface, building wall or window, the area shall be considered to be that of the smallest rectangular or other regular shape which encompasses all of the letters and symbols.

**Single Family Dwelling Unit (Noquochoke Overlay District Only)** - A detached building containing not more than one dwelling unit.

**Social Sustainability** - Design of the physical environment so as to provide, or easily to allow future adaptation to provide, full accessibility to persons with a range of physical abilities as these may change throughout their lifetime.

**Software and Communication Services** - See “Scientific, Technical, and Management Services”.

**Soil Mottling** - Redoximorphic features.

**Solar Energy Systems - Large Scale** - A solar photovoltaic system that is structurally mounted on the ground, not roof-mounted, and occupies more than 1,000 square feet of land.

**Solar Energy Systems - Small Scale** - A solar photovoltaic system that is any size roof-mounted, or is structurally mounted on the ground and occupies 1,000 square feet of land or less.

**Solar Photovoltaic Array** - An arrangement of solar photovoltaic panels.

**Special Flood Hazard Area** - An area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

**Special Permit Granting Authority** - Shall include the Board of Selectmen, Board of Appeals, Planning Board, as designated by this By-Law for the issuance of special permits.

**Start of Construction** - The first land-disturbing activity associated with a development, including but not limited to land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

**Stormdrain System** - The conveyance system, including catchbasins, manholes, pipes and drainage ditches to transport stormwater runoff [usually to a storm water management practice(s)].

**Stormwater Management Plan** - A plan required to be submitted as part of this bylaw.

**Stormwater Management Practice(s)** - Techniques used to control the impacts (flooding, increased volume, and pollution) of stormwater runoff.

**Stormwater Management System** - All components associated with the management of stormwater runoff including the Stormdrain System and the Stormwater Management Practice(s).

**Stormwater Pollution Prevention Plan (SWPPP)**: A plan required under the Environmental Protection Agency's (EPA) NPDES Construction General Permit for

projects that disturb one acre or more of land (See DEP Handbook Chapter I, Volume I).

**Stormwater Runoff** - Water resulting from precipitation that flows overland.

**Stormwater Treatment Practices** - Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies

**Story** - That portion of a building included between the upper surface of any floor and the upper surface of the floor next above except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such as usable or unused under-floor space shall be considered as a story.

**Story, First** - The lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than four feet below grade, as defined herein, at any point.

**Street** - Any duly-accepted public way, any way not less than 40 feet wide shown on plan duly recorded after April 10, 1920, or any other way equivalent to a public way for the purposes of subdivision control as specified in General Laws, Chapter 41, Section 81L.

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

**Surgical and Medical Instrument Manufacturing** - (NAICS 339112) This industry is comprised of companies primarily engaged in manufacturing a multitude of miscellaneous monitoring instruments. Major industry product segments include aircraft engine instruments; nuclear radiation detection and monitoring instruments; commercial, geophysical, meteorological, and general-purpose instruments and equipment; and physical properties testing and inspection equipment. This industry also encompasses companies that produce selected surveying and drafting supplies, such as transits, slide rules, and T-squares, as well as other measuring and controlling devices.

**Turbine and Turbine Generator Set Units Manufacturing** - (NAICS 333611) This industry covers establishments primarily engaged in manufacturing steam turbines; hydraulic turbines; gas turbines, except aircraft; and complete steam, gas, and hydraulic

turbine generator set units. Also included in this industry are manufacturers of wind and solar powered turbine generators and windmills for generating electric power.

**Upland** - Land other than land classified under the Wetlands Protection Act as freshwater wetland, beach, flat marsh or swamp and land under any water bodies such as ocean, creek, river, stream, brook, pond or lake.

**Visitability** - Dwelling units are deemed Visitable if they meet the following three criteria: zero step entrance, all doorways that are 32 inches clear, and a toilet on the first floor.

**Warehouse** - Facilities characterized by extensive warehousing, frequent heavy trucking activity, open storage of material, or nuisances such as dust, noise, and odors, but not involved in manufacturing or production.

**Warehousing** - The process of storing goods within a storage facility.

**Watercourse** - Any body of water, including, but not limited to, lakes, ponds, rivers and streams.

**Waterway** - A channel, either natural or man-made, that directs surface runoff to a watercourse or to the public storm drain.

**Water Quality Volume** - the volume generated by the first 1.25 inches of stormwater runoff. This first inch of runoff carries the majority of accumulated pollutants from impervious surfaces. The first flush volume in cubic feet (VwQ) is determined by the following formula:

$VWQ = (1.25/12 \text{ inches}) (RwQv) (\text{Site Area in square feet});$

Where:  $RwQv = 0.05 + 0.009(I);$

I = the % impervious area.

**Way** – A public way or a way which the clerk certifies is maintained and used as a public way, or a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or a way in existence when the subdivision control became effective, having in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

**Wholesale Operations** - An establishment or place of business primarily engaged in selling and/or distributing merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies. This is not considered a general commercial use.

**Zero Step entrance** - An entrance that has no steps, and is at grade level with the exterior grounds. The zero step entrance can be at any doorway; front, side, rear.

**Zone A** - The 100-year flood plain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

**Zone A1-30 and Zone Ae (For New And Revised Maps)** - The 100-year flood plain where the base flood elevation has been determined.

**ZONE AH and ZONE AO** - The 100-year flood plain with flood depths of 1 to 3 feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Zone A99** - Areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

**Zone V** - A special flood hazard area along a coast subject to inundation by the 100-year flood with the additional hazards associated with storm waves. Base flood elevations have not been determined.

**Zone V1-30 and Zone VE (For New and Revised Maps)** - A special flood hazard area along a coast subject to inundation by the 100-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.

**Zoning By-Laws** - The Zoning By-Laws of the Town of Westport as amended.

(1963 ATM, Article 38; 1964 ATM, Article 54; 1973 STM, Article 19; 1978 ATM, Article 21; 1982 STM, Article 19; 1990 ATM, Article 52; 1995 ATM, Article 43; 1998 ATM, Article 64; 2005 ATM, Article 4; 2007 ATM, Article 20; 2008 ATM, Article 45, 2009 ATM, Articles 28 & 31; 2010 ATM, Article 36; 2011 ATM, Article 37; 2012 ATM, Article 36; 2013 STM, Article 10; 2014 ATM, Articles 29 & 30; 2016 ATM, Article 38; 2017 ATM, Article 24)

**(Editorial Note):** Article 54 of the 1964 ATM added the definitions of "Sign" and "Sign, Area of" to the original. Article 19 of the 1973 Special Town Meeting replaced entirely the old definitions of "Lot" and "Street Line" (see Appendix for prior ones) and added "Way," "Permit Granting Authority" and "Special Permit Granting Authority" were added by 1978 ATM, Article 21. "Front yard," "Side Yard," and "Rear Yard," were added by 1982 STM, Article 19. "Accessory Apartment" was added by 1990 ATM, Article 52). Article 43 of the 1995 ATM added the definitions of "Lot Area" and "Upland." The 1998 ATM, Article 64 added the definitions of "Adult Live Entertainment Establishment," "Adult Theater," and "Sexually-Oriented Business." The 2005 ATM, Article 4 added "Affordable Unit," "applicant," "Assisted Living Facility (ALF)," "Eligible Household," "Independent Living Facility (ILF)," and "Median Income." Article 20 of the 2007 ATM added the definition of "Open Space Residential Development (OSRD)". Article 45 of the 2008 ATM revised the definition of "Adult Entertainment Establishment". Article 28 of the 2009 ATM added the definitions of "Affordable Housing Restriction", Dwelling, Two-Family", "Dwelling, Multi-Family", Market Rate Dwelling Unit", Single Family Dwelling Unit (Noquochoke Overlay District Only)", Social Sustainability", "Visitability", "Zero Step Entrance", and "Zoning By-Laws". Article 31 of the 2009 ATM added the definitions of "Area of Special Flood Hazard", "Base Flood", Coastal High Hazard Area", "Development", "Federal Emergency Management Agency", "Flood Boundary And Floodway Map",

“Flood Hazard Boundary Map”, “Flood Insurance Rate Map”, “Flood Insurance Study”, “Floodway”, “Manufactured Home”, “New Construction”, “One Hundred-Year Flood”, “Regulatory Floodway”, “special Flood Hazard Area”, “Structure”, “Zone A”, “Zone A1-30 And Zone Ae”, “Zone A99”, “Zone V”, “Zone V1-30 And Zone VE”; Article 36 of the 2010 ATM revised the definition of “Affordable Unit.” and added the definition of “Area Median Income”. Article 37 of the 2011 ATM added the following definitions “Agriculture”, “Alter”, “Applicant”, Biofiltration, Bioretention and/or Rain Garden”, “Building”, “Detention”, “Detention Facility”, “Developer”, “Disturbance of Land”, “Easement”, “First Flush”, “Green Roof”, “Heat Island Effect”, “Hot Spot”, “Impervious Cover”, “Infiltration”, “Infiltration Facility”, “Land Disturbance Activity”, “Landowner/Owner”, “Land Uses With Higher Potential Pollutant Loads (LUHPPL)”, “Low Impact Development (LID)”, “Low Impact Development (LID) Management Plan”, “Municipal Storm drain System or Municipal Separate Storm Sewer System (MS4)”, “Nonpoint Source Pollution (NPS)”, “Permeable, Pervious or Porous Pavement”, “Recharge”, “Redevelopment”, “Resource Area”, “Soil Mottling”, “Start of Construction”, “Stormdrain System”, “Stormwater Management Plan”, “Stormwater Management Practice(s)”, “Stormwater Management System”, “Stormwater Pollution Prevention Plan (SWPPP)”, Stormwater Runoff”, “Stormwater Treatment Practices”, “Watercourse”, “Waterway”, and “Water Quality Volume”. Article 36 of the 2012 ATM added the following definitions: “Advanced Materials”, “Analytical Laboratory Instrument Manufacturing”, “Animal (except Poultry) Slaughtering”, “Assembly Line Operations”, “Bank”, “Bank Branch”, “Big Box Retail”, “Biotechnology”, “Buffer Area”, “Building Height”, “Business and Secretarial Schools”, “Corporate Offices”, “Cutting Tool and Machine Tool Accessory Manufacturing”, “Data Processing, Hosting and Related Services”, “Day Care Center”, “Dental Equipment and Supplies Manufacturing”, “Dental Laboratories”, “Distribution Center”, “Electromedical and Electrotherapeutic Apparatus Manufacturing”, “Electronic Connector Manufacturing”, “Electronic Data Processing”, “Engineering Services”, “Facility”, “Farm Management Services”, “Finfish Farming and Fish Hatcheries, Shellfish Farming, Other Aquaculture”, “Glass Product Manufacturing Made of Purchased Glass”, “Height”, “Health Club”, “Instruments and Related Products Manufacturing for Measuring, Displaying and Controlling Industrial Process Variables”, “Instrument Manufacturing for Measuring and Testing Electricity and Electric Signals”, “Industry, Heavy”, “Industry, Light”, “Lot Coverage”, “Manufacture of Medical and Electronic Products”, “Manufacturing”, “Manufacturing, Heavy”, “Manufacturing, Light”, “Medical Laboratories and Diagnostic Facilities”, “Medical Offices”, “Musical Instrument Manufacturing”, “NAICS”, “Natural Gas Distribution”, “Net-Zero Impact development”, “North American Industry Classification System”, “Newsstand”, “Office Park (a.k.a. Business Park)”, “Other Marine Fishing”, “Performance Zoning”, “Professional Offices”, “Recreation”, “Renewable Energy”, “Research and Development Business”, “Research and Development Laboratories and Facilities”, “Restaurant”, “Retail Operations”, “Roadway or Street”, “Roadway or Street Categories”, “Scenic Roads”, “Scientific, Technical and Management Services”, “Semiconductor and Related Device Manufacturing”, “Semiconductor Machinery Manufacturing”, “Software and Communication Services”, “Story”, “Story, First”, “Surgical and Medical Instrument Manufacturing”, “Turbine and Turbine Generator Set Units Manufacturing”, “Warehouse”, “Warehousing”, “Wholesale Operations”; Article 10 of the 2013 STM added the following definitions: “As of Right Sighting”, “Building permit”, “Designated Location for Solar Energy Systems”, “Rated Nameplate Capacity”, “Roof-Mounted Solar Energy Installation”, “Solar Energy Systems – Large Scale”, “Solar Energy Systems – Small Scale”, “Solar Photovoltaic Array”; Article 29 of the 2014 ATM added the following definition: “Medical Marijuana Treatment Centers”; Article 30 of the 2014 ATM deleted the following definitions: “Recreation”, “Way”, “Roadway or Street”, and “Roadway or Street Categories” and added the following definitions: “Private or Unaccepted Way”, Recreation Active”, “Recreation Passive”, and “Way”; Article 38 of the 2016 ATM replaced “Agriculture” with a new definition; Article 24 of the 2017 ATM deleted

“Agriculture” and replaced it with “Agriculture and Agricultural” and added “Agri-commercial”, “Agri-entertainment”, “Agri-tourism” and “Farm Enterprise”.

## **ARTICLE 2**

### **ADMINISTRATION**

#### **2.0 ENFORCEMENT**

- 2.0.1** If the Inspector of Buildings shall be informed, or have reason to believe that any provision of this By-Law has been, is being, or may be violated, he or his agent shall investigate the facts and inspect the property in question.
- 2.0.2** If he shall find such violation he shall give notice thereof in writing to the owner or to his duly authorized agent and to the occupant of the premises, and order that any use of any building or premises contrary to the provision of this By-Law shall immediately cease.
- 2.0.3** If the Inspector of Buildings is requested in writing to enforce the Zoning By-Law against any person allegedly in violation of the same and the Inspector of Buildings declined to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reason therefore, within fourteen (14) days of receipt of such request.
- 2.0.4** Penalty for non-compliance with any lawful order of the Inspector of Buildings pertaining to the Zoning By-Laws shall be punishable by a fine of \$300.00, in accordance with the requirements of G.L. c.40, ss21D; provided that each day such violation continues shall constitute a separate offense.

(1963 ATM, Article 38; 1978 ATM, Article 21; 1986 ATM, Article 55; 2010 ATM, Article 34)

**(Editorial Note):** The 1978 article struck the former provision in its entirety and replaced it with the above section. See Appendix. The 1986 article deleted the words "no more than" prior to "twenty (\$20.00) dollars").

#### **2.1 AMENDMENT (Formerly Section VII C)**

This By-Law may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of M.G.L. Chapter 40A, Section 5.

(1963 ATM, Article 38; 1978 ATM, Article 21)

#### **2.2 VALIDITY (Formerly Section VII D)**

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

section or provision thereof.

(1963 ATM, Article 38)

**2.3            EFFECTIVE DATE (Formerly Section VII E)**

These By-Laws and any amendments thereto shall become effective upon vote of the Town Meeting, subject to approval by the Attorney General of the Commonwealth of Massachusetts.

(1963 ATM, Article 38)

**2.4            BOARD OF APPEALS**

**2.4.0**            There is hereby established a Board of Appeals of five (5) members and two (2) associate members to be appointed by the Selectmen as provided in M.G.L. Chapter 40A, Section 12 for terms of such length and so arranged that the terms of one (1) member shall expire each year.

**2.4.1**            The Board of Appeals shall elect annually a chairperson, a vice-chairperson, and a clerk from its own number and may, subject to appropriation, employ experts and clerical and other assistants. The Board shall adopt rules for the conduct of its business and for the purpose of M.G.L. Chapter 40A and shall file a copy of said rules with the Town Clerk.

**2.4.2**            The Board of Appeals for the purpose of this By-Law and M.G.L. Chapter 40A, shall be designated as the "Permit Granting Authority" and the "Special Permit Granting Authority." The Board shall act on all matters within its jurisdiction under this By-Law in the manner prescribed in M.G.L. Chapter 40A.

The Board shall have the following powers:

**2.4.2.0            Appeals**

To hear and decide appeals by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. Chapter 40A by the regional planning agency in whose area the Town is situated, or by any persons including an officer or Board of the Town, or of an abutting City or Town aggrieved by an order or decision of the Building Inspector or other administrative official, in violation of any provision of Chapter 40A or any ordinance or By-Law adopted thereunder, including this Zoning By-Law.

**2.4.2.1 Permits and Special Permits**

To hear and decide on applications for permits and/or special permits as provided by sections of this By-Law when it shall be found that the use involved is in harmony with the general purpose and intent of the By-Law, subject to appropriate conditions safeguards, and limitations on time and use.

**2.4.2.2 Variances**

To hear and decide petitions for variances and to grant upon appeal or petition with respect to particular land or structures a variance from the terms of the Zoning By-Laws, including a use or activity not otherwise permitted in the district where the land or structure is located, where the Board specifically finds that owing to circumstances relating to soil conditions, shape, or topography of such land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law. (Formerly Section VII F)

The Board of Appeals may grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of this By-Law where the Board of Appeals makes the required findings and follows the requirement of M.G.L Chapter 40A, Sections 10, 11, 13, 15, and 16 and the provisions of the foregoing section entitled **SPECIAL PERMITS**. (Formerly Section VII B)

**2.4.2.3**

In exercising the above powers the Board of Appeals may, in conformity with the provisions of M.G.L. Chapter 40A, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

(1963 ATM, Article 38; 1975 ATM, Article 36; 1978 ATM, Article 21)

**(Editorial Note):** The 1978 article rewrote the entire section. See Appendix for original - Formerly Section VII.

**2.5 SPECIAL PERMITS (Formerly Section VI E)**

- 2.5.0** A special permit shall be required for all uses and for all exceptions to dimensional regulations, which are designed in this By-Law as requiring a special permit before the Inspector of Buildings may issue a building or occupancy permit.
- 2.5.1** Each application for a special permit shall be on forms supplied and shall be filed in triplicate with the Town Clerk who shall transmit copies thereof to the Planning Board and the Board of Appeals within three (3) days of receipt of them (Saturdays, Sundays, and holidays excluded).
- 2.5.2** The Planning Board may at any time up to the date of the public hearing held as provided in Chapter 40A, Section 9, transmit to the Board of Appeals a report accompanied by such materials, maps, or plans as will aid the Board of Appeals in judging the application and in determining special conditions and safeguards.
- 2.5.3** The Board of Appeals shall not render any decision on an application for a special permit before one of the following has taken place:
- A.** The public hearing has been held without notification from the Planning Board to the Board of Appeals that a report will be submitted by the Planning Board.
  - B.** Said report has been received as of the date of the public hearing.
- 2.5.4** The Board of Appeals shall, at the expense of the applicant, give public notice of the appeal in the manner provided in Chapter 40A, Section 9, which require among other things, publication of a notice of a hearing not less than fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in Westport, and by posting such notices in a conspicuous place in the Town for a period of not less than fourteen (14) days before the day of such hearing, and by mail to all interested parties, according to Chapter 40A, Section 9. Public hearings shall be held within sixty-five (65) days after the filing of an application.
- 2.5.5** The decision of the Board of Appeals must be made within ninety (90) days following a public hearing. Failure to take final action upon an application for a special permit within said ninety (90) days shall be deemed to be a grant of the permit applied for. The Board shall cause to be made a detailed record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official actions, copies of all which shall be filed within fourteen (14) days in the office of the Town Clerk and in the office of the Planning Board and shall be mailed forthwith to parties in interest, as designated in Section Eleven (11) of Chapter 40A, and to each person present at the hearing who request that notice be sent to him and states the address to which notice is to be sent.

- 2.5.6** No variance or special permit, any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certificate of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds and indexed in the grantor index under the name of the owner of the record or is recorded and noted on the owner's certificate of title.
- 2.5.7** No appeal for a variance and no application for a special permit which has been unfavorably acted on by the Board of Appeals shall be reconsidered on its merits, within two (2) years of such action, unless the Board of Appeals finds, by unanimous vote specific and material changes in the conditions upon which previous unfavorable action was based, and describes such change in the records of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to parties of interest of the time and place of proceedings when the question of such consent will be considered.
- 2.5.8** The period within which final action shall be taken may be extended for a definite period by mutual consent of the Board of Appeals and the applicant. In the event the Board determines that the site plan and evidence presented to it at the public hearing are inadequate to permit the Board to make a finding or determination, or to permit the Planning Board the proper amount of time to make its report, the Board may, at its discretion, instead of denying the application, adjourn the hearing to a later date to permit the applicant to submit a revised site plan and further evidence, provided, however that such adjournment shall not extend the ninety (90) day period within which final action shall be taken by the Board unless said period is extended to a day certain by mutual consent.
- 2.5.9** A special permit granted under this section shall lapse within three (3) years from the grant thereof unless substantial use has been commenced, except for good cause as determined by the permit granting authority, or, in the case of a permit for construction, if the construction has not begun by such date and continued except for good cause as determined by the Board of Appeals.

(1978 ATM, Article 21; 2017 ATM, Article 22)

- 2.6** The Planning Board is hereby designated as the Special Permit Granting Authority (SPGA) for Assisted and Independent Living Facilities (Article 11), for Inclusionary Housing (Article 13), for Drive-Through Facilities (Article 14), for the Noquochoke Overlay District (Article 19), for the Science and Technology Overlay District (Article 22) for the Flexible Frontage for Reduced Density (Article 23), for the Solar Energy Systems (Article 24) and for the Medical Marijuana Treatment Centers (Article 25). The Planning Board shall act on all special permit applications as provided by the Rules and Regulations of the Planning Board as Special Permit Granting Authority to be adopted hereunder.

(2004 ATM, Article 19; 2005 ATM, Article 30; 2009 ATM, Article 28; 2012 ATM, Article 37; 2017 ATM, Article 22)

2.7 (Article 28, 2009 ATM deleted this section)

### ARTICLE 3

#### ESTABLISHMENT OF DISTRICTS

##### 3.0 TYPES OF DISTRICTS

For the purposes of this By-Law, the Town of Westport is hereby divided into the following types of use districts:

- A. Business
- B. Residence/Agriculture
- C. Unrestricted
- D. Flood Plain
- E. Aquifer Protection
- F. Telecommunication Facilities Overlay
- G. Adult Entertainment Overlay District
- H. Noquochoke Overlay District
- I. Science and Technology Overlay District

(1963 ATM, Article 38; 1975 STM, Article 11; 1998 ATM, Articles 63 & 65; 2008 ATM, Article 45; 2009 ATM, Article 28; 2012 ATM, Article 38)

**(Editorial Note):** Article 11 of 1975 merely added "Flood Plain". Article 45 of 1990 ATM changed "Residence" District to "Residence/Agriculture" District.

##### 3.1 LOCATION OF DISTRICTS

Said districts, except flood plain and other overlay districts, are located and bounded as shown on a map entitled "Zoning Map of Westport, Massachusetts," dated March 28, 1974, and on file in the office of the Town Clerk. The Zoning Map, with all explanatory matter thereon, is hereby made a part of this By-Law. The map is described as follows:

- A. **As Residence/Agriculture:** The portion of the Town bounded and described as follows:

Beginning at the boundary line between Little Compton and Westport at the southerly limit of private rights in the Atlantic Ocean, thence northerly along said boundary line to the southerly line of Adamsville Road; thence easterly in the southerly line of Adamsville Road to the southerly line of Cornell Road, thence easterly in the southerly line of Cornell Road to the west line of Main Road; thence easterly in right angles to the west line of Main Road across Main Road to the east line thereof and continuing easterly in the same course one thousand feet; thence southerly in a line parallel to the east line of Main Road and one thousand feet easterly there from to a point distant northerly one thousand feet measured in a southerly extension of said line from the west line of Drift Road thence easterly; northeasterly and northerly in a line parallel to the west line of Drift Road and one thousand feet there from to the south line of Kirby Road; thence easterly in the south line of Kirby Road one thousand feet more or less to the west line of Drift Road; thence easterly at right angles to the west line of Drift Road across Drift Road to the east line thereof and continuing easterly in the same course to the East Branch of the Westport River and into said River as far as private rights extend; thence southerly by the East Branch of said River to Westport Point; thence northwesterly by the West Branch of said River to the head thereof; thence southeasterly by the West Branch of said River to the Ocean; thence westerly by the Ocean to the place of beginning.

All of that portion of the Town not previously voted by a two-thirds vote of a Town Meeting to be included in the Business District bounded and described as follows:\*

Southerly by the American Legion Highway (Route 177); Westerly by the Westport-Fall River boundary line and the South Watuppa Pond; Northeasterly by the State Highway (Route 6); Easterly by the Westport-Dartmouth boundary line.

That portion of the Town, bounded and described as follows:

Northerly by Interstate 195; Easterly by the Westport-Dartmouth boundary line; Southerly by a line five hundred (500) feet north of and parallel to the north line of the State Highway (Route 6); Westerly by the east line of Washington Street extended to Interstate 195.

That portion of the Town, bounded and described as follows:

Beginning at a point on the westerly line of Washington Street, which point is 500' on a perpendicular line from the northerly line of the State Highway (Route 6); thence northwesterly 500' along a line which is 500' from and parallel to the northerly line of the State Highway (Route 6); thence northwesterly and northerly along a line parallel to and 500' on a perpendicular line from the westerly line of Washington Street to the

northerly line of Hobart Street; thence easterly 150' in the northerly line of said Hobart Street; thence northerly in a line parallel to said westerly line of Washington Street for a corner at a point which is on a perpendicular line to the westerly line of Washington Street and from the terminus of Washington Street, said terminus is at the intersection of westerly line of Washington Street and the southerly line of Interstate Route 195; thence at a right angle easterly 350' to the westerly line of Washington Street; thence southerly and southwesterly along the westerly line of Washington Street to the point of beginning.

That portion of the Town, bounded and described as follows:

Northerly by the Westport-Fall River boundary line; Easterly by the Westport-Dartmouth boundary line; Southerly by the north line of Old Bedford Road; Westerly by the Westport-Fall River boundary line.

All of that portion of the Town, not previously voted by a two-thirds vote of a Town Meeting to be included in the Business District bounded and described as follows:\*

Beginning at the intersection of the south line of the American Legion Highway (Route 177) with the Westport-Fall River boundary line; thence easterly along said south line of the American Legion Highway to its intersection with the west line of Old County Road to the west line of Main Road; thence southerly along said west line of Main Road to a point one thousand (1,000) feet northerly of the north line of Kirby Road; thence westerly at a right angle to the west line of Main Road one thousand (1,000) feet; thence southerly along a line which line is one thousand (1,000) feet westerly from, and parallel to the west line of Main Road, to the south line of Cornell Road; thence westerly along said south line of Cornell Road to its intersection with the south line of Adamsville Road; thence southwesterly along said south line of Adamsville Road to the Westport-Rhode Island boundary line; thence northerly along said boundary line to the Westport-Fall River boundary line; thence northerly along last said boundary line and Sawdy Pond to the point of beginning.

All that portion of the Town, not previously voted by a two-thirds vote of a Town Meeting to be included in the Business District, bounded and described as follows:\*

Beginning at a point on the south line of Kirby Road, which point is one thousand (1,000) feet easterly of the intersection of the south line of Kirby Road with the east line of Main Road; thence southerly along a line, which is one thousand (1,000) feet easterly from, and parallel to the east line of Main Road to a point one thousand (1,000) feet northerly of the west line of Drift Road; thence northerly along a line, which line is one thousand (1,000) feet westerly from, and parallel to the west line of Drift Road, to a point on the south line of Kirby Road; thence easterly

along the south line of Kirby Road to the west line of Drift Road; thence easterly at right angles to the west line of Drift Road across Drift Road to the east line thereof and continuing easterly in the same course to the west bank of the East Branch of the Westport River, and into said River as far as private rights extend; thence northerly along the west bank of the East Branch of the Westport River to the south line of Old County Road; thence southerly along the east bank of the East Branch of the Westport River to the east bank of the Let; thence southerly along the east bank of the Let to a point, which point is on the westerly extension of the north line of Third Street; thence easterly along the north line of Third Street as extended to Horseneck Road and Westport-Dartmouth boundary line; thence northerly along the Westport-Dartmouth boundary line to the south line of American Legion Highway (Route 177); thence westerly along the south line of American Legion Highway (Route 177) to the west line of Old County Road; thence southerly along the west line of & Old County Road to the east line of Main Road; thence southerly along the east line of Main Road to a point one thousand (1,000) feet northerly of the intersection of the north line of Kirby Road with the east line of Main Road; thence easterly at right angles to the east line of Main Road one thousand (1,000) feet; thence southerly along a line, which line is one thousand (1,000) feet easterly from, and parallel to the east line of Main Road, one thousand (1,000) feet to the north line of Kirby Road and thence in the same course to the point of beginning.

All that portion of the Town, not previously voted by a two-thirds vote of a Town Meeting to be included in the Business District, bounded and described as follows:\*

On the east by the Westport-Dartmouth boundary line from the Atlantic Ocean to the easterly extension of the north line of Third Street; on the south by the Atlantic Ocean; on the west by the West Branch of the Westport River; on the north, by the West and East Branches of the Westport River, by the east bank of the Let and by the north line of Third Street and its extension westerly to the Let; including all the islands in the Westport River, the Horseneck and Gooseberry Neck.

All that portion of Town lying northerly of Interstate Route 195.

(1957 STM, Article 6; 1963 ATM, Article 38; 1973 STM, Articles 27, 28, 29, 31, 38, 42 & 44; 1975 STM, Article 11; 1987 ATM, Article 80; 1990 ATM, Articles 45 & 49; 2008 ATM, Article 45)

**(Editorial Note):** The 1963 Article added the introduction to this section, which was amended by Article 44 in 1973 to incorporate the updated zoning map, and again by Article 11 in 1975 which added the words "except flood plain districts." Articles 27, 28, 29, 31, 38, and 42 passed in 1973 added the second, third, fourth, fifth, sixth and seventh descriptive paragraphs. The 1990 ATM, Article 45 changed the Residence District name to "Residence/Agriculture District" while Article 49 changed a portion of the Unrestricted District to Residence/Agriculture, which added the present fourth paragraph. The 2008 ATM added the words "and other overlay districts" in the first line of 3.1

Location of Districts.

\*All references above to "Business Districts voted by Town Meeting" refer to zones contained in 3.1.B., below.

- B.**            **As Business:** The portion of the Town bounded and described as follows:

Beginning at the intersection of the south line of Cornell Road and the west line of Main Road; thence easterly at right angles to the west line of Main Road across Main Road to the east line thereof and continuing easterly in the same course one thousand feet; thence northerly in a line parallel to the east line of Main Road and one thousand feet easterly there from to a point distant northerly one thousand feet measured in said line from the north line of Kirby Road; thence westerly at right angles to the east line of Main Road one thousand feet to the east line of Main Road; thence continuing westerly in the same course across Main Road to the west line of Main Road and continuing westerly in the same course one thousand feet beyond the west line of Main Road; thence southerly in a line parallel to the west line of Main Road and one thousand feet westerly there from to the south line of Cornell Road; thence easterly in the south line of Cornell Road one thousand feet more or less to the place of beginning.

The portion of the Town bounded and described as follows:

Southerly by the American Legion Highway (Route 177); (Route 6); Easterly by the Westport-Dartmouth boundary line.

The portion of the Town bounded and described as follows:

Beginning at the intersection of the west line of Forge Road with the north line of the American Legion Highway (Route 177); thence proceeding northerly along said west line of Forge Road five hundred (500) feet; thence proceeding westerly along a line, which line is five hundred (500) feet northerly from, and parallel to the north line of the American Legion Highway to a point on the east line of Sanford Road; thence proceeding southerly along said east line of Sanford Road five hundred (500) feet to the north line of the American Legion Highway (Route 177); thence proceeding easterly along said north line of the American Legion Highway to the point of the beginning.

The land bounded and described as follows:

Beginning at the intersection of the south line of the American Legion Highway (Route 177) with the west line of Beeden Road; thence proceeding westerly along the south line of said American Legion Highway to a point two thousand (2,000) feet west of the southerly

extension of the west line of Sanford Road; thence proceeding south five hundred (500) feet; thence proceeding easterly along a line, which line is five hundred (500) feet southerly from, and parallel to the south line of the American Legion Highway, to a point on the west line of Beeden Road; thence proceeding northerly five hundred (500) feet along the west line of Beeden Road to the point of beginning. Beginning at the intersection of the west line of Old County Road with the north line of Mouse Mill Road; thence proceeding westerly four hundred (400) feet; thence southerly and parallel to the west line of Old County Road four hundred (400) feet; thence easterly four hundred (400) feet to the west line of Old County Road; thence proceeding northerly four hundred (400) feet along the west line of Old County Road to the point of beginning.

The land bounded and described as follows:

Beginning at the intersection of the south line of the line; thence southeasterly along said south line of said State Highway (Route 6) to the west line of Forge Road; thence southerly along said west line of Forge Road to a point five hundred (500) feet northerly of the north line of the American Legion Highway (Route 177); thence westerly along a line, which line is five hundred (500) feet northerly from, and parallel to the north line of the American Legion Highway, one thousand (1,000) feet; thence northerly to a point, which is five hundred (500) feet east of the end of the east line of Center Street; thence northerly along a line, which line is five hundred (500) feet easterly from and parallel to the east line of Center Street to a point five hundred (500) feet southerly from the south line of the State Highway (Route 6); thence northwesterly along a line, which line is five hundred (500) feet southerly from, and parallel to the south line of the State Highway, to the Westport-Fall River boundary line; thence northerly five hundred (500) feet along said boundary line to the point of beginning.

The land bounded and described as follows:

Beginning at the intersection of the north line of the State Highway (Route 6) with the Westport-Dartmouth boundary line; thence northwesterly along said north line of the State Highway (Route 6) to the east line of Washington Street; thence northerly along said east line of Washington Street; five hundred (500) feet; thence southeasterly along a line, which line is five hundred (500) feet northerly from and parallel to the north line of State Highway (Route 6) to a point on the Westport-Dartmouth boundary line; thence southerly along said boundary line to the point of beginning.

The portion of the Town, bounded and described as follows:

Beginning at the intersection of the westerly line of Washington Street

and the northerly line of the State Highway (Route 6); thence northwesterly along said northerly line of the State Highway (Route 6) to its intersection with the easterly line of Davis Road; thence northeasterly along said easterly line of Davis Road to a point which is 500' on a perpendicular line from the northerly line of the State Highway (Route 6); thence southeasterly along a line, which is 500' from and parallel to the northerly line of the State Highway (Route 6) to the westerly line of Washington Street; thence southeasterly along said westerly line of Washington Street to the northerly line of the State Highway (Route 6) to the point of beginning. The portion of the Town, bounded and described as follows:

Beginning at the intersection of the north line of the American Legion Highway (Route 177) with the west line of Sanford Road; thence northerly along the west line of Sanford Road one thousand (1,000) feet; thence westerly along a line, which line is northerly from, and parallel to the north line of the American Legion Highway, two thousand (2,000) feet; thence southerly along a line, which line is parallel to the west line of Sanford Road, one thousand (1,000) feet to a point on the north line of the American Legion Highway (Route 177); thence easterly along said north line of the American Legion Highway (Route 177) to the point of beginning.

The portion of the Town, bounded and described as follows:

Beginning at a point in the south line of Hix Bridge Road, which point is one thousand (1,000) feet easterly from the intersection of said south line with the east line of Main Road; thence southerly along a line, which line is one thousand (1,000) feet easterly from, and parallel to the east line of Main Road one thousand (1,000) feet; thence easterly at a right angle to the last said line to Route 88; thence northerly along Route 88 to the south line of Kirby Road; thence westerly along said south line of Kirby Road to a point, which point is one thousand (1,000) feet easterly from the intersection of said south line with the east line of Main Road; thence southerly along a line, which line is one thousand (1,000) feet easterly from, and parallel to the east line of Main Road to the point of beginning.

The portion of the Town, bounded and described as follows:

Beginning at the intersection of the east line of Route 88 with the north line of Hix Bridge Road; thence northerly along the east line of Route 88 one thousand (1,000) feet; thence proceeding easterly along a line, which line is one thousand (1,000) feet northerly from, and parallel to the north line of Hix Bridge Road, five hundred (500) feet; thence proceeding southerly along a line, which line is five hundred (500) feet easterly from, and parallel to the east line of Route 88, to a point, which point is one thousand (1,000) feet southerly of the south line of Hix Bridge Road; thence proceeding westerly along a line which line is one thousand

(1,000) feet southerly from, and parallel to the south line of Hix Bridge Road, five hundred (500) feet to the east line of Route 88; thence northerly along the east line of Route 88 to the point of beginning.

The portion of the Town bounded:  
Northerly by Interstate Route 195;  
Easterly by Old Bedford Road;  
Southerly by Route 6;  
Westerly by the Westport-Fall River boundary line.

The portion of the Town bounded as follows:

Bounded on the east by Route 88; on the south by the State Highway (Route 6); on the north by Interstate Route 195, and on the west by Old Bedford Road.

The portion of the Town bounded as follows:

Bounded on the west by Route 88; on the north by Interstate Route 195; on the east by Davis Road; and on the south by State Highway (Route 6).

