

# TOWN OF HUBBARDSTON

## ZONING BYLAWS



Adopted at Town Meeting - October 23, 1989

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With Amendments through June 5, 2018

**TOWN OF HUBBARDSTON ZONING BYLAWS  
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**ARTICLE 1**  
**GENERAL PROVISIONS**

Section

- 1.1 Title
- 1.2 Purpose
- 1.3 Authority
- 1.4 Construction
- 1.5 Repealer

1.1 Title.

These zoning bylaws shall be known as the Hubbardston Zoning Bylaws (revised 1989).

1.2 Purpose.

These zoning bylaws are adopted for the following purposes:

- a. To ensure realization of the general statement of purpose declared in Chapter 40A of the General Laws;
- b. To protect the right of every resident of the Town of Hubbardston to clean air and water; freedom from excessive and unnecessary noise or odor; and to the natural, scenic, historic, and aesthetic qualities of the environment as declared in Article XLIX of the Constitution of the Commonwealth of Massachusetts;
- c. To permit and ensure planned, orderly growth in the Town of Hubbardston;
- d. To provide for compatible development and best use of the town's land and resources;
- e. To provide adequate housing and services to residents, visitors, and employees in the Town of Hubbardston.

1.3 Authority.

These zoning bylaws are adopted by the authority of Massachusetts General Laws, Chapter 40A, Section 5 as most recently amended.

1.4 Construction.

These zoning bylaws shall be liberally construed and applied to promote the purposes of Section 1.2. These bylaws are separable, and if any section or provision hereof or the administration thereof is declared invalid by a court of competent jurisdiction, this shall not invalidate any other section or provision or the administration thereof.

1.5 Repealer.

These zoning bylaws supersede and repeal all prior zoning bylaws and amended zoning bylaws.

**ARTICLE 2**  
**DEFINITIONS**Section

- 2.1 Accessory Building or Structure
- 2.2 Accessory Use
- 2.3 Alteration of Building or Structure
- 2.4 Appeal
- 2.5 Aquifer
- 2.6 Aquifer Favorability Areas
- 2.7 Building
- 2.8 Building Lot
- 2.9 Community and Environmental Assessment
- 2.10 Corner Lot
- 2.11 Dwelling Unit
- 2.12 Home Occupation
- 2.13 Housekeeping Unit
- 2.14 Industry
- 2.15 Light Manufacturing
- 2.16 Lot
- 2.17 Lot Area
- 2.18 Lot Coverage
- 2.19 Lot Frontage
- 2.20 Lot Line
- 2.21 Mobile Homes
- 2.22 Multi-Family Residence
- 2.23 Non-Conforming Use, Structure or Lot
- 2.24 Permitted Use
- 2.25 Principal Use
- 2.26 Setback
- 2.27 Signs
- 2.28 Single-Family Residence
- 2.29 Street
- 2.30 Structure
- 2.31 Toxic or Hazardous Materials
- 2.32 Variance
- 2.33 Wetlands
- 2.34 Yard
- 2.35 Quarrying
- 2.36 Earth Removal
- 2.37 In-Law Apartment
- 2.38 Accessory Apartment
- 2.39 Commission
- 2.40 Marijuana Establishment

2.1 Accessory Building or Structure.

An accessory building, structure is one which is subordinate or incidental to the main building, structure on a lot. The term "accessory building or structure" when used in connection with a farm shall include all buildings or structures customarily used for farm purposes and without limitations in size.

2.2 Accessory Use.

A use related, but clearly incidental and subordinate to the permitted principal use of the premises, which can take place within the principal structure or building on a single lot or parcel of land, or in an accessory structure or building, either attached or detached to the principal structure on the lot, including but not limited to a home occupation on a lot containing a single-family dwelling, or a subordinate use on a non-residential lot. The principal use shall not be subordinated by an accessory use, or accessory uses in their aggregate.

2.3 Alteration of Building or Structure.

Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders or interior partitions, as well as any change in exterior doors or windows, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another.

2.4 Appeal.

An administrative review by the Board of Appeals of the action or failure to act of the Planning Board or Building Inspector as set forth in Article 11.

2.5 Aquifer.

A geologic formation that contains sufficient saturated permeable material to yield significant quantities of water to wells.

2.6 Aquifer Favorability Areas.

Those areas shown on the Hubbardston, MA Aquifer Map as prepared by Places Associates, 256 Great Road, Littleton, MA 01456, Dated September 2017.<sup>1</sup>

2.7 Building.

Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.

2.8 Building Lot.

A lot which meets the permitted use requirements of these zoning bylaws and the requirements of the Subdivision Control Law, Massachusetts General Laws, Chapter 41, Section 81K, et. seq., for construction of a building.

2.9 Community and Environmental Assessment.

An assessment of all physical, social, and economic impacts which can be reasonably anticipated from a proposed use and a program for mitigation of significant adverse impact as set forth in Article 8.

2.10 Corner Lot.

A corner lot is any lot with continuous frontage on two intersecting streets, including the point of intersection.

2.11 Dwelling Unit.

One or more rooms providing complete living facilities for one family, including equipment for cooking or provisions for same, and including room or rooms for living, sleeping, eating and sanitation.

2.12 Home Occupation.

An accessory use, as set forth in Section 2.2 above, of a single-family residential structure, involving provision or sale of goods and/or services and the creation of handicrafts and artwork which: 1) is carried on by members of the family residing on the premises plus no more than one nonresident assistant or employee; 2) is clearly incidental and secondary to the primary use of the site for residential purposes and comprises not more than 20% of the residence; 3) has no advertising, other than on unlit sign of not more than three (3) square feet in area, display, external storage, or other indication of a home occupation on the premises; 4) does not involve shipments (in-coming or out-going) by heavy trucks; 5) produces no noise or obnoxious odors, vibrations, glare, fumes or electric interference detectable to normal sensory perception outside the structure; and 6) has sufficient off-street parking spaces available to provide for the parking needs generated.

2.13 Housekeeping Unit.

Any room or suite of rooms forming a habitable unit for one family with its own cooking and food storage equipment, its own bathing and toilet facilities and its own living, sleeping and eating areas wholly within such room or suite of rooms.

2.14 Industry.

The extraction, developing, manufacturing, assembling, processing, or treatment of raw or processed materials, parts, or assemblies using other than manual power. A light industry is one using quiet motive power and processes which do not generate more noise, odor, smoke, fumes, vibration, glare, electrical or magnetic interference, or hazard of fire, explosion radiation, or pollution of groundwater than could be expected of any of the other permitted uses in that location. A heavy industry is one generating one or more of the above neighborhood impacts.

2.15 Light Manufacturing.

The fabrication processing, finishing, assembly, packing, or treatment of articles or merchandise conducted solely within a totally enclosed building and will not be offensive, noxious, detrimental, or dangerous to surrounding areas of the town by reason of dust, smoke, fumes, odor, noise, vibration, light or other adverse environmental effect.

2.16 Lot.

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<sup>1</sup> Amended October 24, 2017

A single area of land defined by metes and bounds, boundary lines, recorded deed, a plan approved under the Subdivision Control Law, Massachusetts General Laws, Chapter 41, Section 81K, et. seq., or a plan endorsed by the Planning Board to the effect that approval under the Subdivision Control Law is not required and which plan is recorded in the Worcester District Registry of Deeds or the Land Court.

2.17 Lot Area.

The horizontal area of the lot exclusive of any area in a street or recorded way open to public use.

2.18 Lot Coverage.

The percentage of the lot covered by all buildings and structures.

2.19 Lot Frontage.

The portion of a lot fronting upon and having access to a street measured continuously along one street line between side lot lines, or in the case of corner lots, between one side lot line and the midpoint of the corner radius, and not to include frontage within utility transmission easements.

2.20 Lot Line.

A boundary line separating a lot from another lot or lots or from a street.

2.21 Mobile Homes.

A structure, transportable or movable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation, when connected to the required utilities. Is not meant to include manufactured modular homes.

2.22 Multi-Family Residence.

A residential use consisting of a building containing two or more dwelling units. For purposes of this definition, a building includes all dwelling units that are enclosed within that building or attached to it by a common floor, roof or wall, including the wall of an attached garage, porch or breezeway.

2.23 Non-Conforming Use, Structure or Lot.

A use, structure or lot which lawfully existed at the time of adoption of these zoning bylaws, which does not conform to requirements of these zoning bylaws and which may be continued in the circumstances set forth under Section 3.4 of these zoning bylaws.

2.24 Permitted Use.

A use which is authorized under these zoning bylaws as a matter of right or by issuance of a special permit or both.

2.25 Principal Use.

The primary use to which the premises, i.e., the land, buildings, and other structures on a single lot or parcel of land, are devoted and the main purpose for which the premises exist.

2.26 Setback.

The minimum horizontal distance from a lot line to the nearest part of a structure.

2.27 Signs.

Any object, device, display or structure, or part thereof, visible to persons not located on the lot where such object etc., is located, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images. The area of a sign shall be determined by the outermost rectangular perimeter of any design or device including the sign structure. See Article 17.

2.28 Single-Family Residence.

A detached residential building which is designed to be occupied by a single family.

2.29 Street.

An accepted town way, or a way established by or maintained under county, state or federal authority, or a way established by a subdivision plan approved in accordance with the Subdivision Control Law, or a way in existence prior to the adoption of the Subdivision Control Law determined by the Planning Board to have sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

2.30 Structure.

An assembly of materials forming a construction framed of components of structural parts for occupancy or use, including buildings.

2.31 Toxic or Hazardous Materials.

Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant, actual or potential, hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters within the town of Hubbardston. Toxic or hazardous materials include, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and include such products as pesticides, herbicides, solvents and thinners.

2.32 Variance.

An extraordinary remedy which may be granted by the Board of Appeals if it finds that owing to circumstances relating to soil conditions; topography; lot size, frontage, or setback requirements, a literal enforcement of these zoning bylaws or a special permit will create a substantial hardship and that granting of a variance will not adversely affect the land use and environmental objectives of these zoning bylaws, as set forth in Article 10.

2.33 Wetlands.

Land under any waterbody, swamp, wet meadow or marsh, as defined in Massachusetts General Laws Chapter 131, Section 40, and the regulations promulgated thereunder (310 C.M.R. 10.00).

2.34 Yard.

An open space, located between a street right-of way or other lot line and any structure or element thereof other than a fence, wall, uncovered steps, cornices or customary yard accessory.

2.35 Quarrying.<sup>2</sup>

The removal of stone from an open excavation or pit by cutting, blasting, ripping or hammering or any other method other than collection of material found loose in its natural state.

2.36 Earth Removal<sup>3</sup>

The removal for sale or commercial processing of any earth materials found loose in its natural state, including but not limited to sand, gravel, clay or rock from surface or subsurface without the aid of drilling and/or blasting.

2.37 In-Law Apartment<sup>4</sup>

A group of rooms in an owner-occupied single-family residence, with its own kitchen and bathroom facilities, used as a separate apartment for a limited number of persons (not to exceed four) related to the owner-occupants, such as in-laws, elderly relatives, or grown children.

2.38 Accessory Apartment<sup>5</sup>

A group of rooms in an owner-occupied residence, with its own bathroom and kitchen facilities, used as a separate apartment, created from existing space within the residential structure, which place has been part of the structure for the life of the structure or for at least five years, and built in such a way that exterior alterations do not alter the single-family appearance of the structure, with sufficient additional on-site parking space to serve the needs of the inhabitants of the apartment.

2.39 Commission<sup>6</sup>

The Cannabis Control Commission established by Section 76 of Chapter 10 of the Massachusetts General Laws.

2.40 Marijuana Establishment<sup>7</sup>

Marijuana Establishment means a Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center.

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<sup>2</sup> Amended 10/28/1996

<sup>3</sup> Added: 2/01/2000

<sup>4</sup> Added: 6/23/2003

<sup>5</sup> Added: 6/23/2003

<sup>6</sup> Added 6/5/2018

<sup>7</sup> Added 6/5/2018

**ARTICLE 3**  
**ZONING DISTRICTS**Section

- 3.1 Types of Districts
- 3.2 Zoning Map
- 3.3 District Boundaries
- 3.4 District Boundaries-Split Lots

3.1 Types of Districts.

For the purpose of this bylaw, the Town of Hubbardston is divided into the following zoning districts:

Residential-Agricultural District  
Town Center District  
Commercial District  
Light Industrial District

These districts are shown on the Town of Hubbardston Zoning Map which is described in Section 3.2.

3.2 Zoning Map.<sup>8</sup>

The official zoning map entitled "Zoning Districts" which was prepared by IEP, Inc. (1988) is hereby made a part of these zoning bylaws and shall be on file with the Town Clerk. All land currently designated within the Light Industrial District located on the east side of Gardner Road between High Street and Morgan Road and on the west side of Gardner Road between Ragged Hill Road and Pitcherville Road to be amended to be in the Residential-Agricultural District.

3.3 District Boundaries.

Zoning district boundaries shall be determined by reference to the official Zoning Map maintained by the Planning Board and as follows:

- a. Where boundary lines are shown upon the Zoning Map to be within the sidelines of public or private ways, utility rights or way, rail lines, or water courses, the center line shall be the boundary.
- b. Where boundary lines are shown upon the Zoning Map to follow lot lines (even though the exact location of the boundary or lot lines is not indicated), the lot lines shall be the boundary.
- c. Where the location of a boundary line is disputed or uncertain, the Planning Board shall, upon request, determine a location certain of the boundary line. Any person aggrieved by the Planning Board's determination may appeal to the Board of Appeals in the manner set forth in Article 11 of these bylaws.
- d. Where boundary lines are shown upon the Zoning Map to be parallel to a public or private way, utility right or way, rail line, or water course, the line shall be measured from the center line of said way, etc.

3.4 District Boundaries - Split Lots.

Where a district boundary divides any lot existing at the time such district boundary is adopted, the regulations for any district in which the lot has frontage on a street may be extended not more than fifty (50') feet into the other district, however the land within this fifty (50') foot area shall be controlled in a consistent manner by the regulations applicable to only one district.