(1957 STM, Article 6; 1973 STM, Articles 20, 21, 22, 23, 24, 25, 32 & 33; 1975 ATM, Article 38; 1990 ATM, Articles 46, 47 & 48)

**(Editorial Note):** The July 1973 meeting added paragraphs 2, 3, 4, 5, 6, 7, 8, and 9. The 1975 Article added the last paragraph "to clarify the zoning status of property currently occupied by White's Restaurant." Articles 46, 47, and 48 in 1990 changed portions of the Unrestricted District to the Business District as described in 3.1.B present paragraphs 7, 11, and 12 respectively.

**C.            As Unrestricted:** All remaining portions of the Town.

(1963 ATM, Article 38)

**D.            Flood Plain District:** See Article 6 and the maps referenced in Section 6.2.

(1975 STM, Article 11; 1977 ATM, Article 54; 2006 ATM, Article 8; 2009 ATM Article 31)

**(Editorial Note):** Article 8 of the 2006 ATM replaced section 3.1.D and then Article 31 of the 2009 ATM replaced section 3.1.D.

**E.            Aquifer Protection District:** See Article 8 and map.

**F.            Telecommunications Facilities Overlay District:** See Article 9 and Zoning Map.

**G.            Adult Entertainment Overlay District:** The portion of the Town described as the following assessors' parcels as of May, 2008:

Assessor's Map 3, Lots 144, 144B through E

Assessor's Map 3, Lots 145 and 146

Assessor's Map 4, Lots 13 through 15, 16 and 16A

Assessor's Map 4, Lots 17 & 17A.

and further described on the Adult Entertainment Overlay District zoning map detail approved May, 2008, on file with the Town Clerk.

**(Editorial Note):** Article 54 of 1977 amended the map designation.

**H. Noquochoke Overlay District:** The portion of the Town described as the following assessors' parcels as of November, 2008:

- Assessor's Map 33, Lot 17
- Assessor's Map 33, Lot 45
- Assessor's Map 33, Lot 47
- Assessor's Map 33, Lot 47A
- Assessor's Map 33, Lot 47E

And further described on the Noquochoke Overlay District Zoning Map detail approved May, 2009 on file with the Town Clerk.

(1998 ATM, Article 63 added the Aquifer Protection District and Article 65 added the Telecommunications Facilities Overlay District; 2008 ATM added the Adult Entertainment Overlay District; 2009 ATM added the Noquochoke Overlay District)

**I. Science and Technology Overlay District:** The portion of the Town described as the following assessors' parcels as of September, 2011 (Map-Lot #):

MAP	LOT
14-29	23-38 A & B
14-25 & 26	23-78
14-30	23-4
14-30 A	23-3
14-34	17-243 & 249
14-31	17-440-444
14-33 C & D	17-634
14-25 A & 33 B	17-634 A
14-33	23-57
14-32, 33 A	23-46
14-20 E	23-5
14-20 A, 14-20 C & 20 D	23-39
14-20	23-40

23-2	23-22 A, B, C
14-29 B	3-44V
14-29 C & E	14-21
14-29 D	14-22
23-2 A	14-23
23-1	14-24A
17-42, 57, 84	14-24
17-43, 44	14-27
17-3	14-28
17-2	14-31A&31B
14-25 C	14-31C-31D
23-36	Portion of layout of Franklin Avenue as shown

And further described on the Science and Technology Overlay District zoning map detail, approved May 2012 on file with the Town Clerk.

(2012 ATM, Article 39)

## ARTICLE 4

### USE REGULATIONS

**4.0** Except as provided in Section 4.1.0 hereof, no building or structure shall be constructed, 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 hereinafter set forth as permitted in the district in which such building, structure or land is located, or set forth as permissible by special permit in said district and so authorized.

#### **4.0.1 Residence/Agriculture Districts**

- A.** Permitted Uses  
(SEE TABLE OF USE REGULATIONS - pages 158-163)
- B.** Accessory use on the same premises, including, but not limited to the following:
  - 1.** Use of room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking, candy making, or for the practice, by a resident, of a recognized profession.
  - 2.** Use of premises or building thereon in connection with his trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring substantially continuous

employment be carried on.

3. Display of a sign pertaining to a permitted use with a total area of not more than six (6) square feet.
4. Use of the premises by a resident fisherman, possessing a commercial shellfish license, for the shucking or removal of meats from shellfish, caught by said resident.
5. Use of an accessory apartment, an independent dwelling unit not to exceed nine hundred (900) square feet contained within a single-family residence. The unit shall have a separate exterior entrance, a kitchen/living room, a bathroom and a maximum of one bedroom. Either unit shall be occupied by the owner. The gross floor area shall include the interior finished habitable area to be used exclusively for the accessory apartment.

(2015 ATM, Article 42)

One Accessory apartment shall be allowed by right providing the following criteria are met:

- a. Approval from the Board of Health.
- b. Approval from the Fire Department.
- c. Building, plumbing, electrical and any other required permits are obtained.
- d. The accessory apartment is contained within a single-family dwelling.
- e. If an external staircase is needed to reach an accessory apartment, this staircase must be enclosed and not change the general appearance of a single-family house.
- f. Space may be provided by either raising the roof, or extending the dwelling, but only in accordance with current height and setback requirements.
- g. To maintain the single-family character of the neighborhood, the entrance to the accessory apartment should be on the side or rear, if possible, but may be through the front door, if there is a vestibule.

- h.** The owner must occupy one of the two units.
- i.** There shall be no more than one accessory apartment within a single-family dwelling.
- j.** Accessory apartments shall be occupied by no more than 2 persons.

(2006 ATM, Article 6: 2015 ATM, Article 42)

- 6.** Agri-entertainment, Agri-commercial and Agri-tourism shall be permitted as accessory uses provided the primary use of the land is Agriculture, the parcel has a minimum of five (5) acres and the sales meet the requirements of M.G.L. Chapter 40A, Section 3.

(2017 ATM, Article 23)

- C.** The keeping of less than four dogs, three months old or over except that multi-family (houses or premises containing more than three separate family) units may have a maximum of one dog per separate family unit.
- D.** Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in 2.4.2.1 of this By-Law.
  - 1.** Private club not conducted for profit.
  - 2.** Conversion of a one-family dwelling existing at the time of adoption of this By-Law into a two-family dwelling.
  - 3.** Bath houses, beach clubs, boat landings, wharves, and boat yards for construction, storage, maintenance and repair of boats.
  - 4.** Public or private golf courses; which shall not include driving tees, ranges, miniature courses and similar uses operated for commercial purposes.
  - 5.** Reserved.

(2014 ATM, Article 30)

- 6.** Public or private facilities for the hatching and propagation of finfish and shellfish.
- 7.** The keeping of more than three dogs, but less than seven, three months old or over for non-commercial/recreational

purposes.

**8.** Bed and Breakfast consisting of renting rooms on a daily or weekly basis and providing breakfast meals to guests renting such rooms.

**a.** The only meal to be provided guests shall be breakfast, and it shall only be served to guests taking lodging at the facility and shall be included in the guestroom rate. The business owner shall conform to any requirements of the Massachusetts Department of Public Health and the Department of Public Health and Code Enforcement, adhere to all existing rules, regulations, codes and other Federal, Commonwealth of Massachusetts and Town of Westport requirements pertaining to health and safety as typically regulated and enforced by the Building Department, Board of Health, Conservation Commission, Fire Department, Planning Board and/or Board of Selectmen. A maximum of two guests per room are allowed and children under the age of twelve (12) shall not be considered in the total number of guests. Guestroom shall not include individual kitchen facilities and shall have at least one toilet, one bath/shower, and one washbasin separate from those required for the single-family residence portion of the dwelling. Additionally not more than forty-five (45%) percent of the entire habitable living space shall be allocated for Bed and Breakfast establishment purposes. One non-illuminated sign may be erected on the property, not to exceed eight (8) square feet in size, with no single dimension exceeding four feet (4').

**9.** Wind Energy Facility, commercial.

**10.** Wind Energy Facility, commercial or non-commercial, with tower height over 140 feet.

**11.** Shared Wind Energy Facilities.

**12.** Wind turbines, three or more on one parcel.

(2007 ATM, Article 21)

**13.** The Zoning Board of Appeals may issue a Special Permit authorizing the installation and use of a detached

accessory apartment in a detached structure on a lot containing a single family dwelling provided the following conditions are met:

- a.** Purpose and Intent: The intent of permitting a detached accessory apartment is to:
  - 1.** Provide older homeowners with a means of obtaining rental income, companionship, security, and services, thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave.
  - 2.** Develop housing units in single family neighborhoods that are appropriate for households at a variety of stages in their life cycle.
  - 3.** Provide housing units for persons with disabilities.
  - 4.** Protect stability, property values, and the residential character of a neighborhood
- b.** The detached accessory apartment will be a complete, separate housekeeping unit containing a kitchen/living room, a bathroom and a maximum of one bedroom. Only one accessory apartment may be created within a single-family dwelling or house lot.
- c.** Detached accessory apartments shall be occupied by no more than 2 persons.
- d.** The owner(s) of the property in which the detached accessory apartment is created must occupy at least one of the dwelling units. The gross floor area of a detached accessory apartment shall not be greater than seven hundred fifty (750) square feet. The gross floor area shall include the interior finished habitable area to be used exclusively for the accessory apartment.
- e.** Off-street parking spaces shall meet the requirements of Article V, Section 5.1 of these bylaws.

- f. Any new construction shall be in accordance with current height and setback requirements for the district in which it is located.
- g. The septic system must meet the requirements of the Westport Board of Health and the State Sanitary Code.
- h. Any property that has been granted a Special Permit for a detached accessory apartment shall not be further divided unless all zoning requirements can be met for the district in which it is located.
- i. Prior to approval of a Special Permit for a detached accessory apartment the Board shall make the following findings:
  - The detached accessory apartment will not impair the integrity or character of the neighborhood in which it is located.
  - The detached accessory apartment shall not be detrimental to the abutting properties.
- j. In order to encourage the development of housing units for disabled individuals and persons with limited mobility, the Zoning Board may allow reasonable deviation, from the dimensional requirements where necessary to install features that facilitate access and mobility.

2015 ATM, Article 43)

- E. Uses which may be permitted by the Planning Board in accordance with Section 2.6 Special Permits - Planning Board.
  - 1. Assisted and Independent Living Facilities (Article 11.0)

(1957 STM, Article 5; 1963 ATM, Article 38; 1973 STM, Articles 18 & 43; 1975 ATM, Article 42; 1977 STM, Article 7; 1978 ATM, Article 25; 1979 ATM, Article 21; 1981 ATM, Article 42; 1990 ATM, Article 53; 2000 ATM, Article 51; 2003 ATM, Article 48; 2005 ATM, Article 5, 2007 ATM, Article 21)  
(References are to former sections)

**(Editorial Note):** Article 38 in 1963 added the introductory paragraph. Article 18 in 1973 added section "A(6) Two-family dwelling" and Article 43 added sections B(4), B(5) and B(6). In 1975, Article 42 added section A(8). Article 7 in 1977 added section A(5)(d). In 1978, Article 25 added the second and third sentences to section A(8). Section A(9) was added by Article 21 of 1979. The second

and third sentences in section A(8) were deleted by Article 42 in 1981. Article 53 in 1990 added section 4.0.1.B.5. allowing one accessory apartment with criteria. (See Appendix.) Article 48 of the 2003 ATM added provisions for a Bed & Breakfast. Article 5 of the 2005 ATM added provisions for Assisted and Independent Living Facilities. Article 6 of the 2000 ATM revised 4.0.1.B.5.(d), deleted the entire section of 4.0.1.B.5.(e), changed the numbering of 4.0.1.B.5.(f) to 4.0.1.B.5.(e), deleted 4.0.1.B.5.(g) and inserted a new section 4.0.1.B.5(f) and then renumbered the balance of that section of article 4.0.1.B.5.(g) through 4.0.1.B.5.(l). Article 21 of the 2007 ATM added 4.0.1.D.8 -12 provisions for wind turbines. Article 38 of the 2016 ATM added 4.0.1.B.6a-c provisions for Agri-entertainment and Agri-tourism.

**4.0.2            Business District**

- A.**    Permitted Uses  
(SEE TABLE OF USE REGULATIONS - pages 158-163)
  
- B.**    Any wholesale or retail business, research laboratory, service, or public utility not involving manufacture on the premises, except for products, the major portion of which is sold on the premises by the producer to the consumer.
  
- C.**    Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in Section 2.4.2.1 of this By-Law.
  - 1.**    Place of amusement of assembly, club conducted for profit.
  - 2.**    Wind Energy Facility, commercial.
  - 3.**    Wind Energy Facility, commercial or non-commercial, over 140 feet in height.
  - 4.**    Shared Wind Energy Facilities.
  - 5.**    Wind turbines, three or more on one parcel.

(2007 ATM, Article 21)

- D.**    (2008 ATM, Article 45 deleted this section)

(1963 ATM, Article 38; 1998 ATM, Article 64)

**4.0.3            Unrestricted District**

- A.**    Any lawful use shall be permitted, provided that it does not impair the use of adjacent properties by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration, or danger of explosion or fire.

- B. No new tire storage yard or site shall be established, and no existing tire storage yard or site shall be expanded in area, inventory, or capacity, without a special permit granted by the Board of Appeals in accordance with the regulations appearing in Section 2.4.2.1. of this By-Law. For purposes of this section, "tires" shall include new or used rubber tires, tire casings, tire tubes, rubber scraps, and/or any other by-product of rubber tires.
- C. (2008 ATM, Article 45 deleted this section)
- D. Uses that may be permitted by the Board of Appeals in accordance with Section 2.4.2.1 of this by-law:
  - 1. Wind Energy Facility, commercial.
  - 2. Wind Energy Facility, Commercial or Non-commercial, over 140 feet in height.
  - 3. Shared Wind Energy Facilities.
  - 4. Wind turbines, three or more on one parcel.

(1963 ATM, Article 38; 1987 ATM, Article 78; 1998 ATM, Article 64; 2006 ATM, Article 9; 2007 ATM, Article 21)

**4.0.4            Flood Plain District**

- A. Any use permitted in the applicable residence/ agriculture, business or unrestricted district in which the flood plain district is located except that no new construction, substantial improvement or other land development shall be permitted unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the Town.

(1975 STM, Article 11; 1978 ATM, Article 22)

**(Editorial Note):** The 1978 Article replaced everything after "located" in the first sentence. See Appendix for prior version. The 2007 Article added the provisions for wind energy facilities.

**4.0.5            Aquifer Protection District (see Article 8)**

**4.0.6            Telecommunications Facilities Overlay District (see Article 9)**

**4.0.7.           Adult Entertainment Overlay District (AEOD – see Article 16)**

**4.0.8**            **Noquochoke Overlay District (NOD – see Article 19)**

(2009 ATM, Article 28)

**4.0.9**            **Science and Technology Overlay District (STOD – see Article 22)**

(2012 ATM, Article 40)

**4.1**                **NON-CONFORMING USES**

**4.1.0**            The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this By-Law may be continued although such structure or use does not conform with the regulations of the district in which it is located and allow the right to be sold to any equal or similar business.

**4.1.1**            **Abandonment**

A non-conforming use, which has been abandoned four years shall not be re-established and any future use shall conform with this By-Law.

**4.1.2**            **Changes**

A non-conforming use may be changed so as to conform to this By-Law but once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use. A non-conforming use or structure may be changed provided there is a finding by the Board of Appeals that such change shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.

**4.1.3**            **Alteration**

Pre-existing non-conforming structures or uses may be altered provided there is a finding by the Board of Appeals that such alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.

**4.1.4**            **Restoration**

A non-conforming structure damaged or destroyed by fire or other causes may be repaired or rebuilt.

**4.1.5**            **Signs**

The above provisions shall not apply to billboards, signs, or other advertising devices subject to the provisions of Section 29-33, inclusive of, Chapter 93 and to Chapter 93D of the General Laws.

(1963 ATM, Article 38; 1973 STM, Article 16; 1978 ATM, Article 21; 2008 ATM, Article 45)

**(Editorial Note):** Article 16 of 1973 repealed the 1963 section - See Appendix for earlier version. Article 21 changed sections 4.3.2 0 - 4.3.4 substantially and added section 4.3.5. At the May 3, 2006 ATM, Article 9 replaced section 4.0.3.C and added sections a. through j. and sections 1 through 8.

**4.2                    COMPLIANCE WITH M.G.L CHAPTER 40A**

It is the intent and purpose of these By-Laws to conform with M.G.L. Chapter 40A and amendments thereto, and to the extent that any provisions hereof are in conflict with the provisions of said Chapter 40A, the provisions of Chapter 40A shall supersede and control the subject matter thereof. Additionally, all matters of procedure regarding Zoning By-Laws and provisions thereof are specifically incorporated herein by reference thereto.

(1978 ATM, Article 21)

**ARTICLE 5**

**PARKING AND SIGN REGULATIONS**

**5.1                    OFF-STREET PARKING**

**5.1.0**                    Parking facilities off the street right-of-way on any lot which is hereafter developed for new construction shall be provided on the same lot as the building for each use within the district or within a radius of 500 feet of any part of the building which it is intended to serve. Off-street parking shall be designed to prevent the necessity of any vehicles backing into a public way. No parking shall be less than 5 feet from a road or property line. Each parking space shall have a usable area of at least 180 square feet and be served by a two-way access lane at least 26 feet wide, except that if parking stalls are angled at 60 degrees or less, a one-way access lane may be used with a minimum of 20 feet. The 26-foot two-way access lane shall not be required for dwellings of up to four units. In such cases a 12-foot one-way access is sufficient. Joint use of off-street parking facilities is permitted provided that the area of such facilities shall be not less than the sum of the requirements of the various users computed in accordance with the schedule. The number of spaces required for each use shall be determined by the Building Inspector based upon the following criteria:

<u>Use</u>	<u>Minimum Requirements</u>
Residence - housekeeping, rooms For roomers or boarders, apartments, multi-family	1.5 spaces per unit.

Customary Home Occupation or	1 space for each home occupation or profession in recognized profession addition to residential requirements.
Retail stores, Financial Institutions, Consumer Services, Professional or Business Services and similar businesses, and municipal buildings except schools.	1 space for each 200 square feet floor space
Wholesale showrooms and operations, warehouses and storage areas	1 space for each 1,000 sq. ft. plus one additional space for each 2 employees actively engaged at any one time.
Bed and Breakfast	1 space per guest room, plus two spaces for the residence, in a location normal for residential use, and on the premises.
Hotels and Motels	1 space per room and 1 space for every three seats in restaurants and meeting rooms and 1 space for each two employees.
Restaurants, clubs, theaters,	1 space for every 3 seats, churches or other places of public 50 square feet of gross assembly floor area and 1 space for every 2 employees.
Barber shops and beauty parlor	3 spaces for each operator
Bowling alley and Tennis Courts	4 spaces for each alley or court.
For any use not specifically listed	1.5 spaces for each 1,000 square feet of floor space and 1 space for each 2 employees.

**5.1.1** Other uses conducted for profit on premises within or without a building such as flea markets, auction houses, churches and fairs shall provide for off-street parking in accordance with use schedule.

The Board of Appeals may grant a special permit to any person or organization to allow for sporadic or intermittent use of a premises without complying with the requirements of this section.

**5.1.2** Industrial and Commercial buildings shall provide adequate parking, maneuvering, and loading space on premises for freight and delivery trucks in addition to the minimum requirements for spaces in paragraph 5.1.0 above.

(1984 ATM, Article 35)

**(Editorial Note):** The 1984 Article rescinded the off-street parking regulation adopted at the Sept. 13,

1983 STM, Article 19, and substituted the above section therefore. (See Appendix for original).

## **5.2            SIGNS**

- 5.2.1**            The provisions of Section 29-33, Chapter 93 G.L., (relating to outdoor advertising), and the Rules and Regulations adopted thereunder by the Outdoor Advertising Division of the Massachusetts Highway Department.
- 5.2.2**            Nothing in this By-Law shall be construed to abrogate:
- A.**            The Town's control under Ch. 87, Section 9, governing signs placed on shade trees, enforceable by the Tree Warden;
  - B.**            The Town's control under Ch. 85, Section 8, over signs placed within a public way, enforceable by the Selectmen;
  - C.**            The Town's control under Ch. 111, Section 123 to 125, governing Board of Health action against nuisances.

## **ARTICLE 6**

### **WESTPORT FLOOD PLAIN DISTRICTS<sup>4</sup>**

#### **6.1            STATEMENT OF PURPOSE**

The purposes of the Flood Plain District are to:

- 6.1.1**            Ensure public safety through reducing the threats to life and personal injury;
- 6.1.2**            Eliminate new hazards to emergency response officials;
- 6.1.3**            Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- 6.1.4**            Avoid the loss of utility services, which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
- 6.1.5**            Eliminate costs associated with the response and cleanup of flooding conditions;
- 6.1.6**            Reduce damage to public and private property resulting from flooding waters.

**6.2 FLOOD PLAIN DISTRICT BOUNDARIES, FLOODWAY DATA AND BASE FLOOD ELEVATION**

The Flood Plain District, Flood Way Data and Base Flood Elevation are as follows:

**Flood Plain District Boundaries and Base Flood Elevation Data**

The Flood Plain District is herein established as an overlay district.

The District includes all special flood hazard areas within the Town of Westport designated as Zone A, AE, AH, AO, A99, V, or VE on the Bristol County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Bristol County FIRM that are wholly or partially within the Town of Westport are panel numbers 25005C0342F, 25005C0344F, 25005C0353F, 25005C0354F, 25005C0361F, 25005C0363F, 25005C0366F, 25005C0368F, 25005C0432F, 25005C0442F, 25005C0452F, 25005C0454F, 25005C0456F, 25005C0458F, 25005C0459F, 25005C0461F, 25005C0462F, 25005C0463F, 25005C0464F, 25005C0466F, 25005C0467F, 25005C0468F, 25005C0469F, 25005C0526F, 25005C0531F and 25005C0550F dated July 7, 2009. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the official FIRM (Flood Insurance Rate Map) dated July 7, 2009, and further defined by the Bristol County Flood Insurance Study (FIS) report dated July 7, 2009. The Firm and the FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning, Building Inspector, Conservation Commission and Zoning Board of Appeals.

(2010 ATM, Article 35)

**6.2.1 Floodway Data**

In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data consistent with the State Building Code as stated in 780 CMR, 7<sup>th</sup> Edition, Appendix 120.G301.1, Item 3, 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.

(2010 ATM, Article 35)

**6.2.2 Base Flood Elevation Data**

Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

**6.3 NOTIFICATION OF WATERCOURSE ALTERATION**

In a riverine situation, the Building Inspector/Zoning Enforcement Officer shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities
- Bordering States (optional)
- NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, MA 02114-2104
- NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6th Floor  
Boston, MA 02110

## 6.4

### **USE REGULATIONS**

#### **6.4.1 Reference To Existing Regulations**

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

- Section of the Massachusetts State Building Code, which addresses flood plain and coastal high hazard areas (currently 780 CMR 120.G, "Flood Resistant Construction and Construction in Coastal Dunes");
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

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

## **6.4.2**      **Other Use Regulations**

- 6.4.2.1**      Within Zones AH and AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
- 6.4.2.2**      In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Bristol County Flood Insurance Rate Map (FIRM) encroachments are prohibited in the regulatory floodway, which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- 6.4.2.3**      Man-made alteration of sand dunes within Zones V1-30, VE, and V, which, would increase potential flood damage are prohibited.
- 6.4.2.4**      All new construction within Zones V1-30, VE, and V must be located landward of the reach of mean high tide.
- 6.4.2.5**      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.
- 6.4.2.6**      Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
- 6.4.2.7**      There shall be established a "routing procedure," which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Town Engineer, Building Commissioner and Zoning Board of Appeals for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

## **6.5**      **PERMITTED USES**

Except as otherwise provided, in the Flood Plain District, no new building shall be constructed, and no existing structure shall be enlarged within its existing footprint, moved to a more vulnerable location, or altered except to upgrade for compliance with

health and safety codes; nor shall any land, building or structure be used for any purposes permitted in the underlying district, except:

- 6.5.1 Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
- 6.5.2 Forestry and nursery uses.
- 6.5.3 Outdoor recreational uses, including fishing, boating, play areas, etc., but excluding buildings and structures.
- 6.5.4 Conservation of water, plants, wildlife.
- 6.5.5 Wildlife management areas, foot, bicycle, and/or horse paths.
- 6.5.6 Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- 6.5.7 Uses lawfully existing prior to the adoption of these provisions.

(1975 STM, Article 11; 1978 ATM, Article 22; 1982 STM, Article 21; 1985 ATM, Article 48; 1985 STM; Article 11; 2006 ATM, Article 8; 2009 ATM, Article 31)

**(Editorial Note):** The original Flood Plain Zoning was inserted into the By-Law by Article 11, of a 1975 Special Town Meeting, and consisted of seven sections. In 1978, sentences were added to 6, sections 6.0.3 and 6.0.5 and 6.0.6. The original section 6, 6.0.8 submitted at that meeting did not pass. A new section, 6.0.9 was added. The 1981 Annual Town Meeting passed over Article 52, which attempted to add 6, sections 6.0.10 and 6.0.11 to allow trailers in the flood plain on a year-round basis. The revised Section 6, 6.6.11 was adopted at the adjourned Special Town Meeting held August 25, 1982. At the Annual Town Meeting, April 3, 1985, Section 6, 6.0.1 was replaced to conform to the Revised Flood Insurance Rate Map, effective retroactively to March 18, 1985. A new section 6, 6.0.8 was added at the June 11, 1985 Special Town Meeting. See Appendix for original 1975 flood zoning. Article 40 at the 5/23/96 ATM amended the Flood Insurance Rate Map effective date from 3/18/85 to 7/15/92. At the Annual Town Meeting, May 3, 2006, Sections 6, 6.0.1, 6.0.4 & 6.0.5 were replaced to conform to the Westport Flood Insurance Rate Map, and 6.0.10 & 6.0.12 were added. Article 31 at the 2009 Annual Town Meeting replaced the existing language of Article 6 with language required by the Federal Emergency Management Agency to be in compliance with Title 44, Chapter I, Part 67, Code of Federal Regulation (see Appendix for original) Article 35 of the 2010 ATM revised two sections for the purpose of the acceptance of the official Flood Insurance rate Map (FIRM) from the Federal Emergency management Agency.

## **ARTICLE 7**

### **INTENSITY REGULATIONS**

- 7.0 Except as is otherwise permitted under the provision of Section 6 of Chapter 40A of the General Laws, a dwelling hereafter erected or placed in any district shall be located on a lot having not less than 60,000 square feet of area and 150 feet of frontage. At least

30,000 square feet of that area must be contiguous upland. No existing lot shall be changed as to size or shape so as to result in the violation of such area or frontage requirements. And no more than one dwelling shall be built on any such lot. Provisions of this Article 7.0 shall not apply to any existing lot, which complies with previously approved intensity regulations as to area and frontage if such lot was recorded in the Registry of Deeds at the effective date of this regulation.

(1957 ATM, Article 36; 1959 ATM, Article 25; 1963 ATM, Article 38; 1970 ATM, Article 50; 1973 STM, Article 17; 1978 ATM, Article 21; 1995 ATM, Article 43; 2000 ATM, Article 50)

**(Editorial Note):** See Appendix for earlier versions. Article 17 of 1973 Special Town Meeting deleted all prior sections. Article 21 in 1978 inserted "section 6 of Chapter 40A" in place of "Section 5A or Section 7A of Chapter 40A".

**7.1** A dwelling hereafter erected or placed in the Residence/ Agriculture District or in the Business District shall not exceed either 2 1/2 stories or 40 feet in height.

(1957 ATM, Article 36; 1970 ATM, Article 50; 1973 STM, Article 17)

**(Editorial Note):** See Appendix for earlier versions.

**7.2** No dwelling for occupancy by two families shall hereafter be erected or located on a lot having an area of less than 80,000 square feet and 200 feet frontage. For each additional 20,000 square feet of area and 50 feet of frontage in the lot, the size of the dwelling may be increased to accommodate one additional family or dwelling unit. A lot to contain a dwelling for occupancy by more than one family must contain not less than 30,000 square feet of contiguous upland, plus 15,000 additional square feet of contiguous upland for each family in excess of one.

(1970 ATM, Article 50; 1973 STM, Article 17; 1995 ATM, Article 43; 2000 ATM, Article 50)

**(Editorial Note):** See Appendix for 1970 version.

**7.2.1.** Notwithstanding any contrary provisions in the foregoing requirements of Sections 7.1 and 7.2, or in the requirements of Section 7.6, the following dimensional and density requirements shall be applicable to Assisted Living Facilities and Independent Living Facilities authorized under Article 11 of this By-Law.

	Residence/ Agricultural	Business
Minimum land area per unit*	5,500 sq. ft.	5,500 sq. ft.
Minimum front setback	100 ft.	100 ft.
Minimum side and back yard setback/buffer	60 ft.	60 ft.
Minimum setback from surface water or wetlands	80 ft.	80 ft.

Minimum open space	50%	30%
Maximum height	40 ft.	40 ft.
Minimum frontage	200 ft.	200 ft.

Exclusive of wetland resource areas, water bodies, and required open space. For projects proposing more than 10 dwelling units, either assisted or independent living units, with more than 50% of these being rental units, the Planning Board may increase the total number of units allowed by 10%. At least 50% of the bonus units must be maintained as affordable units.

(2004 ATM, Article 18)

All age-qualified Assisted and Independent Living developments for the elderly must comply with the provisions of M.G.L. Chapter 151B, Section 4, including but not limited to the requirement that such development be built on one parcel or on contiguous parcels of land totaling at least five (5) acres in size.

(2005 ATM, Article 26)

**7.3** No dwelling hereafter erected shall occupy, either alone or with other buildings, more than 65% of a corner lot nor more than 50% of any other lot, the measurements to be taken at ground level.

(1983 STM, Article 21)

**7.4** Any lot hereafter created for any non-residential purpose in any district must conform to the minimum standards stated above of 150 feet of frontage and 60,000 square feet of area. At least 30,000 square feet of that area must be contiguous upland. Existing lots or parcels of land shall not be changed as to size or shape so as to result in the violation of such minimums and lots containing less than such minimums shall not be changed to further decrease the area or frontage but may be added to.

(1975 ATM, Article 39; 1995 ATM, Article 43; 2000 ATM, Article 50)

**7.5** The current provisions of Section 7.0 Intensity Regulations pertaining to frontage and/or area requirements shall not apply to a lot for single family residential use which at the effective date of this By-Law amendment was not held in common ownership with any adjoining land and had less than the current requirement, but at least 20,000 square feet of area and 100 feet of frontage. This By-Law shall apply only to such land as is currently recorded in the Registry of Deeds.

(1982 STM, Article 22; 2014 ATM, Article 30)

**7.6 YARD OR SET-BACK REQUIREMENTS**

**7.6.1 Front Yards**

Every building or structure shall be built or placed on a lot so that there shall be a front yard at least 25 feet clear depth from the street line or lines to be part of such building or structure closest to the street line; provided that no building or structure need be set back more than the average of the set backs of the building next thereto within 250 feet on both sides of the lot in question.

**7.6.1.1 Front Yard Width**

**7.6.1.1.1 Purpose**

The purpose of this By-Law is convenient access to buildings; and to discourage irregularly configured front yards and lots, which create difficulties in assigning addresses, in public safety response, and in maintenance.

**7.6.1.1.2 Minimum Width**

The minimum front yard width, as measured between the side lot lines, shall be fifty (50) feet. The minimum front yard width shall be maintained from the street line (street layout line/sideline) to the street setback line (front building line). Lot Width shall be determined by measuring the diameter of the largest circle that can be located along a continuous, but not necessarily straight line from the lot frontage to the principal structure on the lot without the circumference intersecting the side lot lines.

**7.6.1.1.3 Corner Lots**

For corner lots, the minimum width requirement shall apply to yards on all streets bounding the lot, and shall be maintained from the street line (street layout line/sideline) to the street setback line (side or rear building line) of the nearest corresponding side of the building.

**7.6.1.1.4 Waiver**

In order to accommodate constraints posed by existing irregular lots and streets, such

as lots fronting on existing streets with small sideline radii (tight curves) and existing lots with environmental, agricultural and topographic constraints, or historical significance, this requirement may be waived or modified by the grant of a special permit by the Planning Board, upon findings by that Board that waiving this requirement will not detract from the public health, safety, welfare and convenience and that such waiver is not inconsistent with the intentions of this By-Law. In such cases, the lot shall comply to the greatest extent practicable with this provision.

**7.6.1.1.5 Applicability**

The minimum front yard width requirements of Section 7.6.1.1 requirement shall apply to all subdivision or re-subdivision of land into new lots, by whatever process, with the exception of creation of lots measuring 7 acres or more. The re-configuration of lawfully pre-existing non-conforming lots shall not increase the degree of non-conformity of the front yard width.

(2006 ATM, Article 5)

**7.6.2 Side Yards**

At each side of every building or structure, there shall be a side yard not less than ten feet in clear width between side of the building or structure and the side lot lines. However, in the case of corner lots, there shall be a set back requirement of 25 feet from the street line to the side of any building or structure; provided that no building or structure need be set back more than the average of the set backs of the buildings next thereto within 250 feet of said lot in question.

**7.6.3 Rear Yards**

Behind every building or structure there shall provided a back yard between the rear line of a building or structure and the rear lot line not less than six feet in depth and/or 25 feet from a rear street line.

(1982 STM, Article 19)

**(Editorial Note):** The 1982 article rescinded existing By-Laws and/or regulations concerning set backs and inserted the above setback requirements into the Zoning By-Law. Article 5 of the 2006 ATM added 7.6.1.1 “Front Yard Width” and sections 7.6.1.1.1. through 7.6.1.1.5.

**7.6.4** Whenever a property line, road layout or street line cannot be determined with certainty, and there is a clearly defined traveled portion of the street or way consisting of pavement, gravel or other road surface material, a building or structure shall be set back a minimum of fifty (50) feet from the edge of the traveled portion of such way, in lieu of twenty-five (25) feet from the line of the layout.

(1987 ATM, Article 74)

**7.7** (Reserved)

**7.8** Any lot shown on a recorded plan which was endorsed by the Planning Board under General Laws, Chapter 41, Section 81P because the plan depicted a division of land on which two or more substantial buildings were standing when the Subdivision Control Law went into effect in the Town into separate lots, on each of which one of such buildings remained standing on the date the plan was endorsed, shall hereafter be treated for all purposes hereunder as a lawful, pre-existing non-conforming lot. No such lot shall hereafter be changed to create a new violation of any provision of these By-Laws, or increase or change an existing non-conformity with these By-Laws.

(1998 ATM, Article 74)

## **ARTICLE 8**

### **AQUIFER PROTECTION DISTRICT**

#### **8.0 PURPOSE OF DISTRICT**

The purpose of this Aquifer Protection District is:

- A.** To protect, preserve and maintain the groundwater supply and the major groundwater recharge areas within the Town.
- B.** To preserve and protect the sources of water supply for the public health and safety.
- C.** To conserve the natural resources of the Town.
- D.** To protect the groundwater and the major groundwater recharge areas of the Town from adverse land use practices.

#### **8.1 SCOPE**

The Aquifer Protection District encompasses those areas of the Town where

groundwater flow rates equal 1400 gallons per minute (G.P.M.) or greater, as delineated on a map on file at the office of the Town Clerk, which map reflects the best USGS hydro-geologic information as of the date of enactment hereof. The boundaries encompass the aquifer, and the aquifer's most significant recharge areas. The Aquifer Protection District overlays all other zoning districts.

## **8.2 ESTABLISHMENT AND DELINEATION OF AQUIFER PROTECTION DISTRICT**

There is hereby established within the Town an Aquifer Protection District, consisting of aquifers and/or aquifer recharge areas. Aquifers and aquifer recharge areas are defined by USGS standard geologic and hydrologic investigations which may include drilling observation wells, utilizing existing boring data and stratigraphic profiles, conducting seismic surveys or other geophysical techniques, performing pumping tests, water sampling and geologic mapping.

The boundaries of this District are delineated on a map at a scale of 1 inch to 1,000 feet entitled "Aquifer Protection District, Town of Westport" on file in the office of the Town Clerk. These boundaries reflect the best USGS hydro-geologic information available as of the date of the map.

## **8.3 USE REGULATIONS**

**8.3.1** The following uses, if allowed within the underlying District, are allowed within the Aquifer Protection District.

**A.** All primary uses permitted by the underlying District where the land is located, except those expressly prohibited under Section 8.3.2 or requiring a special permit under Section 8.3.3 below, and subject to the following:

**1.** Pesticides and fertilizers shall not be stored in amounts exceeding what is necessary for household or business use on the premises for a period of twelve (12) months.

**2.** Storage of home or business fuel intended to be consumed on-site for space heating, hot water heating and cooking purposes shall be in tanks not exceeding 660 gallons for residential use and 2,000 gallons for commercial use, whose design and installation is reviewed and approved by the Fire Department in accordance with applicable safety regulations, 527 CMR 9.0. Storage must be above ground, either in a freestanding container within a building or outdoors with protection adequate to contain a spill the size of the container's total storage capacity.

**B.** Existing non-conforming prohibited uses in conformance with any applicable state and local regulations.

### 8.3.2

The following uses are prohibited within the Aquifer Protection District:

- A. The manufacture, use, storage or disposal of toxic materials or hazardous wastes.
- B. Car washes, laundromats, automotive service and repair facilities, sanitary landfills, dumps, junk yards, storage or disposal of solid waste. Sludge or septage may only be stored in compliance with 310 CMR 32.30 and 32.31.
- C. Storage of animal manures, unless such storage is covered or contained, or in accordance with the specifications of the National Resource Conservation Service (NRCS).
- D. Storage of commercial fertilizers as defined in M.G.L. c. 182, §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
- E. The removal of soil, loam, sand, gravel or any other mineral substances within four (4) feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States geological survey), unless the original substances removed are redeposited within forty-five (45) days of removal on site to achieve a final grading greater than four (4) feet above the historical high water mark and except for excavations for the construction of building foundations or the installation of utility works and roadway construction.
- F. Impervious cover on any lot, including buildings, structures, driveways, parking areas, gravel areas, patios, storage areas or any other impermeable surfaces that exceed fifteen (15) per cent of land area or 2,500 square feet, whichever is greater, unless a system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality and exempting land primarily used for Agricultural or Horticultural purposes.
- G. Sewage treatment facilities with the exception of:
  - 1. Individual sewage disposal systems; and
  - 2. Decentralized Innovative/Alternative (I/A) Treatment System(s) or Localized Enhanced Treat System(s), approved by the Westport Board of Health, that significantly reduce bacterial and nutrient discharge levels to the environment (as compared with conventional on-site septic systems).

- H.** Stockpiling and disposal of snow or ice removed from highways and streets located outside of the Aquifer Protection District that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
- I.** Truck or bus terminals.
- J.** Disposal of solid wastes with the exception of brush and stumps.
- K.** Storage of liquid hazardous materials, as defined in M.G.L. c.21E, unless such storage is either in a free standing container within a building or in a free standing covered container above ground level with protection adequate to contain a spill one and one half the size of the container's total storage capacity.
- L.** Storage of liquid petroleum products of any kind, except those incidental to normal household use and outdoor maintenance or the heating of a structure.
- M.** Industrial uses that discharge process wastewater to the ground.
- N.** Floor drainage systems discharging to the environment in any facility managing hazardous materials and wastes.
- O.** Storage of road salt or deicing chemicals.

### 8.3.3

The uses set forth below are permitted within the Aquifer Protection District by **SPECIAL PERMIT** only, and are subject to the approval of the Granting Authority with such conditions as they may attach to their approval and subject to Section 8.3.2. The Special Permit Granting Authority shall be the Zoning Board of Appeals.

- A.** All commercial and industrial activities permitted in the underlying district, after site plan review that demonstrates compliance with the requirements of this section:

All such commercial and industrial uses may be constructed and operated in such a manner as to discharge no wastewater except normal sanitary waste to subsurface disposal systems.

- B.** Replacement, rehabilitation and modification of pre-existing non-conforming uses, in accordance with section 4.1 of Westport's Zoning By-Laws. The Special Permit Granting Authority shall not grant such approval unless it shall find that such expansion shall not increase the risk of contamination of groundwater.

**SITE PLAN SUBMISSION REQUIREMENTS****A. General**

Eight copies of a site plan including all of the information required below shall be submitted at a scale no smaller than one inch (1") equals forty feet (40'). The site plan shall have been prepared, stamped and signed by a registered professional engineer, registered land surveyor or registered architect for each pertinent design element.

**B. Legal**

1. Name and address of the applicant and authorization of the owner, if different from the applicant.
2. Name and address of the owner(s) of record, if different from the applicant.
3. Name and address of person and firm preparing the plan.
4. Assessor's plat and lot number.
5. Existing zoning classification of the property, including the location of any zoning district boundary. All setbacks shall be clearly shown on each parcel.
6. Real property boundary of the parcel. All distances, angles, and total parcel area to be shown. Tie lines shall be used, if necessary to provide closure.
7. North arrow, scale and date of plan preparation. Benchmark data to be referenced. Dates of field surveys and dates of revisions to the plan, including purpose of each revision, shall be shown.
8. Location, width and purpose of all existing easements, reservations, restricted development areas, and areas dedicated to public use within and adjoining the parcel.
9. Description of all existing deed restrictions or covenants applying to the property, and their depiction on the plan if they apply to less than the entire parcel.

**C. Physical Features**

1. Geologic features, such as depth to bedrock, rock outcrops, depth to groundwater.
2. Existing topography at a two-foot (2') contour interval.

3. Vegetative cover, including existing wooded areas, significant isolated trees, meadows, cultivated fields, orchards, vineyards and similar features. A recent aerial photograph at a scale no smaller than the scale of the site plan may be submitted to illustrate these features, provided that the parcel boundaries are superimposed thereon.
4. USDA-NRCS (Natural Resources Conservation Service).
5. Wetlands, streams, drainage swales, waterbodies, shorelines with mean high water reference, flood hazard areas.
6. Location, right-of-way and pavement width and location, and name of existing streets, roads, or ways bounding or intersecting the parcel.
7. Location of all existing structures including stonewalls, culverts, and drain pipes on the parcel.
8. Location of all wells, water mains, and other underground utilities and storage facilities.
9. Location of all septic tanks and leaching fields with appurtenant approval references noted.
10. Location of all uses not requiring structures, including outdoor storage, vehicular or equipment parking or repair areas.

**D. Proposed Development**

1. Grading and drainage plan showing proposed topography at two-foot (2') intervals. This information may be combined with the map showing existing conditions if it can be clearly depicted.
2. Location and proposed use of buildings and other structures, such as retaining walls, fences, and outdoor storage tanks.
3. Location and arrangement of site access and egress, including all paths for pedestrian and vehicular travel within the site. Cross-sections and profiles shall be supplied as necessary.
4. Location and size of well, water lines, sewage lines including septic tanks and leaching fields.
5. Proposed alterations to any of the physical features shown in Section D, item 2 above.
6. Location of all proposed uses not requiring structures, as in Section D, item 2 above.

7. Additional information or detail as the SPGA may deem necessary to review the plan.

## **8.5 PROCEDURES FOR ISSUANCE OF SPECIAL PERMIT**

- 8.5.1 Each application for a special permit shall be filed with the Zoning Board of Appeals. The Zoning Board of Appeals shall transmit a copy of the application to the Planning Board, Conservation Commission, Board of Health and Fire Department, and request their comments and recommendations upon the application.
- 8.5.2 The Zoning Board of Appeals shall hold a hearing in conformity with the provisions of M.G.L. chapter 40A, § 9, within sixty-five (65) days after the filing of the application with the Zoning Board of Appeals. Notice of the Public Hearing shall be given by publication and posting and by first class mailing to "parties of interest" as defined in M.G.L. chapter 40A, § 11. The decision of the Zoning Board of Appeals and any extension, modification or renewal thereof shall be filed with the Town Clerk within thirty (30) days following the closing of the Public Hearing. Failure of the Zoning Board of Appeals to act within ninety (90) days after the application is filed shall be deemed as a Granting of the Permit.
- 8.5.3 The Special Permit Granting Authority shall grant a special permit only upon findings that (I) the proposed use does not pose an actual or potential threat of material damage to groundwater quality, and (ii) that all adverse impacts to groundwater and disturbance of natural vegetation have been avoided or minimized to the maximum extent reasonably practicable, giving due regard to the economic scope of the project, and the public benefits to be secured from the project.
- 8.5.4 The Special permit Granting Authority may impose reasonable restrictions and conditions upon an approval action to achieve maximum compliance with this By-Law.

## **8.6 ENFORCEMENT OF THIS BY-LAW**

Enforcement of this By-Law shall be by the Zoning Enforcement Officer of the Town.

## **8.7 RIGHT OF APPEAL**

Any person aggrieved by a decision of the Board of Appeals may seek judicial review thereof in accordance with M.G.L. Chapter 40A, Section 17.

## **8.8 SEVERABILITY**

A determination that any portion or provision of this Aquifer Protection District By-Law is invalid shall not invalidate any other portion or provision thereof. **NOTE: See Map in Back**

(1998 ATM, Article 63)

## ARTICLE 9

### TELECOMMUNICATIONS FACILITIES OVERLAY DISTRICT

#### **9.0**            **Establishment of District**

This section establishes a Telecommunication Facilities Overlay District in addition to the zoning districts described in Article 3 and other overlay districts described herein. The District is established as a special district, which may overlay any other zoning district. The provisions of this Article shall apply in addition to the requirements of the underlying zoning district.

##### **9.1.1**            **Purpose**

The telecommunications Facilities Overlay District is established for the purpose of permitting wireless communications towers and related facilities in specific areas of Westport, in order to minimize visual impacts from such towers and facilities on the Town's rural, residential and village areas.

##### **9.1.2**            **Location**

The Telecommunications Facilities Overlay District consists of all areas of the Town zoned as "Business" or "Unrestricted," and any other areas that may be added thereto by amendment to the Zoning Map duly adopted in accordance with law.

##### **9.1.3**            **Use Regulations**

Land within the Telecommunications Facilities Overlay District may be used for all the purposes permitted in the underlying zoning district, as modified by any other overlay district, and for telecommunications facilities subject to the provisions of Section 9.2. All development shall be subject to the regulations of the underlying zoning district, and of any applicable overlay district that are not specifically modified by the provisions of Section 9.2.

#### **9.2**            **Telecommunications Facilities**

##### **9.2.1**            General Provisions for Wireless Communications Facilities

**9.2.1.1**            **Special Permit Requirement:** Wireless communications towers and facilities (including antennas and accessory structures, if any) may be erected only in a Telecommunications Facilities Overlay District upon the issuance of a special permit with site plan approval by the Board of Appeals, subject to the condition herein.

**9.2.1.2**            **Applicability:** The provisions of this Section 9.2 (except Section 9.2.7) shall apply to any wireless communication tower or facility except the following:

- a.**            An antenna structure used by a federally licensed amateur radio operator, provided that the (1) tower shall be set back from property lines a distance at

least equal to its height, and (2) the tower must be removed if the use is discontinued for six months.

**9.2.2. Standards for Towers**

Construction of wireless communication towers shall be subject to all of the following conditions:

- 9.2.2.1 Only self-supporting towers shall be permitted. Guyed towers are specifically prohibited.
- 9.2.2.2 Tower height shall not exceed 190 feet above the existing terrain.
- 9.2.2.3 A tower shall not be erected nearer to any property line than a distance equal to the vertical height of the tower (inclusive of any appurtenant devices), measured at the mean finished grade of the tower base.
- 9.2.2.4 A tower shall be set back from any public way, except interstate highways, a distance at least equal to one and one-half times the vertical height of the tower, measured at the mean finished grade of the tower base.
- 9.2.2.5 Towers shall be designed to accommodate facilities for at least three separate carriers, and the owners shall allow co-location by such carriers, on terms and conditions prevailing in the market place.
- 9.2.2.6 Towers shall not include facilities for microwave transmission.
- 9.2.2.7 All network interconnections from the communications lot shall be via landlines.
- 9.2.2.8 One telecommunications facility accessory building, not to exceed in the aggregate 300 square feet gross floor area per carrier may be constructed, provided that the building is similar in architectural style and materials to other structures in the neighborhood.
- 9.2.2.9 Any electrical generators shall be shielded so as to prevent unreasonable noise impacts on neighboring properties.
- 9.2.2.10 Tower lighting shall not be permitted. If the FAA would require lighting of proposed tower because of its height, the height should be reduced to eliminate the need for lighting.
- 9.2.2.11 Existing on-site vegetation shall be preserved to the maximum extent practicable.

**9.2.3 Special Permit Procedures**

**9.2.3.1**      **Submittal Requirements**

An application for a permit for a wireless communications tower or other exterior wireless communications facility shall include seven copies of a site plan prepared by a professional engineer or land surveyor registered to do business in the Commonwealth of Massachusetts, which shall show the following at minimum:

- a.      Ownership, zoning, use, the general location of structures and topography within two hundred feet of the property line of the lot; and
- b.      All major site features; including:
  - i.      Driveways, including widths;
  - ii.     Parking areas;
  - iii.    Street line, including widths;
  - iv.    Roadways, including widths;
  - v.     Pedestrian walks, including widths;
  - vi.    Wetlands;
  - vii.   Drainage, including detail design data, pipe sizing, etc.; and
  - viii.   Stone walls.

The applicant shall also describe the capacity of the tower, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity, and any accessory structures.

**9.2.3.2**      **Required Findings:** The Board of Appeals may grant a special permit for a tower only if it makes all of the following findings:

- a.      Existing or approved towers available for use by the applicant cannot accommodate the wireless communications equipment planned for the proposed tower.
- b.      The design of the tower and supporting facilities will minimize adverse visual effects on the environment to the extent feasible.
- c.      Traffic associated with the tower and accessory facilities and structures shall not adversely affect abutting ways.

**9.2.3.3**      **Conditions:** The Board of Appeals may impose

reasonable conditions on a special permit granted under this section, including fencing requirements and painting and lighting standards.

**9.2.4            Modification of Approved Facility**

**9.2.4.1**            Additional antennas and equipment may be added to a facility that has received a special permit under this section, unless specifically prohibited in the special permit decision. The Zoning Enforcement Officer must be notified at least 30 days prior to any such modification.

**9.2.4.2**            Any modifications to approved facilities must be consistent with the requirements of this Section 9.2.

**9.2.5            Non-Use**

Any wireless communications tower, facility or accessory structure, which has not been used for two years shall be dismantled and removed at the owner's expense.

(1998 ATM, Article 65; 2001 ATM, Article 50)

**ARTICLE 10**

**PHASED DEVELOPMENT**

**10.0            PHASED DEVELOPMENT**

**10.1            PURPOSE**

The purpose of this section is to promote orderly growth in the Town of Westport; to preserve the water quality of the Westport River watershed; to phase growth so that it will not unduly strain the community's ability to provide basic education, public facilities and services; to provide the town, its boards and agencies information, time and capacity to incorporate such growth into the Master Plan and the town's budget, and to preserve and enhance existing community character and the value of property.

**10.2            APPLICABILITY AND EXEMPTIONS**

This section 10 regulates the rate at which building permits may be issued for land that is the subject of a plan submitted to the Planning Board after the date of enactment hereof by Town Meeting, either for approval under the subdivision control law, or for endorsement "approval not required" under M.G.L. c.41, Section 81P. This section shall not apply to any plan for which an application for such approval or endorsement was filed with the Planning Board before the date of enactment, nor to any definitive plan filed after enactment hereof, if the land shown thereon was included in a preliminary plan filed under M.G.L. c.41, Section 81S before the date of the enactment, provided that application for approval of such definitive plan is filed within seven months of the date that such preliminary plan was filed.

**10.3            DEVELOPMENT SCHEDULE**

In any calendar year, the Building Inspector shall not issue a permit for the construction

for any lot created by a plan that is subject to this section 10, if the aggregate number of permits issued for lots shown on the plan, when combined with permits issued in previous calendar years, exceeds the totals set forth below.

<b>Year</b>	<b>Maximum Total Permits</b>
Year of endorsement of plan	Greater of 2 lots or 20% of total lots on plan
2nd year after endorsement	Greater of 4 lots or 40% of total lots on plan
3rd year after endorsement	Greater of 6 lots or 60% of total lots on plan
4th year after endorsement	Greater of 8 lots or 80% of total lots on plan
5th year after endorsement	No limit

For the purpose of calculations hereunder, all fractional totals shall be rounded upward.

#### **10.4 MULTIPLE SUBDIVISIONS FROM SINGLE PARCEL**

The Building Inspector will, for the purpose of calculations under this By-Law, aggregate all lots created from two or more plans of land if all the lots shown on such plans were divided from a single, contiguous parcel of land that was in one-ownership or under the control of one entity on the date of enactment of this By-Law.

(2005 ATM, Article 25)

#### **10.5 PERIOD OF PHASED DEVELOPMENT**

The provisions of this By-Law shall apply to all lots created through the division of land for the period of eight (8) years from and after the effective date of this By-Law.

(2000 ATM, Article 49)

#### **10.6 AFFORDABLE UNITS**

Affordable Units, as defined in Article 1.1, and units in Assisted and/or Independent Living Facilities shall be exempt from the phased development schedule.

(2005 ATM, Article 25)

### **ARTICLE 11**

#### **ASSISTED AND INDEPENDENT LIVING FACILITIES**

##### **11.0 ASSISTED AND INDEPENDENT LIVING FACILITIES**

##### **11.1 PURPOSE**

The purpose of this Assisted and Independent Living Facility By-Law is to provide a mechanism for the approval of:

**11.1.1** Assisted Living Facilities (ALFs) within a residential environment that

offers supportive services to individuals who are unable to live independently in the community by offering supervision and/or assistance with basic activities of daily life, such as, but not limited to, dressing, bathing, toileting, and nutrition; and

**11.1.2** Independent Living Facilities (ILFs) that offer congregate living arrangements to persons over the age of fifty-five;

**11.1.3** The development of ALFs and ILFs in a manner that conserves environmental features, woodlands, wet areas, open space, areas of scenic beauty, views and vistas as well as encouraging the renovation and rehabilitation of older, existing buildings; and

**11.1.4** The development of ALFs and ILFs in a manner that is harmonious with the surrounding land uses while protecting natural resources and open space.

## **11.2** DEFINITIONS

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

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

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

**Land**: Land, including areas covered by water.

**Subdivision Regulations**: The rules and regulations of the Planning Board relative to subdivisions.

**Wetlands**: Lands subject to the provisions of M.G.L. c. 131, ss.40 and 40A.

## **11.3** USE RESTRICTIONS

An ALF and/or an ILF may be constructed, subject to the requirements set forth herein, upon the issuance of a special permit by the Planning Board.

**11.3.1** Area, setback, height, frontage, and density requirements for ALFs and ILFs are set forth in Section 7.2.1.

**11.3.2** No other use or structures shall be permitted, except as specifically provided herein.

**11.3.3** An ALF or an ILF may consist of a single building or multiple buildings.

**11.3.4** Structures and uses accessory to the ALF or ILF may also be provided within the same building, including, but not limited to, the following: beauty and barber salons; recreational, physical fitness and therapy services; nondenominational chapel; library; bank automated teller machine; management offices; adult day care or adult health care facility; hospice residence; food service; laundry and covered parking areas; provided, however, that such accessory uses and structures shall be designed for the primary use of the residents and staff of the ALF or ILF. Such accessory uses may not be designed for or used as a general business by the general public. Such accessory uses shall be wholly within a structure containing residential units, and shall have no exterior advertising display.

**11.3.5** The facility shall be served by municipal water and/or sewer systems unless the applicant can provide on-site water supply and sewage treatment.

**11.4** An application for special permit shall be on forms furnished by the Planning Board and accompanied by a special permit filing fee determined by the Planning Board. The Planning Board may waive the submittal of technical information or documents otherwise required hereunder where the applicant demonstrates that, due to the simplicity of the proposal, such information is not necessary for or applicable to the Planning Board's decision pursuant to this section. Unless so waived, an application for a special permit shall consist of the following:

**11.4.1** The following plans:

**11.4.1.1** A plan at a scale of 1" = 40', or other scale acceptable to the Planning Board, showing existing conditions, including: the topography of the site at a minimum of two foot intervals; vegetation and unique features, including wetlands, perennial streams and ponds, trees of more than 8" caliper, stone walls, and rock outcroppings; slopes in excess of 15%; existing trails, paths and ways; open vistas; structures of historical importance; wildlife habitats, and existing easements and restricted areas;

**11.4.1.2** A plan depicting the horizontal layout of the site, including types, location and layout of buildings, parking areas, vehicular and pedestrian circulation, stormwater facilities, lighting, signage, trash disposal areas, loading areas, etc.

**11.4.1.3** Elevation drawings of buildings and other major structures;

**11.4.1.4** A grading plan depicting stormwater management provisions;

- 11.4.1.5 A landscape plan with planting schedule showing types, number and characteristics of proposed plantings;
- 11.4.1.6 Detail drawings of drainage structures, signage, lighting, tree plantings, and other site features, as necessary.
- 11.4.1.7 Perspective drawings or 3-D models may be subsequently required by the Planning Board;
- 11.4.1.8 The Planning Board may describe the required content of the above plans in greater detail in regulations promulgated under this By-Law.

**11.4.2** The following narrative reports or data:

- 11.4.2.1 A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated date of completion;
- 11.4.2.2 A development impact statement prepared impact of the development on the Town's capacity to furnish services including, but not limited to, roads, police, fire, emergency services, water and sewage treatment;
- 11.4.2.3 Information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by Town Counsel;
- 11.4.2.4 Copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the Town, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by Town Counsel;
- 11.4.2.5 A stormwater management plan complying with all local, state, and federal requirements, including drainage calculations, erosion and sedimentation control provisions during and after construction, and on-going maintenance plan.
- 11.4.2.6 Any and all other information that the Planning Board may reasonably require in an acceptable form to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section.

**11.4.2.7** The Planning Board may describe the required content of the above plans in greater detail in regulations promulgated under this By-Law.

**11.4.3** Each such application shall be accompanied, if applicable, by a definitive plan of land pursuant to the provisions of Massachusetts General Law Chapter 41, sections 81-0 and 81-T, as the same may be from time to time amended and the Subdivision Regulations as well as a filing fee determined in accordance with the Subdivision Regulations. Approval of a special permit under this section shall not substitute for compliance with Subdivision Control Law, G. L. c. 41, ss81k et seq. A definitive subdivision plan submitted in connection with an approved special permit for an ALF or ILF shall substantially conform with plans upon which the special permit approval was based.

## **11.5**      **STANDARDS**

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

### **11.5.1**      **Affordability**

At least fifteen percent (15%) of the total number of dwelling units in an Independent Living Facility (ILF), which proposes more than ten units shall meet the definition of Affordable Units as defined in Article 1, Section 1.1 of the Westport Zoning By-Law. These affordable units shall be marketed and administered through the Westport Housing Authority with resale restrictions to assure continued affordability. Dwelling units reserved for occupancy by persons or families of low to moderate income, or for occupancy by a single individual, shall not be segregated from market rate or larger dwelling units in the development.

### **11.5.2**      **Open Space Requirement for ALFs and ILFs:**

In the Residence/Agriculture districts a minimum of fifty (50) percent of the parcel shown on the Development Plan shall be contiguous open space. In the Business districts a minimum of thirty (30) percent of the parcel shown on the Development Plan shall be contiguous open space. Such open space may be separated by road(s) constructed within the development. Said contiguous open space shall have at any point the minimum width of 125 feet.

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

The required open space shall remain unbuilt upon, provided that five percent (5%) of such open space may be paved or built upon for structures accessory to the dedicated use or uses of such open space, community center, pedestrian walks, bike paths, and existing agriculture.

The required open space shall be conveyed in conformance to the requirements provided in the Subdivision Regulations.

Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively existing agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

### **11.5.3 Buffer Areas and Building Setbacks**

All dwellings and structures shall be located a minimum of sixty (60) feet from adjacent properties, and eighty (80) feet from adjacent surface waters or wetlands. All buildings shall be set back a minimum of 100 feet from the street except that, in the Business District this setback requirement may be modified at the discretion of the Planning Board. Buffer areas shall be retained in their natural vegetative state to the maximum extent feasible, where the 60 foot buffer of natural vegetation is not adequate (in the Planning Board's opinion) to screen the development from adjacent properties the Board may require additional plantings, earthen berms and/or fencing.

The Planning Board may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least fifty (50') feet in depth which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the Town for conservation or recreation purposes; or (iii) the site is a mixed-use area or a downtown area where providing a buffer is infeasible or is inconsistent with the Town's planning goals for the area; or (iv) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

### **11.5.4 Removal and Replacement of Vegetation**

Within the site, no clear cutting shall be permitted, except incidental to construction of buildings, roads, trails and parking areas.

### **11.5.5 Roadways**

The principal roadway(s) serving the site shall be designed to conform

with the standards of the Subdivision Regulations as they apply to Residential Streets, or the roadways may be designed to comply with the Town's Secondary Road construction standards, but must be paved with asphalt. Gravel paving or any other non-asphaltic material may not be used as a finished pavement.

**11.5.6 Parking**

Notwithstanding any other provisions in this By-Law to the contrary, the applicant shall provide adequate parking to serve all anticipated uses on the property, and shall provide information detailing the method of computation of parking spaces. The minimum number of parking spaces provided on the site shall be 0.3 parking space per dwelling unit in an ALF and 1.0 parking space per dwelling unit in an ILF. For both ALFs and ILFs one (1) additional parking space shall be provided for every three (3) employees during the largest shift. The Planning Board may increase the required parking by up to 10% to serve the needs of employees, visitors and service vehicles. All parking areas shall be screened from view from adjacent residentially zoned or occupied premises located outside the site, including public ways, by a landscaped border at least ten (10) feet in width. Parking lots in front setbacks in residential zones, and in buffer areas in all zones, with the exception of necessary access driveways, are prohibited. Parking areas in residential districts shall be located to the side or rear of all buildings. Parking lot layout shall be planned to permit landscaping, buffering, or screening to prevent direct views of parked vehicles from adjacent streets. The use of traditional picket fencing, hedges, walls, or landscape berms to define parking areas is encouraged. In parking areas of eleven or more parking stalls, at least one tree of three inch or greater caliper shall be planted for every six parking places. Adequate tree wells and irrigation shall be provided for all parking lot landscaping. Pedestrian access is to be taken into consideration in parking lot design. The use of separate walkways is encouraged.

**11.5.7 Loading**

Loading areas, if required, must be at least 20 X 9 feet, and have a minimum overhead clearance of 10 feet. Screening and landscaping shall be provided to block all views of loading areas (except those specifically designated for emergency vehicles) from the public right-of-way and adjacent properties.

**11.5.8 Stormwater Management**

Drainage provisions shall be provided to ensure compliance with all local, state and federal requirements regarding stormwater management including; Article 20, Low Impact Development and the Board of Health's Stormwater Quality and Quantity Control Regulations dated April 15, 2009 effective on August 1, 2009 or as amended and shall be

subject to review by the Planning Board's engineering consultant at the expense of the applicant. Drainage shall be designed so that the rate of run-off shall not be increased, groundwater recharge is maximized, surface and ground water quality is maintained or improved, and neighboring properties will not be adversely affected. The Board may require that existing drainage problems on/or adjacent to the site be mitigated as a condition of approval of the special permit under this section. Drainage facilities shall not be allowed in the required open space areas.

(2011 ATM, Article 39)

**11.5.9            Utilities**

All electric, gas, telephone, water distribution lines, and other utilities shall be placed underground except upon a demonstration of exceptional circumstances.

**11.5.10          Paths**

Paths for the use of residents shall be attractively designed with proper regard for convenience, separation of vehicular, bicycle and pedestrian traffic, adequate connectivity, completeness of access to the various amenities and facilities on the site and to pathways on adjacent sites.

**11.5.11          Paving and Curbing**

Curbing is to be sloped or cut to provide a barrier free transition at road crossings and building entrances. Paving should be textured or of different materials at pedestrian crossings and walkways. The use of stone, brick or cultured stone pavers for entrance walkway borders is encouraged. The use of textured materials for walkway borders is encouraged.

**11.5.12          Design and Architectural Character**

Architectural style shall be in harmony with the historical design elements that are contextually consistent with regional New England architecture.

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

**11.5.14** No building/structure shall be floodlit. Drives, walkways, entryways, and parking areas shall not be illuminated by lights higher than fifteen (15) feet, which shall be shielded to have a total cutoff of all light at less than ninety (90) degrees and a beam cutoff less than seventy-five (75) degrees. The total cutoff of all light shall occur within the property lines of the parcel to be developed.

**11.5.15** In order to be eligible for consideration for a Special Permit pursuant to this section, the ALF or ILF shall comply with all Federal and State access requirements.

**11.6** **INCENTIVES FOR CONVERSION OF STRUCTURES**

It is the intent of this subsection to encourage the appropriate reuse of land and buildings that are no longer needed or suitable for their original use. Such building conversions shall:

**11.6.1** Be compatible with the character of the neighborhood; and

**11.6.2** Minimize removal or disruption of historic existing building features or architectural elements, whether these exist on the site or on adjacent properties.

**11.6.3** Notwithstanding other sections of this bylaw, the buffer requirements, minimum open space requirements, and building height requirements for the ALF or ILF shall be those physically existing on the ground as of the date of enactment of this bylaw.

**11.6.4** The Planning Board may permit expansion of the structure to the degree reasonably necessary to construct entryways and features to comply with Federal and State access requirements and fire escape and fire protection features.

**11.7** **ACTION BY THE PLANNING BOARD**

The Planning Board may approve, approve with conditions, or deny an application for an ALF or an application for an ILF, after assessing whether the proposed development complies with the requirements of this By-Law and serves the purpose of the By-Law as expressed in section 11.1.

**11.8** **RELATION TO OTHER REQUIREMENTS**

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

**11.9** **SEVERABILITY**

A determination that any portion or provision of this Assisted and Independent Living Facilities By-Law is invalid shall not invalidate any other portion or provision thereof.

## ARTICLE 12

### **BUILDING PERMIT LIMITATIONS (Proposed Article Did Not Pass Town Meeting)**

## ARTICLE 13

### **INCLUSIONARY HOUSING**

#### **13.0 INCLUSIONARY HOUSING**

#### **13.1 PURPOSE AND INTENT**

The purpose of this By-Law is to outline and implement a coherent set of policies and objectives for the development of affordable housing in compliance with the Town of Westport Master Plan, The Westport Planned Production Plan, or any superceding Westport Housing Production Plan and MGL c.40B sec. 20-23, and in tandem with on-going Town of Westport programs to promote a reasonable percentage of housing that is affordable to low and moderate-income households. It is intended that the affordable housing units that result from a special permit issued under this By-Law be considered as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Massachusetts Department of Housing and Community Development (DHCD) and that said units count toward the Town's requirements under MGL c.40B, sec 20-23. It is intended that this By-Law provide a mechanism to compensate for those decreases in the town's percentage of affordable housing that are directly caused by increases in the Town's overall housing stock.

#### **13.2 DEFINITIONS**

**13.2.1 Division of Land:** This By-Law shall apply to the division of land held in single ownership as of June 1, 2005 or anytime thereafter into ten (10) or more lots, whether said ten (10) or more lots are created at one time or are the accumulation of ten (10) or more lots created from said land held in single ownership as of June 1, 2005. This By-Law shall apply to Town of Westport Open Space Residential Development, "conventional" or "grid" divisions allowed by M.G.L. Chapter 41, Section 81-L and Section 81-U, as well as those divisions of land that do not require subdivision approval per G.L. c. 41, §81P.

**13.2.2 Multi-Family Dwelling Units and Duplexes:** This By-Law shall apply to the construction of ten (10) or more multi-family dwelling units or duplexes, whether on one or more contiguous parcels in existence as of June 1, 2005.

**13.2.3 Exemption:** The provisions of Article 13.3 hereof shall not apply to the construction of ten (10) or more single-family dwelling units on individual lots, if said ten (10) or more lots were in existence prior to

(2011 ATM, Article 41)

**13.2.4**            **Administration:** The Planning Board shall be the Special Permit Granting Authority (SPGA) for all special permits under this By-Law.

**13.3**            **MANDATORY PROVISION OF AFFORDABLE UNITS**

The SPGA shall, as a condition of approval of any development referred to in Article 13.2, require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this By-Law and more fully described in Article 13.4. Any special permit granted hereunder shall contain a condition that a regulatory agreement, executed by DHCD, the Town of Westport, and the applicant is recorded at the Registry of Deeds and a copy provided to the Inspector of Buildings and the Planning Board prior to issuance of a building permit, except as provided through special permit in accordance with Article 13.5.

**13.4**            **PROVISION OF AFFORDABLE UNITS**

The SPGA shall grant any application for a special permit if the application satisfies the following minimum affordable housing requirements:

**13.4.1**            At least 10% of the units in any residential development and any division of land subject to this By-Law shall be established as affordable housing units. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing ten (10) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two (2) affordable units, and so on, except as provided through Article 13.5.

**13.4.2**            The affordable unit(s) shall be constructed or rehabilitated on the locus property, except as provided through Article 13.5.

**13.5**            **ALTERNATIVES AND INCENTIVES**

The SPGA is authorized, by grant of a Special Permit, to allow the following alternatives and incentives to the provisions of 13.3 and 13.4.

**13.5.1**            **Off-Site Alternative:** An applicant subject to this By-Law may develop, construct or otherwise provide affordable units equivalent to those required by Article 13.5 off-site. All requirements of this By-Law that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location and design of the off-site units to be provided shall be approved by the Special Permit Granting Authority as an integral element of the special permit review and approval process.

- 13.5.2**      **Cash Contribution:** As an alternative to the requirements of Article 13.5, and as allowed by law, an applicant may contribute funds to the Westport Affordable Housing Trust Fund to be used for the creation of affordable housing in lieu of construction and offering affordable units within the locus of the proposed development. For the purposes of this Bylaw, the cash payment per affordable unit required shall be equal to the difference between the median single-family home sales price in Westport for the most recent calendar year as determined by the SPGA and the price affordable to a qualified purchaser as determined by the SPGA, based on applicable guidelines of the DHCD, Local Initiative Program (LIP). Where the calculation of affordable units results in fractional units, a cash payment may be made as provided in this section on a pro rata basis. The cash payment formula and timetable may be adjusted by the SPGA from time to time through the issuance of guidelines or regulations. If the SPGA issues a Special Permit to authorize a cash payment in lieu of units and the Board of Trustees of the Westport Affordable Housing Trust Fund votes to accept said contributions, the payment shall be paid to the Westport Affordable Housing Trust Fund prior to the issuance of any building permits for the development or prior to the sale of any lots, if applicable. Alternatively, the SPGA may allow payment of said contributions according to a specified timetable in proportion to the rate of development or sale of lots. This cash contribution alternative shall apply only to homeownership developments and division of land and shall not apply to rental developments.
- 13.5.3**      **Donations of Land:** An applicant may offer, and the Board of Trustees of the Westport Affordable Housing Trust Fund (Trustees)with the approval of the SPGA, may accept donations of land in fee simple, on or off-site, that the SPGA and Trustees determine are suitable for the construction of an equivalent number of affordable housing units. The SPGA may require the applicant to submit an appraisal or other data relevant to the determination of suitability for an equivalent number of affordable housing units. If the SPGA issues a Special Permit to authorize donations of land in lieu of units and the Board of Trustees of the Westport Affordable Housing Trust Fund votes to accept said donations, the donation shall be made to the Westport Affordable Housing Trust Fund prior to the issuance of any building permits for the development or prior to the sale of any lots, if applicable.
- 13.5.4**      **Combination of Alternatives:** The applicant may offer, and the SPGA may approve the acceptance of, any combination of the alternatives provided in sections 13.6.1-13.6.3 provided that in no event shall the net result of the combination provided be less than the equivalent number or value of affordable units required by this By-Law.
- 13.5.5**      **Density Bonus:** The SPGA may allow the addition of two market rate units for each affordable unit provided as part of compliance with this

By-Law, provided that the expanded development complies with the open space requirements, design standards, and all other provisions of Article 18 Open Space Residential Development of the Westport Zoning By-Law. In addition, a development that exceeds the minimum affordable housing requirements of this By-Law may receive the same density bonus benefits; however the net increase in housing units as a result of this By-Law and Article 18 shall not exceed fifty percent (50%) of the original property yield before any density bonuses were applied.

**13.6 PROVISIONS APPLICABLE TO AFFORDABLE HOUSING UNITS ON OR OFF-SITE**

**13.6.1** Siting of affordable units: All affordable units constructed or rehabilitated under this By-Law shall be situated so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

**13.6.2** Minimum design and construction standards for affordable units: Affordable housing units within market-rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units.

**13.6.3** Timing of construction or provision of affordable units or lots: The Special Permit Granting Authority shall impose conditions on the special permit requiring construction of affordable housing according to a specified time table, so that affordable housing units, whether on the locus property or off site, shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

<u>Market-Rate Units</u>	<u>Affordable Housing Units</u>
Up to 30%	At least one unit
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
UP to 90%	100%
*Any fractions of an affordable unit shall be rounded up to a whole unit.	

**13.7 LOCAL PREFERENCE**

To the extent permitted by law, the SPGA may require the applicant to comply with local preference requirements, if any, as may be established by regulations promulgated hereunder.

**13.8**            **MARKETING PLAN FOR AFFORDABLE UNITS**

Applicants under this By-Law shall submit a marketing plan (or other method approved by the SPGA) to the SPGA and DHCD, which describes how the affordable units will be marketed to potential homebuyers/tenants. If applicable, this plan shall include a description of the lottery or other process to be used for selecting buyers/tenants. The plan shall be in conformance to any applicable guidelines issues by DHCD, and shall be subject to the prior review and approval of Town Counsel at the applicant's expense.