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<sup>8</sup> Amended: 6/24/1991



**ARTICLE 4**  
**USE REGULATION**

Section

- 4.1 Uses Permitted by Right in Residential Districts
- 4.2 Uses Permitted by Special Permit in the Residential Districts
- 4.3 Use Permitted By Right in the Town Center District
- 4.3.1 Uses Permitted by Special Permit in the Town Center District
- 4.4 Uses Permitted by Right in Commercial Districts
- 4.5 Uses Permitted by Special Permit in the Commercial Districts
- 4.6 Uses Permitted By Right in Light Industrial Districts.
- 4.7 Uses Permitted by Special Permit in Light Industrial Districts
- 4.8 Prohibited Uses
- 4.9 Existing Uses Continued (Grandfathering)
- 4.10 Abandonment of a Non-Conforming Use
- 4.11 Isolated Lots
- 4.12 Effects of Changes on Permit
- 4.13 Enforcement
- 4.14 Penalty

4.1 Uses Permitted By Right in Residential Districts.

Residential Districts are intended to be used primarily for personal residence, agriculture, conservation, recreation and open space maintenance. The following uses are permitted within these districts:

- a. Single-family residence, other than mobile homes.
- b. Two-family residence, other than mobile homes, provided that the minimum lot area requirement is increased over that required for a single-family dwelling by an additional 30,000 square feet for the additional unit and the lot frontage requirement is increased over that which is required for a single family dwelling by an additional fifty (50') feet for the additional unit.
- c. Religious, sectarian or denominational uses.
- d. Conservation or open space area, recreation common or park land.
- e. Agriculture, horticulture, floriculture and viticulture.
- f. Nursery, orchard.
- g. Sale of farm, nursery, or orchard products which have been produced on the premises.
- h. Accessory uses on the same lot such as garages, stables, barns, tool sheds, farm buildings and enclosures, tennis courts, swimming pools.
- i. Cemetery.
- j. Public and Private non-profit educational museums.
- k. Municipal Uses.
- l. Home occupation, as defined in Article 2.
- m. Guest Houses, Bed and Breakfast Establishments.
- n. Educational Uses.
- o. In-Law Apartment.<sup>9</sup>
- p. Solar Photovoltaic Installations<sup>10</sup>, subject to Article 20.

4.2 Uses Permitted By Special Permit in Residential Districts.

The following uses are permitted within Residential Districts subject to conditions and limitations contained in an Approved Site Plan (Article 9), Environmental & Community Impact Analysis (Article 8) and Special Permit (Article 7) issued by the Planning Board.<sup>11</sup>

- a) Library, health care facility, government building or facility.
- b) Public utility facility but not including generating units, new utility rights-of-way, or oil, gas, or propane storage tanks in excess of 5000 gallons.
- c) Country club, tennis club, golf course.
- d) Commercial greenhouse.
- e) Multi-Family Residence. Up to four family units may be constructed in areas not within the Aquifer Favorability Protection District (see Article 15) provided that the minimum lot area requirement is increased over that required for a single-family dwelling by an additional 30,000 square feet for each additional unit and the lot frontage

<sup>9</sup> Added: 6/23/2003

<sup>10</sup> Added: 6/1/2010

<sup>11</sup> Amended: 2/1/2000

requirement is increased over that which is required for a single family dwelling by an additional fifty (50') feet for each additional unit. The structure shall conform to the architectural style and scale of the residential area within which it is proposed.

- f) Radio, Television & Communication Transmission Towers with a maximum height of 150'.<sup>12</sup>
- g) Nursing, Convalescent and Rest Homes.
- h) Day Care center.
- i) Additions and/or alterations to existing non-conforming structure or use.<sup>13,14</sup>
- j) Kennel for five (5) or more dogs, which are three months old or over; commercial riding stable.<sup>15</sup>
- k) Senior Residential Development<sup>16</sup>
- l) Accessory Apartment<sup>17</sup>
- m) Open Space Residential Development<sup>18</sup>
- n) Outdoor Marijuana cultivation establishments licensed for Tier 1 (up to 5,000sf)(subject to Article 22)<sup>19</sup>
- o) Outdoor Marijuana cultivation establishments licensed for Tier 2 (between 5001 and 10,000sf) (subject to Article 22)<sup>20</sup>

#### 4.3 Use Permitted By Right in the Town Center District.

The Town Center District is intended to be used for traditional town center residential activities. The following uses are permitted within these districts:

- a. Single-family residence, other than mobile homes.
- b. Two-family residence, other than mobile homes, provided that the minimum lot area requirement is increased over that required for a single-family dwelling by an additional 30,000 square feet for the additional unit and the lot frontage requirement is increased over that which is required for a single family dwelling by an additional fifty (50') feet for the additional unit.
- c. Religious, sectarian or denominational uses.
- d. Conservation or open space area, recreation common or park land.
- e. Agriculture, horticulture, floriculture and viticulture.
- f. Nursery, orchard.
- g. Sale of farm, nursery, or orchard products which have been produced on the premises.
- h. Accessory uses on the same lot such as garages, stables, barns, tool sheds, farm buildings and enclosures, tennis courts, swimming pools.
- i. Cemetery.
- j. Public and Private non-profit educational museums.
- k. Municipal Uses.
- l. Library, government building or facility.
- m. Guest Houses, Bed and Breakfast Establishments.
- n. Educational Uses.
- o. Home occupation, as defined in Article 2.

#### 4.3.1 Use Permitted by Special Permit in the Town Center District<sup>21</sup>

The following uses are permitted within the Town Center District subject to conditions and limitations contained in an approved site plan (Article 9) and special permit (Article 7) issued by the Planning Board.

- a. Individual retail store or service establishment, market, delicatessen.
- b. Individual business, professional office
- c. Outdoor Marijuana cultivation establishments licensed for Tier 1 (up to 5,000sf) by special permit (subject to Article 22)<sup>22</sup>

#### 4.4 Uses Permitted By Right in Commercial Districts.<sup>23</sup>

<sup>12</sup> Amended: 6/2/2015

<sup>13</sup> Amended: 6/21/1993

<sup>14</sup> Amended: 6/3/2008 (Removed Earth Removal as a Commercial Operation)

<sup>15</sup> Amended: 2/1/2000

<sup>16</sup> Added: 10/28/2002

<sup>17</sup> Added: 6/23/2003

<sup>18</sup> Added: 6/16/2006

<sup>19</sup> Added 6/5/2018

<sup>20</sup> Added 6/5/2018

<sup>21</sup> Added: 6/23/2003

<sup>22</sup> Added 6/5/2018

Commercial Districts are intended to be used for residential and commercial activities. The following uses are permitted:

- a. All uses allowed by right under Section 4.1.
- b. Individual retail store or service establishment (not to include new or used automobile sales), market, restaurant (no drive through facilities permitted)<sup>24</sup>
- c. Individual Business, professional, or political campaign offices.
- d. School, college, library, funeral home.
- e. Post office, public transportation terminal, library, bank, municipal, government facility.
- f. Commercial greenhouse.
- g. Research laboratory.
- h. Light manufacturing or processing facility.
- i. Warehouse, storage facility, other than a facility for storage or reprocessing of so called junk vehicles, and other scrapped materials.
- j. Construction business, enclosed heavy vehicle storage provided that storage and repair areas of all vehicle and equipment are screened from general public view by attractive fences or plantings.
- k. Oil, coal, gas, or propane fuel retail distribution business, provided that storage and repair areas of all equipment and vehicles are screened from general public view by attractive fences or plantings.
- l. Country club, tennis club or courts, golf course, amusement/recreation facility, swimming pool, ice skating arena.
- m. Private and commercial stable, subject to such conditions as may be prescribed by the Board of Health.
- n. Hospital, health care facility.
- o. Nursing, convalescent and rest homes.
- p. Day Care Center
- q. Salesrooms and yards for the sale of farm equipment, contractors' equipment, provided that storage and repair areas of all equipment are screened from general public view by attractive fences or plantings.
- r. Freight, transportation terminals, transfer terminals, motor and rail; motor truck yards, provided that storage and repair areas of all equipment and vehicles are screened from general public view by attractive fences or plantings.

Above uses in Subsections g-r would be subject to site plan approval under Article 9 of the Hubbardston Zoning Bylaws and subject to an Environmental & Community Impact Analysis.<sup>25</sup>

#### 4.5 Uses Permitted by Special Permit in Commercial Districts.

The following uses are permitted within Commercial Districts subject to conditions and limitations contained in an approved site plan (Article 9), Environmental & Community Impact Analysis (Article 8), and a special permit (Article 7) issued by the Planning Board.<sup>26</sup>

- a. All uses allowed by Special Permit under Section 4.2.
- b. Shopping center or complex of offices, businesses, or retail establishments not to exceed 50,000 square feet of gross floor area per lot.
- c. Motor vehicle service, repair, washing or fuel business, provided that, except for vehicles under repair, there will not be any exterior storage or placement of vehicles, equipment, discarded parts or tires.
- d. Hotel, motel, inn, campground.
- e. Sales of New or Used Motor Vehicles (Class 1 & 2, as defined by M.G.L. Chap. 140, only)
- f. Senior Residential Development<sup>27</sup>
- g. All Marijuana Establishments as defined by MGL 94G are allowed by special permit (subject to Article 22)<sup>28</sup>

#### 4.6 Uses Permitted By Right in Light Industrial Districts.

Light Industrial Zoning districts are intended to be used for light industrial and residential purposes. The following uses are permitted:

- a. All uses allowed by right under Section 4.1.

#### 4.7 Uses Permitted By Special Permit in Light Industrial Districts.<sup>29</sup>

The following uses are permitted within the District subject to conditions and limitations of an Approved Site Plan (Article 9), Environmental & Community Impact Analysis (Article 8), and Special Permit (Article 7) issued by the Planning Board.<sup>30</sup>

<sup>23</sup> Added subsections g-r: 2/1/2000

<sup>24</sup> Amended 2/1/2000

<sup>25</sup> Added subsections g-r: 2/1/2000

<sup>26</sup> Amended: 2/1/2000

<sup>27</sup> Added: 3/3/2003

<sup>28</sup> Added 6/5/2018

<sup>29</sup> Amended: 6/24/1991 Subsection (f) Commercial Airfield deleted

<sup>30</sup> Amended: 2/1/2000

- a. Research laboratory.
- b. Light Manufacturing or processing facility.
- c. Warehouse and storage facility other than a facility for storage or reprocessing of so-called junk vehicles and other scrapped materials.
- d. Construction business, enclosed heavy vehicle storage.
- e. Oil, coal, gas or propane fuel retail distribution business.

#### 4.8 Prohibited Uses.

Any use not specifically listed in these zoning bylaws shall be deemed to be prohibited. Uses which are dangerous or detrimental to a neighborhood because of fire or explosive hazard, offensive noise, smoke, vibration, harmful radioactivity, electrical interference, dust, odor, fumes, heat, glare, unsightliness or other objectionable characteristics are prohibited. This includes but is not limited to quarrying.<sup>31</sup>

#### 4.9 Existing Uses Continued (Grandfathering).

Any structures or uses lawfully existing on the effective date of these zoning bylaws and lawfully existing uses which will become non-conforming uses on the effective date of these bylaws may be continued in accordance with the provisions of General Laws Chapter 40A, Section 6. Structural additions to pre-existing, non-conforming structures, or structure being used by pre-existing non-conforming uses, can be expanded up to 50% greater in size than the size of such structure at the time of the adoption of this bylaw. Any subsequent and substantial alteration, or extension of a non-conforming use must be authorized by special permit issued by the Planning Board which will be granted only if the Board finds that the proposed alteration, reconstruction, or extension will not be substantially more detrimental to the neighborhood than is the existing non-conforming use.

- a. "A non-conforming building or structure may be altered or enlarged provided that such alteration or enlargement conforms to applicable yard, building height and lot coverage requirements, but no non-conforming structure shall be permitted unless there is a finding by the Special Permit Granting Authority that such change, extension, or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood".<sup>32</sup>

#### 4.10 Abandonment of a Non-Conforming Use.

A non-conforming use which has been abandoned or discontinued for a period of more than two years or has been replaced by a non-conforming use shall lose the protection set forth above in Section 4.9.

#### 4.11 Isolated Lots.

Pursuant to M.G.L. Chapter 40A, Section 6, the requirements of this bylaw relating to area, frontage, width, yard, and depth, any increase in such requirements, shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the requirements contained in these bylaws, or proposed increase hereto, but contained at least 5,000 square feet of area and fifty (50') feet of frontage.

#### 4.12 Effect of Changes on Permits.

Pursuant to M.G.L. Chapter 40A, Section 6, construction or operations under a building permit shall conform to this bylaw and any subsequent amendments hereto unless the use or construction is commenced within six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

#### 4.13 Enforcement.

The Building Inspector, as zoning agent, shall be charged with the enforcement of these zoning bylaws. He or she shall, upon reasonable request, determine whether any proposed or existing use is permitted under these zoning bylaws. Any person aggrieved by that determination may appeal to the Board of Appeals pursuant to Article 11.

#### 4.14 Penalty.<sup>33</sup>

- a. Criminal Disposition. Whoever violates any provision of the Hubbardston Zoning Bylaw may be penalized by indictment or complaint brought to Superior Court, Housing Court, or Gardner District Court. Except as otherwise may be provided by law, the maximum penalty imposed for each violation shall be \$300.00 (Three Hundred Dollars). Each day on which a violation exists shall be deemed to be a separate offense.
- b. Non-criminal Disposition. In addition to the procedures described in Section 4.14.a. above, the provisions of the Hubbardston Zoning Bylaw may also be enforced by the Zoning Enforcement Officer by non-criminal complaint

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<sup>31</sup> Amended: 10/28/1996

<sup>32</sup> Amended: 5/17/1994

<sup>33</sup> Replaced: 6/11/2001

pursuant to the provisions of M.G.L. Ch. 40 §21D. The penalty for each offense shall be \$50.00 (Fifty Dollars). Each day on which a violation exists shall be deemed to be a separate offense.

**ARTICLE 5  
DEVELOPMENT REGULATIONS**

Section

- 5.1 Table of Dimensional Regulations
- 5.2 Open Space Requirement
- 5.3 On-Site Parking Requirements
- 5.4 Private Dumps
- 5.5 Building and Occupancy Permits
- 5.6 One Building Per Lot
- 5.7 Corner Vision
- 5.8 Wetland Limitation from Minimum Lot Requirement

5.1 Table of Dimensional Regulations.

The following table describes the minimum Lot Area requirements, minimum Frontage requirements, minimum Front Yard requirements, minimum Rear and Side Yards requirements, Maximum Lot Coverage requirements and Maximum Building Height requirements in each of the zoning districts:

DISTRICT	Lot Area	Frontage	Front Yard	Rear Yards	Side	Max Coverage	Lot	Max Building Height
Residential-Agricultural	80,000 s.f.	200'	75'	30'		25%		30'
Town Center	80,000 s.f.	200'	75'	30'		25%		30'
Commercial	80,000 s.f.	200'	100'	30'		50%		35'
Light Industrial	100,000 s.f.	300'	250'	75'		50%		50'

5.1.a If the alignment of existing principal buildings on adjacent lots on each side of a residential lot fronting the same street and in the same zoning district is nearer to the streetline than the required front yard specified for the district, the required front yard for that lot shall be the average depth of such adjacent front yards. This provision also applies to additions or modifications to existing principal buildings.<sup>34</sup>

5.1.b. Estate Lot. Single family lots in Residential/Agricultural, Town Center, and Commercial Districts may be created with 150 feet of frontage on an existing public way providing the lot area is a minimum of 435,600 square feet or ten (10) acres. Such lot shall not be further subdivided. Front yard, rear yard, and side lot setbacks, and Maximum Lot Coverage will remain the same as described for these districts in Section 5.1 Table of Dimensional Regulations.<sup>35</sup>

5.2 Open Space Requirement.

Land included within all yard setback requirements shall be maintained as unoccupied natural or in the case of commercial or industrial uses, landscaped space. This restriction does not apply to fences, utility poles, driveways, septic systems, wells, underground utility services, projections allowed to encroach on building lines by the Commonwealth of Massachusetts State Building Code and certain signs authorized in Article 17. Accessory Buildings and Structures must meet front, rear and side yard requirements.