**13.9**            **PRESERVATION OF AFFORDABILITY; RESTRICTIONS ON RESALE**

Each affordable unit created in accordance with this By-Law shall be subject to a deed restriction in form and substance acceptable in to Town Counsel and the Massachusetts Department of Housing and Community Development (“DHCD”). The deed restriction shall run with the land in perpetuity or for the longest period of time allowed by law unless the SPGA determines that a shorter period of affordability will facilitate the development of affordable housing. The deed restriction shall limit the resale price of any ownership units or, in the case of rental property ensure the continued availability of affordable rental units, consistent with the regulations and guidelines issued from time to time by DHCD. Prior to the issuance of any occupancy permits for affordable or market rate units, the deed restriction(s) for each affordable unit constructed in accordance with the provisions of 13.6.3 shall be recorded at the Bristol County (S.D.) Registry of Deeds or Registry District of the Land Court. The deed restriction shall survive any bankruptcy or foreclosure.

**13.10**           **REGULATIONS**

The Special Permit Granting Authority shall adopt regulations for the orderly administration of this By-Law.

**13.11**           **EXPIRATION**

Any special permit issued pursuant to this Article shall be recorded with the Registry of Deeds or Registry District of the Land Court. A special permit shall lapse within two years from the date of issuance, not including time required for appeals or challenges pursued under G. L. c. 40A Section 17, if substantial use has not been made or if construction has not begun within that time period except for good cause.

**13.12**           **SEVERABILITY**

If any portion of this By-Law is declared to be invalid, the remainder shall continue to be in full force and effect.

(2005 ATM, Article 24, 2010 ATM, Article 37)

**(Editorial Note):** Article 37 of the 2010 ATM deleted Article 13 in its entirety and replaced it with the above language.

## ARTICLE 14

### DRIVE-THROUGH FACILITIES

#### 14.0 DRIVE-THROUGH FACILITIES

#### 14.1 PURPOSE

The purpose of this By-Law is to enhance the public health, safety, convenience and welfare by providing detailed review of the design and layout of drive-through facilities, which have a substantial impact upon the character and environment of the Town and upon traffic, utilities and services therein.

#### 14.2 POWERS AND ADMINISTRATION

The Planning Board is hereby designated the Special Permit Granting Authority (SPGA) for Drive-Through Facilities. The SPGA shall, after a public hearing, adopt regulations relative to the issuance of special permits for Drive-Through Facilities, including submission requirements, design standards and BMPs. After holding a public hearing, the SPGA may establish administrative and review fees.

After notice and public hearing as required by M.G.L. Chapter 40A, Section 9, and review of the site plan and accompanying submissions required by its regulations (to be adopted hereunder), the SPGA may grant the special permit, deny the special permit, or grant the special permit with conditions appropriate to serving the purposes of this section.

#### 14.3 DEFINITIONS

As used in this By-Law section and any regulations adopted by the Planning Board under this By-Law, the following words shall have the meanings specified herein as follows:

**Access**: A way or means of approach to provide vehicular or pedestrian access to a property.

**Access Connection**: Any driveway, street, curb cut, turnout or other means of providing for the movement of vehicles to or from the public/private roadway network.

**Best Management Practice (BMP)**: For the purposes of stormwater management, structural or nonstructural and managerial techniques that are recognized to be the most effective and practical means to prevent or reduce non-point source pollution from entering receiving waters.

**Cross Access**: A service drive providing vehicular access between two or more contiguous sites so that the driver need not enter the public street system.

**Drive-Through Facility**: A commercial facility that provides a service or delivers a

product directly to a motor vehicle (including, but not limited to, quick lube facilities and drive-through car washes); or to the occupants of the vehicle, without requiring them to leave the vehicle (including, but not limited to fast food restaurants and drive-through automatic teller machines). This definition does not include the selling of fuel at a gasoline filling station or the accessory functions of a car wash facility such as vacuum cleaning stations.

**Driveway/Curb Cut Spacing**: The distance between access connections, as measured from the closest edge of pavement along the public/private roadway.

**Fast Food Restaurant**: Any restaurant serving the majority of its food in disposable containers, packages, or other similar wrapping, for consumption on or off the premises.

**Joint Access (or Shared Access)**: A driveway or other Access Connection connecting two or more contiguous lots to the public/private street system.

**Lot, Corner**: Any lot having at least two (2) contiguous sides abutting upon one or more streets, provided that the interior angle at the intersection of such two sides is less than one hundred thirty-five (135) degrees.

#### 14.4 **APPLICABILITY**

The provisions of this By-Law shall apply to all new drive-through facilities, whether such drive-through is the principal use on the lot or a use that is accessory to another use on the lot and to any existing drive-through facility undergoing alteration or reconstruction which substantially changes its location, footprint, access connection, or service capacity.

#### 14.5 **EXEMPTIONS**

The provisions of this By-Law do not apply to businesses such as take-out restaurants that require the vehicle occupant(s) to leave their vehicle and to walk to a take-out window or counter for service.

#### 14.6 **DIMENSIONAL AND INTENSITY REGULATIONS**

**14.6.1** Drive-Through Facilities shall only be permitted on lots which meet the minimum standards for non-residential lots pertaining to lot area and contiguous upland area contained in Section 7.4 of these By-Laws and which have a minimum lot frontage of 250 feet, and a minimum lot depth of 200 feet.

**14.6.2** **Driveway/Curb Cut Spacing**: Separation between access connections on all collectors and arterials shall be based on the posted speed limit in accordance with the following table:

<b><u>Posted Speed Limit (MPH)</u></b>	<b><u>Access Connection Spacing (Feet)</u></b>
20	85

25	105
30	125
35	150
40	185
45	230
50	275

**14.7 PARKING SPACE REQUIREMENTS**

Developments that provide joint (shared) access or cross access drives between properties may be allowed a 10% reduction in the required number of parking spaces. If the applicant demonstrates to the satisfaction of the Special Permit Granting Authority (SPGA) that the periods of peak parking demand for developments with shared parking and joint or cross access are not simultaneous, the SPGA may reduce the number of required parking spaces by 20%.

**14.8 SEVERABILITY**

Should any section or provision of this By-Law be held invalid, it shall not affect the validity of the remainder of the Westport Zoning By-Laws.

(2005 ATM, Article 30)

**ARTICLE 15**

**SITE PLAN APPROVAL**

**15.0 PURPOSE**

The purpose of Site Plan Approval is to protect the health, safety, convenience, property values, and general welfare of the inhabitants of the Town of Westport by providing for review of plans for uses and structures which may have significant impacts on traffic; municipal and public services and utilities; environmental and design quality; and community character.

**15.1 POWERS AND ADMINISTRATIVE PROCEDURE**

All applications for Site Plan Approval shall be submitted to the Planning Board prior to the issuance of a building permit. In exercising its jurisdiction under this section, the Planning Board shall, unless otherwise provided, follow the procedural requirements for special permits as set forth in Section 9 of M.G.L. Chapter 40A; however, a motion to approve, approve with conditions, or disapprove a Site Plan shall require only a majority vote of the members present. The Board shall adopt Rules and Regulations relative to Site Plan Approval, a copy of which shall be filed with the Town Clerk. After notice and public hearing and after due consideration of the reports and recommendations of outside consultants and other town boards, commissions and/or departments, the Planning Board may approve a Site Plan. The Planning Board may impose, in addition to any applicable conditions specified in this section, such

conditions as reasonably appropriate to improve the site design and/or mitigate the impacts of the proposed development. Such conditions shall be imposed in writing; the applicant may be required to post a bond or other surety for compliance with said conditions in an amount satisfactory to the Planning Board.

## **15.2**      **APPLICABILITY**

For specific uses requiring Site Plan Approval, see the Table of Use Regulations. The following types of activities and uses require Site Plan Approval by the Planning Board:

1.            Construction with a gross floor area (GFA) of over 1,000 square feet of a municipal, institutional, commercial, or industrial building, or a multi-family building with three or more dwelling units;
2.            Exterior expansion by more than 1,000 square feet GFA of a municipal, institutional, commercial, or industrial building, or a multi-family building with three or more dwelling units;
3.            Change of use within a municipal, institutional, commercial, or industrial building, or a multi-family building with three or more dwelling units, that requires either:
  - More than 5 additional parking spaces; or
  - Increased impervious surfaces other than building footprint (for example, additional loading areas, access driveways, paved parking spaces, sidewalks) totaling more than 1000 square feet;
4.            Construction or expansion of a parking lot proposing more than 5 new parking spaces for a municipal, institutional, commercial, or industrial building, or a multi-family building with three or more dwelling units.

For the purposes of computing the total gross floor area and total external changes and increases in parking spaces of a site plan, the Planning Board shall aggregate all such applications for building/special permits and/or site plan approval made within the five (5) previous calendar years.

Where provisions for site plan approval of specific uses and buildings exist elsewhere in the Westport Zoning By-Laws, the provisions of the pertinent section shall supersede the provisions of this section.

Site Plan Approval shall not be construed to supersede the exemptions granted by Section 3 of Mass. Gen. Laws Ch. 40A.

## **15.3**      **WAIVER OF TECHNICAL COMPLIANCE**

The Planning Board may, upon written request of the applicant, waive any of the

technical requirements of Westport's Site Plan Approval Rules and Regulations and the procedures of this By-Law provided that the Board determines that such waiver is not inconsistent with the provisions of the Zoning By-Law, or with the intent of Site Plan Approval.

(2007 ATM, Article 19)

#### **15.4 PERFORMANCE STANDARDS**

All Site Plans presented for approval shall be prepared in compliance with applicable Westport Zoning Bylaws; the Rules and Regulations Governing the Subdivision of Land, to the extent applicable; and the explicit standards of the Rules and Regulations for Site Plan Approval. In evaluating and rendering a decision on a Site Plan Approval application the Planning Board shall consider whether the proposal will achieve the objectives listed below and may require conditions and safeguards deemed necessary to realize, within reason, these performance standards:

1. Provide convenience and safety of vehicular and pedestrian movement within the site, and in relation to adjacent streets, properties, buildings, structures, and other improvements.
2. Buffer and protect adjoining premises against detrimental or offensive uses.
3. Provide adequate and functional off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment.
4. Provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations to the extent applicable, and all applicable local, state and federal codes, statutes, By-Laws, policies, standards and regulations.
5. Minimize negative impacts to the environment by limiting or eliminating: volumes of cut and fill; removal of trees 6" caliper or larger and other vegetation; removal of stone walls; impact on wetland resources, wildlife habitat and other areas of environmental sensitivity; flooding and other impacts of stormwater flow both on- and off-site; soil erosion; and air, water, noise and light pollution.
6. Prevent contamination of groundwater and surface water from onsite wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances by utilizing Best Management Practices in accordance with all statutes, By-Laws, regulations and policies governing these activities;

7. Promote compatibility among uses by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or from premises residentially used or zoned;
8. Divide large expanses of parking with landscaping and shade trees and minimize lighting intrusion and the glare from headlights.
9. Screen service facilities located near the perimeter of the site, including but not limited to: garbage collection, recycling containers, refrigeration units, and utility areas.
10. Relate buildings and structures to the natural and built environment by attention to appropriate scale, massing, height and other factors necessary to achieve harmony with the surrounding natural environment, neighborhood, and Town as a whole.
11. Minimize obstruction of scenic views from publicly accessible locations.
12. Ensure compliance with the provisions of the Board of Health Regulations for Stormwater Quality and Quantity Control Regulations and this Zoning Ordinance including but limited to, Low Impact Development Regulations, stormwater management, parking, loading and signage.

(2011 ATM, Article 40)

## **15.5            ADMINISTRATION**

1. The Planning Board may adopt reasonable fees for administration, technical review, and construction inspection for site plan approval proposals. All expenses for use of outside consultants, ancillary reports or reviews, supplemental studies, advertising, publication of notices, postage and mailings and all other expenses in connection with the site plan including without limitation, sampling and/or testing, shall be borne by the applicant.
2. The Planning Board shall adopt reasonable Rules and Regulations governing Site Plan Approval including administrative procedures and requirements, and design and construction standards.

(2010 ATM, Article 38)

3. The Planning Board may distribute plans to other Boards, Commissions, departments, and outside technical and legal consultants and agencies for their review and comments.
4. The Planning Board may require narrative assessments and/or quantitative studies of the on-site and off-site impacts of the proposed project, including: traffic, drainage, noise, lighting and other

environmental factors.

## **15.6 ENFORCEMENT**

The Building Inspector shall have enforcement powers over any Site Plan Approval. The Building Inspector shall inspect and enforce any and all stipulations and/or conditions placed upon the approval of any Site Plan. Failure to satisfy the conditions of any Site Plan Approval will result in the withholding of the Certificate of Occupancy.

## **15.7 REVIEW AND DECISION**

The Planning Board shall ensure the use of the site consistent with the uses permitted in the district in which the site is located and shall give due consideration to the reports received. Prior to the approval of any Site Plan, the Planning Board shall find that the site plan:

1. Protects adjoining premises by avoiding adverse effects on the natural environment and abutters.
2. Provides for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site;
3. Provides an adequate arrangement of parking and loading spaces in relation to proposed uses of the premises;
4. Provides adequate methods of disposal of refuse or other wastes resulting from the uses permitted on the site;
5. Complies with all applicable requirements of this By-Law, the Rules and Regulations of Site Plan Approval, and the Rules and Regulations Governing the Subdivision of Land (to the extent applicable), unless explicitly waived by the Planning Board.

## **15.8 APPEAL**

The appeal of any decision of the Planning Board hereunder shall be made in accordance with the provisions of Mass. Gen. L. Ch. 40A, §17 or other such provision of the General Laws pertaining to site plan review/approval as they may be amended from time to time. Appeal of a decision on a Site Plan for a by-right use shall be by appeal (to the Zoning Board of Appeals) of the action of the Building Inspector in granting or denying a building permit.

## **15.9 RELATIONSHIP TO SUBDIVISION PLAN AND OTHER PERMITS**

The Planning Board approval of a Site Plan shall neither oblige the Planning Board to approve any related preliminary or definitive plan for subdivision nor substitute for such approval. However, the Planning Board may allow an applicant to combine a

submission for Site Plan Approval with a submission for a preliminary or definitive subdivision if such submission conforms to all requirements for both Site Plan Approval and subdivision application. In such case, the Planning Board may conduct a combined public hearing for both Site Plan Approval and subdivision application.

Where the Planning Board serves as the Special Permit Granting Authority for a proposed use, it shall, when possible, consolidate the Site Plan Approval and the Special Permit processes.

An application to the Zoning Board of Appeals for either a Special Permit or a variance requiring Site Plan Approval under this By-Law, shall be accompanied by a site plan approved by the Planning Board; in the alternative, any special permit or variance granted for work set forth in 15.2 shall contain the following condition: "The work described herein requires the approval of a site plan by the Planning Board pursuant to Article 15 of the Westport Zoning By-Law. Any conditions imposed in such a site plan approval shall also be conditions of this special permit/variance."

Where the Planning Board approves a site plan "with conditions", and said site plan accompanies a special permit or variance application to the Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance by the Board of Appeals.

No deviation from an approved site plan shall be permitted without the approval of the Planning Board.

#### **15.10**            **EXPIRATION**

Approval of a Site Plan shall lapse after two (2) years from the date of approval, or the date of resolution of any appeal of the decision, if substantial use thereof or construction has not begun, except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

#### **15.11**            **SEVERABILITY**

If a court of competent jurisdiction holds any provision of this bylaw invalid, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Westport Zoning Bylaw.

(2006 ATM, Article 4; 2007 ATM, Article 19 Amended Sec. 15.2 & Sec. 15.3; 2010 ATM, Article 38 amended Sec. 15.5)

### **ARTICLE 16**

#### **ADULT ENTERTAINMENT OVERLAY DISTRICT**

##### **16.0**            **PURPOSE AND INTENT**

It has been documented in numerous other towns and cities throughout the Commonwealth of Massachusetts and elsewhere in the United States that Adult Entertainment Establishments are distinguishable from other business uses and that the location of adult entertainment uses degrades the quality of life in the areas of a community where they are located. Studies have shown secondary impacts such as increased levels of crime, increased demands on police, fire departments and other municipal resources, decreased tax base, and blight resulting from the clustering and concentration of adult entertainment uses. Late night noise and traffic also increase due to the late hours of operation of many of these establishments. This by-law is enacted pursuant to Massachusetts General Law Chapter 40A, Section 9A and the Massachusetts Home Rule Amendment with the purpose and intent of regulating and limiting the location of Adult Entertainment Establishments (as defined within Article 1, Section 1.1 of these By-Laws) so as to prevent or minimize the secondary effects associated with these establishments, and to protect the health, safety, and general welfare of the present and future inhabitants of the Town of Westport.

The provisions of Article 16 have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually-oriented matter or materials. Similarly, it is not the intent or effect of this Article 16 to restrict or deny access by adults to sexually-oriented matter or materials protected by the Constitution of the United States or of the Commonwealth of Massachusetts, nor restrict nor deny rights that distributors or exhibitors of such matters may have to sell, distribute, or exhibit such matter or materials. Nor is it the intent or effect of this Article 16 to legalize the distribution of obscene matter or materials.

**16.1**      **APPLICABILITY**

Article 16 shall apply to all Adult Entertainment Establishments, as defined in Article 1, Section 1.1. Definitions of these By-Laws. Any existing Adult Entertainment Establishment shall apply for an Adult Entertainment Special Permit within 90 days of the effective date of this By-Law. This By-law shall not be construed so as to be more permissive than G.L. c.40A, §§6 and 9A.

**16.2**      **ESTABLISHMENT OF ADULT ENTERTAINMENT OVERLAY DISTRICT (AEOD) & RELATIONSHIP TO UNDERLYING DISTRICTS**

The AEOD is established as a district that overlays the underlying district( s), such that any parcel of land lying in the AEOD shall also lie in one or more of the other zoning districts in which it was previously classified, as provided for in these Zoning By-Laws.

**16.3**      **PERMITTING AUTHORITY**

The Special Permit Granting Authority (SPGA) shall be the Zoning Board of Appeals.

**16.4**      **SPECIAL PERMIT USES**

All Adult Entertainment Establishments, shall require a Special Permit from the Zoning Board of Appeals with Site Plan Approval under Article 15 from the Planning Board.

**16.5**

**SPECIAL PERMIT SUBMITTAL REQUIREMENTS**

Special Permit applications for approval by the Zoning Board of Appeals under this Article 16 shall contain, without limit, the following information:

- a. Name of the proposed business;
- b. A copy of the lease for the business premises;
- c. A full description of the intended nature of the business;
- d. The proposed days and hours of operation;
- e. Name and address of each person who has or will have a legal or beneficial interest in the business. If a corporation has such interest, the names and addresses of the officers and directors of same; if such corporation is not publicly owned, the names of the stockholders; if a partnership has such a legal or beneficial interest, the names and addresses of all general and limited partners and all persons with a beneficial interest in the partnership.
- f. Name and address of each person who will have management responsibility for the proposed business and specification of the days and times at which each such person will be present at the business premises. The application shall include the names and addresses of each person with management responsibility that shall be authorized and available to respond promptly to complaints at any time when a manager is not present at the business premises and shall specify how each such person can be contacted without delay at any such time.
- g. A certification that none of the persons named in the previous two subparagraphs has ever been convicted of violating the provisions of General Laws Chapter 119, Section 63 or General Laws Chapter 272 Section 28.
- h. A plan to scale showing the lot on which the proposed business will be located, including all buildings, parking spaces, driveways, abutting streets and lots and any proposed landscaping; a floor plan to scale showing the proposed layout of the business premises; exterior elevation drawings to scale showing the proposed exterior appearance of the business premises, including each proposed sign and its content and the treatment of doors and windows. Should the special permit be granted, the Planning Board will require additional plans and information as specified under Article 15 Site Plan Approval and its regulations for same. In the interest of efficiency, the applicant is advised to prepare plans, drawings and reports such that they are consistent with the Planning Board's requirements or may be augmented with additional information to meet those standards.

- i. A traffic study prepared by a Massachusetts Registered Professional Civil Engineer reliably determining the effect on traffic likely to be caused by the proposed business and setting out all measures proposed to be taken to mitigate any adverse traffic impact. The traffic study shall reliably determine any parking needs of the proposed business and shall specify how these needs will be met without adverse impact on- or off-site.
- j. Total number of employees and hours they are expected to work;
- k. Proposed security precautions including, without limit, a security plan ensuring that minors in no event be exposed to sexually explicit material or performances except as authorized by law.
- l. A proposed plan for ensuring that the stock in trade of the business or any performance presented shall include no obscene material, as defined in General Laws Chapter 272, Section 31.
- m. If the application is for renewal of a special permit for an Adult Entertainment Establishment, it shall contain a certification that the establishment has complied with the terms and conditions of the special permit for which renewal is sought, and shall specify any and all proposed changes to the extent, nature and location of the use.

**16.6 RULES AND REGULATIONS**

The Zoning Board of Appeals shall promulgate rules and regulations governing the issuance of special permits for Adult Entertainment Establishments and shall file a copy of said rules and regulations with the office of the Town Clerk, as required by General Laws Chapter 40A, Section 9A. The Board may assess reasonable fees for administration and review of such applications, including, but not limited to, consultant review fees, including legal fees incurred by the Zoning Board of Appeals in reviewing the application, as provided in G.L. c.40, §53G.

**16.7 SPECIAL PERMIT STANDARDS FOR ADULT ENTERTAINMENT**

A Special Permit shall be granted, subject to such reasonable conditions relative to time, place and manner of the operation as the Zoning Board of Appeals may deem necessary or appropriate, for an Adult Entertainment Establishment unless one or more of the following conditions is not satisfied:

**a. Submission Standards:**

An application containing inaccurate or incomplete information shall be cause for denying a special permit. If a special permit is issued and information in the application is later found to be false, this shall be cause for revoking, denying renewal of or modifying the special permit. An application for a renewed special permit shall be determined in the

same manner as the original application except that failure to comply with the conditions of the original permit or to follow the approved plans shall be cause for denial of a renewal and for revocation of the original permit.

**b. Location and Site Standards:**

No Adult Entertainment Establishment may be located outside of an AEOD.

Maximum lot coverage, including but not limited to structures, parking and driveway areas, shall be less than fifty percent (50%), including parking and driveway areas.

**c. Display Standards:**

No signs, graphics, pictures, publications, videotapes, movies, covers, merchandise, or other implements, items or advertising, depicting, describing or relating to sexual conduct or sexual excitement as defined in Massachusetts General Law Chapter 272, Section 31 shall be displayed in the windows of, or on the exterior of the building of, any Adult Entertainment Establishment, or be visible to the public from the pedestrian sidewalks or walkways or from other areas outside such establishments.

**d. Screening Standards:**

All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the Adult Entertainment Establishment by the public.

**e. Minors:**

No Adult Entertainment Establishment shall be allowed to disseminate adult matters to minors, to cause Adult Entertainment Establishment displays to be viewed by minors, or to allow minors to linger on the premises.

**f. Applicant Standards:**

No Special Permit shall be issued absent compliance with the provisions of Section 16.5 (e), (f) and (g) and confirmation of the truthfulness of the information provided by the applicant in this regard.

**g. Parking and Access Standards:**

Parking shall comply with the requirements of Article 5.1 of these By-Laws governing off-street parking, except that off-site parking shall not be allowed, and with recommendations of traffic and engineering

consultants including those made during the Site Plan Approval process. Drive-through facilities are prohibited at all Adult Entertainment Establishments.

**h. Security Standards:**

The applicant may be required to provide and pay for a police security detail at any time when, in the opinion of the Chief of Police, conditions warrant additional security.

**16.8 LAPSE OF SPECIAL PERMIT**

A special permit issued under this Section 16 shall lapse upon anyone of the following occurrences:

- a. A change in or expansion of the location(s) of the adult use, including but not limited to access, parking, and areas for performance or sales;
- b. Sale, transfer or assignment of the business or the business and/or premises;
- c. Change in ownership or management.
- d. Failure to commence a permitted Adult Entertainment Establishment, within the term of the special permit as established in Section 16.8(e), except for good cause, including such time as is required to pursue or await the determination of an appeal to the court from the grant thereof.
- e. Any special permit issued for an Adult Entertainment Establishment shall be for a term specified by the Board of Appeals not to exceed two (2) years.

**16.9 SEVERABILITY**

If any portion of this by-law is ruled invalid, such ruling shall not affect the validity of the remainder of the By-Law.

(2008 ATM, Article 45)

**ARTICLE 17**

**COMMERCIAL AND NON-COMMERCIAL WIND ENERGY FACILITIES**

**17.0 PURPOSE**

The purpose of this by-law is to minimize the impacts of wind turbines on the character of neighborhoods, property values, scenic, historic, and environmental resources of the

Town and to protect health and safety while allowing wind energy.

**17.1 APPLICABILITY**

Construction and use of a Wind Energy Facility, Meteorological Tower or any part thereof shall be permitted in all zoning districts subject to the requirements set forth by this By-Law.

**17.2 DEFINITIONS**

**17.2.1 Wind Energy Facility**

All equipment, machinery, and structures, whether underground, on the surface, or overhead used to collect, transmit, distribute, store, supply, or sell energy derived from wind, including but not limited to wind turbines (rotors, electrical generators and towers), anemometers (wind measuring equipment), transformers, substations, power lines, control and maintenance facilities, and site access and service roads.

**17.2.2 Wind Energy Facility, Commercial**

A Wind Energy Facility that has a rated capacity of more than 60kw.

**17.2.3 Wind Energy Facility, Non-Commercial**

A Wind Energy Facility that has a rated capacity of less than or equal to 60kw.

**17.2.4 Shared Wind Energy Facility**

A Wind Energy Facility that serves multiple properties held under separate ownership.

**17.2.5 Wind Turbine**

A device for converting wind energy to mechanical, electrical or another form of energy.

**17.2.6 Tower**

The monopole, freestanding, or guyed structure that supports a wind turbine.

**17.2.7 Meteorological Tower (Met Tower)**

Meteorological tower (Met Tower): Includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment, anemometers and vanes,

data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

**17.2.8 Tower Height**

The vertical distance from ground level to the highest point of the tower.

**17.2.9 Total Height**

The vertical distance from ground level to the tip of a Wind Turbine blade when it is at its highest point.

**17.3 REQUIREMENTS**

The requirements of this Section, 17.3, with the exception of 17.3.5 and 17.3.6, shall apply to both Towers and Met Towers.

**17.3.1. Mounting and Engineering Requirements**

Wind turbines and associated tower-mounted components shall be mounted only on a guyed, monopole or lattice structure. The applicant shall provide engineered drawings, plans and supporting data for the tower and tower foundations as well as a site plan depicting location of the Wind Energy Facility relative to property lines, buildings and other structures to the Building Inspector/Zoning Enforcement Officer. Where a special permit and/or Site Plan Approval are required, the applicant shall submit said documents to the Zoning Board of Appeals and Planning Board. Said plans, drawings and supporting data shall be prepared and stamped by the appropriate registered professional engineer licensed in the state of Massachusetts. Site Plans showing setbacks from property boundaries shall be prepared and stamped by a Registered Professional Land Surveyor licensed in Massachusetts. The Zoning board of Appeals and/or Planning board may require peer review of the engineering at the applicant's sole expense.

**17.3.2. Maximum Height**

The total height of the Wind Energy Facility shall not exceed 190 feet. A Wind Energy Facility with tower height over 140 in height may be allowed by special permit from the Zoning Board of Appeals.

**17.3.3. Lighting**

Tower lighting shall not be permitted. If the FAA requires lighting of a proposed tower because of its height, the height shall be reduced to eliminate the need for lighting.

**17.3.4. Setback Requirements**

Towers shall be set back from property lines a distance equal to the total height. Upon provision by the applicant of a recordable easement from an abutting property owner(s) that is satisfactory to the appropriate permitting authority (Building Inspector/Zoning Enforcement Officer for facilities allowed as a matter of right) or special permit granting authority (Zoning Board of Appeals for those requiring a special permit), that authority may allow a reduction in property line setback to such abutting property.

**17.3.5. Density**

A maximum of two (2) wind turbines shall be allowed on a lot. A special permit from the Zoning Board of Appeals shall be required for more than two (2) wind turbines.

**17.3.6. Shared Wind Energy Facility**

A special permit from the Zoning Board of Appeals shall be required for a Shared Wind Energy Facility. The applicant(s) shall submit for review and approval legal agreements providing for the repair and maintenance of the shared facility.

**17.3.7 Discontinuance**

A Wind Energy Facility that is out-of-service for a continuous 24-month period shall be deemed to have been discontinued. Upon receipt of a Notice of Discontinuance from the Building Inspector/Zoning Enforcement Officer, the owner shall have the right to respond to the Notice of Discontinuance within 30 days from receipt. The Building Inspector/Zoning Enforcement officer shall withdraw the Notice of Discontinuance and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates that the Wind Energy Facility has not been discontinued. If the Wind Energy Facility is determined to be discontinued, the owner of the Wind Energy Facility shall remove the system at the owner's sole expense within three months of receipt of the Notice of Discontinuance. Failure to remove the system within the said time period may subject the owner to action by the Building Inspector/Zoning Enforcement Officer under the Non-Criminal Disposition provisions of Mass. Gen. Law Ch.40, Section 21D and Section 3702 of the general By-Laws and regulations of the Town of Westport. The Building Inspector/Zoning Enforcement Officer may impose fines not exceeding three hundred dollars per day until the discontinued Wind Energy Facility is removed.

**17.3.8 Tower Access**

The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 12 feet above the ground.

**17.3.9 Tower Uses**

Unless approved by the Zoning Board of Appeals in accordance with Article 9, towers permitted for Wind Energy Facilities shall not be used for any purpose inconsistent with the definition of a Wind Energy Facility

**17.3.10 Color**

Wind Energy Facilities shall be of neutral color, to minimize visual impact.

**17.4 SEVERABILITY**

The invalidity of any section, subdivision, paragraph or other part of this By-Law shall not affect the validity of the remainder of the By-Law.

(2007 ATM, Article 21)

**ARTICLE 18**

**OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD)**

**18.0 PURPOSE AND INTENT**

The purpose of Article 18 of the Westport Zoning By-Law is to allow Open Space Residential Development (OSRD) upon review and approval of the Planning Board ("the Board") pursuant to Sections 81K to 81GG of Mass. General Law Ch. 41 The Subdivision Control Law), and in accordance with the Board's Rules and Regulations Governing the Subdivision of Land, as a flexible alternative to conventional subdivision.

The intent of Westport's OSRD By-Law is to:

- a. Encourage the permanent preservation and efficient stewardship of open space, agricultural land, forestry land, wildlife habitat, and other natural resources, including aquifers, water bodies, riverine areas and wetlands, historical and archeological resources, passive recreational areas, and scenic areas;
- b. Protect drinking water supplies;
- c. Facilitate the siting and construction of innovative and shared septic

systems that will provide more effective treatment and cleaner effluent;

- d. Minimize the total amount of disturbance on the site;
- e. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;
- f. Perpetuate the appearance of Westport's traditional New England landscape;
- g. Allow for greater flexibility and creativity in the design of residential developments;
- h. Promote more sensitive siting of buildings and better overall site planning;
- i. Protect the value of real property;
- j. Allow landowners a reasonable return on their investment; and
- k. Facilitate the construction and maintenance of streets and utilities, and the provision of public services in a more economical and efficient manner.
- l. Generally encourage more sustainable development using recognized principles such as low Impact Development and Smart Growth.

## **18.1 APPLICABILITY AND ELIGIBILITY**

In order to be eligible for consideration as an OSRD, the tract to be subdivided must meet all of the following criteria.

### **Minimum Size of Tract:**

The tract to be subdivided (which may consist of more than one contiguous parcel) shall contain a minimum of five (5) total acres.

### **Location:**

The Zoning Districts in which OSRD's may be permitted by the Board are noted in the Table of Use Regulations of these Zoning By-Laws.

The entire tract shall be located within the Town of Westport.

The Board may, in its sole discretion, permit lots on directly opposite sides of a street to qualify as a single tract of land for OSRD purposes only. In order to allow such qualification of a tract of land divided by a street, the Board must find that this action is

consistent with and enhances the purpose and intent of the OSRD By-Law and would not result in any more dwelling units than would be allowable under the Westport Zoning By-Law and the Board's Rules and Regulations Governing the Subdivision of Land if the lots on either side of the street were developed separately.

**Land Division:**

The tract may be a subdivision or a division of land pursuant to Mass. General Law c.41, section 81-P.

**Dwelling Type:**

The proposed dwelling types shall be single-family or two-family dwellings, or a mix thereof.

**18.2 ADMINISTRATIVE PROCEDURE**

All applications for OSRD Approval shall be submitted to the Board and shall be reviewed by the Board following normal procedures as established by Chapter 41, Sections 81K-81GG "The Subdivision Control Law" and the Board's Rules and Regulations Governing the Subdivision of Land, as each may be amended from time to time. The Board may approve, with conditions, or deny an application for an OSRD after assessing whether the OSRD better promotes the intent of this By-Law than a conventional subdivision.

**18.3 PRE-APPLICATION**

The applicant is encouraged to request a pre-application review at a regular meeting of the Board. The Board may invite representatives from other boards and commissions, such as the Conservation Commission and Board of Health to attend. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical expenses by commencing discussion with the Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed OSRD and seek preliminary, but not binding, feedback from the Board and other Town bodies and staff. This process will streamline administration of the application, enhance communication and coordination among Town departments, and save the Town time and money.

**18.4 DESIGN PROCESS**

**Schematic Drawings from the Four-Step Design Process.**

Each development plan shall follow a Four-Step Design Process, as described below. From the beginning of the submittal and review process, applicants shall demonstrate to the Planning Board, through schematic drawings, that these four design steps were followed by their site designers in determining the layout of their proposed streets, house lots, and open space.

- a. **Designating the Open Space.** First, the open space is identified. The open space shall include, to the extent feasible, the most sensitive and noteworthy natural, scenic, and cultural resources on the property. Such items may include without limit: specimen trees, stonewalls, archaeological features, unique habitats, plant communities, distinctive vistas, wetlands and riverine areas, or other areas of special natural, cultural or recreational interest.
- b. **Location of House Sites.** Second, potential house sites are tentatively located. House sites should be located not closer than 100 feet to wetlands areas, but may be situated within 50 feet of open space areas, in order to enjoy views of the latter without negatively impacting the former.
- c. **Street and Lot Layout.** Third, align the proposed streets to provide vehicular access to each house in the most reasonable and economical way, in conformance with existing natural landforms. When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on open space. To the greatest extent practicable, wetland crossings and streets traversing existing slopes over 15% shall be strongly discouraged.
- d. **Lot Lines.** Fourth, draw in the lot lines. These are generally drawn midway between house locations, in a manner that meets the lot requirements below.

**18.5**

**GENERAL APPLICATION REQUIREMENTS**

**18.5.1      Application Form**

Applications for OSRD's shall be submitted on a form provided by the Board.

**18.5.2      Concept Plan**

In addition to the requirements set forth in the Board's Rules and Regulations Governing the Subdivision of Land, an application shall include a Concept Plan and a Yield Plan. The Concept Plan shall address the general features of the land; give approximate configurations of the lots, open space and roadways; and include the information required for a preliminary plan in the Board's Rules and Regulations Governing the Subdivision of Land. The concept plan shall incorporate the Four-Step Design Process above, and the Design Standards below, to propose a conceptual design for the development. Production of the Concept Plan by a Registered Landscape Architect is strongly encouraged.

**18.5.3      Yield Plan**

The basic number of units shall be determined by the number of lots shown on a preliminary subdivision plan conforming to the requirements of the Rules and Regulations Governing the Subdivision of Land. Such preliminary plan shall include a perimeter survey prepared by a Registered Professional Land Surveyor, location of wetlands delineated by a wetlands scientist, and topography based, at a minimum, on the most recent USGS topography map. The applicant shall demonstrate to the satisfaction of the Board and its consulting engineer that the preliminary plan is buildable without reliance on waivers of the subdivision regulations, without multiple wetlands crossings, and without extraordinary engineering techniques.

**18.5.4 Other Information**

The submittals required by this By-Law are in addition to any other requirements of the Rules and Regulations Governing the Subdivision of Land or by other sections of the Westport Zoning By-Laws.

**18.6 SITE VISIT**

The Board and/or its agents may conduct site visits either at the pre-application stage or during the public hearing. The applicant and/or his agents are encouraged to attend.

**18.7 REDUCTION OF DIMENSIONAL REQUIREMENTS**

The Board may authorize modification of lot size, shape, width, and other dimensional requirements for lots within an OSRD, subject to the following limitations:

Dimensional Requirements	Zoning District	
	Residence/ Agricultural, Business, Unrestricted	Residence/ Agricultural, Unrestricted  Business,
	Single-Family	Two-Family
Minimum Lot Area (sq. ft.)	20,000	30,000
Minimum Lot Area of Upland (sq. ft.)	20,000	30,000
Minimum Lot Frontage (ft.)	80	120
Minimum Front Yard Width (ft.)	50	50
Minimum Front Setback (ft.)*	25	25
Minimum Side Setback (ft.)	10	10
Minimum Rear Setback (ft.)	25	25
Maximum Lot Coverage		

The Board may, in its sole discretion, allow one (1) additional building lot where the

applicant proposes to use decentralized Innovative/Alternative (I/A) Treatment system(s), or decentralized "localized" treatment system(s) (typically for flows over 10,000 gallons per day), that significantly reduce bacterial and nutrient discharge to the environment (as compared with conventional onsite septic systems), and that are acceptable to the Westport Board of Health and to Massachusetts Department of Environmental Protection.

There shall be a minimum building location area on each lot where a circle having a diameter equal to the required lot frontage in feet can be placed. Such circle shall contain an area of land that, in the opinion of the Board, provides a suitable dwelling site.

Lots having reduced area or frontage in accordance with the above table shall not have frontage on a street other than a street created through the OSRD application; provided, however, that the Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.

## **18.8 OPEN SPACE REQUIREMENTS**

### **18.8.1 Area Requirements**

A minimum of fifty percent (50%) of the parcel shown on the development plan shall be open space and shall exclude required yards. No more than 30% of such open space shall be wetland resource areas, as defined pursuant to Mass. General Law Ch. 131, section 40.

The open space shall be contiguous. Contiguous shall be defined as being connected. Such open space may, however, be separated by the roadways or accessory amenities constructed within the OSRD. The Planning Board may waive this requirement for all or part of the required open space if it determines that allowing non-contiguous open space will promote the goals of this By-Law.

### **18.8.2 Uses and Restrictions**

The required open space shall be used for conservation, historic preservation, environmental education, passive recreation, aquifer recharge, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access if necessary for such purposes. No commercial use shall be made of the required open space. The open space shall be arranged so as to achieve the preservation or other objective for which it is intended. Based on the resources identified in step one of the four-step design process, the Board may restrict the use of open space to one or more of the above uses, in order to meet the intent of this By-Law. Where open space is used for shared wastewater treatment facilities, the use of said open space is subject to Title V restrictions. The Board may permit up to 10% of the open space to be paved or built upon for structures accessory to the

dedicated use or uses of such open space (e.g. pedestrian walks and bike paths).

Any proposed open space shall be subject to a recorded restriction enforceable by the Town or a non-profit organization the principal purpose of which is the conservation of open space, providing that such land shall perpetually be kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes. Where common open space and/or other shared facilities, including without limit septic systems and trails are to be owned by the homeowners in an OSRD, they shall be subject to a Homeowner's Agreement and deed restrictions as deemed necessary by, and recommended and/or approved by Town Counsel and to ensure their maintenance.

The Board may allow stormwater management systems serving the OSRD to be located within the open space, where care is taken to avoid placing them near sensitive natural or cultural resources. Surface systems, such as retention and detention ponds shall not qualify towards the minimum open space required.

Wastewater shall be managed in accordance with Title V, Town By-Laws, and the regulations of the Westport Board of Health. Where town sewer is available nearby, the OSRD shall be connected at the applicant's expense to that system. Where town sewer is not available, septic systems may be installed on individually owned lots. Where this arrangement cannot be met, alternatives such as shared septic designs may be proposed in consultation with the Board of Health. In the case of shared systems, the wastewater system may be located in the open space, when the Planning Board finds such arrangement will enhance the purpose and intent of the OSRD.

For on-site and shared systems, decentralized Innovative/Alternative (I/A) Treatment system(s), or decentralized "localized" treatment system(s) (typically for flows over 10,000 gallons per day), that significantly reduce bacterial and nutrient discharge to the environment (as compared with conventional onsite septic systems), and that are acceptable to the Westport Board of Health and to Massachusetts Department of Environmental Protection are preferred.

### **18.8.3 Ownership of Open Space**

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

- The Town or its Conservation Commission;
- A non-profit organization, the principal purpose of which is the

conservation of open space and any of the purposes for such open space set forth above;

- A corporation or trust owned jointly or in common by the owners of lots within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of the open space and facilities shall be permanently guaranteed by such corporation or trust that shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of the open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. The owner of each lot shall be deemed to have assented to the town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the town of same. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded in the Registry of Deeds.

## **18.9 DESIGN STANDARDS**

The following design standards shall apply to all OSRD's and shall govern the design and development process.

- The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. Individual building sites shall be designed to maintain existing topography and cover. Topography, tree cover, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.
- Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.
- The removal or disruption of significant historic, archaeological, or traditional uses, structures, or architectural elements shall be avoided or minimized insofar as practicable, whether these exist on the site or on adjacent properties.

- A buffer area of 50 feet shall normally be provided at the perimeter of the property where it abuts residentially zoned and occupied properties. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance of structures and landscapes approved as part of the project. Where the Planning Board determines that a smaller buffer (or no buffer) will suffice to accomplish the objectives set forth herein, the 50-foot buffer is not required. Where the development abuts or includes a body of water or wetlands, these areas and the 100-foot buffer to such areas shall be incorporated into the open space.
- Drainage. The Planning Board shall encourage the use of “soft” (non-structural) stormwater management techniques (such as vegetated swales) and other low-impact drainage techniques that reduce impervious surface and enable infiltration where appropriate, and are consistent with the drainage standards of the Board's Rules and Regulations Governing the Subdivision of Land and other Town by-laws.
- Streets and Utilities. All streets and ways, whether public or private, and utilities shall be designed and constructed in compliance with the Board's Rules and Regulations Governing the Subdivision of Land. Variations shall be permitted by the Board on a finding that the objectives of this section are better served with such variations.

**18.10 REVIEW & DECISION OF THE PLANNING BOARD**

The Board shall review and process an OSRD application consistent with the procedures of Mass. General Law c. 41, Sections K - GG, and the Board's Rules and Regulations Governing the Subdivision of Land. The Board may approve, approve with conditions, or deny an application for a OSRD, after assessing whether the OSRD better promotes the objectives of this section than a conventional subdivision development.

**18.11 RELATION TO OTHER REQUIREMENTS**

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law. The Planning Board shall coordinate the review procedures and public hearing required for any application for an OSRD with the review procedures and public hearing required for approval of a conventional subdivision plan.

**18.12 SEVERABILITY**

If a court of competent jurisdiction holds any provision of this bylaw invalid, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Westport Zoning Bylaw.

(2007 ATM, Article 20)

## ARTICLE 19

### NOQUOCHOKE OVERLAY DISTRICT (NOD)

#### 19.0 PURPOSE

The purpose of the NOD By-Law is to provide a mechanism for the approval of:

- A range of housing choices, including but not limited to, moderate-density, multi-family dwellings;
- Housing suitable for households of varying ages, sizes, and income levels;
- Dwelling units that shall be eligible for inclusion on Westport's Subsidized Housing Inventory under the Local Initiative Program of M.G.L. Ch. 40B, as administered by the Department of Housing and Community Development (DHCD);
- Development in a manner that conserves natural features, such as wetland resources, open space, areas of scenic beauty, and vegetated buffers along public ways and adjacent residential properties;
- Development that groups buildings to preserve open space; facilitate efficient provision of utilities; and create a sense of neighborhood and community;
- Development in accordance with a site plan demonstrating a design that is both technically functional and in harmony with both the site and surrounding land uses.
- Development that, by means of site planning and building design, promotes social sustainability.

#### 19.1 DEFINITIONS

**Development:** Any project applied for and/or approved pursuant to Article 19 of the Zoning By-Laws.

#### 19.2 POWERS AND ADMINISTRATIVE PROCEDURE

This By-Law shall apply to developments in the Noquochoke Overlay District (NOD) as defined in Article 3 of the Westport Zoning By-Laws. Any such development shall require, without limit, a special permit under Article 2 of the Zoning By-Laws and G.L. c. 40A, §9; Site Plan Approval under Article 15; and an Inclusionary Housing Special Permit under Article 13. For the purposes of Article 19, the Planning Board of the Town of Westport (the "Board") is hereby designated as the Special Permit Granting Authority (SPGA). As such, the Board may adopt any additional regulations, forms, fees, design guidelines, and design and construction standards it deems necessary to administer this By-Law, provided that it shall not regulate or restrict the use of materials or methods of construction of structures that are regulated by the State Building Code.

In granting a special permit, the Board may, without limit, impose controls on the dimensions, and bulk of buildings to enhance architectural compatibility with the surrounding neighborhood, and on locations of buildings and site improvements to enhance a sense of community and to ensure public health, safety and convenience and the protection of natural and cultural resources.

**19.2.1            Procedures**

The Board shall act on all special permit applications as provided by the Rules and Regulations of the Planning Board as a Special Permit Granting Authority.

**19.2.2            Consolidation of Permits and Procedures**

When approval is sought under this article for a project that requires special permit relief from the Planning Board pursuant to multiple Articles of the Zoning By-Laws such as, but not limited to, Article 13 Inclusionary Housing, and requiring Site Plan Approval where the Board serves as the reviewing authority, the applicant is strongly encouraged to simultaneously apply to the Board for all of the relief and submit all materials and fees initially required by those articles with the application made under this article. Whenever possible and practicable, the Board may consolidate the multiple special permits and site plan approval proceedings, with regard to conducting the public hearings and issuing decisions. If a decision is granted under this article and other relief is addressed as well, whenever possible, the Board will issue an integrated decision for the entire project. Notices for public hearings should reference the Zoning By-Law sections under which relief is sought.

**19.3                PERMITTED AND PROHIBITED USES**

**19.3.1            Permitted Uses**

Uses allowed by right pursuant to the Table of Use Regulations in the underlying district shall also be allowed by right in this overlay district. The following uses in the Noquochoke Overlay District shall require a special permit:

- a.        Developments including Single-family, Two-, and/or Multi-family dwellings with up to 12 dwelling units per building, including structures and facilities accessory thereto,
- b.        Community uses accessory to the residential uses,
- c.        Projects containing a combination of uses allowed by right and the aforementioned uses.

**19.3.2            Prohibited Uses**

Those uses prohibited in the underlying district pursuant to the Table of Use Regulations or not expressly allowed in this overlay district shall be prohibited.

**19.4            APPLICATION FOR A SPECIAL PERMIT APPROVAL**

An application for a Noquochoke Overlay District Special Permit shall adhere to the Rules and Regulations of the Planning Board as Special Permit Granting Authority.

**19.5            RELATIONSHIP TO OTHER REGULATORY REQUIREMENTS**

The submittals and permits of Article 19 shall be in addition to any other requirements of the applicable sections of the Rules and Regulations governing the Subdivision of Land in Westport, MA, Rules and Regulations of the Westport Planning Board for Site Plan Approval, and the Rules and Regulations of the Westport Planning Board for Inclusionary Housing Special Permits. Where such requirements conflict, the more stringent requirement shall control unless the Board determines that requirement to be unnecessary to protect the public interest and/or inconsistent with the intent of Article 19.

**19.6            DENSITY**

The maximum number of dwelling units allowed shall be established by calculations based upon a Net Usable Land Area (NULA) plan for the overall property, submitted by the applicant as part of the initial submission. The NULA acreage shall be established by subtracting all water bodies and any wetland resource area subject to protection under M.G.L. Ch. 131 s. 40 (the “Wetland Protection Act”) and 310 CMR 10.00 (the “Wetland Protection Regulations”) from the gross acreage of the site. The remaining upland area shall be the NULA for the purposes of establishing the number of units allowed in a development. The total number of proposed units within the development shall not exceed eight (8) dwelling units per NULA acre with a maximum of fifty-four (54) total dwelling units in the district. These may be in one-bedroom, two-bedroom, or three-bedroom dwelling units. The percentages of unit types shall be dispersed equally among market-rate units and affordable units. The distribution of unit types shall conform with Westport’s Housing Plan and/or Needs Assessment.

**19.7            AREA AND DIMENSIONAL REQUIREMENTS**

There shall be no minimum lot area, frontage, floor area ratio, lot width or yard requirements within the NOD, or for any lot or building within the NOD, except as provided in this section; however, all developments with the NOD shall comply with the applicable requirements of the Aquifer Protection and Flood Plain Overlay Districts. The Board may impose appropriate conditions on the layout, location and size of buildings, structures and open spaces. Nothing contained herein shall relieve the owner of a proposed Development from receiving final approval of a definitive subdivision plan in accordance with the Town’s Subdivision Regulations if the Development proposes subdividing or re-subdividing the development site. In this case, the Special Permit application shall be accompanied by such other data as is required by the Rules

and Regulations Governing the Subdivision of Land.

**19.7.1 Building Height, Bulk and Setback Requirements**

**19.7.1.1 Building Height and Bulk**

The maximum height of any building in the NOD shall be 35 feet. Building height shall be measured as the vertical distance from the Average Natural Grade under the footprint of the building, to the highest point of the roof assembly. Architectural elements that do not add interior or exterior floor area to a building, such as chimneys, and vents, are not considered part of the height of the building. Average Natural Grade shall be derived from the average elevation of the natural grade along the exterior of the building facing the front lot line or street line and the average elevation of the natural grade along the exterior of the rear or opposite side of the building. The livable floor area of the third level or floor of a building shall be 50 percent or less of the livable floor area of the second level or floor of that building.

**19.7.1.2 Setbacks from NOD Boundary**

All buildings, structures and facilities within the NOD shall maintain a minimum setback of 30 feet from the NOD boundary where that boundary coincides with the sideline of American Legion Highway.

The setback of all buildings from the NOD boundary in all other instances shall be at least 1.5 multiplied by the height of the intersection of building wall and roof on the side of the building nearest the NOD boundary.

Other major structures, and major stormwater management facilities, such as retention/detention basins, shall be set back at least 20 feet from the NOD boundary. Other utilities, roads and access driveways, swales, and minor improvements such as accessory buildings shall be set back at least 10 feet from the NOD boundary unless otherwise specified by the Board. All buildings, structures and major facilities within the NOD shall be shielded from adjacent properties by a buffer, adequate in the Board's opinion, which shall contain landscape elements.

**19.7.1.3 Separation of Buildings**

The minimum separation of buildings within the NOD shall be 20 feet. The Board may require greater separation of between larger buildings or may permit lesser separations if it finds that separation of less than 20 feet meets the purpose and intent of the NOD.

**19.7.1.4 Front Yard Setbacks**

The minimum front yard setback from the street or access drive within the NOD shall be 20 feet for a single-family or two-family dwelling, and 30 feet for a multi-family dwelling.

**19.8 BUILDING REQUIREMENTS FOR MULTI-FAMILY DWELLINGS**

In the NOD, there shall be no more than 12 dwelling units and two garage spaces per dwelling unit in any residential building. The maximum length of any residential building shall be not more than 120 feet.

**19.9 OPEN SPACE REQUIREMENTS**

The development shall meet the Open Space Requirements as delineated in section 18.8 of Article 18 Open Space Residential Development (OSRD). Any special permit granted shall contain, as a condition of approval, that the required open space shall be protected by a permanent conservation restriction which shall be recorded before the conveyance of any unit occurs. Said restriction shall be held by the Conservation Commission, a non-profit conservation organization, or an organization or trust representing homeowners in the development, at the option of the Planning Board. The open space shall allow walking paths and other passive recreational uses, but shall not be use for the siting of any structure, building, septic system, well (drinking water or geothermal) or utilities or pipes.

**19.10 ARCHITECTURAL DESIGN, COMMUNITY OPEN SPACES AND AMENITIES, AND NON-VEHICULAR CIRCULATION**

**19.10.1 Community and Private Open Spaces and Amenities**

In addition to the contiguous open space required to be restricted to conservation and passive recreational use, the design of the site shall incorporate small private and community outdoor spaces, designed as “outdoor rooms”, such as greens or other landscaped areas, and a system of pathways or sidewalks designed to provide for internal pedestrian circulation among dwellings and other facilities. The open spaces surrounding buildings and within neighborhoods shall provide for plantings and outdoor sitting areas, as well as small gathering and recreational areas for the use of the residents of the development. Outdoor areas for the use of inhabitants of each building shall be provided contiguous to each building with attention being paid to the

delineation of public versus private outdoor spaces. Amenities such as porches and landscaped sitting areas may be used to fulfill this requirement. Areas or facilities designed for use by all members of the Noquochoke community or neighborhood shall be distributed in such a manner as to allow easy, non-vehicular, access for all of the Noquochoke residents they are designed to serve, as well as vehicular access, where appropriate.

**19.10.2 Non-Vehicular Circulation**

Sidewalks shall be provided along at least one side of all streets and/or access driveways within the development unless waived by the Board in favor of equivalent, alternative pathways providing convenient access among all buildings and community amenities. A pedestrian connection shall be provided to American Legion Highway.

**19.10.3 Architectural Design**

Building design shall be consistent in scale, bulk, materials, color and typology with the architecture of the South Coast of Massachusetts. Private, ground floor entries for each dwelling unit, located on the front of residential buildings are preferred. Window area equivalent to a minimum of twenty-five percent of the first floor wall area of the primary facade of residential buildings is preferred. For larger buildings, variation in roof shape and building form, articulation of the facade, variation of street setback, and other means to enhance architectural interest are encouraged. In granting a Special Permit, the Board may impose conditions to ensure architectural compatibility with the character of the region and/or neighborhood.

**19.11 SOCIAL SUSTAINABILITY, ACCESSIBILITY, AND VISITABILITY**

Social sustainability is design that acknowledges that a person's abilities may change over his or her lifetime and allows their home and neighborhood to accommodate the changing needs. Principles of social sustainability should be applied throughout the development – to the buildings, landscapes and amenities. The design can provide full accessibility or can be easily adapted to meet changing needs. For people to fully participate in community life, in homes they may visit, as well as in public spaces, the design shall meet the following standards/guidelines.

**19.11.1 Goals**

- To create socially equitable homes and communities that includes persons with a range of abilities.
- To minimize the economic and social costs of expensive renovations or the need to move from one's home.

- To avoid the structural barriers that can prevent older adults and persons with disabilities from leading independent lives and participating fully in their communities.

**19.11.2 Accessible Dwelling Units**

A minimum of 30 percent of the total dwelling units in the Development shall be Visitable in accordance with the criteria in Section 19.11.3.

**19.11.3 Performance Criteria for Social Sustainability and Visitability**

Dwellings in the NOD shall meet the following criteria for visitability unless explicitly waived by the Planning Board. Visitability increases the supply of accessible housing through the inclusion of three basic structural features at the time of home construction:

- A zero-step entrance;
- Doorways (both interior and exterior) with at least 32 inches of clear width, but shall not conflict with any requirement of the State Building Code;
- At least a half bath on the main floor of the home.

**19.11.4 Additional Guideline**

Reinforcement in the bathtub area of bathroom walls of all dwelling units to allow easy addition of grab bars is suggested.

**19.12 OFF-STREET PARKING**

Off-Street Parking shall, in general, adhere to the design and dimensional requirements of Section 5.1.0 Off-Street Parking; however, the minimum requirements for parking spaces shall be as follows:

Residential dwelling units:	2 spaces per unit
Visitor Parking:	1 space for every 3 residential dwelling units
Community Buildings:	3 spaces per 1000 square feet of gross floor area
Recreational uses:	To be determined during the review process. Where feasible the ITE Parking Generation Manual in effect during January 2009 shall be used.

**19.13**      **ACCESS WAY CONSTRUCTION**

Construction of access ways within the NOD shall conform to the applicable requirements of the Rules and Regulations Governing the Subdivision of Land. The Board may waive any requirements of the Rules and Regulations it deems to be unnecessary either to meet the intent of this by-law or to ensure public safety. The minimum paved width shall not be less than 20 feet and the minimum right-of-way width shall be 32 feet. A sidewalk on at least one side of each access way shall be required.

**19.14**      **CONDOMINIUM ASSOCIATION**

In cases of sale of individual units as condominiums, there shall be included in the deed a requirement obligating the purchasers to join in an organization of unit owners incorporated under Chapter 183A as amended, of the General Laws of the Commonwealth. If any unit is sold separately, there shall be a deed restriction that shall require mandatory membership in a homeowner's association, which shall satisfy all of the same requirements. No conveyance of an individual unit shall take place until this requirement has been satisfied. The organization shall file a written report, including the names of officers, with the Town Clerk by February 15 of each year. Such report may be the same written report rendered to all unit owners referred to in G.L. c. 183A, § 10, par. D.

**19.14.1**      The Condominium or Homeowners Association (the "Association") shall provide for the maintenance of common open space, drainage facilities, community water and sewage disposal systems, the access ways, parking areas, recreational facilities or any other commonly held property or facility. The Association shall be a permanent agreement, either through a non-profit homeowner's and/or condominium association, and be recorded by a covenant or other agreement in the Bristol County Registry of Deeds before the conveyance of any unit or dwelling. Drafts of the proposed agreements shall be submitted to the Board with the development plan and shall be subject to approval by the Board and by Town Counsel, at the applicant's expense, as a condition of approval of the special permit relief.

- a.      The agreement shall provide for the maintenance of all common land and facilities and specify the required methods of maintenance
- b.      Membership in the Association shall be compulsory as a requirement of ownership of any lot or unit in the development.
- c.      The agreement shall require compulsory assessment upon the individual owners for the cost of maintenance and the creation of a lien on any unit that is assessed for failure to pay such assessment.

- d. The agreement shall mandate that the Association shall not be dissolved without the consent of the Board; and any other specifications deemed necessary by the Board.
- e. The agreement shall provide that, in the event the Association or any successor organization, fails to maintain the common open space or any commonly owned facility in reasonable order and condition in accordance with the development plan, the Town shall have the right but not the obligation enforce the provisions of the agreement and shall be provided with an easement that shall allow the Town and its agents to enter onto such portions of the land in the development as are necessary to perform the required maintenance in order to preserve the taxable values of the properties within the development and to prevent the common land or facility from becoming a hazard or nuisance. If the Town performs any maintenance or repair work, the Association and its members shall be jointly and severally liable to reimburse the Town for its costs and the cost, if unpaid, shall become a lien upon the properties in the development until said cost has been paid in full.
- f. The developer shall turn over such Association to the homeowners at such time as 51 percent of the units or lots have been leased or sold. The agreement shall provide that the developer shall bear the responsibility for installation and/or maintenance of common open space, community water and sewage disposal systems, private ways, recreational facilities or any other commonly held property or facility until (1) such time as these facilities are completed to the satisfaction of the Board and (2) at least 51 percent of the units or lots have been sold, at which time the homeowner's or condominium association shall bear the responsibility of maintaining these areas and facilities.

**19.15            HOUSING AFFORDABILITY**

**19.15.1            Marketing Plan**

Applicants under this by-law shall submit a marketing plan as outlined in **Section 13.8, Marketing Plan for Affordable Units**, of these By-Laws.

**19.15.2            Required Affordable Units**

Not less than 30% of the total dwelling units constructed in each development shall be designated as Affordable Units as defined in Section 1.1.E of these By-Laws and shall be eligible for inclusion in the SHI maintained by DHCD and the applicant shall provide written evidence of such eligibility from DHCD. For purposes of calculating the number of units of affordable housing required within a development,

any fraction of a unit shall be deemed to constitute a whole unit.

**19.15.3 Design and Construction**

Affordable Units shall be finished housing units; the exterior shall be comparable in initial construction, quality and exterior design to Market Rate Units in the development.

**19.15.4 Affordable Housing Restrictions**

Each Affordable Unit shall be subject to a permanent Affordable Housing Restriction which shall be approved by the Board and Town Counsel and duly recorded, before any Affordable Unit is sold, with the appropriate registry of deeds or district registry of the Land Court and which contains the following:

- a. Specification of the term of the Affordable Housing Restriction which shall be the maximum period allowed by law but not less than ninety-nine years;
- b. The name and address of an administering agency with a designation of its power to monitor and enforce the affordable housing restriction;
- c. Reference to a housing marketing and resident selection plan, to which the Affordable Unit is subject and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. The housing marketing and selection plan for the Affordable Units may provide for preferences in resident selection to the extent consistent with applicable law; the plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that the preference for such Unit shall be given to a household of the appropriate size;
- d. A requirement that residents shall be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan;
- e. A description of the Affordable Unit by address and number of bedrooms;
- f. Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership shall be set;
- g. Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions;

- h. A requirement that only an Eligible Household may reside in an Affordable Unit and that notice of any lease or sublease of any Affordable Unit shall be given to the administering agency;
- i. Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the administering agency;
- j. Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the administering agency and the Town of Westport, and shall limit initial sale and resale to and occupancy by an Eligible Household;
- k. Provision that the restriction on an Affordable Rental Unit shall run in favor of the administering agency and The Town of Westport, and shall limit rental and occupancy to an Eligible Household;
- l. Provision that the owner (s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the administering agency in a form specified by that agency certifying compliance with the affordability provisions of this By-Law, and containing such other information as may be reasonably requested in order to ensure affordability.
- m. A requirement that residents in Affordable Housing provide such information as the administering agency may reasonably request in order to ensure affordability.

**19.15.5 Affordable Housing Administering Agency**

An administering agency for affordable units, which may be the Westport Housing Authority, or other qualified housing entity shall be designated in the special permit. In a case where the administering agency cannot adequately carry out its administrative duties, such duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Board or, in the absence of such timely designation, by an entity designated by the DHCD. In any event, such agency shall ensure the following:

- a. Prices of Affordable Homeownership Units are properly computed, rental amounts of Affordable Rental Units are properly computed;
- b. Income eligibility of households is properly and reliably determined;
- c. The housing marketing and resident selection plan conforms to

all requirements and is properly administered;

- d. Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given;
- e. Affordable Housing Restrictions meeting the requirements of this section are recorded with the proper registry of deeds;
- f. All payments to the Town of Westport and their assigns are made in a timely manner pursuant to the requirements of the deed restrictions for the Market Rate Units.

**19.15.6 Housing Marketing and Selection Plan**

The housing marketing and selection plan shall make provision for payment by the Development applicant or successor in title of reasonable costs to the administering agency to develop, advertise, and maintain the list of Eligible Households, and to monitor and enforce compliance with affordability requirements. Such payment as determined by the SPGA shall not exceed one-half (1/2%) percent of the amount of rents received for each Affordable Rental Unit (payable annually by the Owner of said Affordable Rental Unit) and/or one (1%) percent of the sale or resale prices of Affordable Homeownership Units (payable upon each such sale or resale), as applicable.

**19.15.7 Payment in Lieu of Eligible Buyer**

The Board may allow a developer of non-rental housing units to make a cash payment to the Town through its Affordable Housing Trust Fund for each affordable low-or moderate-income unit, if after one-year's time, a buyer cannot be found for an affordable unit. The cash payment shall be equal either to (1) the difference between the fair market value for a typical market-rate housing unit in the proposed development, as determined by the Board, and the price of a housing unit affordable to a low- or moderate-income household; or (2) the difference between the actual fair market price paid for the unit and the price of an affordable unit, whichever is greater.

**19.16 DECISION**

The Board may approve or approve with conditions an application for a NOD Special Permit, if the Board determines that the Development better promotes the objectives herein, than a conventional development would and that the Development is in compliance with applicable sections of the Rules and Regulations governing the Subdivision of Land in Westport, MA, Rules and Regulations of the Westport Planning Board for Site Plan Approval, and the Rules and Regulations of the Westport Planning

Board for Inclusionary Housing Special Permits.

**19.17**            **ISSUANCE OF OCCUPANCY PERMITS**

The Building Inspector shall not issue an occupancy permit for a unit without prior receipt of evidence that all restrictions and covenants required as set forth hereunder have been duly recorded at the Registry of Deeds and that the low-and moderate-income units have been approved for listing by DHCD for Westport's SHI.

**19.18**            **FURTHER CONDITIONS**

No lot shown on a plan for which relief is granted under this section may be further subdivided, and a restrictive covenant imposing this condition shall be recorded against the subject land before any building permit issues and a note regarding this condition shall be placed on the approved plan and it shall be recorded as a condition of the special permit taking effect. Subsequent to granting relief, the Board may permit minor adjustments of lot lines within the development that do not result in the creation of additional lots. However, any change in overall density, street layout, or open space layout shall require a modification of the special permit and full public hearing, with notice.

(2009 ATM, Article 28)

**ARTICLE 20**

**LOW IMPACT DEVELOPMENT (LID) SITE PLAN APPROVAL**

**20.1**            **PURPOSE**

The purpose of this bylaw is to establish minimum requirements and controls to protect and safeguard the environment, natural resources, general health, safety, and welfare of the public residing in watersheds within the Town's jurisdiction from the adverse impacts of soil erosion, sedimentation, and stormwater runoff. This section seeks to meet that purpose through the following objectives:

- 20.1.1**            To eliminate or reduce the adverse effects of soil erosion and sedimentation;
- 20.1.2**            To minimize stormwater runoff from any development;
- 20.1.3**            To minimize nonpoint source pollution caused by stormwater runoff from development;
- 20.1.4**            To provide for groundwater recharge where appropriate; and
- 20.1.5**            To ensure controls are in place to respond to objectives in Subsections 20.1.1 and 20.1.2 and that these controls are properly operated and

maintained.

## **20.2            APPLICABILITY**

This bylaw shall apply to all activities that result in a land disturbance activity of 40,000 sq. ft. of land, or that will disturb less than 40,000 sq. ft. of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than 40,000 sq. ft. of land. No person shall perform any activity that results in a land disturbance activity of 40,000 sq. ft. or more of land without site plan approval by the Planning Board, by majority vote, following review at a duly posted meeting, but without a formal public hearing, of soil erosion and sediment control plan and a stormwater management plan. Normal maintenance and/or improvement of land in agricultural or aquaculture use, as defined by the Wetland Protection Act Regulation 310 CMR 10.4, shall be exempt from this by-law. In addition, as authorized in the Phase II Small MS4 General Permit for Massachusetts, stormwater discharges resulting from the above activities that are subject to jurisdiction under the Wetland Protection Act and demonstrate compliance with the Massachusetts Stormwater Management Policy as reflected in an Order of Conditions or Request for Determination of Applicability (RDA) issued by the Town of Westport Conservation Commission shall be deemed to be in compliance with this bylaw.

## **20.3            AUTHORITY**

This stormwater site plan review bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, G.L. c.40 and G.L. c.40A, and the Federal Clean Water Act and applicable regulations, including 40 CFR 122.34.

## **20.4            RESPONSIBILITY**

The Planning Board shall administer, implement and enforce this bylaw. The Planning Board may distribute plans to other boards, commissions, departments, and outside technical and legal consultants and agencies for their review and recommendations.

## **20.5            DESIGN STANDARDS**

The applicant shall submit a plan to the Planning Board that illustrates how the following LID site design standards were utilized to the maximum extent feasible and explains any site and financial constraints which limited application of items 1 through 10 below and how items 11 and 12 were considered for implementation:

- 20.5.1**            Preservation of the site's natural features and environmentally sensitive areas such as wetlands, existing vegetation, slopes, drainage ways, permeable soils, flood plains, woodlands and soils to the greatest extent possible;
- 20.5.2**            Minimization of grading and clearing;
- 20.5.3**            Clustering of buildings and a reduction in size of building footprints;

- 20.5.4** Use of stormwater management components that provide filtration, treatment and infiltration such as vegetated areas that slow down runoff; maximizing infiltration and reducing contact with paved surfaces;
- 20.5.5** Creation of subwatersheds to treat and micromanage runoff in smaller, decentralized, innovative stormwater management techniques to treat and recharge stormwater close to the source;
- 20.5.6** Lengthen flow paths and maximize sheet flow;
- 20.5.7** Emphasis on simple, nonstructural, innovative, low-cost methods including open drainage systems, recharging of roof runoff, parking areas and/or roadways, to recharge on site as close to the source as possible.
- 20.5.8** A maintenance program including information on regular street and parking lot sweeping shall be provided to the Planning Board for approval;
- 20.5.9** Reduction of impervious surfaces wherever possible through alternative street design, such as omission of curbs and use of narrower streets, the use of porous pavement or permeable pavers, shared driveways and through the use of shared parking areas;
- 20.5.10** Reduction of the heat island effect;
- 20.5.11** Use of vegetation in buffer strips and in rain filter runoff);
- 20.5.12.** Techniques integrated into every part of site design to create a hydrologically functional lot or development site, including but not limited to the following:
- A.** Grass swales along roads;
  - B.** Rain gardens;
  - C.** Buffer areas;
  - D.** Use of roof gardens where practicable;
  - E.** Use of amended soils that will store, filter and infiltrate runoff;
  - F.** Bioretention areas;
  - G.** Use of rain barrels and other cisterns to provide additional stormwater storage;
  - H.** Use of permeable pavement and/or pavers in driveways, overflow

parking, outside sales areas, etc.

**I. Use of native plants and grasses**

**20.6 LID PLAN CONTENTS**

The LID Management Plan shall contain sufficient information for the Planning Board to evaluate the environmental impact, effectiveness, and acceptability of the site planning process and the measures proposed by the applicant for reducing adverse impacts from stormwater runoff. This plan shall be in accordance with the criteria established in these Bylaws and must be submitted with the stamp and signature of a Professional Engineer (PE) licensed in the Commonwealth of Massachusetts. The LID Management Plan shall fully describe the project in drawings, narrative, and calculations. It shall include:

- 20.6.1** Contact Information. The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected;
- 20.6.2** A locus map;
- 20.6.3** Existing site plan (for comparison to 20.6.15 below);
- 20.6.4** The existing zoning, and land use at the site;
- 20.6.5** The proposed land use;
- 20.6.6** The location(s) of existing and proposed easements;
- 20.6.7** The location of existing and proposed utilities;
- 20.6.8** The site's existing & proposed topography with contours at 2-foot intervals,
- 20.6.9** The existing site hydrology (both groundwater recharge and surface runoff);
- 20.6.10** A description and delineation of existing stormwater conveyances, impoundments, wetlands, drinking water resource areas, shellfishing areas, swimming beaches or other critical environmental resource areas, on or adjacent to the site or into which stormwater flows;
- 20.6.11** A delineation of 100-year flood plains, if applicable;
- 20.6.12** Estimated seasonal high groundwater elevation in areas to be used for stormwater retention, detention, or infiltration;
- 20.6.13** The existing and proposed vegetation and ground surfaces with runoff

coefficients for each;

- 20.6.14** A drainage area map showing pre and post construction watershed boundaries, drainage area and stormwater flow paths, including municipal drainage system flows;
- 20.6.15** A recharge area analysis that calculates pre-and post-project annual groundwater recharge rates on the parcel;
- 20.6.16** A description and drawings of all components of the proposed LID Management system including:
- A.** Locations, cross sections, and profiles of all brooks, streams, drainage swales and their method of stabilization;
  - B.** All measures for the detention, retention or infiltration of water;
  - C.** Description of non-structural BMPs;
  - D.** All measures for the protection of water quality;
  - E.** The structural details for all components of the proposed drainage systems and LID Management facilities;
  - F.** Notes on drawings specifying materials to be used, construction specifications, and expected hydrology with supporting calculations;
  - G.** Proposed site plan including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable;
  - H.** Any other information requested by the Planning Board.
- 20.6.17** Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in this Bylaw. Such calculations shall include:
- A.** Description of the design storm frequency, intensity and duration;
  - B.** Time of concentration;
  - C.** Soil Runoff Curve Number (RCN) based on land use and soil hydrologic group;
  - D.** Peak runoff rates and total runoff volumes for each watershed area;
  - E.** Information on construction measures used to maintain the

infiltration capacity of the soil where any kind of infiltration is proposed;

- F. Infiltration rates, where applicable;
- G. Culvert capacities;
- H. Flow velocities;
- I. Data on the increase in rate and volume of runoff for the specified design storms; and
- J. Documentation of sources for all computation methods and field test results.

**20.6.18** Post-Development downstream analysis if deemed necessary by the Planning Board;

**20.6.19** Soils Information from test pits performed at the location of proposed LID Management facilities, including but not limited to soil descriptions, depth to seasonal high groundwater, depth to bedrock, and percolation rates. Soils information will be based on site test pits logged by a Massachusetts Registered Soil Evaluator, or a Massachusetts Registered Professional Engineer;

**20.6.20** Landscaping plan describing the woody and herbaceous vegetative stabilization and management techniques to be used within and adjacent to the stormwater practice.

## **20.7 OWNERS ASSOCIATION**

As a condition of approval of a LID Management Plan the Applicant shall create and properly fund an Owners Association and all purchasers of land within the project shall be required to belong to the Owners Association. The Owners Association shall be responsible for the perpetual operations and maintenance of the components of the approved LID management Plan. The Owners Association shall maintain permanent ownership of any drainage basins or ponds in the subdivision, including all pipes and other appurtenant devices, and shall have the permanent responsibility of maintaining, repairing and replacing said drainage systems, as necessary. The Owners Association documents shall be reviewed and approved by the Planning Board, in consultation with Town Counsel, and the Owners Association shall have an initial fund that is deemed satisfactory to the Planning Board, in consultation with the Planning Board's technical consultant. The Owners Association shall send correspondence to all members of the Association twice a year, once during March and once during September, to advise each member of the Association's duties and responsibilities to: (1) operate and maintain the components of the approved LID management Plan; and (2) maintain, repair and replace the drainage systems. At the same time, the Owners Association shall provide a written reminder to each individual member to maintain any portion of the systems on

each member's property, including the mowing and clearing of drainage swales and berms.