5.3 On-Site Parking Requirements.

a. General.

1. Parking and loading shall be provided in accordance with this Section for any building or use hereafter erected, enlarged or increased. Parking and loading space shall be maintained and shall not be encroached upon so long as said principal building or use remains, unless an equivalent number of such spaces is provided elsewhere in conformance with this bylaw.
2. The parking spaces required shall be located on the same lot as the principal use or on a lot adjacent to the lot on which the principal use is located. The required parking for any two or more uses or structures may be provided by the allocation of the total of the various spaces required for each use or structure in a common parking facility, cooperatively established and operated.

<sup>34</sup> Amended: 6/11/2001

<sup>35</sup> Amended: 12/12/2006

3. If the Building Inspector is unable to identify a use with one or more of the uses in the above schedule, the required number of parking spaces shall be determined, if a site plan review is required, by the Planning Board. If a site plan review is not required, the Building Inspector shall make a determination of the number of spaces that will be reasonably required to be provided by such use for on-site parking.
4. These off-street parking requirements shall not apply to single or two family dwellings.
5. An off-street parking space as used herein shall be a space nine (9') feet in width and twenty (20') feet in length.

b. Number of Spaces.

Off-street parking spaces shall be provided for all new uses or buildings hereafter constructed, reconstructed, or enlarged in accordance with the following schedule (page 15) of requirements, unless otherwise provided for by the Town.

c. Number of Loading Spaces.

Every hospital, institution, hotel, retail store, office building, wholesale house, warehouse, or industrial building, or additions thereto to which or from which outside deliveries of materials or dispatches of materials are to be made by motor transport, and totaling 8,000 sq. ft. or more in floor area, hereafter constructed, reconstructed, or enlarged shall have on the lot one permanently maintained loading space and one additional loading space for each additional 16,000 sq. ft. of gross floor area or major portion thereof, excluding basements.

d. Design Requirements.

1. The general layout and traffic circulation of parking and loading areas shall be designed so as to avoid unsafe conditions and traffic congestion in the street upon which the area has access and to provide for the safety and adequacy of access for vehicles and pedestrians using the area.
2. Parking areas and spaces are to be designed to permit safe access and exit of vehicles. Parking areas are to be designed to prevent vehicles from backing onto driveways or streets.
3. Any enclosed loading space shall be located at least thirty (30') ft. from any street line and any open loading space shall be so designed that trucks when loading or unloading will not project over any street line.
4. Individual parking and loading spaces, maneuvering areas, entrances and exits shall be suitably identified with lines and arrows, as deemed necessary by the Building Inspector.
5. No access drive, aisle or maneuvering area shall have a turning radius of less than twenty (20') ft.
6. Where vehicles will be located adjacent to sidewalks, fences, walls, required buffer strips, trees, landscaping, or similar constructions, a suitable bumper or curb shall be provided in such a location that the vehicle cannot overhang or otherwise damage said obstruction.
7. Off-street parking and loading areas shall be surfaced with an asphaltic, bituminous, cement, or other properly bound pavement so as to provide a durable and dustless surface, and shall be so graded and drained as to dispose of all surface water accumulation within the area. The use of so called porous paving and properly maintained leaching catchbasins is encouraged, especially in the Aquifer Protection District. The surface shall be delineated so that the parking spaces are apparent.
8. Any lighting used to illuminate any off-street parking or loading area shall be shielded and so arranged as to reflect the light away from adjoining premises and public rights-of-way.
9. Provision shall be made for at least one shade tree for every ten (10) parking spaces required and shall be planted adjacent to every tenth parking space whenever possible to ensure even distribution. Trees shall be planted in landscape areas with a minimum size of six feet by six feet (6' x 6'). Planting shall be done in accordance with proper landscaping practices. Trees which dies or become diseased shall be replaced. Minimum trunk size shall be two inch (2") diameter at the time of planting, measured four feet (4') above ground level.
10. All parking areas with more than five (5) spaces and all loading areas shall be bordered on all sides with a ten (10') ft. wide buffer strip on which shall be located and maintained appropriate landscaping of suitable type, density and height to effectively screen the parking area.
11. Access drives shall be arranged for the free flow of vehicles at all times; and all maneuvering spaces and aisles shall be so designed that all vehicles must exit from and enter into a public street by being driven in a forward direction.

12. All portions of all parking spaces and maneuvering aisles shall be set back a minimum of five (5') ft. from any wall of a building.
  13. Each required off-street parking space shall be designed so that any motor vehicle may proceed to and from said space without requiring the moving of any other vehicle or by passing over any other parking space.
  14. Parking areas for more than ten (10) vehicles and associated driveways are to be constructed to the standards for construction as set forth in the Hubbardston Subdivision Rules and Regulations. Drainage design and construction shall include interconnected catch basins with oil and grease traps.
  15. Parking areas are not to be constructed within minimum front yard, rear yard, or side yard setback areas.
- e. Access Drives.
1. No driveway or access road, to or from any property, shall be so located at its juncture with a street as to create a danger or menace to the community or to the convenience or proper use of the adjoining property.
  2. No driveway shall provide access to a lot located in another Zoning District, if said lot is used for any use, principal or accessory, not permitted in the district in which such driveway is located. The driveway or access road to a lot shall be through its frontage.<sup>36</sup>
  3. No driveway shall be located closer than twenty-five (25') ft. to any street intersection measured along the street lines. In any non-residential district, no two driveways on the same lot shall be located closer than seventy-five (75') ft. to each other at their closest limits.
  4. No lot having less than 200 ft. of street frontage shall have more than two (2) driveway entrances and/or exits on each street abutting the lot. Lots with more than 200 ft. of street frontages may have up to one driveway entrance and/or exit for each 200 ft. of additional street frontage.

**HUBBARDSTON PARKING SCHEDULE**

<b>USE</b>	<b>SPACES REQUIRED</b>
1. Multi-Family Dwellings	2 spaces per unit 1 space per dwelling unit for units designrd for, and occupied by, the elderly under government subsidized programs
2. Places of assembly including but not limited to churches, auditoriums, theaters, and stadiums	1 space for each four (4) persons, capacity based on design capacity
3. Food and beverage establishments, clubs (public and private), fraternal organizations and lodges	1 space for each seventy-five (75) sq. ft. of gross floor area but not less than three (3) spaces per seperate enterprise
4. Hotels, motels, and boarding, lodging, and rooming houses	1 space for each rooming unit, plus required parking for facilities used for eating, drinking, assembly and other such uses
5. Automotive services including but limited to gas stations, auto dealers, auto accessories, auto repair, overhaul shops and car wash	1 space for each 500 sq. ft. of gross floor area; or three (3) spaces per bay, lift or equivalent, whichever is greater. An attendant operated or self-sevice car wash shall have at least five (5) waiting positions for each bay between the street line and such by for cars approaching and at least two (2) waiting positions for cars leaving said bays
6. Appliance, carpet, furniture, electrical, heating, and plumbing retail sales	1.5 space for each 1,000 sq. ft. of gross leaseable floor area but not less than five (5) spaces per separate enterprise
7. Other retail sales and service establishments	3 spaces for each 1,000 sq. ft. of gross leaseable area but not less than five (5) spaces per separate enterprise
8. General business and professional and financial institutions	2.5 spaces for each 1,000 sq. ft. of gross floor area, but not less than five (5) spaces per separate enterprise. A drive-in bank window shall have at least five (5) waiting positions between the street line and said window for cars approaching and at least one (1) waiting position for cars leaving said window
9. General hospital, convalescent, nursing or rest home	1 space per three (3) patient beds

<sup>36</sup> Amended: 12/1/2003



10. Manufacturing and industrial establishments	1 space for each 500 sq. ft. of gross floor area
11. Wholesale and distribution, businesses, warehousing and storage businesses, truck terminals, and other enclosed non-industrial storage uses	1 space for each 1,000 sq. ft. of gross floor area or one (1) space each for each one and one half employees on the maximum work shift, whichever is less

5.4 Private Dumps and Commercial Landfills.

Dumping, abandonment, or disposal of vehicles, equipment, appliances, demolition material, or any other waste matter is prohibited in all districts.

5.5 Building and Occupancy Permits.

A building or structure cannot be built or altered and cannot be occupied until the Building Inspector has issued building and occupancy permits which certify compliance with all requirements of these zoning bylaws. If the Building Inspector declines to issue or revokes a permit under this section, the Inspector shall issue a written statement of reasons for decision. Any person aggrieved by an action or decision of the Building Inspector under this section may appeal to the Board of Appeals.

5.6 One Building Per Lot.

Not more than one principal building shall be erected on a lot unless each such building is served by access determined by the Building Inspector, after consultation with the Planning Board, to be functionally equivalent to that required under the Rules and Regulations Governing the Subdivision of Land in Hubbardston. In addition, not more than one structure, other than an accessory structure, shall be erected on a single lot unless such lot has sufficient area, frontage and other dimensional requirements, and all such structures shall be located, so as to allow the lot to be divided with each structure conforming to all current dimensional requirements.

5.7 Corner Vision.

No sign, opaque fence, hedge or similar obstruction shall be permitted to block vision at eye level between streets within thirty (30') feet from their intersection.

5.8 Wetland Limitation from Minimum Lot Requirement.

Not more than 40,000 sq. ft. of the area of a lot required to meet the minimum square footage requirements set forth in Section 5.1 shall be wetland defined in The Wetlands Protection Act (Chapter 131 Section 40 of the Massachusetts General Laws) and those regulations promulgated thereto and the Hubbardston Wetlands Protection Bylaw. Determination of wetland, for the purposes of this provision, shall be made by the Building Inspector, after consultation with the Conservation Commission.

5.9 Swimming Pool Access.

All outdoor swimming pools having a capacity of 400 gallons or more shall be completely surrounded at all times by a fence or wall not less than four (4') feet in height above grade. The pool wall itself may serve as a fence. All gates or doors opening through such enclosure shall be of not less than four (4') feet in height and shall be equipped with a self-closing and a self-latching device located at least four (4') feet above the underlying ground and inaccessible from the outside to small children. Every such gate or door shall be kept locked at all times when the swimming pool is not in use, and any ladders shall be removed.<sup>37</sup>

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<sup>37</sup> Amended: 11/17/1992

## ARTICLE 6 RATE OF DEVELOPMENT<sup>38</sup>

### 6.1 Purpose and Intent

The purpose of this bylaw is to ensure the orderly growth and development of the Town of Hubbardston and the adequate provision of services to its residents while the Town is engaged in the process of updating its master plan, zoning bylaws, and subdivision regulations.<sup>39</sup>

### 6.2 Applicability

This bylaw shall apply to the issuance of all building permits for construction of new single/multi-family residential dwelling units except for those exemptions and exceptions as noted below.

### 6.3 New Dwelling Unit Limitation

Commencing on the date of the adoption of this bylaw, building permits shall not be issued for the construction of, or conversion to more than twenty-eight (28) new dwelling units in any calendar year. Following the adoption of this bylaw the permit issuance shall be determined by subtracting from the twenty-eight (28) unit limit the total number of permits issued, minus those permits withdrawn or expired without use. Building permit applications refused because of this limitation shall be held and acted on in chronological sequence, based on the date of receipt by the Building Commissioner.

### 6.4 Procedures and Permit Phasing

No applicant may submit more than two (2) complete applications for a new single/double building permit to the Building Commissioner in any given month. Building permits shall not be issued to any applicant authorizing the construction of more than five (5) new family dwelling units (exclusive of unused authorizations that have lapsed or been withdrawn) in any calendar year for any lots that are, as of the date of adoption of this bylaw, contiguous, or held in the same ownership, unless the Planning Board has granted an exemption from this requirement pursuant to a special permit.

#### Procedures:

- a. Applications for a building permit must be completed and filed. Improperly filed or rejected permits shall not be considered, and will not be included in the chronological sequence described above and will require re-submission.
- b. The Building Commissioner must process and issue permits for all complete and properly filed permits pursuant to this bylaw. The Building Commissioner shall mark each application with the time and date of submission, and shall act on each application in a timely manner.
- c. If any permit is deemed abandoned or invalid in the same calendar year in which it was issued, then it shall be returned and counted as an additional permit available for issuance during that same calendar year. A permit which is deemed abandoned or invalid in a calendar year different from the year it was issued shall be returned and counted as an additional permit to be issued during the calendar year in which it is deemed abandoned or invalid on if: 1) there were more approved applications for permits than were issued in the year when the said permit was issued, and 2) if there are any intervening years between the calendar year of issuance and calendar year in which said permit is deemed invalid or abandoned, there were also more approved applications for permits than were issued during all of those intervening years.
- d. Permits not issued in any calendar year shall not be available for issuance in any subsequent year.
- e. By the first Friday of January during any calendar year in which Procedures Section 6.4 is in effect, the Building Commissioner shall determine whether or not each approved application for which a permit has not been issued during the previous calendar year shall be retained. Upon being informed in writing by the applicant before the said first Friday in

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<sup>38</sup> Adopted 12/3/2001

<sup>39</sup> Amended 1/18/2005

January that the applicant desires the application to remain in effect, the Building Commissioner shall continue to treat said application as an approved but not issued application in accordance with Procedures Section 6.4.

- f. All approved applications for which a permit has not been issued, and for which the applicant has not informed the Building Commissioner in writing by the said first Friday in January of the applicant's desire for the application to remain in effect shall not be retained, and the application shall be returned to the applicant.
- g. The maximum number of permits to be issued for the remainder of the calendar year 2001 shall be the established quota number for the year minus the number of permits already issued. All other applicable provisions of this bylaw shall apply to the balance of permits which may be issued in 2001.