**20.8**            **CONNECTIONS TO MUNICIPAL SYSTEMS**

There shall be no connections to the Town of Westport Municipal Storm Drain Systems (MS4)

**20.9**            **PROMULGATION OF RULES AND REGULATIONS**

The Planning Board may promulgate rules and regulations to effectuate the purpose of this bylaw. Failure by the Planning Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

**20.10**          **INSPECTIONS, SUBMISSION OF FINAL PLANS, MAINTENANCE**

**20.10.1**        The Planning Board, or designated agent, shall make inspections as hereinafter required and either shall approve that portion of the work completed in accordance with the approved plans or shall notify the owner or person responsible for the implementation of the plans wherein the work fails to comply with the approved soil erosion and sediment control plan, or the approved stormwater management plan as described in Planning Board's Rules and Regulations. Plans for grading, removal, stripping, excavating, and filling work approved by the Planning Board and shall be stored on site during the progress of the work. To obtain inspections, the permittee shall notify the Planning Board agent at least two working days before each of the following:

- A.     Installation of sediment and erosion control measures.
- B.     Start of construction.
- C.     Completion of site clearing.
- D.     Completion of rough grading.
- E.     Installation of stormwater controls.
- F.     Close of the construction season.
- G.     Completion of final landscaping.

**20.10.2**        The person responsible for the implementation of the approved plans shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved soil erosion and sediment control plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in

written form and submitted to the Planning Board Agent at the time interval specified in the approved permit.

**20.10.3** The Planning Board, or designated agent, shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed as noted above.

**20.10.4** The applicant shall submit an "as-built" plan for the stormwater controls after the final construction is completed. The plan must show the final design and specifications of all stormwater management systems and must be prepared by a professional land surveyor.

**20.10.5** An Operation and Maintenance plan (O&M Plan) is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with the Permit and this Bylaw during all seasons and throughout the life of the system. The Operation and Maintenance Plan shall remain on file with the Planning Board and shall be an ongoing and enforceable requirement. The O&M Plan shall include:

- A.** The name(s) of the owner(s) for all components of the system;
- B.** A map showing the location of the systems and facilities including catch basins, manholes/access lids, main, and stormwater devices;
- C.** Maintenance agreements that specify:
  - a.** The names and addresses of the person(s) responsible for operation and maintenance;
  - b.** The person(s) responsible for financing maintenance and emergency repairs;
  - c.** An Inspection and Maintenance Schedule for all LID Management facilities including routine and non-routine maintenance tasks to be performed;
  - d.** A list of easements with the purpose and location of each;
  - e.** The signature(s) of the owner(s).
- D.** LID Management Easement(s)
  - a.** LID Management easements shall be provided by the property owner(s) as necessary for:
    - 1.** Access for facility inspections and maintenance;

- 2. Preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event;
  - 3. Direct maintenance access by heavy equipment to structures requiring regular maintenance.
- b. The purpose of each easement shall be specified in the maintenance agreement signed by the property owner.
  - c. Stormwater Management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the Planning Board.
  - d. Easements shall be recorded with the County Registry of Deeds prior to issuance of a Certificate of Completion by the Planning Board.
- E. Changes to Operation and Maintenance Plans
- a. The owner(s) of the LID Management system shall notify the Planning Board of changes in ownership or assignment of financial responsibility.
  - b. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this Bylaw by mutual agreement of the Planning Board and the Responsible Parties. Amendments shall be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility.

**20.11 PROJECT CHANGE**

The permittee, or his or her agent, shall notify the Planning Board in writing of any change or alteration of a land-disturbing activity authorized in either the soil erosion and sediment control plan or the stormwater management plan before any change or alteration occurs. If the Planning Board determines that the change or alteration is significant, based on the design requirements listed in this bylaw and accepted construction practices, the Planning Board may require that an amended soil erosion and sediment control plan and/or stormwater management plan application be filed. If any change or deviation from these plans occurs during a project, the Planning Board may require the installation of interim measures before approving the change.

**20.12 FEES**

The appropriate application fee as established by the Planning Board shall accompany

each application. Applicants shall pay review fees, as determined by the Planning Board, sufficient to cover any expenses connected with any public hearing, review of the soil erosion and sediment control plan, and site inspection.

**20.13**            **APPEAL**

The appeal of any decision of the Planning Board hereunder shall be made in accordance with the provisions of Mass. General Law Ch. 40A or other such provision of the General Laws.

(2011 ATM, Article 36)

**ARTICLE 21**

**DRIVEWAYS AND COMMON DRIVEWAYS**

**21.1**            **INTRODUCTION**

In an effort to preserve, protect and enhance environmentally sensitive land that might otherwise be cleared, excavated, filled and/or covered with impervious surface this bylaw seeks to minimize negative impacts on community character and improve safety and emergency access. Common driveways may be allowed by Special Permit granted by the Planning Board in accordance with the provisions of this section. A Special Permit will not be required when the common driveway is approved as part of the definitive subdivision process. For existing common driveways: a Special Permit shall be required when alterations are proposed to the common driveway.

**21.2**            **PURPOSE**

The purpose of allowing access to no more than three (3) lots in any zoning district, except in an Open Space Residential Development, over a common driveway is:

(2012 ATM, Article 42)

**21.2.1**            To enhance public safety by reducing the number and frequency of points at which vehicles may enter upon the ways used by the public;

**21.2.2**            To preserve, protect, and enhance environmentally sensitive land, such as well discharge areas, wetlands and flood plains, by reducing the area of land that is cleared, excavated, filled and/or covered with impervious material;

**21.2.3**            To encourage the protection and preservation of significant features and vistas.

**21.3**            **APPLICABILITY AND REQUIREMENTS**

The Planning Board may grant a Special Permit for a Common Driveways that serves no more than three (3) lots, provided that each lot shall have the required frontage on a public way or a way approved by the Planning Board, except for the greater benefits that may be provided for in Open Space Residential Development (Article 18 and Flexible Frontage (Article 23). An application for a special permit shall include a site plan prepared by a registered engineer and registered land surveyor that provides satisfactory evidence that such Driveway or Common Driveway meets the following requirements:

(2012 ATM, Article 42)

**21.3.1** The common portion of the common driveway shall not be in excess of five hundred (500) feet in length or as allowed by the Rules and Regulations;

**21.3.2** Driveway/Curb Cut Spacing: Separation between access connections on all collectors and arterials shall be based on the posted speed limit in accordance with the following table:

<u>Posted Speed Limit (MPH)</u>	<u>Access Connection Spacing (Feet)</u>
20	85
25	105
30	125
35	150
40	185
45	230
50	275

**21.3.3** The integrity of the edge of the public roadway pavement shall be protected and stormwater, sand, silt, mulch, and other debris shall be kept off of the road and out of town drainage systems.

**21.3.4** Upon completion of the project, the applicant shall insure that the edge of the paved road is supported and not undermined. Any construction damage to the edge of town road shall be repaired by the applicant.

**21.3.5** The radius of the driveway at the intersection of the street shall be designed to accommodate public safety & emergency vehicles.

**21.3.6** Compliance with Emergency 911 requirements shall be maintained by the lots served by the common driveway. Permanent signs indicating the street number address assigned to each lot served by the common driveway shall be installed within ten (10) feet of the intersection of the common driveway with the street, as well as within ten (10) feet of the intersection of an individual lot driveway with the common driveway. Numbered signs shall be placed in a manner so that they shall not be

blocked during heavy snow pack;

- 21.3.7** The common driveway shall access the property over the frontage of either or both of the lots served by the driveway;
- 21.3.8** The applicant shall provide evidence to the Planning Board that the owners of the properties to be served by the common driveway have a deeded right to the common portions of the common driveway;
- 21.3.9** The common driveway shall meet the Secondary Road standard found in Table A of the Planning Board's Subdivision Rules & Regulations. The traveled way width requirement shall apply only to that portion of a driveway, which is used in common by more than one (1) lot. The maximum grade shall be 10%. The minimum grade shall be 1%, with a 3% maximum grade within fifty (50) feet of its intersection with a street right of way. The driveway right-of-way (or easement for a single driveway) shall be calculated as the width of the traveled way, plus 4' on either side, or at least 20' for a common driveway.
- 21.3.10** No common driveway shall be accepted as a public road nor shall the Town under any circumstances be held liable for construction, reconstruction, maintenance, or snow removal on any common driveway.
- 21.3.11** The presence of a common driveway accessing an undevelopable lot does not imply that the lot is buildable.
- 21.3.12** A lot may be served by a common driveway only if the ownership of the lot provides mandatory membership in an owners' association responsible for annual and long term maintenance, including, but not limited to, removal of ice and snow from the common drive. The plan shall identify all land that is to be held and administered by the mandatory owners' association. It shall bear restrictions satisfactory to the Planning Board and the Town Counsel, to run with the land, restricting the way shown to remain private property and not to be extended, and any other restrictions and easements that are required for common driveway development by these by-laws. It shall incorporate by reference the document(s), satisfactory to the Planning Board and the Town Counsel, creating the mandatory owners' association and setting forth restrictive covenants and easements binding present and future owners of all the lots served by the common driveway. Such document(s) shall include, at a minimum the following:
- a.** Specific standards for the maintenance of all structures designed to be requirements of a common driveway Special Permit, including, but not limited to, the travel way, drainage system, and signage;
  - b.** Provisions for allocating responsibility for snow removal, maintenance, repair, or reconstruction of the common driveway,

drainage system, and signage;

- c. Text of proposed easement including the metes and bounds description;
- d. A procedure for the resolution of disagreements. Said document(s) shall be recorded along with the site plan and public utility and drainage easements in the Bristol County Registry of Deeds and shall also be recited in and attached to every deed to every lot served by the common driveway.

**21.4            ADOPTION OF RULES AND REGULATIONS**

The Planning shall adopt an application form and rules and regulations in accordance with the provisions of this by-law. Rules and regulations shall specify the application process, type and number of required plans, and general requirements in order to assist the developer in complying with the intent of this by-law. Pursuant to M.G.L. Chapter 44, Section 53G, the Planning Board may accept and expend funds to engage peer review services, including engineering and legal services.

**21.5            FEES AND CONCURRENT HEARING PROCESS**

The appropriate application fee as established by the Planning Board must accompany each application. Applicants shall pay review fees, as determined by the Planning Board, sufficient to cover any expenses connected with any public hearing and review of the plan.

**21.6            WAIVER OF COMPLIANCE**

The Planning Board, under this section, may waive strict compliance with dimensional requirements (for grade, length and width) of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

(2014 ATM, Article 30)

**21.7            APPEAL**

The appeal of any decision of the Planning Board hereunder shall be made in accordance with the provisions of Mass. Gen. L. Ch. 40A, §17 or other such provision of the General Laws.

**21.8            VALIDITY**

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

(2011 ATM, Article 38)

## ARTICLE 22

### SCIENCE AND TECHNOLOGY OVERLAY DISTRICT

#### 22.1 PURPOSE AND INTENT

The purpose of the Science and Technology Overlay District (STOD) special permit is to: allow better utilization of land adjacent to the Route 6 and 88 interchange, assure attractive and efficient arrangement of office and research buildings and the harmonious integration of the uses allowed in this district into the surrounding neighborhood and the community at large. The intent of the STOD By-law is to:

- A. Promote professional and technically skilled employment;
- B. Promote a maximum number of jobs to built-floor space ratio;
- C. Promote high value buildings and equipment that maximize tax revenues;
- D. Promote growth where investments have been made in infrastructure;
- E. Encourage the permanent preservation of open space, forestry lands, wildlife habitat, aquifers, wetlands and water bodies;
- F. Minimize the total amount of disturbance on the site by sensitive siting of buildings and parking;
- G. Protect drinking water and surface water resources and quality;
- H. Protect adjacent residential property values through effective and year round screening and buffering of the commercial uses from the residential uses;
- I. Minimize traffic impacts in residential areas;
- J. Mitigate impacts to the transportation infrastructure;
- K. Maximize energy conservation and on-site harvesting of energy; and
- L. Encourage net-zero impact development within each development.

#### 22.2 APPLICABILITY

The STOD is hereby established as a district that overlays the Business and Residential/Agricultural Districts shown on the supplemental zoning map entitled Town of Westport Science and Technology Overlay District (STOD), dated February 1, 2012.

#### 22.3 ADMINISTRATION

The Planning Board shall be the Special Permit Granting Authority (SPGA) for a Science and Technology Overlay District special permit. The SPGA shall follow the procedural requirements for special permits as set forth in Section 9 of MGL Chapter 40A. After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other town boards and/or departments, the SPGA may grant such a permit. The SPGA shall impose conditions reasonably appropriate to improve site design, traffic flow and safety, and protect water quality, air quality, and significant environmental resources, and/or otherwise serve the purpose of this section.

#### **22.4 PROCEDURES**

An applicant for a Science and Technology Overlay District special permit shall submit an application to the Planning Board. Where applicable, and to the extent permitted by law, the Planning Board shall coordinate the review procedures and public hearing required for any application for a STOD special permit with the review procedures and public hearing required for Site Plan approval (Article 15), Low Impact Development Site Plan Approval (Article 20) or if necessary a definitive subdivision plan.

#### **22.5 USES ALLOWED BY SPECIAL PERMIT**

No use shall be allowed which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

No building or premises shall be used and no building shall be erected in the STOD, other than as is already allowed in the underlying district, except for the following additional uses, which shall be allowed by special permit:

- A.** Professional or Corporate Office building for business and professional services, which shall include insurance, banking and other financial business uses and businesses with similar purposes in connection with such uses;
- B.** Scientific, Technical, and Management Service uses, as defined hereunder;
- C.** Software and Communication Service uses, as defined hereunder;
- D.** Clinics for outpatient care, as well as outpatient medical offices and services including, but not limited to, imaging, physical therapy, laboratory and diagnostics;
- E.** Telemarketing and telephone based services;
- F.** Electronic data processing areas;

- G.** Light industry, as defined hereunder;
- H.** Light manufacturing, as defined hereunder;
- I.** Assembly line operations, as defined hereunder, for any use allowed in the Table of Uses;
- J.** Publishing and printing uses;
- K.** Research and Development Laboratories and Facilities, as defined hereunder;
- L.** Private athletic and/or health club and day spa uses, provided that no overnight accommodations are provided;
- M.** Municipal buildings and uses, including, but not limited to town offices, police stations, fire stations, ambulance stations, public works buildings and storage areas and such garages and other outbuildings that are incidental thereto;
- N.** Advanced Materials Operations, as defined hereunder;
- O.** Multiple uses that are otherwise allowed individually in the underlying district or by special permit hereunder may be allowed under an STOD special permit, provided that specific findings are made that the site contains sufficient area, setbacks, stormwater controls, parking and buffers to manage the combined uses;
- P.** Accessory Uses shall be allowed by special permit, including the following uses that are accessory to a principal use on the premises, provided that the uses are not open to the general public and are available only to on site employees and their guests and there is no external evidence of the use (unless the use is itself separately allowed as a principal use under a special permit that has issued):
  - 1.** Day care center;
  - 2.** Health club;
  - 3.** Branch bank;
  - 4.** Newsstand; and
  - 5.** Food Service for on premise employees and their guests.
- Q.** Any other uses not listed above in Section 22.4 or in the Table of Uses shall be expressly prohibited.

22.6

**LOT REQUIREMENTS FOR ISSUANCE OF A STOD SPECIAL PERMIT**

Minimum Lot Size	10 acres; If a commercial subdivision is proposed, the lots may be of varying size, with a minimum of 5 acres per lot, providing that an average lot size of 10 acres is maintained for the subdivision as a whole. Lots so created that are larger than 10 acres shall not be further subdivided.
Minimum Lot Frontage	150 feet on a way in existence when this provision is adopted and, 50 feet on a subdivision way approved and constructed as part of a new subdivision way that is created in the STOD, provided that an STOD special permit is granted at the same time that definitive subdivision approval is granted.
Minimum Lot Width (at front building line)	400 feet
Minimum Front Setback	150 feet from a way in existence, as defined under G.L. c.41, §81L, when this provision is adopted and 40 feet from a new subdivision way that is created in the STOD, provided that an STOD special permit is granted at the same time that definitive subdivision approval is granted.
Minimum Side Setback	50 feet, except 150 feet if abutting a Res/Ag district .
Minimum Rear Setback	50 feet, except 150 feet if abutting a Res/Ag district.t
Maximum % Lot Coverage	60% (includes buildings, parking lots, roadways and all impervious surfaces)
Maximum Height	3 stories or 45 feet, whichever is greater. Heights may be increased by 1 story or 15 feet for every additional 200 feet of setback provided, with a maximum height of 5 stories or 75 feet, whichever is greater.
Upland Requirement	50%

22.7

**PERFORMANCE STANDARDS**

In addition to the performance standards of Article 15 Site Plan Approval (15.4), development within the STOD shall conform to the following additional performance standards:

- A. **Master Plan Approach to Development** – The use and buildings shall incorporate sustainable development techniques, using recognized principles such as Low Impact Development and Smart Growth. Each project shall follow the Four-Step Design Process, as described below. From the beginning of the submittal and review process, an applicant shall demonstrate to the Planning Board, through schematic drawings, that the four design steps were followed in determining the layout of

proposed way, dwelling lots, business lots and open space.

1. Identify the Proposed Open Space. The proposed the open space shall be clearly identified on the plan, with the square footage specifically identified and with the upland and non-upland areas separate quantified. The open space shall include, to the maximum extent feasible, the most sensitive and noteworthy natural, scenic, historic, and cultural resources on the property. Such resources shall include without limitation: specimen trees, rare species, stonewalls, archaeological features, unique habitats, plant communities, distinctive vistas, wetlands and riverine areas and other resources of special natural, cultural or recreational interest.
2. Identify the Proposed Building Site Locations. Potential building sites shall be shown on the plan and include the square footage of each footprint and overall square footage and the all applicable dimensional setbacks.
3. Identify the Proposed Street/Way and Lot Layout. The proposed street/way and lot layouts shall be shown on the plan. The proposed streets/way shall be aligned to as to provide vehicular access to each building in the most reasonable and economical way, in conformance with existing natural landforms. When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on open space. Wetland crossings and ways traversing existing slopes with a grade in excess of 15% shall be strongly discouraged.
4. Identify Proposed Lot Lines. The Plan shall identify the proposed lot lines and the square footage of each proposed lot and its proposed use and the setbacks, including buffers.

- B. Interior Infrastructure** - All streets, ways and drainage facilities shall be designed and constructed in compliance with the Westport Rules and Regulations Governing the Subdivision of Land, except such as may be waived by the Planning Board upon request of an applicant, whether or not the proposed STOD use involves a subdivision of land. The stormwater drainage infrastructure for the project shall be designed and constructed and maintained so as to control all stormwater on site and so that it shall not result in any increase, post construction, in rate or volume of stormwater released, when compared to pre-construction conditions, based upon drainage calculations that take existing conditions on the site and the relevant area watersheds into account. All infrastructure improvements shall be private, under the ownership and control of a single property owner or a property owner's association shall be established and recorded before any conveyance of land is made.

Any and all streets and ways shall be designed and located in such a manner so as to maintain and preserve natural topography, significant landmarks, and trees and so as to minimize cut and fill and so as to preserve and enhance views and vistas on or off the subject parcel. Any and all proposed grade changes shall be in keeping with the general appearance of the neighboring developed areas.

- C. **Utilities** - Developers in the STOD shall ensure that buildings constructed within its boundaries are served by underground utilities. Universal Utility Planning (UUP) ensures that all essential utility infrastructure is placed as part of the construction project to each building. Sewer, water, gas, electric, and telecommunications infrastructure must be viewed as a single process of infrastructure development. Design and installation of water, sewer, stormwater and gas lines and other utilities shall be consistent with Westport's Rules and Regulations Governing the Subdivision of Land, Title V, the regulations of the Board of Health and any other applicable requirements.

High speed competitively priced fiber optic connectivity to the Internet with redundant and diverse paths is an essential service within the STOD and is strongly encouraged. Companies that seek to locate in the STOD often require multiple paths to the Internet for the exchange of high volumes of data via high capacity fiber optics. Several telecommunications conduits with inner-ducts should be placed within the STOD roadway right of ways and utility easements, and each building within the STOD should have conduit with inner-duct installed to permit multiple providers access to the building to deliver metering and communications services.

Developers in the STOD should consider providing aggregation services to future STOD businesses. The Developer may seek to own and maintain the conduit and lease it to telecommunications providers or own and maintain both the conduit and fiber that is leased to telecommunications providers and utilities. Developers in the STOD should also ensure that there is out-facing fiber optic connectivity.

- D. **Lighting** - Exterior area lighting, including but not limited to lighting for parking lots, recreational areas, walks, drives and outside building walls, shall be designed and installed and maintained so as to direct light away from abutting property and abutting ways. Exterior, standalone lighting fixtures shall have a maximum height of 30 feet above the ground. Exterior lighting fixtures located on a building shall also not exceed a maximum height of 30 feet.

- E. **Buffer Area** - There shall be a 100' Buffer Area adjacent to residence/agriculture uses within or abutting the STOD district boundary. The purpose of this Buffer Area shall be to eliminate or mitigate negative impacts on existing abutters. The Buffer Area shall consist of existing

natural vegetation and /or new plantings or combinations of vegetation and earthen berms and /or sound barriers, which shall form a year-round dense screen that reach at least six feet in height within three years of issuance of the first building permit.

There shall be a minimum natural buffer of 100 feet between wetlands and areas altered for development. There shall be no parking or buildings or impervious surfaces within the 100' buffer zone.

- F. **Access Roadways** – Access streets/roadways may be constructed within the minimum buffer and, furthermore, mitigation measures may be required for light and sound impacts from access roadways, particularly if residential uses exist nearby.

General access from a STOD development over the following existing residential streets, which are public ways, shall be strongly discouraged: Heritage Drive, J Drive, B Drive, O Drive, R Drive, D Drive, Summer Ave, Conserve Ave, Register Ave, Banner Ave, Milk Ave, Velvet Ave, Sunset Ave East. Access over the following existing private ways shall also be strongly discouraged: Lepire Avenue and Franklin Avenue. Gated emergency access shall be allowed provided that a Knox box is used to which emergency personnel shall have access.

- G. **Landscaping** – All landscaping shall be consistent with Article 15 Site Plan Approval. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. Individual building sites shall be designed to maintain existing topography and cover. Topography, tree cover, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.

- H. **Open Land** - Adequate pedestrian access shall be provided to undisturbed land which may be used for outdoor active or passive recreational purposes for use by owners and employees of the premises and, if granted, to the public.

- I. **Queue** - As determined by the Traffic Study required in Section 22.9, adequate infrastructure shall be designed and constructed to avoid unsafe queuing and idling of vehicles during hours of peak traffic demand.

- J. **Parking** - No parking shall be placed within the minimum front yard setback. Shared parking on the sides and rear of buildings is encouraged.

- K. **Off-Street Parking** - Within the STOD, off-street parking shall be provided sufficient to serve the needs of the various uses, based upon the nature of the use and the number of persons occupying and using the

facilities. To that end the maximum number of off-street parking spaces shall be determined as follows:

At the choice of the applicant, either

1. One and one half (1.5) spaces for each 1,000 gross square feet of building floor area devoted to manufacturing uses and two (2) spaces for each 1,000 gross square feet of building used for research and development uses shall be provided; or
2. One space for each two persons included in the offices, staff and employees within the STOD of each organization conducting such use, plus visitor spaces of one additional space for each twenty-five (25) spaces so determined shall be provided. Staff shall be calculated based on building use and type as well as occupancy limitations.

**L. Loading Areas** - Within the STOD, any building which has one or more uses which will require delivery of materials in trucks of gross vehicle weight of 60,000 pounds or more shall have at least one loading area for each 75,000 square feet of net floor area for which such delivery is required. Buildings or portions of buildings having functions which will require delivery of materials in small size trucks, in smaller quantities or on infrequent occasions shall be served by appropriate smaller loading areas or facilities which are adapted to the particular need and consistent with pedestrian and vehicular traffic and safety.

**M. Outside Storage** – Designated temporary storage of registered vehicles is permitted. All outdoor storage of materials and equipment shall be screened from public view, from public ways and abutting residential districts.

Provision shall be made for storage, collection and removal of all trash and other solid waste. All necessary facilities for utilities and trash, including but not limited to boxes, equipment sheds and dumpsters, shall be screened appropriately.

**N. Signage** - Within the STOD signs shall be allowed as follows:

1. At each public street entrance to the STOD a sign shall be permitted to identify the STOD development as a whole. No such sign shall be located closer than twenty (20) feet from the street line.
2. At an appropriate location within the STOD, signage shall be permitted to identify each individual organization and enterprise. With the approval of the Planning Board additional directory signs may be permitted. No such sign shall exceed three hundred

(300) square feet in size, nor twelve (12) feet in height, nor shall any lettering thereon exceed eight (8) inches in height. If such sign includes a locator map, at least two adjacent parking spaces shall be provided.

3. Each principal building shall be permitted to have one identifying sign designating the names and/or logos of the organizations or enterprises occupying the same. No such sign shall exceed sixty (60) square feet in size.
  4. Traffic direction and control signs as required or authorized by state and municipal officials having jurisdiction with respect thereto are permitted.
  5. Temporary signs to identify construction, financing, sale, leasing, pending tenancy and the like, with respect to buildings, or the occurrence of a special event, a hazard or a restriction or limitation of access or use.
  6. No sign shall be moving or flashing, but a sign may be illuminated by non-flashing, non-blinking, fully-shielded and downward-facing lights.
- O.**        **Noise** - Noise levels emanating from air conditioning equipment, fans, vents, loading areas, machinery, or normal operations and other noise causing operations on the premises (including persons) shall not exceed the thresholds described in Article XL (Noise Pollution Control) in the Town of Westport Town Bylaws and the Massachusetts Department of Environmental Protection noise regulation (310 CMR 7.10).
- P.**        **Hours of Operations** - The Planning Board may limit the allowed hours of operation based on type of use proposed within the special permit conditions.

## 22.8        **ARCHITECTURAL STANDARDS**

The building design and construction drawings and documents shall be prepared by a registered architect. It is strongly encouraged that the building design and construction be LEED certified or be LEED certifiable for the purpose of energy efficiency, material durability, healthy interior and exterior building environment.

- A.**        **Buildings** – It is strongly encouraged that the exterior walls of structures and buildings shall be constructed of brick, stone, concrete or other similar durable materials so as to have an attractive appearance and maintain architectural integrity.

Buildings with a footprint larger than 2,000 square feet constructed in the STOD shall meet the following requirements:

1. In order to avoid long blank outside walls, walls shall not be longer than thirty (30) feet without an articulation such as, but not limited to: a window, a footprint offset, a siding change, a pilaster. Whatever articulation is chosen, the same articulation shall not be repeated for more than 1/3 the length of the wall.
2. No outside wall longer than one hundred (100) feet shall meet the roof without a change in height, which is significant enough to visually break the long straight line.
3. All roof units, such as, but not limited to HVAC units, elevator overruns, vent pipes, or other such paraphernalia shall not be visible when standing at ground level at the same elevation as the building.
4. Covered entryways/porches shall be provided for public entrances into the building before entry doors.

## 22.9

### TRAFFIC STUDY

The Board may require the applicant to do a traffic impact study, at the applicant's expense. The traffic study shall evaluate and provide projected traffic generation from the development onto state highways and local roads; traffic service for the development; capacity of the road network, including roads and intersections; and, safety issues using egress and ingress of the development. Mitigation may be required of the applicant/developer.

- A. An initial traffic impact assessment report should include the projected a.m. and p.m. peak traffic, the average daily traffic and the hourly distribution of vehicles, including with respect to gross vehicle weight, and future no-build conditions on adjacent state or local roads for the proposed project. This report shall also include a review of any existing master plans relating to traffic in the vicinity of the proposed project, an assessment of the impact of that project upon the implementation of the master plan, and an analysis of that project's impact on proposed takings for roadway improvements. Finally, this report shall include a designation and review of the possible locations of curb cuts on nearby parcels, demonstrating consistency with the master plan.
- B. The Planning Board may engage the services of a consultant, paid for by the applicant under G.L. c.44, §53A or §53G, to conduct an independent analysis of the factual assertions and conclusions of the traffic impact assessment report.
- C. If either the initial traffic impact assessment report or the independent analysis thereof, using recent traffic counts and the latest edition of the ITE Trip Generation Handbook, indicate that the proposed facility would increase the traffic volume of nearby roads and intersections by at least

10% over the future no-build scenario, a Level of Service ("LOS") analysis for pre and post-development conditions is required.

**D.** The LOS analysis shall be provided by the applicant. It shall then be reviewed by a consultant again chosen by the Planning Board, and again paid for by the applicant. If either this analysis, or the review thereof, indicates that the proposed facility will result in either:

1. A reduction in service of two or more levels (e.g. from level A to level C); or
2. A reduction in service to level D or lower (i.e. intersection failure), then the proposed facility is subject to subsection E below. If the analysis, and the review thereof, indicate that the proposed facility will result only in a reduction in service by one level, so long as the reduction is not to level D or lower (e.g. from level B to level C), then a permit may be issued.

**E.** The applicant of any proposed facility whose anticipated traffic impact subjects it to this subsection shall be required to submit a traffic mitigation plan to the Planning Board, who shall engage the services of a consultant, again paid for by the applicant, in reviewing it. The Planning Board shall also consult with the Highway Department and Massachusetts Department of Transportation in reviewing this plan. The mitigation plan shall be sufficient to create the following conditions:

1. Prevent a reduction in service of more than one level; and
2. Prevent a reduction in service to level D or lower.

Only if the above requirements and criteria are satisfied shall a special permit be issued.

## **22.10 CONSULTANT REVIEW**

The Board may engage a professional engineer and/or other technical consultant to advise the Planning Board, and to review application plans and documents in application phase and the construction phase. The applicant shall pay for the cost of the consultant review pursuant to the procedures specified in M.G.L. c. 44, §53G or §53A. Further, the Building Inspector may engage to inspect to confirm compliance with special permit requirements. Refusal to pay the necessary fees shall be a basis to deny the special permit relief.

## **22.11 REVIEW CRITERIA**

A STOD special permit may be granted by the SPGA only if it makes a written determination that the benefits of the proposed development will outweigh the detrimental impacts on the neighborhood and the town, after using the review criteria

set forth below. The SPGA shall review and make all required determinations for each special permit application and, to approve a special permit, the SPGA shall first make a positive finding on each of the following criteria:

- A. The development complies with the town's currently approved plans or reports;
- B. The development provides water, wastewater and stormwater infrastructure that satisfies the criteria identified in this by-law and DEP standards including low impact development methods, Title V, board of health and planning board drainage requirements for subdivisions;
- C. The development provides permanent preservation of open space, forestry lands, wildlife habitat, aquifers, wetlands and water bodies as required in this by-law;
- D. The design and construction of the development minimizes the total amount of disturbance on the site by sensitive siting of buildings, parking, roadway and other impervious surfaces;
- E. The design and construction of the development protect drinking water and surface water quality and quantity;
- F. The design and construction of the development protects the quiet enjoyment of adjacent residential properties and protects the property values of such land by completely buffering the high quality office and research uses from adjacent residential properties;
- G. The development minimizes traffic impacts in residential areas and mitigates impacts to the road network;
- H. The development maximizes energy conservation to a satisfactory and allowable extent.

**22.12 SEVERABILITY**

The provisions of this Bylaw are severable from each other and the invalidity of any provisions or section shall not invalidate any other provision or section thereof.

(2012 ATM, Article 35)

**ARTICLE 23**

**FLEXIBLE FRONTAGE FOR REDUCED DENSITY**

**23.1 PURPOSE AND INTENT**

The purpose and intent of this Article is to encourage reduction in potential residential development density, reduce future vehicular trips, road congestion, demand for public services and the number of curb cuts onto Town roadways; preserve the natural and cultural resources visible along these roadways; facilitate the movement of wildlife; protect traditional access to “backland” open space; and improve the design and site planning of smaller residential neighborhoods. To achieve this, the Planning Board may issue a special permit to allow a reduction in the otherwise applicable frontage requirements on a public way, a way approved by the Planning Board under the subdivision control law or a private way that the Planning Board votes to determine has been in existence since prior to the effective date of the Subdivision Control Law in the Town of Westport and has adequate, width, grade and construction within the meaning of G.L. c. 41, §81L for the proposed development, for one or more of the lots proposed, in exchange for a corresponding reduction in development density and reliance upon common driveways, if applicable.

(2014 ATM, Article 31)

### **23.2 METHODS OF APPLICATION**

In order to obtain a special permit under this by-law provision, an applicant shall file a yield plan showing the basic number of lots that could be created under a traditional subdivision meeting the requirements of the Town’s Rules and Regulations Governing the Subdivision of Land and all other applicable regulations.

(2014 ATM, Article 31)

### **23.3 DESIGN STANDARDS**

The Planning Board may grant a reduced frontage special permit if the Planning Board determines that that the design standards set forth below will be better achieved by the reduced frontage special permit than using standard frontage and the other dimensional requirements contained in Article 7.

#### **23.3.1 Retain Existing Roads and Laneways**

The project shall retain, reuse and/or enhance existing farm/woods roads and laneways rather than construct new roads or driveways, in order to minimize clearing and disruption of the landscape and shall take advantage of existing lanes and shall foster the use of low impact development techniques and shall minimize loss of significant large trees or stone walls and shall lessen the disturbance to existing topography.

#### **23.3.2 Reduce Potential Number Of Driveways**

The project shall reduce the number of individual driveways and shall wherever and whenever feasible use a common driveway.

#### **23.3.3 Preserve Stone Walls And Edge-Of-Field Vegetation**

The project shall preserve existing stonewalls and edge-of-field vegetation as these traditional landscape features define open space edges in a natural way and maintain corridors useful for wildlife. Using these features as property lines may also be appropriate to establish lot line boundaries, if this does not require constructing buildings in otherwise sensitive locations.

**23.3.4 Site Buildings Carefully**

The project shall site buildings either at the edges of fields or in a wooded area; however, septic systems and leach fields may be located in fields. Buildings and clearing of land shall be designed and performed so as to minimize tree canopy penetration and so as to avoid crest-lines of hills as seen from public places and public and private roads. Wherever practicable, the project shall open up views to serve a building only through the selective cutting of small trees and pruning lower branches of large trees, to create a filtered view and shall not use clear cutting involving the removal of large areas of growth or the removal of mature trees (e.g. exceeding 24" dbh).

**23.3.5 Use Existing Vegetation And Topography To Buffer And Screen New Buildings**

The project shall design and locate building envelopes in relation to the road or driveway in a manner historically or visually appropriate to the neighborhood. The project shall use vegetation as a backdrop to reduce the prominence of the structure. If vegetative buffers are used, a minimum depth of fifty (50) feet of mixed indigenous ground covers, shrubs, and trees shall be provided. The principal structure and any accessory structures shall be grouped on each lot in a cluster or they shall be placed behind tree lines or knolls rather than spreading them out across the open landscape in a "sprawl" pattern.

**23.3.6 Minimize Clearing Of Vegetation**

The project shall be designed so as to minimize clearing of vegetation particularly at the edge of the road that provides access or any other adjacent road and clearing shall be limited only to as much clearing as is necessary to create a driveway entrance with adequate sight distance and width to safely accommodate residential and emergency vehicles. For example, the project shall use curves in the driveway to increase the screening of buildings from the road.

**23.3.7 Minimize Slope Disturbance**

The project shall minimize crossing of slopes that exceed ten (10) percent with roads and driveways. If necessary to build on a slope, the project shall take advantage of the topography by building multi-level

structures with entrances on more than one level (e.g., walk-out basements, garages under buildings), rather than grading the entire site flat and by using the flattest portions of the site for parking areas.

**23.3.8 Keep Traditional Access Open**

The project shall site buildings and develop other areas so as not to block trails or paths traditionally used as access to back land or that are established wildlife corridors. This provision shall not be construed to create any access rights.

**23.4 FRONTAGE REDUCTION RATIOS IN PROPORTION TO DWELLING DENSITY REDUCTION**

A special permit may be issued so that the required lot frontage is decreased as a function of average density decrease (average lot size and upland increase) in equal proportions, to a minimum of fifty (50) feet of frontage. By way of example, the required lot frontage for any lot shown on the plan being proposed to benefit from this Article may be decreased only by the proportionate increase in lot area and upland area for said lot(s). The standard lot frontage is 150 feet for a minimum 60,000 square foot lot containing a minimum of 30,000 square feet of contiguous upland ceteris paribus. To achieve a lot frontage reduction to 75 feet, the lot density of the benefited lots shall be halved by increasing their average lot size to at least 120,000 square feet and their average contiguous upland to at least 60,000 square feet. To achieve the minimum lot frontage of fifty (50) feet under this Article, the lot size shown on the plan shall be at least 180,000 square feet and the contiguous upland area at least 90,000 square feet. These examples are illustrated in the table below:

Residential Lot Size (SF)	Minimum Upland (SF)	Frontage (Feet)
60,000 Std. Min.	30,000	150
120,000	60,000	75
180,000	90,000	50

At no point shall the new lot lines create a width narrower than 50 feet, the width shall also be equal to or greater than the required frontage from the street line to the proposed dwelling. The width shall be measured in accordance with Section 7.6.1.1.2. If the Board determines that reducing the width improves the overall design of the project, the board may waive the width requirement.

The lots so benefiting from reduced frontage under this Article shall be indicated on the endorsed plan and the plan shall be recorded with the special permit decision which shall contain conditions that the lots shown on the plan shall not be further subdivided and that the clearing and building locations shall not be changed from what is shown on the plan without a modification of the special permit. The following notes shall also be placed on the plan:

1. "Lots shown on this plan benefiting from reduced frontage under Zoning By-law Article 23 shall not be further subdivided and no modification of

the clearing restrictions and building locations shall occur without a corresponding modification of the special permit and recorded plan."

and;

2. "No lot clearing shall begin and no building permit shall be issued for lots shown on this plan benefiting from reduced frontage under Zoning By-law Article 23 until the Special Permit has been duly approved, executed and recorded and evidence of the recording has been filed with the Inspector of Buildings."

(2012 ATM, Article 41, 2014 ATM, Article 31)

## **ARTICLE 24**

### **SOLAR ENERGY SYSTEMS**

#### **24.1 PURPOSE**

The purpose of this article is to provide as-of-right siting for small scale solar energy systems in all zoning districts and such development may proceed without need for discretionary approval as set forth herein and to limit large scale solar energy systems as set forth herein. The provisions set forth in this section of the Zoning By-Law shall apply to the construction, operation, repair, and/or removal of solar photovoltaic installations, and to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

The intent of the By-Law is to create a reasonable regulation to ensure that the construction and operation of all solar photovoltaic installations be consistent with all applicable local, state and federal requirements, notwithstanding Chapter 40A, Section 3, including but not limited to all applicable nuisance (noise, odor, lighting etc), stormwater, safety, construction, electrical, and communications requirements. All buildings, structures and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

#### **24.2 AS-OF-RIGHT SMALL SCALE SOLAR ENERGY SYSTEMS AND ANY SIZE ROOF MOUNTED SYSTEM**

##### **24.2.1 Purpose**

The purpose of small-scale ground mounted solar photovoltaic installations and roof-mounted photovoltaic solar installations is to promote the creation of renewable energy for individual residences, commercial enterprises and municipal and other buildings, as-of-right, requiring the issuance of a building permit after demonstrating compliance with this bylaw.

##### **24.2.2 Small-Scale Roof-Mounted Solar Energy Equipment**

Retrofitted roof-mounted solar equipment shall be located so as not to increase the total height of the structure more than one (1) foot above the applicable zoning regulations related to height in the Zoning District in which it is located, or such other height as is determined by the Building Inspector to be essential for proper operation, but in no case no more than four (4) feet above existing roof plane, whichever is lesser. All new construction shall comply with the height regulation as listed in Article 7 of the Zoning Bylaw (Intensity Regulations).

**24.2.3 Small-Scale Ground-Mounted Solar Energy System Equipment**

Small-scale ground mounted solar equipment is permitted provided it meets the Zoning Dimensional Setbacks as listed in Article 7 of the Zoning Bylaw (Intensity Regulations).

Small-scale ground-mounted equipment shall be adequately screened from the neighboring lot line as determined by the Building/Zoning Official.

The height of Small-Scale Ground-Mounted Solar Equipment shall not exceed twelve (12) feet above existing grade.

**24.2.4 Permitting**

Small-scale solar equipment requires a building permit. All other necessary permits, such as electrical, shall be obtained through the Building Official/Zoning Official and from other Town departments.

**24.2.5 As-Built Plans**

As-built plans shall be submitted prior to final inspection approval.

**24.3 LARGE SCALE SOLAR ENERGY SYSTEMS**

**24.3.1 Purpose**

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

**24.3.2 Site Plan Approval**

Large-scale ground-mounted solar photovoltaic installations are allowed subject to Planning Board Site Plan Approval in the Business Districts

and Unrestricted Districts.

### **24.3.3 Special Permit**

Large-scale ground-mounted solar photovoltaic installations are allowed by special permit granted by the Planning Board in the Residence-Agriculture District.

### **24.3.4 Administration**

The Planning Board shall be the Special Permit Granting Authority (SPGA) for a Large Scale Ground Mounted Solar Photovoltaic Installation special permit. The SPGA shall follow the procedural requirements for special permits as set forth in Section 9 of MGL Chapter 40A. After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other town boards and/or departments, the SPGA may grant such a permit. The SPGA shall impose conditions reasonably appropriate to assure proper site design, safety, and protect water quality, air quality, and significant environmental resources, and/or otherwise serve the purpose of this section.

### **24.3.5 Required Review and Permitting**

All large-scale ground-mounted solar photovoltaic installations in the Business and Unrestricted Zoning Districts shall require Site Plan Approval under Article 15 and a building permit issued by the Building Inspector. Low Impact Development Site Plan Approval, under Zoning By-Law Article 20 by the Planning Board shall also apply.

All large-scale ground-mounted solar photovoltaic installations in the Residential/Agricultural zoning district shall require a special permit under this Zoning By-Law and a building permit. Low Impact Development Site Plan Approval, under Zoning By-Law Article 20 by the Planning Board shall also apply.

### **24.3.6 Utility Notification**

Evidence shall be provided at time of the application that the utility company that operates the electrical grid where the installation is to be located has been informed of the intent of a solar photovoltaic installation and that approval to connect to the grid has been granted or appropriate application(s) have or will be made to such utilities for interconnection. Off-grid systems shall be exempt from this requirement. Reasonable efforts should be made to place all utility connections underground, depending on appropriate soil conditions, wetlands, shape and topography of the site. The Building Inspector or Planning Board will consider this information in their deliberations.

**24.3.7**      **Fees**

An application shall be accompanied by the required fee and a tri-party account for engineering review, monitoring, and inspections fees. An application for a building permit shall be accompanied by the fee required for a building permit. All other fees that shall be required by permitting parties (Conservation Commission, etc.) shall be administered according to their regulations.

**24.3.8**      **Dimensional Requirements for Large Scale Systems (Lot Size, Frontage, Setbacks and Height)**

No minimum lot size is required in any zoning district.  
Frontage – no minimum required.

Height of Structures – No component of a Large-Scale Ground-Mounted Solar Photovoltaic Installation shall exceed 15 feet above existing grade (except for connection to the grid).

Setbacks in Residential Districts\*:  
Front Yard - depth shall be at least      100 feet  
Side Yard - depth shall be at least      100 feet  
Rear Yard - depth shall be at least      100 feet

Setbacks in Business and Unrestricted Districts\*:  
Front Yard - depth shall be at least      50 feet  
Side Yard - depth shall be at least      50 feet  
Rear Yard - depth shall be at least      50 feet

\*Setbacks may be reduced if, in the opinion of the Planning Board based on evidence submitted by applicant, existing and/or proposed screening will be adequate to minimize visual impact (as described in 24.3.11.d). Under no circumstance will setbacks be reduced to less than the dimensional requirements for the zoning district.

**24.3.9**      **Required Documents**

In addition to any other documents required under the Town of Westport Zoning By-Law, the following documents shall be provided for Large-Scale Ground-Mounted Solar Photovoltaic Installation:

- a. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts in accordance with the “Plans and Plan Content” section of Rules and Regulations of the Westport Planning Board for Site Plan Approval (Section 2.2.3).

- b.** Drawings of the solar photovoltaic installation showing the proposed layout of the system and any potential shading from nearby structures shall be shown on the plans.
- c.** One or three line electrical diagrams detailing the solar photovoltaic installation, associated components and electrical interconnection methods with all National Electrical Code compliant disconnects and overcurrent devices shall be shown on the plans.
- d.** Documentation of the major system components to be used, including the electric generating photovoltaic panels, mounting system, inverter, etc. shall be provided (including applicable material safety data sheets (MSDS)).
- e.** A list of any hazardous materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment, as appropriate, (including applicable material safety data sheets (MSDS)).
- f.** Name, address, signature and contact information for project applicant, co-applicant and name, address, signatures and contact information of any agents representing the project applicant's proposed system installer shall be provided.
- g.** Photometric plan for any required site lighting with specific cut-sheet details.
- h.** All signage detail shall be submitted with the application showing dimensions and detail.
- i.** A rendering or photo simulation showing the proposed project at completion.
- j.** Locations of wetlands and Priority Habitat Areas defined by the Natural Heritage and Endangered Species Program (NHESP); the applicant shall provide evidence of compliance with these regulations.
- k.** Locations of Floodplains or inundation areas for moderate or high hazard dams.
- l.** Locations of local or National Historic Districts and Priority Heritage Landscapes or other significant cultural sites.
- m.** Plans showing provision of water including that needed for fire protection.

- n. Plans showing existing trees of 6” caliper or larger.
- o. Proof of liability insurance.

The Building Inspector or Planning Board may waive documentary requirements as it deems appropriate. All waiver requests must be written on the site plan.

**24.3.10 Site Control**

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

**24.3.11 Design Standards**

**a. Lighting**

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting shall be compliant with Section 20.9, Outdoor Lighting, in the Rules and Regulations of the Westport Planning Board for Site Plan Approval.

**b. Signage**

A non-illuminated sign not exceeding four square feet in area shall be installed identifying the owner and/or operator of the solar installation and a 24-hour emergency contact telephone number. Additional signage relative to public safety shall be permitted if approved by the Building Inspector.

**c. Land Clearing, Landscaping, Vegetation Maintenance**

Clearing of natural vegetation shall be limited to what is necessary for construction, operation and maintenance of the installation. Article 20, Low Impact Development Site Plan Approval shall apply.

Herbicides shall only be applied by properly licensed personnel. Mowing, grazing, or using geotextile materials underneath the solar arrays are possible alternatives.

**d. Visual Impact**

Structures shall be reasonably shielded from view by vegetation and/or joined and clustered to minimize adverse visual impacts. Landscaping, natural features, opaque fencing and other suitable

methods shall be utilized. A screening plan shall be submitted ensuring that the solar arrays and any appurtenant structures are screened from roads and from adjacent lots by a minimum twenty-five (25) foot wide and five (5) foot tall staggered and grouped planting of shrubs and small trees within the setbacks. The Planning Board may alter or waive this requirement if such screening would have a detrimental impact on the operation and performance of the array, or would prove to be ineffective for the site. Fences may be required for safety and/or visual screening purposes with appropriate safety signage (see 24.3.11.b).

When possible, a diversity of plant species shall be used, with a preference for species native to New England. Use of exotic plants, as identified by the most recent copy of the "Massachusetts Prohibited Plant List" maintained by the Massachusetts Department of Agricultural Resources, is prohibited.

Such plantings shall use native plants and a mix of deciduous and evergreen species and may be located within the setback area. Said vegetative screening shall reach a mature form to effectively screen the installation within five years of installation. Planting of the vegetative screen shall be completed prior to final inspection and approval of the solar energy installation. A landscape maintenance bond may be required for two (2) growing seasons.

Pre-application clearing may negate the application for Large Scale Systems at the Planning Board's discretion.

**e. Safety, Emergency Service and Hazardous Materials**

The applicant shall provide a copy of the project summary, electrical schematic, and site plan. The applicant shall develop an emergency response plan including showing all means of shutting down the solar installation. The applicant shall submit the name of the person answerable to inquires throughout the life of the installation. The name of the designated individual shall be kept current and on file with the Planning Board and the Building Inspector.

Hazardous materials stored, used, or generated on site shall not exceed the amount for a Very Small Quantity Generator of Hazardous Waste as defined by the DEP pursuant to MassDEP regulations 310 CMR 30.000 and shall meet all requirements of the DEP including storage of hazardous materials in a building with an impervious floor that is not adjacent to any floor drains to prevent discharge to the outdoor environment. If hazardous materials are utilized within the solar photovoltaic equipment,

impervious containment areas capable of controlling any release to the environment to prevent potential contamination of groundwater are required.

**f. Monitoring and Maintenance**

The applicant shall submit a plan for the operation and maintenance of the installation, which shall include measures for maintaining the site including safe access, stormwater control, structural repairs and the integrity of security measures. These measures shall be approved by the Fire Chief and emergency medical services personnel. The owner and/or operator shall be responsible for the cost of maintaining the installation.

**g. Appurtenant Structures**

All appurtenant structures to large-scale ground-mounted solar photovoltaic installations shall, be subject to reasonable conditions concerning the bulk and height of structures, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be screened from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

**h. Noise**

Noise generated by Large-Scale Ground-Mounted Solar Photovoltaic Installations and associated equipment and machinery shall conform to applicable state and local noise regulations, including the DEP's Division of Air Quality noise regulations, 310 CMR 7.10. A source of sound will be considered in violation of said regulations if the source:

- i.** Increases the broadband sound level by more than 10 db (A) above ambient; or
- ii.** Produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more. Said criteria are measured both at the property line and at the nearest inhabited residence. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours, unless established by other means with the consent of the DEP. Noise generated shall

further comply with Section XL of the Town of Westport By-Laws.

**i. Impact on Agricultural and Environmentally Sensitive Land**

The facility shall be designed to minimize impacts to agricultural and environmentally sensitive land and to be compatible with continued agricultural use of the land whenever possible.

**24.3.12 As-Built Plans**

As-built plans shall be approved by the Building Inspector, if said plans represent construction of the facility as shown on the building permit application or the site plan approved by the Planning Board before a Certificate of Completion or Occupancy may be issued.

**24.3.13 Modifications**

All material modifications as determined by the Building Inspector for a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board.

**24.3.14 Change in Ownership**

If the owner and/or operator of a large-scale ground mounted solar facility changes, notice shall be given to the Building Inspector and Planning Board with the contact information of the new owner/operator within one month of the change in ownership and/or operations.

**24.3.15 Annual Reporting**

The owner or operator of the installation shall submit an Annual Report to the Building Inspector and the Planning Board which certifies compliance with the requirements of this By-Law and their approved site plan including control of vegetation, noise standards, and adequacy of road access by January 15<sup>th</sup> of each year.

**24.3.16 Abandonment, Decommissioning and Removal of Equipment**

The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of their proposed date of discontinued operations and plans for removal. The notification shall consist of the methodology of physical removal of all structures, equipment, security barriers and transmission lines, disposal of all solid and hazardous waste, and stabilization or re-vegetation of the site.

If the owner or operator fails to remove the installation in accordance with the above criteria, the Town or its agents may, after the receipt of an appropriate court order or consent of the owner, enter the property and physically remove the installation at the owner's expense. As a condition of siting any such use, an equipment owner shall allow the Town entry to remove an abandoned or decommissioned installation. The cost for the removal will be charged to the property owner in accordance with the provisions of M.G.L. 139, Section 3A as a tax lien on the property.

Decommissioning shall consist of:

- a. Physical removal of all Large-Scale Ground-Mounted Solar Photovoltaic Installations, structures, equipment, security barriers and transmission lines from the site, including any materials used to limit vegetation.
- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- c. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- d. Restoration of agricultural land to a condition suitable for resumption of agricultural production.

**24.3.17 Financial Surety for Removal/Remediation on Municipal Property**

The applicant shall provide surety (either through escrow account or other form of surety approved by the Building Inspector or Planning Board) to cover the cost of removal in the event the Town must remove the installation and remediate the landscapes, in an amount and form determined to be reasonable by the Planning Board. Such amount shall not exceed 150% of the estimated cost of removal and compliance with any additional requirements set forth herein. The project applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal cost due to inflation. The estimate shall be verified by the Planning Board's consultant engineer or other expert who may be engaged pursuant to Section 24.4.

**24.4 CONSULTANT REVIEW**

The Building Inspector and the Planning Board shall establish a procedure for engaging a professional engineer and/or other technical consultant to advise the Building Inspector or Planning Board, and to review application plans and documents in

application phase and the construction phase. The applicant shall pay for the cost of the consultant review pursuant to the procedures specified in M.G.L. c. 44, §53G or §53A. Further, the Building Inspector and the Planning Board shall establish a procedure for engaging consultants to inspect and confirm compliance with any requirements during construction and maintenance. Refusal to pay the necessary consultant fees shall be a basis to deny the building permit, site plan, or special permit approval. Such procedure shall include prior notice to the owner or operator of the installation of the cause of such proposed engagement.

**24.5            EXPEDITED APPLICATION AND PERMITTING PROCESS**

The Planning Board shall issue decisions for solar Energy Systems within one year from the date of submission of a completed application.

**24.6            SEVERABILITY**

Severability. If any provision herein is determined to be unlawful, it shall be severed from this section and all remaining provisions shall remain in force and effect.

(2013 STM, Article 11)

**ARTICLE 25**

**MEDICAL MARIJUANA TREATMENT CENTERS**

**25.1            PURPOSE**

The purpose and intent of this Article is to regulate the siting of Medical Marijuana Treatment Centers, by minimizing the adverse impacts on adjacent properties, residential neighborhoods, schools and other places where children congregate, and other land uses potentially incompatible with said Centers.

**25.2            AUTHORITY**

Medical Marijuana Treatment Centers, other than agricultural operations meeting exemption standards under M.G.L. Chapter 40A Section 3, may be allowed by Special Permit from the Westport Planning Board provided the Planning Board finds that:

1.            The Facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. Chapter 40A, Section 11.

2. The Facility is designed to maximize security measures including but not limited to lighting, fencing, visibility and gates. Alarms and video shall connect to the Police Station for security.
3. The Facility demonstrates that it will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations; and
4. The applicant has satisfied all of the conditions and requirements of this Section.

### **25.3      REQUIREMENTS**

1. Medical Marijuana Treatment Centers shall only be located in the Science and Technology Overlay District and the Business District with the exception of that portion of the Business District bounded to the south following an east-west line 50' parallel to and south of Kaila's Way; to the east by Route 88; to the north by the northern boundary of the Business District; and to the west by a line 1,000' from the westerly line of Main Road, currently the boundary of the Business District.
2. All Medical Marijuana Treatment Centers shall be contained within a permanent building or structure.
3. No other use shall be permitted on a lot containing a Medical Marijuana Treatment Center.
4. Buildings and parking areas shall be clearly visible from the street.
5. Medical Marijuana Treatment Centers shall meet the following dimensional requirements and any additional requirements listed in the district in which it is located.  
  
Minimum Front Yard 50'  
Minimum Side Yard 25'  
Minimum Rear Yard 25'  
Maximum Gross Floor Area 10,000 s.f.
6. The hours of operation of a Medical Marijuana Treatment Center shall be set by the Special Permit Granting Authority, but in no event shall said

facilities be open between the hours of 8:00 PM and 8:00 AM. All visits shall be by appointment only.

7. Site Plan Approval under Article 15 is required for all Medical Marijuana Treatment Centers.
8. Medical Marijuana Treatment Centers that can demonstrate that they comply with the agricultural exemption under M.G.L. Chapter 40A, Section 3 must still apply for Site Plan Approval under Article 15.

#### **25.4 WAIVER OF COMPLIANCE**

The Planning Board acting as the Special Permit Granting Authority, under this Section may waive strict compliance with the dimensional requirements, provided the Board finds that the waivers are in the public interest and not inconsistent with the purpose and intent of this Section.

#### **25.5 TERM LIMIT**

A special permit granted under this Section shall have a term limited to the duration of the applicant's ownership of the premises as a Medical Marijuana Treatment Centers. A special permit may be transferred only with the approval of the Planning Board in the form of an amendment to the special permit.

#### **25.6 LAPSE**

A special permit shall lapse if not exercised within two years of issuance.

(2014 ATM, Article 29)

### **ARTICLE 26**

#### **TEMPORARY MORATORIUM OF RECREATIONAL MARIJUANA FACILITIES AND RELATED USES**

##### **26.1 PURPOSE**

By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law regulating the production and distribution of recreational marijuana under a system that licenses, regulates and taxes the businesses involved in a manner similar to alcohol and to make marijuana legal for adults 21 years of age or older. The law as amended provides that it is effective on December 15, 2016, and the Cannabis Control Commission shall promulgate the initial regulations under Section 4 of Chapter

94G of the General Laws not later than March 15, 2018. Currently under the Zoning By-Law, Recreational Marijuana Establishments, including establishments for cultivating, manufacturing, testing, processing, retail sales of recreational marijuana and any other type of licensed marijuana-related business are not a permitted use in the Town of Westport and any regulations promulgated by the State are expected to provide guidance to the Town in regulating recreational marijuana, including Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning By-Law regarding regulation of Recreational Marijuana Facilities and any other uses related to recreational marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact by-laws in a manner consistent with sound land use planning goals and objectives.

**26.2**            **DEFINITION**

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

**26.3**            **TEMPORARY MORATORIUM**

For the reasons set forth above and notwithstanding any other provision of the Zoning By-Law to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Recreational Marijuana Establishment. The moratorium shall be in effect through June 30, 2018. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, consider the State regulations regarding Recreational Marijuana Establishments and related uses, and shall consider adopting new Zoning Bylaws to address the impact and operation of Recreational Marijuana Establishments and related uses.

(2017 ATM, Article 25)

## TABLE OF USE REGULATIONS

**X = Prohibited unless allowed in Underlying District**

**Y = Allowed By Right**

**N = Prohibited**

**SPBA = Special Permit Board of Appeals**

**SPPB = Special Permit Planning Board**

**SPA-PB = Site Plan Approval Planning Board**

<u>USES</u>	<u>RESIDENTIAL/ AGRICULTURAL</u>	<u>BUSINESS</u>	<u>UNRESTRICTED</u>	<u>STOD (Art. 22)</u>
ACCESSORY APARTMENT (see section 4.0.1.B.5.)	Y	Y	Y	X
ACCESSORY USE Included but not limited to: HOME OCCUPATION	Y	Y	Y	X
ADULT ENTERTAINMENT ESTABLISHMENT	N	N Except SPBA & SPA-PB in AEOD	N	X
AGRICULTURE	Y	Y	Y	X
AGRICULTURAL, FORESTRY NURSERY, GARDENING, FARM,	Y	Y	Y	X
AMUSEMENT OR ASSEMBLY (see section 4.0.2.C)	N	SPBA/ SPA-PB	Y/SPA-PB	X
ANALYTICAL LABORATORY INSTRUMENT MANUFACTURING	N	N	SPPB/SPA-PB	SPPB/SPA-PB
ANIMAL (EXCEPT POULTRY) SLAUGHTERING	N	Y/SPA-PB	SPPB/SPA-PB	SPPB/SPA-PB
ASSISTED AND INDEPENDENT LIVING FACILITIES	SPPB	SPPB	SPPB	X
AUTO BODY SHOP/AUTO REPAIR SHOP	N	Y/SPA-PB	Y/SPA-PB	X
AUTO SALESROOM CLASS 1 & 2	N	Y/SPA-PB	Y/SPA-PB	X
AUTO SALES, TRAILER SALES, OR FARM EQUIPMENT SALES	N	Y/SPA-PB	Y/SPA-PB	X
AUTO SERVICE STATIONS	N	Y/SPA-PB	Y/SPA-PB	X
AUTO STORAGE GARAGE	N	Y/SPA-PB	Y/SPA-PB	X
BANKS	N	Y/SPA-PB	Y/SPA-PB	X
BATH HOUSES, BEACH CLUBS, BOAT LANDINGS, WHARVES (see section 4.0.1.D)	SPBA	Y/SPA-PB	Y/SPA-PB	X
BOAT YARDS FOR CONSTRUCTION, STORAGE, MAINTENANCE, REPAIR OF BOATS (see section 4.0.1.D)	SPBA	Y/SPA-PB	Y/SPA-PB	X

<b>USES</b>	<b>RESIDENTIAL/ AGRICULTURAL</b>	<b>BUSINESS</b>	<b>UNRESTRICTED</b>	<b>STOD (Art. 22)</b>
BED & BREAKFAST	SPBA	Y/SPA-PB	Y/SPA-PB	X
BUSINESS AND SECRETARIAL SCHOOLS	N	Y/SPA-PB	SPPB/SPA-PB	SPPB/SPA-PB
CLUB, PRIVATE: NOT FOR PROFIT (See section 4.0.1.D)	SPBA	Y/SPA-PB	Y/SPA-PB	X
CLUB, PROFIT (see section 4.0.2.C)	N	SPBA/ SPA-PB	Y/SPA-PB	X
COMMERCIAL & NON-COMMERCIAL KENNELS	N	Y	Y	X
CONVALESCENT HOMES	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB	X
CONVERSION OF SINGLE-FAMILY INTO TWO-FAMILY STRUCTURE (see section 4.0.1.D)	SPBA	SPBA	SPBA	X
CUTTING TOOL AND MACHINE TOOL ACCESSORY MANUFACTURING	N	N	SPPB/SPA-PB	SPPB/SPA-PB
DATA PROCESSING, HOSTING AND RELATED SERVICES	N	Y	SPPB/SPA-PB	SPPB/SPA-PB
DENTAL EQUIPMENT AND SUPPLIES MANUFACTURING	N	Y/SPA-PB	SPPB/SPA-PB	SPPB/SPA-PB
DENTAL LABORATORIES	N	Y/SPA-PB	SPPB/SPA-PB	SPPB/SPA-PB
DETACHED ACCESSORY APARTMENTS	SPBA	SPBA	SPBA	X
DOGS: MAXIMUM 3 (see section 4.0.1.C)	N	Y	Y	X
DOGS: MAXIMUM 6	SPBA	Y	Y	X
DRIVE-THROUGH FACILITIES	N	SPPB	SPBA	X
DWELLING: ONE FAMILY	Y	Y	Y	X
DWELLING: TWO FAMILY	Y	Y	Y	X
DWELLING: MULTI-FAMILY	N	N	Y/SPA-PB	X
EARTH REMOVAL/MINING	N	N	Y/SPA-PB	X
EDUCATIONAL USES	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB	X
ELECTROMEDICAL AND ELECTROTHERAPEUTIC APPARATUS MANUFACTURING	N	N	SPPB/SPA-PB	SPPB/ SPA-PB

<b>USES</b>	<b>RESIDENTIAL/ AGRICULTURAL</b>	<b>BUSINESS</b>	<b>UNRESTRICTED</b>	<b>STOD (Art. 22)</b>
ELECTRONIC CONNECTOR MANUFACTURING	N	N	SPPB/SPA-PB	SPPB/ SPA-PB
ENGINEERING SERVICES	N	Y	SPPB/SPA-PB	SPPB/ SPA-PB
FARM MANAGEMENT SERVICES	Y	Y	SPPB/SPA-PB	SPPB/SPA-PB
FINFISH FARMING AND FISH HATCHERIES	SPBA/SPA-PB	N	SPPB/SPA-PB	SPPB/SPA-PB
FLEA MARKET (see section 4.0.1.D)	N	Y/SPA-PB	Y/SPA-PB	X
GLASS PRODUCT MANUFACTURING MADE OF PURCHASED GLASS	N	N	SPPB/SPA-PB	SPPB/SPA-PB
GREENHOUSES FOR AGRICULTURAL USE ONLY	Y	Y	Y	X
GOLF COURSE: PUBLIC OR PRIVATE (see section 4.0.1.D)	SPBA/ SPA-PB	Y/SPA-PB	Y/SPA-PB	X
HOME OFFICE (See section 4.0.1.B for Standards and Limitations)	Y	Y	Y	X
HOSPITALS	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB	X
HOTEL	N	Y/SPA-PB	Y/SPA-PB	X
INCLUSIONARY HOUSING	SPPB	SPPB	SPPB	X
INSTRUMENT MANUFACTURING FOR MEASURING AND TESTING ELECTRICITY AND ELECTRICAL SIGNALS	N	N	SPPB/SPA-PB	SPPB/SPA-PB
INSTRUMENTS AND RELATED PRODUCTS MANUFACTURING FOR MEASURING, DISPLAYING, AND CONTROLLING INDUSTRIAL PROCESS VARIABLES	N	N	SPPB/SPA-PB	SPPB/SPA-PB
JOB PRINTING	N	Y/SPA-PB	Y/SPA-PB	X
MANAGEMENT CONSULTING SERVICES	N	Y/SPA-PB	SPPB/SPA-PB	SPPB/SPA-PB

<u>USES</u>	<u>RESIDENTIAL/ AGRICULTURAL</u>	<u>BUSINESS</u>	<u>UNRESTRICTED</u>	<u>STOD (Art. 22)</u>
MEDICAL MARIJUANA TREATMENT CENTERS	N	SPPB/SPA-PB (1)	N	SPPB/SPA-PB
(1) Medical Marijuana Treatment Centers shall only be located in the Science and Technology Overlay District and the Business District with the exception of that portion of the Business District bounded to the south following an east-west line 50' parallel to and south of Kaila's Way; to the east by Route 88; to the north by the northern boundary of the Business District; and to the west by a line 1,000' from the westerly line of Main Road, currently the boundary of the Business District.				
MISCELLANEOUS RETAIL OR SERVICE BUSINESS (see section 4.0.2.B)	N	Y/SPA-PB	Y/SPA-PB	X
MOBILE HOME PARK	N	N	N	X
MOTEL	N	Y	Y	X
METEOROLOGICAL TOWER (Met Tower)	Y	Y	Y	X
MUNICIPAL	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB	X
MUSICAL INSTRUMENT MANUFACTURING	N	N	SPPB/SPA-PB	SPPB/SPA-PB
NATURAL GAS DISTRIBUTION	N	N	SPPB/SPA-PB	SPPB/SPA-PB
NEWSPAPER	N	Y/SPA-PB	Y/SPA-PB	X
NURSING HOMES	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB	X
OFFICES: BUSINESS OR PROFESSIONAL	N	Y/SPA-PB	Y/SPA-PB	X
OPEN SPACE RESIDENTIAL DEVELOPMENT	Y	Y	Y	X
OTHER AQUACULTURE	SPBA	N	SPPB/SPA-PB	SPPB/SPA-PB
OTHER MARINE FISHING	SPBA	N	SPPB/SPA-PB	SPPB/SPA-PB
OUTDOOR ADVERTISING WITH PERMIT	N	Y/SPA-PB	Y/SPA-PB	X
PUBLIC OR PRIVATE FACILITIES FOR AQUACULTURE (see section 4.0.1.D)	SPBA	SPBA	Y	X
PUBLIC UTILITY	N	Y/SPA-PB	Y/SPA-PB	X
RECREATION ACTIVE	SPBA	Y	Y	X
RECREATION PASSIVE	Y	Y	Y	X
RELIGIOUS USES	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB	X
RESEARCH LABS	N	Y/SPA-PB	Y/SPA-PB	SPPB & SPA-PB

<b>USES</b>	<b>RESIDENTIAL/ AGRICULTURAL</b>	<b>BUSINESS</b>	<b>UNRESTRICTED</b>	<b>STOD (Art. 22)</b>
RESIDENT FISHERMEN SHUCKING	Y	Y	Y	X
RESTAURANTS	N	Y/SPA-PB	Y/SPA-PB	X
ROOM RENTAL/BOARDING FOR NOT MORE THAN FOUR PERSONS IN A DWELLING	Y	Y	Y	X
SANITARIUMS	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB	X
SEMICONDUCTOR AND RELATED DEVICE MANUFACTURING	N	N	SPPB/SPA-PB	SPPB/SPA-PB
SEMICONDUCTOR MACHINERY MANUFACTURING	N	N	SPPB/SPA-PB	SPPB/SPA-PB
SHARED WIND ENERGY FACILITIES	SPBA	SPBA	SPBA	X
SHELLFISH FARMING	SPBA/SPA-PB	N	SPPB/SPA-PB	SPPB/SPA-PB
SIGNS (ACCESSORY)	Y	Y	Y	X
SOLAR ENERGY SYSTEMS LARGE SCALE	Y/SPPB	Y/SPA-PB	Y/SPA-PB	X
SOLAR ENERGY SYSTEMS SMALL SCALE	Y	Y	Y	X
SURGICAL AND MEDICAL INSTRUMENT MANUFACTURING	N	N	SPPB/SPA-PB	SPPB/SPA-PB
TEMPORARY TRAILER	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB	X
TIRE STORAGE YARDS	N	N	SPBA/ SPA-PB	X
TRADESMAN	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB	X
TURBINE AND TURBINE GENERATOR SET UNITS MANUFACTURING	N	N	SPPB/SPA-PB	SPPB/SPA-PB
WHOLESALE BUSINESSES (see section 4.0.2.B)	N	Y/SPA-PB	Y/SPA-PB	SPPB/SPA-PB
WIND ENERGY FACILITY, COMMERCIAL	N	SPBA/ SPA-PB	SPBA/ SPA-PB	X
WIND ENERGY FACILITY, COMMERCIAL OVER 140 FEET IN HEIGHT	N	SPBA/ SPA-PB	SPBA/ SPA-PB	X

<u>USES</u>	<u>RESIDENTIAL/ AGRICULTURAL</u>	<u>BUSINESS</u>	<u>UNRESTRICTED</u>	<u>STOD (Art. 22)</u>
WIND ENERGY FACILITY NON-COMMERCIAL	Y	Y	Y	X
WIND ENERGY FACILITY, NON-COMMERCIAL OVER 140 FEET IN HEIGHT	N	SPBA	SPBA	X
WIND TURBINES, THREE OR MORE ON ONE PARCEL	SPBA	SPBA	SPBA	X
YARD SALES & AUCTIONS: 3 DAYS IN 1 MONTH 4 DAYS CALENDAR YEAR	Y	Y	Y	X

**Table of Use Regulations Notes:**

In the event of conflicts between the narrative text in the sections of this Bylaw and the Table of Use Regulations, the text of the sections shall control.

It is the intent and purpose of the Table of Use Regulations to conform with M.G.L. Chapter 40A, § 3 Exemptions from Zoning Regulations, and to the extent that any provisions of this table are in conflict with the exemptions of said Chapter 40A, the provisions of Chapter 40A shall supersede and control the subject matter thereof.

(1990 ATM, Article 44; 1995 ATM, Article 42 [correction]; 1996 ATM, Article 39 [correction]; 1998 ATM, Article 64; 2000 ATM, Article 51; 2003 ATM, Article 48; 2005 ATM, Articles 6, 24, 29 [correction], & 30; 2006 ATM, Articles 4 & 9; 2007 ATM, Article 21; 2008 ATM, Article 45; 2012 ATM, Article 43; 2013 STM, Article 14; 2014 ATM, Articles 29 & 30; 2016 ATM, Article 38)

**APPENDIX A**  
**TOWN OF WESTPORT**  
**ARTICLE XIV - ZONING**  
**HISTORICAL REFERENCES**

**NOTE: Historical References are Original By-Laws and Sections**

**The following pages contain those sections of the Westport Zoning By-Laws that have been repealed or amended by subsequent provisions. They are included for reference purposes only. The date appearing beside each entry is the date that the Article passed at the Town Meeting, NOT its effective date. The relevant effective dates must be obtained from the Town Clerk.**

**(Editorial Note):** Prior to January 1, 1976, the effective date of Zoning By-Laws or amendments thereto was governed by M.G.L. Chapter 40 Section 32, which provided for approval by the Attorney General and publication prior to the By-Laws becoming effective. When Chapter 40A (the Zoning Enabling Act) Section 5 was amended, to take effect January 1, 1976, it carved out an exception to this rule from Chapter 40 which provided that the effective date of subsequent Zoning By-Laws and/or amendments thereto would be the date on which the provision passed the Town Meeting. If for any reason the provision was rejected by the Attorney General, the original provision would be reinstated as though no amendment or change had been voted).

**1.** The following three articles refer to the original zoning, which is of no current significance due to its total repeal in 1957. It is included for purposes of continuity and reference.

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**ARTICLE 32 - March 10, 1931:**

(Authority of M.G.L. c. 40 sections 25 - 99) For the purpose set forth in General Laws, Chapter 40, Section 25 and all acts in amendment thereof, a district is hereby established to be known as Zone A in the locations and having the following boundaries:

**a.** That portion in South Westport known as Horseneck East Beach included within the limits extending from a point on the shore at the Dartmouth town line to a point 300 feet northerly of the East Beach Road in Westport, thence westerly on a line 300 feet north of and parallel to said East Beach Road to a point 300 feet easterly of Reed Road, thence south and parallel with Reed Road 300 feet and thence continuing in a straight line to the ocean and thence easterly to the point of beginning.

**b.** That portion in South Westport known as Horseneck West Beach included within the limits extending from a proposed street known as Ocean Avenue at the shore, thence northeasterly on said Ocean Avenue to its intersection with the East Beach Road and thence northeasterly to Reed Road, thence northwesterly and westerly on said Reed Road to a point 300 feet easterly of its intersection with the road running south from Westport Point, thence southerly on a line 300 feet easterly of said last named road to the shore, thence easterly and southeasterly on the ocean to said Ocean Avenue; excepting, however, so much of said territory as lies 300 feet east and west of Sixteenth Avenue so called between said Reed Road and the Ocean.