#### 6.5 Exemptions

The permit limitation provided for in this bylaw shall not apply to building permits for the construction of the following:

- a. Reconstruction of an existing dwelling after catastrophic loss, or repairs, expansion, alteration, or historic restoration to an existing building.
- b. Permits for non-residential purposes.
- c. Upon determination by the Planning Board, under a Special Permit, that the proposed development will meet special needs in housing provision, the proposed development shall be exempt from this growth bylaw. A Special Permit may be granted if the housing is proposed by a public, non-profit, or limited dividend organization or corporation relying on committed state or federal subsidies, where at least twenty-five percent (25%) of the units will initially be sold or leased at terms affordable to households and individuals with incomes not exceeding those defined as "Moderate Income" and at least twenty-five percent (25%) of the new units will initially be sold at terms affordable to households and individuals with incomes not exceeding those defined as "Middle Income" by the Massachusetts Department of Housing and Community Development.
- d. The construction of a single family dwelling on land that, as of the effective date of this bylaw, was part of a lot held in separate ownership and containing no more than one single family dwelling, provided that only one (1) such new dwelling may be constructed in any year on such lot, and provided that no more than two (2) such dwellings may be created from the original lot, with the existing and new dwelling each on separate lots, and the new dwelling complying with all zoning requirements of the district in which they are located.
- e. The construction of one (1) new dwelling on a lot in existence as of the date of the passage of the Rate of Development Bylaw (December 3, 2001). This exemption expires 24 months from the date of the approval of this amendment.<sup>40</sup>

#### 6.6 Relation to Real Estate Assessment

Any land owner denied the issuance of an approved permit because of the provisions of this bylaw may appeal to the Board of Assessors, in conformity with the General Laws of Massachusetts Chapter 59 §59 for a determination as to the extent which the temporary restriction on development of such land shall affect the assessed valuation placed on such land for purposes of real estate taxation, and for abatement as determined to be appropriate.

#### 6.7 Special Permits for More Rapid Development

For the purposes of this bylaw, the Planning Board shall be the special permit granting authority. Notwithstanding the requirements of the above subsections, the Planning Board may issue a special permit authorizing the immediate issuance of a building permit for up to ten (10) single-family dwelling units upon making all of the following determinations and findings:

- a) A salient and unmet housing need would be addressed by the granting of such permit, and
- b) Adequate infrastructure and other mitigating measures are being provided to ensure that municipal services will not be overburdened, and
- c) Expected benefits to the community outweigh anticipated adverse impacts upon municipal service or public facilities associated with the issuance of a special permit.

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<sup>40</sup> Amended: 10/28/2002

#### 6.8 Periodic Review and Expiration

Every year following the adoption of this bylaw, the Planning Board shall report to the Town Meeting on the effectiveness of this bylaw, the need for its continuation, to further the purpose stated in Section 6.1 above, and any recommendations for amendments. This bylaw shall expire July 1, 2021.<sup>41, 42, 43</sup>

#### 6.9 Severability

Each provision of this bylaw shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

#### 6.10 Senior Residential Development

A Senior Residential Development maybe exempted from the building permit limitations outlined above under a Special Permit issued by the Planning Board. Under such a Special Permit, the Planning Board may authorize the issuance of all permits required to complete a Senior Residential Development in one year, depending upon the expected benefits to the community and anticipated need for such housing, and may authorize any portion of those permits requested over a defined period of years.<sup>44</sup>

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<sup>41</sup> Amended 1/18/2005

<sup>42</sup> Amended 12/10/2009

<sup>43</sup> Amended 6/7/2016

<sup>44</sup> Added: 10/28/2002

**ARTICLE 7**  
**SPECIAL PERMITS**Section

- 7.1 Purpose
- 7.2 Application for Special Permit
- 7.3 Review by Other Agencies
- 7.4 Public Hearing
- 7.5 Decision and Enforcement
- 7.6 Associate Member

7.1 Purpose.

This Article sets forth the process for submission and review of special permit applications before the Planning Board. The purpose of a special permit is to assure that a proposed use will be conducted in a manner that is consistent with the land use objectives of the Town of Hubbardston. None of the uses allowed by special permit under these bylaws may be authorized by the Planning Board unless the use:

- a. Shall not have vehicular and pedestrian traffic of a type and quantity so as to cause significant adverse effect to the neighborhood;
- b. Shall not have a number of residents, employees, customers, or visitors so as to cause significant adverse effect to the neighborhood;
- c. Shall not have a greater lot coverage than allowed in the zoning district in which the premises are located;
- d. Shall not be dangerous to the immediate neighborhood or the premises through fire, explosion, emission of wastes, or other causes;
- e. Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare, adverse visual effects, or other nuisance or serious hazard so as to adversely effect the immediate neighborhood;
- f. Shall not cause degradation of the environment.

7.2 Application for Special Permit.

An applicant for a special permit shall submit three (3) copies of Application Form 1, a fee set by the Planning Board, and six (6) copies of a written description of the proposed use.

The description of the proposed use shall include the following information:

- a. A summary description of the proposed use, its location, purpose, and zoning district.
- b. A citation to sections of these zoning bylaws which apply to the special permit.
- c. A list of all state, federal, and local permits, licenses, and authorizations which are required for development, use, operation, and maintenance of the proposed use.
- d. A list of all abutters in accordance with Chapter 40A, Section 11 of the General Laws.

7.3 Review by Other Agencies.

The Planning Board may transmit the description of the proposed use to other town agencies for review and comment within twenty (20) days from transmittal.

7.4 Public Hearing.

The Planning Board shall hold a public hearing in conformance with the requirements of M.G.L. Chapter 40A.

7.5 Decision and Enforcement.

The Planning Board may approve, modify, or reject the application within ninety (90) days following the date of the public hearing for a special permit, unless by written agreement between the applicant and the Planning Board, such time limit is extended. The Planning Board shall issue a written statement of reasons for its decision. A decision to approve or modify the application shall require an affirmative vote of four (4) members.

The Planning Board's decision will be based upon a determination that the proposed use as approved or modified will have an acceptable environmental impact, will be consistent with the land use objectives of the town, will comply with these zoning bylaws and, in particular, Section 1.2, and will comply with bylaws or regulations of the town and applicable laws and regulations of the Commonwealth. A decision to grant a special permit may impose appropriate conditions and limitation.

A special permit shall lapse within two (2) years of the grant, which shall not include such time required to pursue or await the determination of an appeal. Failure to comply with a special permit during development, operation, or use will result in a penalty of three hundred (\$300.00) dollars for each day of continuing violation, revocation of the permit, or judicial enforcement, pursuant to M.G.L. Chapter 40A, Section 8.

#### 7.6 Associate Member

There shall be one Associate Member, recommended by the Planning Board and appointed by the Selectboard. The associate member shall sit on the Board for purposes of acting on special permit applications in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board.<sup>45</sup>

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<sup>45</sup> Amended: 12/3/2001

**ARTICLE 8**  
**ENVIRONMENTAL AND COMMUNITY IMPACT ANALYSIS**

Section

- 8.1 Applicability
- 8.2 Purpose
- 8.3 Analysis
- 8.4 Scope

8.1 Applicability<sup>46</sup>.

Any application for a special permit to be allowed to conduct a use listed in Section 4.5(b-f),<sup>47</sup> Section 4.2 (a,b,c,d,f,g)<sup>48</sup>, 4.4 (g-r),<sup>49</sup> or Section 4.7(a-e) of either a Commercial or Municipal operation which occupies more than 5,000 square feet, and any use listed in Article 15 shall be required to submit, as part of the special permit application submission, an Environmental and Community Impact Analysis. The Environmental and Community Impact Analysis shall clearly and methodically assess the relationship of the proposed use and/or development to the natural and man-made environment of Hubbardston. This report shall be prepared by an interdisciplinary team of professionals qualified, experienced, and, where applicable, licensed, in their fields.

8.2 Purpose.

It is intended that the report be a guide to the Planning Board in its deliberations and will build into the board's decision-making process an appropriate and careful consideration of the environmental and community impacts of the proposed use and/or development.

8.3 Analysis.

For each of the components of the Environmental and Community Impact Analysis listed under paragraph 4 below, each of the following concerns must be separately addressed:

- a. The Environmental and Community Impacts of the Proposed use and/or Development - All primary and secondary environmental and community impacts, both beneficial and adverse, anticipated as a result of the proposed use and/or development. This section shall include all impacts resulting from the construction phase as well as those resulting from the project's completion.
- b. Adverse impacts which cannot be avoided should the proposed use and/or development be implemented - The report shall describe the kinds and magnitudes of adverse impacts which cannot be reduced in severity or which can be reduced in severity, but not eliminated.
- c. Alternatives to the proposed use and/or development - The report shall develop, describe, and objectively weigh alternatives to the proposed use and/or development which are allowed by the Zoning Bylaw.
- d. Measures to be used to minimize adverse environmental and community impacts - Corrective and protective measures which will be taken, as part of the project, to minimize adverse impacts shall be described in detail.

8.4 Scope.

The Environmental and Community Impact Analysis shall evaluate all of the following topics:

- a. Natural Environment.
  - i. Air and Noise Pollution - The impact of local air quality and noise from the proposed development (including traffic generated from the development), both during and after construction, shall be evaluated. The Planning Board may require detailed technical reports of such impacts.
  - ii. Water Pollution - The impact of storm water run-off on adjacent and downstream surface water bodies and sub-surface ground water shall be evaluated. Dangers of flooding as a result of increased downstream runoff, especially peak runoff. The impact of the proposed project on water table levels shall also be analyzed.
  - iii. Land - Compatibility of the proposed development with existing soils; the impact of any soils or other materials to be removed from the site; and the potential dangers and impacts of erosion and sedimentation caused by the proposed development.

<sup>46</sup> Amended: 2/1/2000

<sup>47</sup> Amended: 10/28/2002

<sup>48</sup> Amended: 6/3/2008

<sup>49</sup> Amended: 2/1/2000

- iv. Plants & Wildlife - The impact that the proposed project may have on wildlife habitat and on any rare or endangered plant or animal species known to exist in the area.
  - v. Water Supply - The average and peak daily demand and the impact of such demands on groundwater aquifers.
  - vi. Sewage Disposal - The average and peak daily disposal and the impact of such disposal on groundwater aquifers.
- b. Man-Made Environment.
- i. Existing Neighborhood Land Use - Compatibility with adjacent or nearby existing land uses, or approved private development plans, if known, for adjacent or nearby land use changes to occur during the life of the proposed development. If not compatible, reasons therefor shall be detailed. Consultation with the Planning Board is strongly recommended.
  - ii. Zoning - Compatibility of proposed development with the purposes of the Zoning ByLaw and the Zoning District.
  - iii. Architecture - The style of architecture of the buildings shall be described; its relation to prevailing types of architecture for similar buildings; and its compatibility with the function of the building and to the architecture of adjacent buildings. Sketches, photos, elevations and renderings are encouraged to illustrate architectural appropriateness as well as innovation.
- c. Public Service.
- i. Schools - The expected impact on the school system both elementary and secondary levels, the number of students; projected school bus routing changes and projections of future school building needs resulting from the proposed project.
  - ii. Police - The expected impact on police services, time and manpower needed to protect the proposed development and service improvements necessitated by the proposed development.
  - iii. Fire - Expected fire protection needs; on-site fire fighting capabilities; on-site alarm or other warning devices; fire-flow water needs, source and delivery system and other needs shall be presented. Fire department service improvements necessitated as a result of the proposed project shall also be discussed.
  - iv. Recreation - On-site recreation provisions shall be detailed and off-site recreation demands shall be estimated. Provision for public open space, either dedicated to the Town or available to its residents shall be described. Open space available primarily or exclusively for residents or employees shall also be described.
  - v. Solid Waste Disposal - Analysis of the projected volume and type of solid waste to be generated by the proposed development and methods of removal.
  - vi. Traffic - The expected impact of traffic generated by the proposed development on area roadways. Discussion shall include existing average and peak traffic volumes and composition, projected average and peak traffic generation and composition, intersection impacts and analysis of area roadway and intersection capacities. Methodologies used to make projection shall be described in detail.
  - vii. Highway - Projected need, responsibility and costs to the Town of roadway maintenance shall be analyzed. Impacts of construction equipment on area roadways shall also be discussed.
- d. Aesthetics.
- i. Lighting - The type, design, location, function and intensity of all exterior lighting facilities shall be described. Attention given to safety, privacy, security, and daytime and nighttime appearance shall be detailed.
  - ii. Landscaping - Provisions for landscaping shall be described including type, location and function of all plantings and materials.
  - iii. Visual - Attention given to views into the site and from the site shall be described. Included shall be long-distance views as well as views to and from adjacent properties.



- e. Planning.  
Analyze the compatibility of the proposed development and its alternatives with the goals and objectives of the most recent Growth Management Master Plan and the most recent Open Space Plan.
  
- f. Cost/Benefit Analysis.  
This municipal benefit/cost analysis should follow standard and usual procedures for measuring both the benefits to be derived and costs to be incurred by the Town of Hubbardston as a result of the proposed development. This element should also estimate net benefits or costs of non-quantifiable environmental impacts.

**ARTICLE 9**  
**SITE PLAN APPROVAL**

Section

- 9.1 Application and Purpose
- 9.2 Site Plan Submission
- 9.3 Site Plan Form
- 9.4 Site Plan Content
- 9.5 Review by Other Agencies
- 9.6 Public Hearing
- 9.7 Decision and Enforcement

9.1 Application and Purpose.

This article sets forth the process of submission and review of any site plan required to be approved by the Planning Board. The purpose of site plan review is to assure that development proposals are consistent with the environmental and siting objectives of the Town of Hubbardston. The site plan provides the basic information necessary for reasoned review by citizens and agencies of the town. Site plan review is applicable when required under Article 4 of these bylaws (subsections 4.2, 4.3.1, 4.5, 4.7) and Articles 13, 15,<sup>50</sup> and 20.<sup>51</sup>

The site plan application shall include:

- a.) A summary description of the proposed use, its location, purpose and zoning district.
- b.) A citation to sections of these zoning bylaws which apply to the site plan.
- c.) A list of abutters in accordance with MGL Chapter 40A Section 11 and the required cost to publish hearing notices and notify abutters.<sup>52</sup>

9.2 Site Plan Submission.

An applicant for site plan approval shall submit the following:

- a. Two (2) original mylar drawings of the site plan and six (6) contact prints. The prints are to be dark line on white background. One of the original drawings will be returned after approval or disapproval.
- b. Three (3) copies of the Planning Board's Site Plan Review Application Form. The applicant shall state in his application the time within which the required work on the ground will be completed.
- c. The required fee established by the Planning Board.
- d. A location plan of the site at a scale of 1 inch = 200 feet (1" = 200') showing all proposed uses, ways, driveways, buildings, parking and loading areas and their relation to one or more existing streets.
- e. A sketch plan, acceptable to the Planning Board, showing a prospective layout for any adjacent land owned or controlled by the owner or application.
- f. A community and environmental assessment report as required by Article 8.
- g. The plan shall not be deemed to have been submitted until the application form, site plan, and fee herein required have been delivered to the Planning Board at a regular or special meeting. Receipt will be acknowledged by signature of a majority of the Planning Board on each copy of the application, two (2) of which will be returned to the applicant.
- h. When deemed necessary by the Board the plan may be reviewed by an engineer selected by the Planning Board.<sup>53</sup>
- i. All consultants fees for legal, engineering, and other professional reviews required by the Planning Board shall be paid for by the applicant.<sup>54</sup>

9.3 Site Plan Form.

The site plan shall be prepared by a registered engineer or surveyor and shall be clearly and legibly drawn at a scale of not less than 1 inch = 40 feet (1" = 40') on a material which is suitable for reproduction. If multiple sheets are used, an index sheet showing the entire site plan shall be provided.

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<sup>50</sup> Amended: 6/23/2003

<sup>51</sup> Amended: 6/01/2010

<sup>52</sup> Amended: 6/01/2010

<sup>53</sup> Amended: 6/01/2010

<sup>54</sup> Amended: 6/01/2010

#### 9.4 Site Plan Content.

The site plan shall contain the following information:

- a. Plan name, boundaries, true north point, date, scale, and zoning district(s).
- b. Names and addresses of present record owner(s) and applicant and name(s) of the engineer and surveyor who prepared the plan; certificates and seals of the engineer and surveyor; and a certificate that all surveying conforms to the requirements of the Massachusetts Land Court.
- c. Zoning district boundaries, if any.
- d. Suitable space to record the action of the Planning Board and the signatures of the Planning Board on each sheet of the site plan.
- e. Major site features, such as existing stone walls, fences, buildings, rock ridges, rock out-croppings, swamps, trees over twelve (12") inches in diameter, or the perimeter of heavily wooded areas.
- f. Location of natural waterways, water bodies and wetlands within and adjacent to the site.
- g. Existing and proposed topography of the land to be shown at five (5) foot intervals.
- h. Size, material, type, and location of existing and proposed storm drains, sewers, utility services, septic or sanitary disposal systems, hydrants.
- i. Existing and proposed layout of driveways, parking areas, storage and loading areas, buildings, structures, lighting, signs, fire alarm systems.
- j. Profiles of all buildings, structures, signs.
- k. Landscape and maintenance plan.

#### 9.5 Review by Other Agencies.

The Planning Board shall transmit the site plan and environmental assessment to the Board of Health, Highway Department, Police Department, Fire Department and Conservation Commission for review and comment. These agencies may submit recommendations to the Planning Board within twenty (20) days from transmittal.

#### 9.6 Public Hearing.

The Planning Board shall hold a public hearing on the proposed site plan within sixty-five (65) days from the date of submission, unless by written agreement between the applicant and the Planning Board, such time limit is extended. Legal notice of the hearing shall be given by the Planning Board to the applicant, abutters, and to the Planning Boards of the towns abutting the Town of Hubbardston. Legal notice shall be posted in the Town Hall. Legal notice shall be published once in each of two successive weeks in a local newspaper; the first notice is to be published not less than fourteen (14) days prior to the hearing. The Public Hearing on the site plan may be held simultaneously with the Public Hearing on the Special Permit.

#### 9.7 Site Plan Decision and Enforcement.

The Planning Board may approve, modify, or reject the application within ninety (90) days following the date of the Public Hearing, unless by written agreement between the applicant and the Planning Board, such time limit is extended. The Planning Board shall issue a written statement of reasons for its decision.<sup>55</sup> A decision to approve or modify the site plan shall require an affirmative vote of four (4) members.

The Planning Board's decision shall be based upon a determination that the development shown on the site plan, as approved or modified, will have an acceptable level of community or environmental impact, will be consistent with the land use objectives of the town, will comply with the purpose of these zoning bylaws as stated in Section 1.2, and will comply with these zoning bylaws, Rules and Regulations of the Town of Hubbardston and applicable laws and regulations of the Commonwealth of Massachusetts.

An approved site plan is valid for two (2) years; development must be completed within that time unless an extension is granted. Failure to comply with the Planning Board's site plan decision will result in a penalty of \$300.00 for each day of continuing violation.

The Planning Board may waive or modify the requirements listed under section 9.2, 9.3 ,9.4.<sup>56</sup>

#### 9.8 Associate Member

The Associate Member of the Planning Board shall sit on the Board for purposes of acting on site plan reviews and applications in the case of absence, inability to act, or conflict of interest in the part of any member of the Planning Board in the event of a vacancy on the Board.<sup>57</sup>

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<sup>55</sup> Amended: 06/01/2010

<sup>56</sup> Amended: 06/01/2010

<sup>57</sup> Amended: 06/01/2010

**ARTICLE 10  
VARIANCES**Section

- 10.1 Purpose
- 10.2 Application to Board of Appeals
- 10.3 Public Hearing
- 10.4 Decision and Enforcement

10.1 Purpose.

The Board of Appeals shall have the power to grant, as an extraordinary remedy with respect to particular land or structures, a variance from the terms of these zoning bylaws where the Board finds that:

- a. Owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the zoning bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and
- b. desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the land use and environmental objectives of these zoning bylaws.

A zoning variance may not be granted for a use which is not permitted as a right, or by special permit, in the zoning district in which the land or structure in question lies.

10.2 Application to Board of Appeals.

An applicant for a variance shall submit Application Form 1, a fee determined by the Board, and a written description of the proposed use.

The description of the proposed use shall include the following information:

- a. A summary description of the proposed use, its purpose, location, and zoning district.
- b. A citation to sections of these zoning bylaws which apply to the variance.
- c. A list of all state, federal, and local permits, licenses, and authorizations which are required for development, use, operation, and maintenance of the proposed use.
- d. A true copy of all site plans, special permit applications and decisions of other town agencies which involve the proposed use.

10.3 Public Hearing.

The Board of Appeals shall hold a public hearing in conformance with the requirements of M.G.L. Chapter 40A.

10.4 Decision and Enforcement.

The Board of Appeals may approve, modify, or reject the application within one hundred (100) days from the date of application for a variance, unless by written agreement between the applicant and the Board, such time limit is extended. The Board shall issue a written statement of reasons for its decision. A decision to approve or modify the application shall require an affirmative vote of four (4) members of the Board. The Board's decision will be based upon a determination that the proposed use as approved or modified satisfies the purpose of Section 10.1.

If the rights authorized by a variance are not exercised within one year of the date of the grant of such variance, such rights shall lapse. Failure to comply with a variance during development, operation, or use will result in a penalty of three hundred (\$300.00) dollars for each day of continuing violation and/or revocation of the variance.

**ARTICLE 11**  
**APPEALS**Section

- 11.1 Purpose
- 11.2 Application to Board of Appeals
- 11.3 Public Hearing
- 11.4 Decision

11.1 Purpose.

An appeal to the Zoning Board of Appeals may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action in accordance with Chapter 40A, Section 8 of the General Laws. An appeal must be filed within thirty (30) days from the date of the order or decision which is being appealed.

11.2 Application to the Board of Appeals.

An appellant shall submit three (3) copies of Application Form 1 and six (6) copies of a written statement of appeal to the Town Clerk. The Clerk shall retain one (1) copy of the Application Form and Statement of Appeal. The Clerk shall forward one (1) copy of the application Form and Statement of Appeal to the officer or agency from which the appeal has been taken. The Clerk shall file the remaining copies with the Board of Appeals.

The Statement of Appeal shall include the following information:

- (a) A summary statement of grievance.
- (b) A citation to sections of these zoning bylaws and other laws and regulations which apply to the appeal.
- (c) A true copy of any decision which is being appealed.

11.3 Public Hearing.

The Board of Appeals shall hold a public hearing in conformance with the requirements of M.G.L. Chapter 40A. In addition to all other notice requirements, notice shall be given to the officer or agency from which the appeal has been taken.

11.4 Decision.

The Board of Appeals shall issue a decision on appeal within one hundred (100) days from the date of application for appeal. The Board shall issue a written statement of facts and reasons for its decision. Any person aggrieved by the decision of the Board may seek judicial review pursuant to M.G.L., Chapter 40A, Section 17.

**ARTICLE 12**  
**BOARD OF APPEALS**

Section

12.1 Appointment

12.2 Powers

12.1 Appointment.

The Board of Appeals shall consist of five (5) voting members and such non-voting associate members as may be deemed appropriate by the Board of Selectmen. All members shall be appointed and removed by the Board of Selectmen pursuant to M.G.L., Chapter 40A, Section 12. The Board shall elect a chairman and clerk. The chairman may designate an associate member to represent any voting member during that member's absence. In such instance, an associate member shall have and exercise full voting rights of the absent member.

12.2 Powers.

The Board of Appeals shall have the following powers:

- (a) To hear and decide appeals in accordance with M.G.L., Chapter 40A, Section 8.
- (b) To hear and decide petitions for variances as set forth in M.G.L., Chapter 40A, Section 10.

In exercising the powers granted by this section, 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 the powers of the officer from whom the appeal is taken and may issue or direct issuance of a permit.

**ARTICLE 13**  
**FLOODPLAIN DISTRICT**

Section

- 13.1 Purposes
- 13.2 District Delineation
- 13.3 Use Regulations
- 13.4 Planning Board

13.1 Purposes.

The purposes of this district (in addition to those enumerated elsewhere in this zoning bylaw) are:

- a. To provide that lands in the Town of Hubbardston subject to seasonal or periodic flooding, as described hereinafter, shall not be used for residence or other purposes in such a manner as to endanger the health, safety, or welfare of the occupants thereof, or of the public generally, or so as to burden the public with costs resulting from unwise individual choices of land use.
- b. To protect, preserve and maintain the water table and water recharge areas within the town so as to preserve present and potential water supplies for the public health and safety of the town.
- c. To assure the continuation of the natural flow pattern of the water courses within the town, in order to provide adequate and safe floodwater storage capacity to protect persons and property against the hazards of flood inundation.

13.2 District Delineation.

- a. The Floodplain District delineations are established by elevations of area subject to inundation by 100-year frequency floods, as delineated by the Federal Emergency Management Agency (FEMA).
- b. The Floodplain District includes all special flood hazard areas designated as Zone A on the Hubbardston Flood Insurance Rate Maps (FIRM), dated June 1, 1984, as amended, which is hereby made a part of this bylaw and which is on file at the office of the Town Clerk. The explanatory data contained in the "Flood Insurance Study, Town of Hubbardston, Massachusetts, Worcester County", dated December 1, 1983, as prepared by the Federal Emergency Management Agency, shall be used in the interpretation of the said map, and for such purpose the said Flood Insurance Study is hereby incorporated in this bylaw.
- c. The Floodplain District also includes all that land along any named or unnamed water body or water course for a horizontal distance of fifty (50') feet from the permanent or seasonal banks thereof except as otherwise defined on the Flood Insurance Rate Maps.
- d. Within Zone A, where the 100-year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Building Inspector. If the data is sufficiently detailed and accurate, it shall be relied upon to require compliance with this bylaw and the State Building Code.

13.3 Use Regulations.

- a. The Floodplain District is established as an overlay district to all other zoning districts. All Development, including structural and non-structural activities, whether permitted by right or by special permit, must be in compliance with M.G.L., Chapter 131, Section 40 and the requirements of the Massachusetts State Building Code pertaining to construction in floodplains.
- b. The following uses of low flood damage potential and causing no obstructions to flood flows shall be allowed as a matter of right, provided they are permitted in the underlying district and they do not require structures, fill or storage of materials or equipment:
  - (1) Agricultural uses such as farming, grazing, and horticulture;
  - (2) Forestry and nursery uses;
  - (3) Outdoor recreational uses, including fishing, boating, play areas;
  - (4) Conservation of water plants and wildlife;
  - (5) Wildlife management areas, foot, bicycle, and/or horse paths;
  - (6) Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises; and
  - (7) Building lawfully existing prior to the adoption of these provisions.
- c. The following uses are prohibited in the Floodplain District:

- (1) The erection of new buildings or structures, or the construction of new buildings or structures, except as may be permitted in Sections 13.3(b) or 13.3(d);
  - (2) The removal, filling, dredging, or altering of any lake, pond, river, stream, brook, marsh, swamp, bog, or meadow, except as may be permitted in Sections 13.3(b) or 13.3(d);
  - (3) The installation of septic tanks or leach fields; and
  - (4) The storage of salt, petroleum or other chemical products.
- d. The following uses may be allowed by special permit from the Planning Board, subject to the requirements of Section 13.4:
- (1) Municipal, county or state parks;
  - (2) Forestry management;
  - (3) Wells or other structures necessary for proper functioning of municipal or private water supplies;
  - (4) Public utilities;
  - (5) Improvement or repair of any structure, in existence at the time of adoption of this section of the bylaws, which is in excess of fifty (50%) percent of the market value of the structure; said market value to be determined by the Board of Assessors;
  - (6) In case of fire, natural catastrophe, or total rehabilitation of structures existing in the Floodplain District prior to the adoption of these provisions, said structure may be rebuilt to the original size, subject to the requirement the the new structure shall conform to the provision for flood-proofing found in the State Building Code;
  - (7) Construction and maintenance of dams and other water control devices; and
  - (8) Roadways, driveways and walkways ancillary to uses otherwise permitted by this section.

#### 13.4 Planning Board.

The Planning Board may issue a special permit for the uses described in Section 13.3(d). In the Floodplain District, no structure or building shall be erected, constructed, substantially improved, or otherwise created or moved; and no earth or other materials may be dumped, filled, excavated, or transferred, unless a special permit is granted by the Planning Board. Said Board may issue a special permit hereunder (subject to the other applicable provisions of this bylaw) only if the application complies with the following provisions:

- a. The proposed use shall comply in all respects with the provisions of the underlying zoning district; and
- b. The application (which shall conform to the plan requirements described in Section 8.2 through 8.4 {Site Plan Approval}) shall be reviewed by the Conservation Commission, Planning Board, Board of Health and Building Inspector. Within ten (10) days of the receipt of the application, the Planning Board shall transmit one (1) copy of the development plan to each of the above named Boards. The Planning Board shall take no final action until reports have been received from the above Boards or until thirty-five (35) days have elapsed; and
- c. All encroachments, including fill, new construction, substantial improvements to existing structures, and other development in the floodway are prohibited unless certification by a registered professional engineer is provided by the applicant, demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood; and
- d. The Planning Board may specify such additional requirements and conditions it finds necessary to protect the health, safety, and welfare of the public and the occupants of the proposed use.