**Sec. 2.** In the Zone A district no building or structure or part thereof shall be constructed, altered, enlarged, reconstructed or used and no premises shall be used for:

**a.** Any industry, trade, manufacturing or commercial purpose, or for

- b.** Any purpose except the following specified uses:
- 1.** Single or two-family detached house;
  - 2.** Boarding or lodging house;
  - 3.** Place of worship;
  - 4.** Public school or other public use;
  - 5.** Private club;
  - 6.** Tea room or gift shop in a dwelling;
  - 7.** Private garage for no more than two motor vehicles;
  - 8.** Parking spaces not less than 50 feet from the property line of another, 40 feet from mean high water shore line or 12 feet from the street line of any street or way;
  - 9.** Private bathhouses, not to exceed four separate compartments and covering an area of not more than 100 square feet, but no bathhouse shall be erected on the front half of any lot.

**Sec. 3.** In the Zone A district no building shall be located nearer than 2 feet from the street line of any street or way, 20 feet from mean high water shore line, or 6 feet from the side line of any adjoining lot, except that a private garage may be located within 2 feet of the side or rear lot line but shall not be located on the half of any lot adjacent to the shore or on the front half of any lot.

**Sec. 4.** No dwelling house shall be constructed on a lot whose area is less than 4,000 square feet provided, however, that where a lot has already been platted at the time of the adoption of these By-Laws and it appears that the owner thereof has no land adjacent thereto, such, lot may be occupied by a single-family dwelling providing it contains more than 3,000 square feet.

**Sec. 5.** No building or buildings shall be erected so as to occupy more than 50 percent of the area of any lot.

**Sec. 6.** No lot shall be reduced in area or its dimensions so that any structure thereon shall be within the limits prohibited by the By-Laws.

**Sec. 7.** Before any structure within the Zone A district shall be constructed, altered, enlarged, or reconstructed, the owner, or lessee or the agent of either or the architect or builder employed for the purpose, shall, except for ordinary repairs apply to the Selectmen for a permit and shall submit a detailed description of the location, purpose and construction proposed and such reasonable plans and information as the Selectmen may require.

**Sec. 8.** It shall be the duty of the Selectmen to approve said application within a reasonable time if the location, purpose and construction aforesaid shall be within the requirements of these By-Laws.

**Sec. 9.** No person shall commence the erection, alteration or reconstruction of any structure within the Zone A district without first receiving a permit in writing from the Selectmen.

**Sec. 10.** Whoever violates the provision of these Zoning Laws shall be liable for a penalty of not more than twenty (\$20.00) dollars for each violation thereof.

**Sec. 11.** Any person aggrieved by the refusal of the Selectmen to grant a permit in accordance

with these By-Laws, may appeal therefrom and the Selectmen shall thereupon appoint a Board of Appeal consisting of three disinterested persons who shall review the proceedings and who are hereby empowered to grant or reject the permit requested.

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**ARTICLE 28 - March 15, 1949:**

**Voted:** To amend that section of the Zoning Laws adopted by the Town of Westport on March 10, 1931, and approved by the Attorney General on April 8, 1931, identified as sub-section "b" and substituting therefore a new sub-section "b", reading as follows:

That portion in South Westport known as Horseneck West Beach included within the limits extended from a proposed street known as Ocean Avenue at the shore, thence northeasterly on said Ocean Avenue to its intersection with the East Beach Road, and thence northeasterly to Reed Road, thence northwesterly and westerly on said Reed Road to its intersection with the road running south from Westport Point, thence southerly on said last named road to the shore, thence easterly and southeasterly on the ocean to said Ocean Avenue, excepting, however,

1. So much of said territory as lies 300 feet east and west of Sixteenth Avenue, so-called between said Reed Road and the ocean, and
2. So much of said territory as lies between the ocean and a line parallel with and 500 feet northerly of West Beach Road, so-called, west of a line parallel with and 300 feet west of Sixteenth Avenue, so-called, and east of the road running south from Westport Point.

All of said new sub-section "b" as delineated on Plan of Horseneck Beach, Westport, Mass., Showing Zone Areas, dated January 31, 1949, Francis S. Borden, C.E. which plan is made a part hereof.

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**ARTICLE 36 - March 27, 1957:**

**A.** A dwelling hereafter erected in any district shall be located on a lot having not less than the minimum requirements set forth in the table below, and no more than one dwelling shall be built upon any such lot. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

<u>District</u>	<u>Minimum Lot Dimension</u>		<u>Maximum Height Building (a)</u>	
	<u>Area in Sq. Ft.(a)</u>	<u>Frontage in Ft.(a)</u>	<u>No. of Stories</u>	<u>Ft.</u>
Residence	(20,000)	(100)	2 ½	(40)
Business	(20,000)	(100)	2 ½	(40)
Industrial - No restrictions except minimum lot size of 20,000 sq. ft.				

**B.** Lot Size Exceptions

The foregoing provisions of this section shall not prohibit the erection of a dwelling in any district upon a vacant lot having less than such minimum requirements as to area, frontage or width:

- (1) If such lot was shown on a plan on file in the Registry of Deeds on the effective date of this By-Law; or

(2) If the owner of such lot on the effective date of this By-Law owned no adjoining land available for use in connection with such lot.

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**ARTICLE 4** - June 6, 1957:

**Voted:** To repeal the Zoning By-Laws adopted on March 10, 1931 as amended March 15, 1949.

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**ARTICLE 38** - March 26, 1963:

**Section 1. Purpose**

In order to promote the health, safety, convenience and general welfare of its inhabitants, to lessen the danger from fire and congestion and to improve the town under the provisions of General Law, Chapter 40A, the use, construction, repair, alteration and height of buildings and structures and the use of premises in the Town are hereinafter provided.

**3. Section II. Definitions**

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**ARTICLE 38** - March 26, 1963:

**6.** Lot: A parcel of land having not less than the frontage, area, and width required under the provisions of this By-Law and the Building Regulations and having its principal frontage on a street or other means of access as may be determined in accordance with the provisions of the law to be adequate as a condition of the issuance of a building permit.

**8.** Street Line: The dividing line between the street right of way and the lot.

**4. Section IIB. Location of Districts**

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**ARTICLE 38** - March 26, 1963:

Location of Districts: Said districts are located and bounded as shown on a map entitled "Zoning Map of Westport, Massachusetts", dated June 6, 1957 and on file in the office of the Town Clerk. The Zoning Map, with all explanatory matter thereon is hereby made a part of this By-Law. The map is described as follows:

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**ARTICLE 25** - March 17, 1959:

**Voted:** To amend Section V-A of its Zoning By-Laws by requiring that all lots shall have a minimum of 100 foot frontage.

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**ARTICLE 38** - March 26, 1963:

- A. Amend by changing the word "Industrial" to read "Unrestricted."
- 

**ARTICLE 38 - March 26, 1963:**

A. Non-conforming Uses

- 1) The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this By-Law may be continued although such structure or use does not conform with provisions of the By-Law.
  - 2) Abandonment. A non-conforming use that has been abandoned two years shall not be re-established and any future use shall conform with this By-Law.
  - 3) Changes. Once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use.
- 

**ARTICLE 38 - March 26, 1963:**

A. Enforcement

This By-Law shall be enforced by the Selectmen through the Building Inspector appointed by them. No building shall be built or altered and no use of land or a building shall be begun or changed without a permit having been issued by the Building Inspector. No building shall be occupied until a certificate of occupancy has been issued by the Building Inspector. Any person violating any of the provisions of this By-Law may be fined not more than twenty dollars for each offense. Each day that such violation continues shall constitute a separate offense.

B. Board of Appeals

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

- 1). Appeals. To hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws or by any officer or board of the Town, or by any person aggrieved by any order or decision of the Inspector of Buildings, or other administrative official in violation of any provisions of Chapter 40A of the General Laws, or of this By-Law.
- 2). Special Permits. To grant a special permit for an exception as provided by sections of this By-Law when it shall have found that the use involved will not be detrimental to the established or future character of the neighborhood and town and subject to appropriate conditions or safeguards if deemed necessary.
- 3). Variances. To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon a variance from the terms of this By-Law where, owing to conditions especially affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this By-Law would involve substantial hardship to the appellant and where 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 By-Law, but not otherwise.

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**ARTICLE 38 - March 26, 1963:**

C. Amendment. This By-Law may be amended from time to time at the annual or special town meeting in accordance with the provisions of Section 6 of Chapter 40A.

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**ARTICLE 50 - April 7, 1970:**

A. A dwelling hereafter erected or placed in any district shall be located on a lot having not less than the minimum requirements set forth in the table below and no more than one dwelling shall be built upon any such lot. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

<u>District</u>	<u>Minimum Lot Dimension</u>		<u>Maximum Height Building</u>	
	<u>Area in Sq. Ft</u>	<u>Frontage in Ft.</u>	<u>No. of Stories</u>	<u>Ft.</u>
Residence	(40,000)	(100)	2 ½	(40)
Business	(40,000)	(100)	2 ½	(40)
Unrestricted	(40,000)	(100)	none	none

**B. Lot Size Exceptions**

The foregoing provisions of this section shall not prohibit the erection of a dwelling in any district upon a vacant lot having less than such minimum requirements as to area or frontage:

- 1) If such lot was shown on a plan or deed on file in the Registry of Deeds on July 11, 1957 and had a minimum of 30 feet frontage; or
- 2) If the owner of such lot on July 11, 1957 owned no adjoining land available for use in connection with such lot; or
- 3) If such lot has an area of at least 20,000 square feet and a frontage of at least 100 feet and is shown on a plan or deed on file in the Registry of Deeds on the effective date of this By-Law; or
- 4) If such lot, a plan of which was on file in the Registry of Deeds on July 11, 1957 and does not have the 30 feet minimum frontage required by V-B(1) and the owner of such lot on July 11, 1957 owned no adjoining land available for use in connection with such lot and an application is made and approved by the Appeals Board for a special permit to construct a single dwelling on a lot.

C. No dwelling for occupancy by two families shall hereafter be built, erected or located on a lot having an area of less than 40,000 square feet and 100 feet frontage. For each additional 20,000 square feet of area and 50 feet of frontage in the lot, the size of the dwelling may be increased to accommodate one additional family or dwelling unit.

**7. Section VI. General Regulations**

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**ARTICLE 16 - July 31, 1973:**

**Voted:** To amend the Zoning By-Law of the Town of Westport by deleting the present non-conforming use and adopting the following new regulations:

**A. Non-Conforming Uses**

- 1) The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this By-Law may be continued although such structure or use does not conform with the regulations of the district in which it is located and allow the right to be sold to any equal or similar business.
- 2) Abandonment. A non-conforming use that has been abandoned four years shall not be re-established and any future use shall conform with this By-Law.
- 3) Changes. A non-conforming use may be changed so as to conform to this By-Law but once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use. A non-conforming use may be changed to another use not substantially different in character or not more detrimental to the district upon approval by the Board of Appeals.
- 4) Alteration. A non-conforming structure may be altered or reconstructed or replaced.
- 5) Extension. A non-conforming use may be expanded in size or scope of the activity within the confines of the lot used therefore and to the extent permitted by the building regulation By-Law.
- 6) Restoration. A non-conforming structure damaged or destroyed by fire or other causes may be repaired or rebuilt.

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**ARTICLE 36 - April 15, 1975:**

**Voted:** To amend the Westport Zoning By-Law to increase the membership of the Board of Appeals to 5 persons, by deleting the number 3 in the first sentence of the first paragraph of Section VII-B Board of Appeals, and inserting in place thereof the number 5.

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**ARTICLE 11 - July 16, 1975:**

Under Section III-B Location of Districts, add new paragraph "4. As Flood Plain: All portions of the Town included in Paragraphs 1,2, and 3 above and indicated as zones A7, A8, and A9, on Department of Housing and Urban Development maps, entitled Westport, Mass., FIA Flood Hazard Boundary Map #802 and #803, effective date August 12, 1970, with interim map revision effective July 1, 1974, lying below the elevations of 10 feet, 11 feet, and 12 feet above mean sea level for said Zones A7, A8, and A9 respectively. (copies of the aforesaid maps are on file in the Town Clerk's office)."

**5. Section IV. Use Regulations**

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**ARTICLE 11 - July 16, 1975:**

After Section IV-C add IV-D. Flood Plain District

1. Any use permitted in the applicable residence, business, or unrestricted district in which the

flood plain district is located, except no use may be permitted which when combined with all other existing and anticipated uses will increase the water surface elevation of the 100 year flood more than one foot at any point.

6. Section V. Intensity Regulations

After Section VI-B add VI-C. Flood Plain Districts.

1) The following provisions apply to the areas located within Zones A7, A8, and A9 indicated on the flood hazard boundary maps, and having elevations below the base flood elevation, (100 year flood) which is 10 feet, 11 feet and 12 feet above mean sea level Zones A7, A8 and A9 respectively.

2) The ordinances concerning land use and control and other measures designed to reduce flood losses shall take precedence over any conflicting ordinances.

3) Building permits are required for new construction, substantial improvements and major repairs, and applications will be reviewed to determine that materials, equipment, and construction methods and practices conform with the Massachusetts State Building Code.

4) New construction or substantial improvements of residential structures shall have the lowest floor (including basement) elevated to or above the level of the 100-year flood.

5) New construction or substantial improvements of non-residential structures shall have the lowest floor (including basement) elevated to or above the 100 year flood, or together with attendant utility and sanitary facilities be flood-proofed up to the level of the 100-year flood.

6) Subdivision proposals and other proposed new developments will be reviewed to assure that all such proposals are consistent with the need to minimize flood damage; all public utilities and facilities are located, elevated, and constructed to minimize or eliminate flood damage; and adequate drainage is provided so as to reduce exposure to flood hazards.

7) New or replacement water supply systems and/or sanitary sewerage systems shall be designed and located to minimize infiltration into and discharge from the systems into flood waters, and shall conform to the Massachusetts State Sanitary Code.

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**ARTICLE 25** - April 4, 1978:

Section IV Paragraph A.1.h. "A permit, cost not to exceed two (\$2.00) dollars and valid for one year from date of issue will be required for Yard, Barn and Garage Sales." Penalty for failure to comply will result in a fine of not more than twenty (\$20.00) dollars.

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**ARTICLE 19** - September 13, 1983:

**Off-Street Parking**

1) Parking facilities off the street right-of-way for new construction shall be provided on the same lot as the building for each use within the district. Off-street parking shall be designed to prevent the necessity of any vehicles backing into a public way. No parking area shall be less than 5 feet from a road or property line. Each parking space shall have a usable area of at least 180 square feet and be served by two-way access lane at least 26 feet wide, except that if parking stalls are angled at 60 degrees or less, a one-way access lane may be used with a minimum of 20 feet. The 26 foot two-way access lane shall not be required for dwellings of up to four units. In such cases a 12 foot one-way

access is sufficient. The number of spaces required for each use shall be determined by the building inspector based upon the following criteria:

<u>Use</u>	<u>Minimum Required Space</u>
Residence – Housekeeping Rooms for roomers or boarders, apartments, multi-family	1.5 spaces per unit.
Customary home occupation or recognized profession	1 space for each home occupation or profession in addition to residential requirements
Retail stores, Financial Institutions, Consumer Services, Professional or Business offices and similar businesses	1 space for each 200 square feet floor space
Wholesale Showrooms and Operations	1 space for each 1,000 square feet plus one additional space for each 2 employees actively engaged at any one time.
Hotels and Motels	1 space per room and one space for every 3 seats in restaurants and meeting rooms and 1 space for each 2 employees.
Restaurants, Clubs, Theaters, Churches, or other places of public assembly	1 space for every 3 seats or 50 square feet of gross floor public assembly area and space for every 2 employees.
Barber Shops and Beauty Parlors	3 spaces for each operator
Bowling Alleys and Tennis Courts	4 spaces for each alley or court.
For any use not specifically listed	1.5 spaces for each 1,000 square feet of floor space and 1 space for each 2 employees

Parking for Handicapped Persons shall be in accordance with Chapter 40, Section 21, as amended by Chapter 644 of Massachusetts General Laws.

2) Other uses conducted for profit on premises within or without a building such as flea markets, auction houses, and fairs shall provide for off-street parking. The Board of Appeals may grant a special permit to any person or organization to allow for sporadic or intermittent use of a premises without complying with the requirements of this section.

3) Industrial and commercial buildings shall provide adequate parking, maneuvering and loading space on premises for freight and delivery trucks in addition to the minimum requirements for spaces listed in Article 19-1) above.

8. Section VII. Administration

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**ARTICLE 44 - April 3, 1990**

This article changed the format and style of the Zoning By-Law but not the substance thereof.

**ARTICLE 45** - April 3, 1990:

**Voted:** To amend the Zoning By-Law to change the present zoning district name of "Residence" of the Town Zoning By-Laws to "Residence/Agriculture" wherever the district name "Residence" appears.

**2. Section I. Purpose**

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**Article 28** – May 26, 2009

This article added the “Noquochoke Overlay District” to the Zoning By-Laws and amended the “Definitions” in Section 1.1.

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**Article 30** – May 26, 2009

This article amended section 8.3.2 – “Sewage Treatment Facilities”.

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**Article 31** – May 26, 2009

This article deleted Zoning By-Law Article 6 in its entirety and substituted new language. It also amended the “Definitions” in Section 1.1.” and amended “Section 3.1.D – Flood Plain District”. The following is the old language for Article 6.

**ARTICLE 6**

**SPECIAL REGULATIONS (Formerly Section VI C)**

**6.0 FLOOD PLAIN DISTRICTS**

**6.0.1** The following provisions apply to the Flood Plain District as defined in Section 3.1.D Flood Plain Districts of Article 3 of these By-Laws.

(2006 ATM, Article 8)

**6.0.2** Ordinances concerning land use and control and other measures designed to reduce flood losses shall take precedence over any conflicting ordinances.

**6.0.3** Building permits are required for new construction, substantial improvements and major repairs, and applications will be reviewed to determine that materials, equipment and construction methods and practices conform with the Massachusetts State Building Code. All permits required by any Town, State or Federal agency must be obtained or be in the process of being obtained at the time of building permit application.

**6.0.4**            **Base Flood Elevation And Floodway Data**

**6.0.4.1**            **Floodway Data**

In zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

**6.0.4.2**            **Base Flood Elevation Data**

Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

**6.0.5**            **Notification Of Watercourse Alteration**

In a riverine situation, the Building Inspector/Zoning Enforcement Officer shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Municipalities
- Bordering States
- NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, MA 02114-2104  
(Or successor entity at its then current address)
- NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6th Floor  
Boston, MA 02110  
(Or successor entity at its then current address)

(2006 ATM, Article 8)

**6.0.6**            Subdivision proposals and other proposed new developments will be reviewed to assure that all such proposals are consistent with the need to minimize flood damage; all public utilities and facilities are located, elevated, and constructed to minimize or eliminate flood damage, and adequate drainage is provided so as to reduce exposure to flood hazards.

Base flood elevation data shall be provided by the applicant for all proposals within the Flood Plain District.

**6.0.7** New or replacement water supply systems and/or sanitary sewerage shall be designed and located to minimize or eliminate infiltration into and discharge from the systems into flood waters, and will conform to the Mass. State Sanitary Code.

**6.0.8** All new constructions within Zones V1-30 of the Flood Insurance Rate Map shall be located landward of the reach of the mean high tide.

**6.0.9** The Board of Appeals may issue a variance only upon a showing of good and sufficient cause; determination that failure to grant the variance would result in exceptional hardship to the applicant; determination that granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with local laws; and determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance and will increase the risks to life and property.

**6.0.10**      **Reference To Existing Regulations**

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

- Massachusetts State Building Code provisions addressing floodplain and coastal high hazard areas (currently 780 CMR 3107, "Flood Resistant Construction");
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

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

(2006 ATM, Article 8)

- 6.0.11** All mobile homes to be placed within the Flood Zone shall have (i) stands or lots that are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, (ii) adequate surface drainage and access for a hauler are provided, and (iii) in the instance of elevation of pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten feet apart, and reinforcement is provided for piers more than six feet above ground level.
- 6.0.12** Man-made alteration of sand dunes within Zones V1-30, VE and V that would increase potential flood damage are prohibited)

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**Article 37** – June 8, 2010

This article deleted Zoning By-Law Article 13 in its entirety and substituted new language.

**ARTICLE 13**

**INCLUSIONARY HOUSING**

**13.0 INCLUSIONARY HOUSING**

**13.1 PURPOSE AND INTENT**

The purpose of this By-Law is to outline and implement a coherent set of policies and objectives for the development of affordable housing in tandem with on-going Town of Westport programs to promote a reasonable percentage of housing that is affordable to moderate-income buyers. It is intended that the affordable housing units that result from special permits issued under this By-Law be included on the Town’s subsidized housing inventory, as kept by the Massachusetts Department of Housing and Community Development (“DHCD”). It is intended that this By-Law provide a mechanism to compensate for those decreases in the town’s percentage of affordable housing that are directly caused by increases in the Town’s overall housing stock.

**13.2 DEFINITIONS**

**13.2.1 Affordable Housing Unit**: A dwelling unit that can be purchased at an annual cost that is deemed affordable for a household that is earning no more than 70% of the area median income as reported by the U.S. Department of Housing and Urban Development and/or DHCD.

**13.2.2 Qualified Affordable Housing Unit Purchaser**: An individual or family with a household income that does not exceed 80% of the area median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development and/or DHCD

### 13.3

#### APPLICABILITY

- 13.3.1**        **Division of Land**: This By-Law shall apply to the division of land held in single ownership as of June 1, 2005 or anytime thereafter into eight (8) or more lots, whether said eight (8) or more lots are created at one time or are the accumulation of eight (8) or more lots created from said land held in single ownership as of June 1, 2005, and shall require a special permit under Article 2 of the Zoning By-Law and G.L. c. 40A, §9. A special permit shall be required for “conventional” or “grid” divisions allowed by M.G.L. Chapter 41, Section 81-L and Section 81-U, as well as those divisions of land that do not require subdivision approval per G.L. c. 41, §81P.
- 13.3.2**        **Multi-Family Dwelling Units and Duplexes**: This By-Law shall apply to the construction of eight (8) or more multi-family dwelling units or duplexes, whether on one or more contiguous parcels in existence as of June 1, 2005, and shall require a special permit under Article 2 of the Zoning By-Law and G.L. c. 40A, §9.
- 13.3.3**        **Exemption**: The provisions of Article 13.3.1 hereof shall not apply to the construction of eight (8) or more single-family dwelling units on individual lots, if said eight (8) or more lots were in existence as of June 1, 2005.
- 13.3.4**        **Administration**: The Planning Board shall be the Special Permit Granting Authority for all special permits under this By-Law.

### 13.4

#### MANDATORY PROVISION OF AFFORDABLE UNITS

The Special Permit Granting Authority shall, as a condition of approval of any development referred to in Article 13.3, require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this By-Law and more fully described in Article 13.5. Any special permit granted hereunder shall contain a condition that no construction of any of the proposed development may commence until the affordable units created thereby are eligible for inclusion on the Town’s subsidized housing inventory.

### 13.5

#### PROVISION OF AFFORDABLE UNITS

The Special Permit Granting Authority shall deny any application for a special permit for development if the applicant for special permit approval does not comply, at a minimum, with the following requirements for affordable units:

- 13.5.1**        At least 10% of the units in a division of land or units in a multi-family or duplex unit development subject to this By-Law shall be established as affordable housing units in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing eight

(8) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two (2) affordable units, and so on.

**13.5.2** The affordable unit(s) shall be constructed or rehabilitated on: The locus property; or a locus different from the one subject to the special permit (see Article 13.9); or the applicant may offer and the Special Permit Granting Authority may accept any combination of the Article 13.5 requirements provided that in no event shall the total number of units or land area provided be less than ten (10%) percent of the total number of units/lots approved under the permit.

**13.6**      **PROVISIONS APPLICABLE TO AFFORDABLE HOUSING UNITS ON- OR OFF-SITE**

**13.6.1**      Siting of affordable units: All affordable units constructed or rehabilitated under this By-Law shall be situated so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

**13.6.2**      Minimum design and construction standards for affordable units: Affordable housing units within market-rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units.

**13.6.3**      Timing of construction or provision of affordable units or lots: The Special Permit Granting Authority may impose conditions on the special permit requiring construction of affordable housing according to a specified time table, so that affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

<u>Market-Rate Unit %</u>	<u>Affordable Housing Unit %</u>
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
UP to 90%	100%

Any fractions of an affordable unit shall be rounded up to a whole unit.

**13.7**      **LOCAL PREFERENCE**

To the extent permitted by law, the Special Permit Granting Authority may require the

applicant to comply with local preference requirements, if any, as may be established by regulations promulgated hereunder.

**13.8            MARKETING PLAN FOR AFFORDABLE UNITS**

Applicants under this By-Law shall submit a marketing plan or other method approved by the Special Permit Granting Authority, which describes how the affordable units will be marketed to potential homebuyers. If applicable, this plan shall include a description of the lottery or other process to be used for selecting buyers. The plan shall be in conformance to DHCD rules and regulations, and shall be subject to the prior review and approval of Town Counsel at the applicant's expense.

**13.9            PROVISION OF AFFORDABLE HOUSING UNITS OFF-SITE**

Subject to the approval of the Special Permit Granting Authority, an applicant subject to this By-Law may develop, construct or otherwise provide affordable units equivalent to those required by Article 13.5 off-site. All requirements of this By-Law that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location and design of the off-site units to be provided shall be approved by the Special Permit Granting Authority as an integral element of the special permit review and approval process.

**13.10          PRESERVATION OF AFFORDABILITY; RESTRICTIONS ON RESALE**

Each affordable unit created in accordance with this By-Law shall have the following limitations governing its resale. 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. The deed restriction must be deemed acceptable to DHCD and Town Counsel prior to the issuance of any building or occupancy permits and shall be recorded at the Bristol County (S.D.) Registry of Deeds or the Land Court and shall be in force for the longest period allowed by law, unless the Planning Board determines that a shorter period of affordability will facilitate the development of affordable housing.

**13.10.1**        The Special Permit Granting Authority shall require, as a condition for special permit approval under this By-Law, that the deeds to the affordable housing unit contain a restriction requiring that any subsequent renting or leasing of said affordable housing unit shall not exceed an amount that is deemed affordable for a household earning no more than 70% of the area median income, as determined by the DHCD.

**13.10.2**        The Special Permit Granting Authority shall require, as a condition for special permit approval under this By-Law, that the applicant comply with the mandatory set-asides and accompanying deed restrictions on affordability.

**13.11          REGULATIONS**

The Special Permit Granting Authority may adopt regulations for the orderly administration of this By-Law.

(2005 ATM, Article 24)

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**Article 39** – May 25, 2011

This article amended the Zoning By-Laws by deleting the following Section 11.5.8 and replacing it with new language.

**11.5.8**            **Stormwater Management**

Drainage provisions shall be provided to ensure compliance with all local, state and federal requirements regarding stormwater management and shall be subject to review by the Planning Board's engineering consultant at the expense of the applicant. Drainage shall be designed so that the rate of run-off shall not be increased, groundwater recharge is maximized, surface and ground water quality is maintained or improved, and neighboring properties will not be adversely affected. The Board may require that existing drainage problems on/or adjacent to the site be mitigated as a condition of approval of the special permit under this section. Drainage facilities are not allowed in the required open space areas.

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**Article 40** – May 25, 2011

This article amended the Zoning By-Laws Article 15, Site Plan Approval, 15.4 Performance Standards by deleting the following Section 12 and replacing it with new language.

- 12.**            Ensure compliance with the provisions of this Zoning Ordinance including, but not limited to, parking, loading, and signage.
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**Article 41** – May 25, 2011

This article amended the Zoning By-Laws by deleting the following Section 13.2.3 and replacing it with new language.

- 13.2.3**            **Exemption:** The provisions of Article 13.3.1 hereof shall not apply to the construction of ten (10) or more single-family dwelling units on individual lots, if said ten (10) or more lots were in existence prior to June 1, 2005 nor to Assisted and Independent Living Facilities.
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**Article 29** – May 3, 2014

This article deleted Zoning By-Law Article 25 in its entirety and substituted new language.

**ARTICLE 25**

## **TEMPORARY MORATORIUM OF MEDICAL MARIJUANA TREATMENT CENTERS**

### **25.1 PURPOSE**

By vote at the State election on November 6, 2012, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for medical purposes. The law provides that it is effective on January 1, 2013 and the State Department of Public Health is required to issue regulations regarding implementation within 120 days of the law's effective date. Currently under the Zoning Bylaw, a Medical Marijuana Treatment Center is not a permitted use in the Town of Westport and any regulations promulgated by the State Department of Public Health are expected to provide guidance to the Town in regulating medical marijuana, including Medical Marijuana Treatment Centers. The regulation of medical marijuana raises novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Medical Marijuana Treatment Centers and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of medical marijuana treatment centers and other uses related to the regulation of medical marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Medical Marijuana Treatment Centers so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

### **25.2 DEFINITION**

“Medical Marijuana Treatment Center” shall mean a “not-for-profit entity, as defined by Massachusetts law only, registered by the Department of Public Health, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.”

### **25.3 TEMPORARY MORATORIUM**

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Medical Marijuana Treatment Center. The moratorium shall be in effect through June 30, 2014. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of medical marijuana in the Town, consider the Department of Public Health regulations regarding Medical Marijuana Treatment Facilities and related uses, and shall consider adopting new Zoning Bylaws to address the impact and operation of Medical Marijuana Treatment Centers and related uses.

(2013 STM, Article 13)

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**Article 30 – May 3, 2014**

This article amended the Zoning By-Laws by deleting Article 4, Section 4.0.1 D Subparagraph 5 and reserving the section for future use.

5. Public or private facilities for outdoor recreation including play and sporting areas, horseback riding, swimming, skin- diving, camping, boating, hiking, field trails, nature study and fishing.

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**Article 30 – May 3, 2014**

This article amended the Zoning By-Laws by deleting the following Section 17.3.9 and replacing it with new language.

**17.3.9            Tower Uses**

Towers permitted for Wind Energy Facilities shall not be used for any purpose inconsistent with the definition of a Wind Energy Facility.

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**Article 31 – May 3, 2014**

This article amended the Zoning By-Laws by deleting Sections 23.1, 23.2 and 23.4 and replacing them with new language.

**23.1            PURPOSE AND INTENT**

The purpose and intent of this Article is to encourage reduction in potential residential development density, reduce future vehicular trips, road congestion, demand for public services and the number of curb cuts onto Town roadways; preserve the natural and cultural resources visible along these roadways; facilitate the movement of wildlife; protect traditional access to “backland” open space; and improve the design and site planning of smaller residential neighborhoods. To achieve this, the Planning Board may issue a special permit to allow a reduction in the otherwise applicable frontage requirements on a public way or a private way that the Planning Board votes to determine has been in existence since prior to the effective date of the Subdivision Control Law in the Town of Westport and has adequate, width, grade and construction within the meaning of G.L. c. 41, §81L for the proposed development, for one or more of the lots proposed, in exchange for a corresponding reduction in development density and reliance upon common driveways, if applicable.

**23.2            METHODS OF APPLICATION**

In order to obtain a special permit under this by-law provision, an applicant first shall either: a) obtain a Special Permit under Article 21 for the common driveway or existing laneway meeting common driveway standards prior to seeking a special permit under this provision and prior to the creation of the subject lots under the “Approval Not

Required” process; or b) file an application for a Definitive Subdivision Plan or modification thereof under the provisions of the Town’s "Rules & Regulations Governing the Subdivision of Land" to determine the “yield” or basic number of lots on a parcel to be subdivided conforming to the requirements of the Rules and Regulations. Said application shall show the basic number of lots otherwise conforming to the Zoning Bylaw together with the proposed plan submitted for approval under this Article.

**23.4**

**FRONTAGE REDUCTION RATIOS IN PROPORTION TO DWELLING DENSITY REDUCTION**

A special permit may be issued so that the required lot frontage is decreased as a function of average density decrease (average lot size and upland increase) in equal proportions, to a minimum of fifty (50) feet of frontage. By way of example, the required lot frontage for any lot shown on the plan being proposed to benefit from this Article may be decreased only by the proportionate increase in lot area and upland area for said lot(s). The standard lot frontage is 150 feet for a minimum 60,000 square foot lot containing a minimum of 30,000 square feet of contiguous upland ceteris paribus. To achieve a lot frontage reduction to 75 feet, the lot density of the benefitted lots shall be halved by increasing their average lot size to at least 120,000 square feet and their average contiguous upland to at least 60,000 square feet. To achieve the minimum lot frontage of fifty (50) feet under this Article, the lot size shown on the plan shall be at least 180,000 square feet and the contiguous upland area at least 90,000 square feet. These examples are illustrated in the table below:

Residential Lot Size (SF)	Minimum Upland (SF)	Frontage (Feet)
60,000 Std. Min.	30,000	150
120,000	60,000	75
180,000	90,000	50

The lots so benefiting from reduced frontage under this Article shall be indicated on the endorsed plan and the plan shall be recorded with the special permit decision which shall contain conditions that the lots shown on the plan shall not be further subdivided and that the clearing and building locations shall not be changed from what is shown on the plan without a modification and a permanent deed restriction shall be provided for approval and then recorded in favor of the Town before any clearing begins, with restriction reciting the restriction on further lot division and all restrictions on clearing and building locations. The following notes shall also be placed on the plan:

1. "Lots shown on this plan benefiting from reduced frontage under Zoning By-law Article 23 shall not be further subdivided and no modification of the clearing restrictions and building locations shall occur without a corresponding modification of the special permit and endorsed definitive plan."

and;

2. "No lot clearing shall begin and no building permit shall be issued for lots shown on this plan benefiting from reduced frontage under Zoning By-law Article 23 until the deed restriction has been duly approved, executed and recorded and evidence of the recording of the restriction has been filed with the Inspector of Buildings.

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**Article 42 – May 5, 2015**

This article amended the Zoning By-Laws by deleting the following Section 4.0.1 B. Sub-paragraph 5 and replacing it with new language and deleting Sub-paragraph k and l.

5. Use of an accessory apartment, an independent dwelling unit of five hundred (500) to nine hundred (900) square feet contained within a single-family residence. The unit shall have a separate exterior entrance, a kitchen/living room, a bathroom and a maximum of one bedroom. Either unit shall be occupied by the owner.

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**Article 38 – May 3, 2016**

This article amended the Zoning By-Laws by deleting the following definition of “Agriculture” and replacing it with a new definition and adding a Sub-Section 6 in Section 4.0.1.B.

**Agriculture** – The normal maintenance or improvement of land in agricultural or aquaculture use as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

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**Article 23 – May 2, 2017**

This article amended the Zoning By-Laws by deleting Section 4.0.1B, Sub-Section 6 and replacing it with a new Sub-Section 6.

6. Use of Agricultural Property having at least five(5) contiguous acres utilized in conformance with the uses of land as enumerated in M.G.L. Chapter 61A, §§ 1 and 2 and M.G.L. Chapter 40a § 3 shall include the use of said property for:
  - a. Agri-entertainment meaning entertainment, such as a seasonal event, festival, contest, music, party, or other time-specific events and commercial enterprises, designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of the agricultural operations with the ultimate goal to encourage the purchase of agricultural products.

Agri-entertainment is designed to enhance the agricultural viability of farm operations;

- b. Agri-tourism means tourism designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of agricultural operations with the ultimate goal to encourage the purchase of agricultural products. Agricultural tourism shall include but not be limited to Farm-Stay programs, entertainment events on the farm, fundraising activities, and community events. Agri-tourism is designed to enhance the agricultural viability of the farm operations.
- c. Commercial activities designed to market to and bring the public to a Farm Enterprise for a farm related experience, and increase the sale of agricultural products to the public with the express purpose of enhancing the agricultural viability of the Farm operations.

(2016 ATM, Article 38)

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**Article 24 – May 2, 2017**

This article amended the Zoning By-Laws by deleting the following definition of “Agriculture” and replacing it with with several new definitions “Agriculture and Agricultural”, Agri-commercial”, “Agri-entertainment”, “Agri-tourism”, and “Farm Enterprise”.

**Agriculture** - meaning the uses of land as enumerated in M.G.L. Chapter 61A, §§ 1 and 2; as described in M.G.L. Chapter 40a § 3; as defined in Westport Town By-Law LIV Right to Farm By-Law, including the conduct of:

- a. Agri-entertainment meaning entertainment, such as a seasonal event, festival, contest, music, party, or other time-specific events and commercial enterprises, designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of the agricultural operations with the ultimate goal to encourage the purchase of agricultural products. Agri-entertainment is designed to enhance the agricultural viability of farm operations;
- b. Agri-tourism means tourism designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of agricultural operations with the ultimate goal to

encourage the purchase of agricultural products. Agricultural tourism shall include but not be limited to Farm-Stay programs, entertainment events on the farm, fundraising activities, and community events. Agri-tourism is designed to enhance the agricultural viability of the farm operations.

- c. Commercial activities designed to market to and bring the public to a Farm Enterprise for a farm related experience, and increase the sale of agricultural products to the public with the express purpose of enhancing the agricultural viability of the Farm operations.