**ARTICLE 14**  
**SUBDIVISION PHASING**

Section

- 14.1 Applicability
- 14.2 Purpose
- 14.3 Building Limitations
- 14.4 Exemptions

14.1 Applicability.

The following regulation shall apply to all subdivisions of land into more than fifteen (15) lots in any twelve (12) month period. This shall not apply to division of land as approval under the Subdivision Control Law not required (M.G.L., Chapter 41, Section 81P).

14.2 Purpose.

The purpose of this bylaw is to encourage a steady pace of residential development, provide long-term support to the local building industry, stabilize property values and facilitate adequate provision of public services to individual developments and the Town in general.

14.3 Building Limitations.

Within any approved subdivision, no more than fifteen (15) lots or 12.5% of the total number of lots within the approved subdivision, whichever is greater, may be built upon for residential purposes in any twelve (12) month period commencing on the date of approval of such subdivision. Any lot existing at the time of adoption of this Article shall be considered as a single unit for the purposes of this Article and the subdivision of such a lot by two or more definitive subdivision plans shall be considered as a single subdivision plan for the purposes of this Article.

14.4 Exemptions.

The provisions of this bylaw shall not apply to, nor limit in any way, the granting of building or occupancy permits required for enlargement, restoration or reconstruction of dwellings existing on lots as of the date of passage of this bylaw.

**ARTICLE 15**  
**AQUIFER FAVORABILITY PROTECTION**

Section

- 15.1 Findings and Purpose
- 15.2 Designation
- 15.3 Procedure
- 15.4 Permitted Uses
- 15.5 Special Permits Uses
- 15.6 Prohibited Uses
- 15.7 Dimensional Requirements
- 15.8 Design and Operations Guidelines
- 15.9 Violations
- 15.10 Definition

15.1 Findings and Purpose.

The future growth of the Town of Hubbardston is dependent upon the ability of the town to provide sufficient clean drinking water. As such it is necessary that areas identified as having a high degree of potential for future development of a municipal water supply be protected. The purposes of this Article, in addition to the purposes enumerated in Article 1 of this zoning bylaw, are to limit activities that may occur in areas which have a high degree of potential groundwater yield, and which pose a threat to the quality or quantity of groundwater that may be available in such areas.

15.2 Designation.

The Aquifer Favorability Protection District (hereafter referred to as AFPD) shall include all Aquifer Favorability Areas (see Article 2). The AFPD shall be considered to be superimposed over any other district established by this zoning bylaw. All land in this District is subject to the regulations set forth in this Section and such regulations shall be in addition to, rather than in place of, the requirements for the underlying district.

15.3 Procedure.

Whenever an application is made for a building or use permit which the Building Inspector believes may involve the use of land in the District, he shall determine by any means at his disposal, whether the parcel identified in the application lies within the AFPD. If the parcel in question is within the AFPD and is within 500 feet of the district boundary, as determined by the Building Inspector, and if the applicant does not believe that the parcel in question properly lies within the AFPD, the applicant may submit site specific data, prepared and certified by a hydrogeologist, that proves that the parcel in question is not underlain by stratified drift deposits hydrologically connected to the other areas mapped as having a high degree of Aquifer Favorability. If the Building Inspector, after conferring with the Planning Board, is convinced that such area is not properly located within the AFPD, he may consider such parcel as not being within the AFPD and not subject to this Article.

15.4 Permitted Uses.

Uses not requiring a special permit under Section 15.5 or prohibited under Section 15.6 are permitted in the AFPD, subject to the applicable provisions of this bylaw, other provisions of this zoning bylaw applicable to the underlying zoning districts in which said AFPD is located and to any other applicable overlay district regulations.

15.5 Special Permits Uses.

- a) Schedule of Special Permit Uses. Where otherwise legally permitted by the provisions of this zoning bylaw applicable to the underlying districts in which the AFPD is located, and subject to such special conditions and safeguards as the Planning Board deems necessary to fulfill the purpose of this Section, the following uses are permitted by Special Permit granted by the Planning Board in accordance with the provisions of subparagraphs b. through d.:
  - 1) Any use involving usage of storage of toxic or hazardous materials in quantities greater than normally associated with household use, and on site agricultural use;<sup>58</sup>
  - 2) Golf Courses;
  - 3) Package sewage treatment plants not in excess of 15,000 gpd;<sup>59</sup>
  - 4) On-site disposal of sewage or industrial wastewater exceeding 5,000 gallons per day but not in excess of 15,000 gpd.<sup>60</sup>

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<sup>58</sup> Amended: 6/28/94

<sup>59</sup> Amended: 6/28/94

<sup>60</sup> Amended: 6/28/94

- b) For any use within the AFPD for which a special permit is required under the provisions of this article or Section 4 of this bylaw, the applicant shall submit, in addition to any other information required to be submitted, the following:
- 1) A complete list of all chemicals, pesticides, fuels and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use, accompanied by a description of measures proposed to protect all storage containers/facilities from vandalism, corrosion and leakage, and to provide for control of spills.
  - 2) A description of potentially toxic or hazardous wastes to be generated, indicating storage and disposal methods.
  - 3) Evidence of approval by the Massachusetts Department of Environmental Quality Engineering (DEQE) of any industrial waste treatment or disposal system or any waste-water treatment system over 15,000 gallons per day capacity.
  - 4) Projections of downgradient concentrations of nitrogen and other relevant chemicals at property boundaries and other locations deemed pertinent by the Planning Board. Projections shall be based upon appropriate ground water models.
- c) Considerations. In hearing an application for a Special Permit hereunder, the Planning Board shall consider, in addition to any other factors said Board deems pertinent, the following factors:
- 1) The simplicity, reliability and feasibility of the proposed measures for containment of toxic or hazardous materials and control of spills.
  - 2) The degree of threat of water quality which would result if the control measures failed.
  - 3) The recommendations of other town agencies regarding the application, if any.
- d) Criteria for Approval. Special permits under this Section shall be granted only if the Planning Board determines that:
- 1) The intent of this bylaw as well as its specific criteria are met; and
  - 2) Ground water quality resulting from on-site waste disposal and other on-site operations will not exceed a standard for drinking water at the downgradient property boundary of 5ppm (mg/l) concentration nitrate-nitrogen.<sup>61</sup>

The Planning Board shall explain any departures from the recommendations of other town agencies in its decision.

#### 15.6 Prohibited Uses.

The following uses are specifically prohibited in the AFPD:

- a) Airplane, boat and motor vehicle service and repair, including auto body shops;
- b) Car or truck washes;
- c) Chemical and bacteriological laboratories;
- d) Commercial photographic processing;
- e) Commercial printing, other than Xerographic reproduction;
- f) Dry cleaning establishments;
- g) Dumping of snow from outside the District;
- h) Hotel or motel;
- i) Metal plating, finishing or polishing;
- j) Motor vehicle salvage operations and Junk yards;
- k) Multi-family residential structures;
- l) Municipal sewage treatment facilities with on-site disposal of treated effluent;
- m) Rendering of more than 25%, in total, of any lot impervious nor rendering of more than 15%, in total, of any lot impervious unless an acceptable method of on site recharging of runoff without degrading groundwater quality is provided;<sup>62</sup>
- n) Storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;<sup>63</sup>
- o) Sanitary landfills or other disposal of solid waste;
- p) Self-service laundries;
- q) Storage of liquid petroleum products of any kind, except those incidental to:
  - (1) Normal household use and on site agricultural use, outdoor maintenance or the heating of a structure,

<sup>61</sup> Amended: 6/28/94

<sup>62</sup> Amended: 6/28/94

<sup>63</sup> Amended: 6/28/94

- (2) Waste oil retention facility required by M.G.L. CH 21, s. 52A, as amended,
- (3) Emergency generators required by statute, rule or regulation, or
- (4) Treatment works approved by the Department of Environmental Protection designed in accordance with 314 CMR 5.00, as amended, for the treatment of contaminated ground or surface waters, provided that such storage is either in a free standing container within a building or in a free standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity;<sup>64</sup>
- r) Uses with subsurface disposal of domestic sewage as projected by 310 CMR 15.00 THE STATE ENVIRONMENTAL CODE, Title 5, as amended;
- s) Any other use which involves the manufacture, storage, use, or disposal of toxic or hazardous materials, except as allowed by special permit in Section 15.5 above;
- t) Sludge or septage, except as in compliance with 310 CMR 22.21(2) (b)1-"...storage of sludge and septage, as defined in 310 CMR 32.05, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31; " all references to 310 CMR being as amended.
- u) Earth Removal as commercial operation.<sup>65</sup>
- v) Quarrying.<sup>66</sup>

#### 15.7 Residential Density Requirement.

Within the AFPD, the minimum lot size, regardless of the minimum lot size specified in Article 5, shall be 80,000 square feet per dwelling unit.

#### 15.8 Design and Operations Guidelines.

The following design and operation guidelines shall be observed for all uses within the AFPD:

- a) Safeguards. Provision shall be made to protect against toxic or hazardous material discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures such as: prohibition of underground fuel storage tanks; spill control provisions in the vicinity of chemical or fuel delivery points; and secured storage areas for toxic or hazardous materials. The storage of liquid hazardous materials, as defined in M.G.L. CH 21E, must be either in a free standing container within a building or in a free standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity. Indoor storage provisions are mandated for the corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the ground water.
- b) Location. Where the premises are partially outside of the AFPD, potential pollution sources such as on-site waste disposal systems shall be located outside the District to the extent feasible.
- c) Disposal. For any toxic or hazardous wastes to be produced in quantities greater than those associated with normal household use, the applicant must demonstrate the availability and feasibility of disposal methods which are in conformance with Chapter 21C, M.G.L.
- d) Drainage. All runoff from impervious surfaces, other than driveways, rooftops, walkways and patios servicing single family dwellings, shall be recharged on the site or diverted towards areas covered with vegetation for surface infiltration, to the extent possible. Dry wells shall be used only where other methods are not feasible, and shall be preceded by oil, grease, and sediment traps to facilitate removal of contaminants. If dry wells are utilized the property owner shall be required to have the oil, grease and sediment traps cleaned annually and to provide the building inspector, on an annual basis, with proof of such cleaning.

#### 15.9 Violations.

Written notice of any violation of this bylaw shall be provided by the Building Inspector to the owner of the premises, specifying the nature of the violations and a schedule of compliance, including cleanup of any spilled materials. This compliance schedule must be reasonable in relation to the public health hazard involved and the difficulty of compliance. In no event shall more than 30 days be allowed for either compliance or finalization of a plan for longer-term compliance.

#### 15.10 Definition.

**TOXIC OR HAZARDOUS MATERIAL:** Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture

<sup>64</sup> Amended: 6/28/94

<sup>65</sup> Amended: 10/28/02

<sup>66</sup> Amended: 10/28/02

were discharged to land or waters of this town. Toxic or hazardous materials include, without limitation, organic chemicals, petroleum products, heavy metals, radio-active or infectious wastes, acids and alkalis, and include products such as pesticides, herbicides, solvents and thinners. Wastes generated by the following activities, without limitation, are presumed to be toxic or hazardous unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Board of Health.

- \* Electronic circuit assembly.
- \* Motor and machinery service and assembly.
- \* Painting, wood preserving and furniture stripping.
- \* Pesticide and herbicide application.

**ARTICLE 16  
OPEN SPACE RESIDENTIAL DEVELOPMENT<sup>67</sup>**

<b>SECTION</b>	
16.1	Introduction
16.2	Purpose
16.3	Definitions
16.4	Use and Dimensional Standards
16.5	Density/Lot Size/Frontage/Setbacks/Lot Coverage
16.6	Deleted
16.7	Additional Utility Requirements
16.8	Design Criteria
16.9	Open Space
16.10	Review and Approval Process
16.11	Adoption of Rules and Regulations
16.12	Waiver of Compliance

**16.1 Introduction**

The Planning Board may grant a special permit for an "Open Space Residential Development" (OSRD) in accordance with this by-law in the Residential/Agricultural District (RA) and Commercial District, on one or more parcels of land in common ownership.

OSRD may consist of any combination of single family and two-family structures in which the buildings are clustered together in one or more groups in accordance with this by-law. The land not included in the building lots shall be preserved as Open Space.

**16.2 Purpose**

The purpose of an OSRD is to encourage the preservation of open land by providing an alternative pattern of development through which the following objectives are likely to be met:

- A. Greater flexibility and creativity in the design of residential subdivisions provided that the overall density of the development is no greater than that which is normally allowed in the district;
- B. The permanent preservation of the Open Space, agricultural lands, forest lands, and other natural resources and to encourage a less sprawling form of development that consumes less open land;
- C. Maintain the traditional New England rural character and land use pattern in which small villages contrast with Open Space and farm land;
- D. The construction of street(s), utilities and public services in a more economical and efficient manner;
- E. Respect for the natural features of the land, including wetlands, watercourses, forests, prime agricultural land, steep slopes, plants, wildlife, historic sites, scenic areas, and rural character;
- F. Promote alternatives to strip residential development lining the roadsides in the town to preserve the unobstructed natural views from roadways;
- G. Provide wildlife corridors and greenways connecting Open Spaces, needed by wildlife to ensure their survival.

**16.3 Definitions**

- A. Deleted
- B. Deleted
- C. Deleted
- D. "Open Space" shall mean any parcel or area of land or water essentially unimproved or set aside, dedicated, designated or reserved for public or private use and enjoyment of the owners and occupants of an OSRD and the public as permitted by this by-law.

**16.4 Use and Dimensional Standards**

- A. OSRD shall be located on a parcel or contiguous parcels of land in common ownership having an area of no less than twenty (20) acres in the Residential/Agricultural or Commercial District, and have at least two hundred (200) feet of

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<sup>67</sup> Adopted: 6/13/2006

frontage on an existing town way or on an existing town public way.

- B. No less than fifty (50%) percent of the gross area of the development shall be preserved as undeveloped Open Space. The percentage of this Open Space that can be wetland shall not exceed the percentage of wetland for the entire site under conditions as shown on Sketch Plan.

#### **16.5 Density/Lot Size/Frontage/Setbacks/Lot Coverage**

- A. The number of building lots in an OSRD shall not exceed the total number of building lots which could be reasonably expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetland regulations and other applicable requirements. The applicant shall have the burden of proof with regard to design and engineering specifications for such conventional plan. It is the intent of this Section that OSRD shall not result in the creation of more lots than could be approved under a traditional development, in accordance with the Subdivision Control Law and the Planning Board's Rules and Regulations. The Planning Board shall require a preliminary subdivision plan, which conforms to the Town's Subdivision Rules and Regulations for the Planning Board to determine the number of lots, which could be approved in a traditional subdivision.

The conventional development plan shall show the locations and results of at least two soil evaluations performed in separate areas within each soil phase classification proposed for residential development on the parcel. The board after consultation and agreement with the Hubbardston Board of Health may require the applicant to perform further soil evaluations on selected lots shown on the conventional development plan. Those lots not meeting the requirements of Title 5 of the Mass State Environmental Code and any additional requirements of the Hubbardston Board of Health shall be subtracted from the total number of lots. All areas of the subject lot(s) disturbed during any preliminary testing must be restored to their original condition, regardless whether or not special permit issued. A bond for an estimated amount to restore area must be posted with the Planning Board to assure restoration is finished.

- B. The lot size for each residential structure in an OSRD shall be no less than 40,000 square feet, minimum 25,000 upland.
- C. The minimum lot frontage shall be one hundred twenty-five (125) feet.
- D. Minimum front, side, and rear yard setbacks for residential structures shall not be less than fifty (50), twenty-five (25), and thirty (30) feet respectively.
- E. Maximum lot coverage by building shall be the same as in the underlying district. However, lots of a reduced size shall continue to be regarded as having the full-required size for the underlying district for the purpose of this calculation. See Hubbardston Zoning By-law 5.1 (regulation size, page 11).
- F. Mix of Housing Types

The OSRD housing may consist of single-family and two-family structures. Two family structures need an additional twenty-five (25) feet of frontage and fifteen (15,000) thousand square feet of upland. Not more than fifty (50) percent of units in the OSRD may be two family structures.

#### **16.6 Deleted**

#### **16.7 Additional Utility Requirements**

- A. All structures shall be connected to their own private waste disposal system, or a public sanitary sewer system, if available, or any design allowable in the Hubbardston Subdivision Regulations.
- B. No OSRD served by on-site waste disposal systems shall be approved unless the applicant can demonstrate to the satisfaction of the Planning Board through the Board of Health that the potential for groundwater pollution is no greater than would be expected from the conventional subdivision with single family lots meeting normal lot size requirements located on the same parcel.

#### **16.8 Design Criteria**

- A. Where the proposed development abuts a body of water, a portion of the shoreline, as well as reasonable access to it, shall be part of the common Open Space.
- B. Residences shall be grouped so that the greatest number of units can be designed to take advantage of solar heating opportunities; so that scenic views and long views remain unobstructed, particularly those seen from roads.
- C. Lots shall be laid out, to the greatest extent possible to achieve the following objectives:
  - 1. On the most suitable soils for subsurface septic disposal;
  - 2. On the least fertile soils for agricultural use;
  - 3. Within the woodland on the parcel, or along the far edges of open fields;

4. So as to minimize the length of any common boundary between the new lots created by OSRD and lands preserved for agriculture;
  5. So that dwelling units and non-agricultural structures shall be located at a minimum of one hundred (100) feet from agricultural land and shall be separated, to the greatest extent possible, from the agricultural uses by a seventy-five (75) foot wide buffer strip of trees and native plantings sufficient to minimize conflicts between farming operations and residents.
- D. In areas greater than twenty (20) percent slope or upon hilltops and ridgelines, lots shall be laid out, to the greatest extent possible, to achieve the following objectives:
1. Building sites shall be located so that the silhouettes of structures will be below the ridgelines or hilltop or if the site is heavily wooded, the building silhouettes shall be at least ten (10) feet lower than the average canopy height of the trees on the ridge or hilltop.
  2. Where public views will be unavoidably affected by the proposed use, architectural and landscaping measures shall be employed so as to minimize significant degradation of the scenic or aesthetic qualities of the site.
  3. The removal of native vegetation shall be minimized.
  4. Any grading or earthmoving operation in conjunction with the proposed development shall be planned and executed in such a manner that the final contours are consistent with the existing terrain, both on and adjacent to the site.
  5. Safeguards shall be employed where needed to mitigate against environmental degradation from erosion, sedimentation, water pollution, or flooding.
- E. ROADS: The principal roadway(s) serving the site shall be designed to conform to the standards of the Rules & Regulations of the Planning Board adopted February 1, 2000, Article 34, General By-law Roads, Streets and Ways.
- F. PARKING: Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may be included in this calculation.

#### **16.9 Open Space**

- A. Further subdivision of Open Space, or its use for other than conservation, agriculture, forestry, or non-commercial recreation shall be prohibited, and the approved plan shall be so endorsed in writing. Any proposed Open Space, shall be subject to a permanent Conservation or Agricultural Preservation Restriction in accordance with M.G.L. Chapter 184 § 31, approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, or Department of Agricultural Resources. Such land shall be perpetually kept in an open state, shall be preserved exclusively for the purpose set forth herein, and shall be maintained in a manner which will ensure its suitability for its intended purposes. Any proposed Open Space that does not qualify for inclusion in a Conservation Restriction or Agricultural Preservation Restriction or that is rejected from inclusion in these programs by the Commonwealth of Massachusetts shall be subject to a Restrictive Covenant, which shall be approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the Town.
- B. Subject to approval by the Board, all Open Space created hereunder shall either:
1. Be conveyed to the Town of Hubbardston, for a park or Open Space use if accepted by the Town; or
  2. Be conveyed to a nonprofit organization, the principal purpose of which is the conservation of Open Space; or,
  3. Be conveyed to a corporation, trust, or association owned or to be owned by the owners of the lots or residential units within the development; or,
  4. Be retained by the owner or other entity for use or lease in accordance with 16.9 A., above,
  5. Be conveyed to a private owner for agriculture, horticulture or forestry in accordance with the Conservation Restriction of the above.
  6. An appropriate combination of the above.

#### **16.10 Reviews and Approval Process**

- A. Approval for OSRD will be by Special Permit from the Planning Board.
- B. As OSRD constitutes a subdivision; both the subdivision and special permitting approval processes may run concurrently. However, subsequent approval by the Planning Board of such portions of the development as constitute a subdivision shall be required as set forth in the Subdivision Control Law, including the approval of streets and utility systems. A favorable action, that is taken by the Planning Board on a special permit application, shall not, constitute subdivision approval under the Subdivision Control Law, or imply that such approval will be given.
- C. The Planning Board shall require the applicant for an Open Space Residential Development to submit a preliminary subdivision plan of conventional design as stipulated under the Town's Subdivision Regulations, as satisfactory evidence



that the number of lots in the Open Space Residential Development plan is no greater than that shown on the conventional plan.

- D. At the Planning Board's discretion, this preliminary plan shall be accompanied by the results of percolation verification tests as administered by the Board of Health as an indication of the number of potentially buildable lots on the parcel. Percolation verification shall be tested as follows:
1. Percolation and deep hole tests may be required to be performed on up to twenty (20%) percent of the total proposed lots, as determined by the Planning Board.
  2. In the event any such lot fails to pass these tests, the lots not passing shall be eliminated from the total proposed lots. In addition, Section 16.10D may be repeated for another twenty (20%) percent of the lots remaining, at the Planning Board's discretion.
  3. The process shall continue until there are no lot failures within the twenty (20%) percent group being tested.
- E. Such Plan shall show compliance with the requirements of this by-law and shall show any other particular features of the OSRD as requested by the Planning Board or required by the applicable Rules and Regulations to enable the Planning Board to determine compliance with this by-law.
- F. After notice and a public hearing in accordance with M.G.L. Chapter 40A Sections 9 and 11, and after following the procedure outlined in this by-law, the Planning Board may grant such a special permit with any conditions, safeguards, and limitations, if it determines:
1. That the applications form is complete,
  2. That all the other requirements of this section and by-law are fully met; and provides a high degree of design quality, provides opportunity for affordable housing based on criteria and considerations outlined in Section 16.2 and 16.3.
  3. That the design and layout of the proposed OSRD encourages the preservation of Open Space for conservation and recreation, preserves natural features of the land, allows more efficient provision of streets, utilities and other public service, and provides a high degree of design quality, based on the criteria and considerations enumerated in Section 16.3 of this By-law.

#### **16.11 Waiver of Compliance**

The Hubbardston Planning Board, acting as the Special Permit granting authority under this By-law, may waive strict compliance with such requirements 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.

#### **16.12 Validity**

The invalidity of any section or provision of this By-law shall not invalidate any other section or provision thereof.

**ARTICLE 17**  
**SIGNS**<sup>68</sup>

<b>SECTION</b>	
17.0	Purpose
17.1	Definitions
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17.2.2.1	Legally Erected Non-Conforming Signs
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17.4.3.5	Off-Site Directional Signs
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17.6.1.2	Freestanding Signs
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17.6.1.4	Projecting Signs
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17.6.1.6	Wall and Window Signs
17.6.1.7	Multi-Tenant and Place Name Signs
17.6.1.8	Flags
17.6.1.9	Off-Site Directional Signs

<sup>68</sup> Bylaw replaced 6/13/2006

<b>SECTION</b>	
17.6.1.10	On-Site Directional Signs
17.7	Non-Residential Signs in the Town Center District
17.7.1	Exempt Signs in Accordance with Section 17.4.1
17.7.2	Residential Signs in Accordance with Section 17.5
17.7.3	Freestanding Signs
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17.9	Pre-Existing Signs (Grandfathering)
17.10	Enforcement and Fines
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17.12	Appeals Process
Appendix	Table of Allowable Signs and Reference
A.	

### **17.0 Purpose**

This by-law is provided to protect the appearance of the Town from the effect of signs that may be inappropriate for the zoning districts of the Town. This section regulates the type, number, size, location, and other characteristics of signs in the various zoning districts, in support of the following purposes:

1. To promote the safety of the users of the pedestrian ways and roadways in Hubbardston by reducing distractions, visual competition, and obstructions of signs that impede pedestrian or vehicular circulation;
2. To serve the informational and orientation purposes for which signs are intended;
3. To promote and preserve the visual character of the town; and
4. To protect property values.

### **17.1 Definitions**

Terms used in this by-law that are not defined herein, shall have meanings given in Article 2 of the Hubbardston Zoning By-laws or alternatively as defined by common dictionary,

**Billboard** – A freestanding sign larger than forty (40) square feet in gross area, or a sign affixed to a building wall covering more than ten percent (10%) of the area to which it is affixed; which does not advertise a business or profession conducted, a service offered or a commodity sold upon the premises where such sign is located, and which is subject to MGL c. 93 §§29-33 and the rules and regulations of the Outdoor Advertising Board of the Commonwealth of Massachusetts.

**Party** – Any person, persons, business or other entity who applies for or maintains a sign.

**Place Name** – a name or label used to identify a group of residents or businesses located together on a single property, such as an office or industrial park, or residential community, without specifically naming each resident or business; for example "Hometown Industrial Park" or "Senior Village".

**Public Event** – Any in-town event that is open to the general public.

**Sign** – Any device designed to inform, direct or attract attention of persons not on the premises on which the sign is located. Such signs require compliance with the regulations stated herein. The following shall not constitute signs within the meaning of this by-law:

- government flags or insignia, except when displayed in connection with a commercial promotion;
- on-site signs directing or guiding traffic and parking on private property and bearing no advertising matter;
- integral decorative or architectural features of buildings, except letters, trademarks, moving parts or moving lights;
- non-permanent legal notices, informational flyers, identification or directional signs for an event posted only during the event, that are posted, erected or required by governmental bodies;
- non-commercial messages intending to express opinions, positions, or to solicit public enjoyment, provided they do not create a public safety problem or nuisance, as determined by the building inspector or the police chief.

**Sign, Abandoned** – any sign as defined in this By-law that remains in place for more than ninety (90) days following evacuation of the tenant from the site, or cessation of the related business activity, or any sign that pertains to a time, event, or purpose which no longer applies. Abandonment of signs does not apply to seasonal businesses that do not change ownership.

Sign, Accessory – Any sign or other form of advertising device that advertises, calls attention to, or indicates the person or activity occupying the premises on which the sign is erected or that advertises the property or some part of it for sale or lease and that contains no other advertising matter. Such signs require compliance with the regulations stated herein.

Sign, Alteration - Alteration shall refer to any change in size, design or location of any existing sign, or to replacement to an existing sign. Maintenance and repair of an existing sign, such as painting or replacement of supporting elements shall not constitute alteration.

Sign, Awning – A sign created by individual letters or symbols attached or painted onto a fabric-covered supporting structure that projects from and is supported by the exterior wall of a building.

Sign, Banner – A sign painted on to or attached to fabric such as cloth, canvas or plastic.

Sign, Farm Stand, Seasonal – A sign used to advertise products grown or produced on the premises for sale, including permanent or changeable copy where the items available change from time to time. Seasonal farm stand signs shall be exempt from permitting if the requirements of Section 5.1.7 are satisfied.

Sign, Farm Stand, Permanent – Permanent signs located on farm property may be permitted only in accordance with Section 6.0.5 or with the regulations for signs otherwise allowed in the zoning district in which the property is located.

Sign, Freestanding – A self-supporting sign not attached to any building, wall or fence, but in a fixed location, supported by poles, posts, braces or other frames on or in the ground. Freestanding signs do not include movable, portable, mobile or trailer-type signs.

Sign, Illuminated – Any sign lit by electrical bulbs, fluorescent lights or neon tubes. Neon tubes used as abstract, graphic, decorative or architectural elements shall be considered to constitute an illuminated sign. Christmas or other holiday lighting shall not be deemed to be “illuminated signs.”

Sign, Measuring Height: Ground Elevation – The grade of the land shall be the average natural grade of the land surrounding the sign, and does not include elevated islands, mounds or walls. Where the sign will be located on a slope, mound or wall, the height of the sign shall be measured from the average elevation of the land ten feet to each side of the sign.

Sign, Monument - Also known as *ground mounted* signs. A sign that is part of an integrated structure running from the surface grade of the ground to the sign area, having the appearance of a solid base on the ground, as opposed to being supported by independent posts or poles. Contrast *freestanding signs*.

Signs, Moveable, Portable or Mobile – A sign capable of being readily moved or relocated, including portable signs mounted on, attached to or painted on a chassis and wheels, a truck, trailer or other vehicle if placed at a location especially prepared for display through special lighting or elevation, or in the case of commercial vehicles having lettering, logos or similar devices, if such vehicles are placed at a location more prominent than a feasible alternative on the site, or any sign supported by legs; also signs converted to A- or T-frames, balloons used as signs and umbrellas used for advertising. Moveable, Portable or Mobile signs are prohibited except as allowed as temporary signs in accordance with Sections 17.4.2 and 5.3.4.

Sign, Non-Accessory – Any billboard or other sign not meeting the definition of accessory sign. Such signs require compliance with this Zoning by-law and may require approval of the Massachusetts Outdoor Advertising Board.

Sign, Projecting – A sign that is affixed to a building, tree, pole or other structure and which extends more than six (6) inches beyond the surface to which it is affixed.

Sign, Temporary – A sign intended to be used for a period of no more than sixty (60) days, or a sign which is displayed and removed daily. Temporary signs shall be regulated in accordance with Section 17.4.2.

Structure – A combination of material assembled in a fixed location to give support or shelter or for other purposes. Structures shall include buildings, frameworks, signs, sheds, mobile homes, platforms, swimming pools, towers, billboards, flagpoles and similar objects.

Structure, Temporary – A structure that is permitted for a limited and defined period of time, in accordance with the provisions of this by-law.

Wall Face - A wall face shall be defined as any length of continuous wall, including doors and windows with a change in relief of no more than three feet, extending from corner to corner and from the eave of the roofline to the elevation of the entrance to the building. If the wall to contain the sign does not contain an entrance then the wall shall include the area to the average grade of the ground surface running along that wall.

## **17.2 APPLICABILITY**

This section applies to all new signs, as well as to alterations of existing signs. Any exterior sign or advertising device, or any permanent interior sign or advertising device designed and intended to be viewed from the out of doors, which is hereafter erected or maintained, shall, except as expressly provided otherwise, conform to this section. This section shall apply to all existing signs that do not comply with the current zoning by-law.

### **17.2.1 Permit Required**

All new or altered signs shall require a permit from the Building Inspector, except for non-conforming signs satisfying the criteria of Section 17.2.2, exempt signs as provided by Section 17.4.1 and temporary signs in accordance with Section 17.4.2. Refer to the attached appendix for guideline references to relevant sections.

### **17.2.2 Non-Conforming Signs**

It is the intent of this section to bring all signs into conformance with this section over time.

#### *17.2.2.1 Legally Erected Non-Conforming Signs*

Any existing sign that conformed to the requirements of the Hubbardston Zoning by-law or Hubbardston General by-law, when so erected shall continue to legally exist as a non-conforming sign, until such time that the elements of wear and tear require replacement. Such signs may continue to be maintained, even though as a result of adoption of this section, the sign does not conform to the terms of this sign By-law, provided that such sign shall not be enlarged, except so as to make the sign conform to said requirements. Significant redesign or alteration shall not include general maintenance and upkeep, alteration of the copy (including a different name for a new business) or new logo design for a similar business or modifications that do not increase the size of the sign.

#### *17.2.2.2 Restoration of Non-Conforming Signs*

Any such sign that has been destroyed or damaged to such an extent that the cost of restoration would exceed thirty-five percent (35%) of the replacement value of the sign at the time of destruction or damage, or where greater than 50% of the sign area is destroyed or damaged, shall not be repaired, rebuilt or altered, except so as to make said sign conform to the requirements of this by-law, except where such destruction or damage is by accident, caused by parties other than the business or property owner or by act of God. The Building Inspector shall determine whether restoration of a non-conforming sign shall be allowed in accordance with this section.

#### *17.2.2.3 Abandonment; Failure to Maintain*

The exemption for a nonconforming sign herein granted shall terminate with respect to any sign which is abandoned, which advertises or calls attention to any products, businesses or activities no longer carried on or sold on the premises for at least sixty (60) days or which is not repaired or properly maintained for at least sixty (60) days after notice that such repair or maintenance is required has been given to the property owner by the Building Inspector.

### **17.2.3 Prohibited Signs**

The following signs shall not be allowed in Hubbardston

1. Flashing signs;
2. Billboards;
3. Signs exceeding the limits set forth herein;
4. All Neon signs including "open" and/or "closed" signs and internal neon window signs;
5. Tethered, lighter than air objects used as signs;
6. Any sign displayed on a chassis, trailer, or other unregistered vehicle;
7. All internally illuminated signs. (See 17.3.3)

### **17.3 GENERAL PROVISIONS**

All signs shall conform to the following general provisions as well as to any other relevant provisions for the particular type or location of the sign proposed.

#### **17.3.1 Location and Setbacks**

1. No sign shall be located in such a manner as to impair sight distances of pedestrians and/or vehicles at an intersection or at a vehicular or pedestrian entrance to a property.
2. All signs shall be located on the same parcel of land as the business, location, product, service or occupant identified on the sign, with the exception of directional signs on public property and the exceptions provided in sections 17.3.4.5.
3. Signs shall not be installed on power-line poles, traffic lights or street signs.
4. No sign shall be affixed to a roof. No sign shall extend above the eaves line of any building to which it is affixed.
5. All signs shall be set back a minimum of ten (10) feet from any property line, unless stated otherwise herein.
6. No sign will be intentionally placed to obscure another sign.

#### **17.3.2 Maintenance**

1. Signs shall be maintained in a good state of repair, in a safe and secure condition.
2. Signs shall be repaired, maintained or removed within 30 days after the Building Inspector has given notice that repair or maintenance is required. If a sign shows corrosion or deteriorated paint over 50% of the area of one side or if damage to the sign causes the loss of 10% of its substance or if the sign suffers damage or deterioration which creates a risk of harm to the person or property of another it shall be repaired or removed.

#### **17.3.3 Illumination**

1. Signs shall not contain internal illumination, or emit flashing or intermittent illumination.

2. When external lights are used to illuminate signs, such lights shall be shielded and directed solely at the face of the sign. Any such illuminating fixture may be mounted on the sign structure above or alternately on the ground below its respective sign so long as the secondary reflected light from the surface of the sign is limited to the area immediately surrounding the sign.
3. Signs may be illuminated only between one hour before opening and one hour after closing of business to which the sign applies. The illumination of any sign shall not produce glare on or shine directly on adjacent properties or roadways.

#### **17.3.4 Number of Signs**

A party shall be allowed any combination of two signs in accordance with this By-law in addition to any temporary signs or other signs not requiring a permit under this By-law. Properties containing multiple businesses may be permitted additional signs in accordance with Section 17.6.1.7.

#### **17.3.5 Sign Area**

1. Sign area shall be the entire area of the sign, bounded by a single continuous line that encloses the outside perimeter of the total sign, excluding supporting framework.
2. For a sign applied to a building, the area shall be considered to include all lettering, wording and accompanying designs or symbols, together with any background of a different color than the natural color, or finish, material of the building.
3. For a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall or window, the area shall be considered to be the smallest total area which encompasses all of the letters and symbols.
4. When calculating the percent coverage of a wall or window, on which the sign will be placed, the entire face of the "wall" shall be considered.
5. The area of supporting framework (for example, brackets, posts, etc.) shall not be included in the sign area measurement if such framework is incidental to the display. The area supporting framework shall be considered incidental if the total area is twenty percent (20%) or less than the sign (area) which is supported.
6. When a sign has two (2) or more faces, the area of all faces shall be included in determining the area, except where two (2) faces are placed back to back and are at no point more than two (2) feet from each other. In this case, the sign shall be taken as the area of either face, and if the faces are unequal, the larger shall determine the area.

#### **17.3.6 Sign Height**

1. All sign heights shall be in accordance with requirements for particular types of signs as specified in this by-law.
2. Sign height shall be measured from the grade of the land surface from which the sign rises to the top of the highest element of the sign.
3. For freestanding signs located within the yard area of a lot, if the surrounding roads or ground is at a significantly higher elevation than the area on which the sign is located, the following shall apply:
  - The sign may be permitted to be elevated up to five (5) feet above the road elevation, but in no case shall the sign be greater than fifteen (15) feet high.
  - In situations where a property is visible from two (2) roads of different elevations, measurement shall be to the surface elevation of the roadway in closest proximity to the sign.

#### **17.3.7 Construction Standards for Signs**

Construction design and installation of permanent signs shall be in a workmanlike manner so as to provide signage that will be long lasting and shall comply with Massachusetts State Building Codes.

#### **17.3.8 Record of Permitted Signs**

A file of records, to include a photograph of the approved sign at installation, of all signs granted permits shall be organized by street and number and maintained at the office of the Building Inspector.

### **17.4 SIGNS ALLOWABLE IN ALL DISTRICTS**

#### **17.4.1 Exempt Signs**

The following types of signs protect resident's First Amendment Rights of free speech or represent the history and culture of the Hubbardston community and shall be allowed without a permit.

##### *17.4.1.1 Historic and Cultural Signs*

Historical markers, tablets, statues, memorial signs and plaques; names of buildings and dates of erection and emblems installed by governmental agencies, religious or non-profit organizations; not exceeding six (6) square feet shall not require a permit.

#### *17.4.1.2 Residents' Signs*

Signs placed by residential owners or occupants stating their names, addresses, or other non-commercial message shall not require a permit provided the sign does not exceed four (4) square feet. See provisions related to home occupation signs in Section 17.5.4

#### *17.4.1.3 Home Occupation Identification Sign*

One sign identifying a home occupation or accessory use that is authorized under the Hubbardston Zoning By-law, shall be allowed for each property for which a home occupation or accessory use is present. Such sign shall be exempt so long as it measures no more than four (4) square feet in area. Such sign may be a monument sign or attached to the building or may be freestanding and not more than eight (8) feet high. See definition in Article 2.12 in Article 2 Definitions.

#### *17.4.1.4 Multi-Unit Dwelling Complexes*

In the event that the occupants of a residential structure are part of a congregate living facility; including senior care, group homes, apartment or other multifamily dwelling, one sign not exceeding eight (8) square feet may be permitted to identify the group.

#### *17.4.1.5 Entrance Signs*

Up to two freestanding or monument signs may be provided at each roadway entrance to a subdivision or existing neighborhood to identify the name of the subdivision or neighborhood, provided that total sign area does not exceed sixteen (16) square feet, complies with this section and does not reduce site visibility to or from intersecting roads.

#### *17.4.1.6 Sponsor Signs*

Signs advertising or soliciting support of local non-profit youth or groups through local business advertising shall not require permits, so long as such signs are incorporated into an integral part of a structure used by the group (e.g. Curtis Recreational Field). Signs shall be erected in an orderly arrangement and safely and securely attached to the supporting structure. The sponsored group shall be responsible for ensuring the maintenance of sponsor signs or alternatively their removal. Individual sponsor signs shall not exceed sixteen (16) square feet, shall be maintained in good repair and shall be removed or replaced at the discretion of the sponsored group.

#### *17.4.1.7 Seasonal Farm Stand Signs*

Farm stands offering produce or other products produced on properties may post one sign at such property, without a permit, to advertise such products for sale. The sign may include permanent or changeable copy where the items available change from time to time, provided that such sign shall be located at least ten (10) feet from the property line. Farm stand signs are allowed in addition to any other signs that would otherwise be permitted on the property under the provisions of this By-law. Permanent farm signs are not exempt; see section 17.5.5 for conditions. For off-site directional signs, see section 17.6.1.9.

### **17.4.2 Temporary Signs**

Temporary Signs are intended to be used for a period of no more than sixty (60) days, or a sign which is displayed and removed daily. Temporary signs are permitted by right without a permit in accordance with this section and provided that the requirements of section 17.3 above are satisfied. Any temporary sign that does not comply with this section must comply with the permit requirements of this by-law or otherwise be subject to enforcement action.

#### *17.4.2.1 Election Signs*

Signs relating to candidates for public office, ballot questions, notices pertaining to voting not exceeding sixteen (16) square feet shall be allowed.

#### *17.4.2.2 Message Signs*

Signs displaying messages regarding a public event shall not be erected more than four (4) weeks prior to the event; shall not exceed sixteen (16) square feet in area; and shall be removed within three (3) days after the event.

#### *17.4.2.3 Yard Sale Signs*

Signs advertising a yard sale, not to exceed three (3) square feet each may be displayed for not more than five (5) consecutive days. The holder of the yard sale may post no more than four (4) signs. Signs must be removed within twelve hours after the yard sale.

#### *17.4.2.4 Sandwich Boards*

In all non-residential districts sandwich board signs are allowed during business hours, provided that the sign does not exceed twelve (12) square feet in area (per side) and are displayed no more than 12 hours per day. In addition,

sandwich boards shall be located in a manner that does not create a safety hazard or hindrance to pedestrian or vehicular traffic.

#### *17.4.2.5 Contractors and For Sale or Lease Signs*

An on-premises sign identifying the contractor, builder, architect, landscape architect and/or engineer's name, address and other pertinent information shall be allowed provided such signs do not exceed eight (8) square feet and are set back a minimum of ten (10) feet behind the property line.

For sale, rent, or lease signs are allowed on-premises to advertise the property being sold, leased, or rented, provided that:

- Such sign shall not exceed eight (8) square feet;
- Such signs shall advertise only the property on which the sign is located, except off-premises signs of not greater than six (6) square feet may be posted for a maximum of 18 hours to provide directions for one-day events so long as they do not restrict visibility.
- A maximum of two (2) signs may be maintained on any property being sold, leased, or rented.
- The owner or agent shall remove signs governed by this subsection within ten (10) days of sale, lease, rent, completion of work or issuance of a certificate of occupancy, as applicable.

#### *17.4.2.6 Banner Signs*

Fixed banners for advertising special events or otherwise identifying the user of the property shall be allowed provided they are not illuminated by external lights. Banners shall be removed after a period of six weeks. The total area of all banner signs shall not exceed thirty-two (32) square feet. The Town of Hubbardston is exempt from the size requirement where the purpose of the banner is to promote public participation in public events such as meetings, voting or celebrations. Such public notice or public participation banners shall not be present in any location for longer than two weeks.

### **17.4.3 Special Provisions**

The following signs shall be permitted following review and approval by the Building Inspector. Where this Section applies, the Building Inspector shall grant or deny the permit within ten (10) business days of submission of a complete application. No special provision signs shall exceed sixteen (16) square feet. One copy each of the items specified in Section 17.8.2 shall be required for a complete application.

#### *17.4.3.1 Signs Internal to a Property*

Signs internal to a property that are obscured from view from public ways by vegetation, structures or topography shall be allowed without a permit. The Building Inspector shall make the determination as to whether or not the signs are obscured from view. This section specifically includes directory signs intended to identify the occupants of multifamily developments, senior housing and business parks, where the property itself is otherwise identified by a "place name".

#### *17.4.3.2 Directional Signs for Public Benefit*

Off-site signs on public ways or other property indicating the direction to any public building or community facility, such as the senior center, community hall, churches, schools, recreation fields, hospital and other similar uses are allowed following approval by the Building Inspector with consideration of comments from the Police Chief. Non-permanent signs such as legal notices, flyers or directional signs to events are exempt under the definition of "sign."

#### *17.4.3.3 Municipal Signs*

Signs serving municipal purposes such as advertising a public event, locations or identification of public buildings or property or the location of land or buildings open for the public benefit may be permitted by the Building Inspector after consideration of the proposed sign in context of its purpose and its compatibility with surrounding neighborhood. Non-permanent signs such as legal notices, flyers or directional signs to events on the day of the event are exempt under the definition of "sign."

#### *17.4.3.4 Moveable, Portable or Mobile Signs*

Moveable, portable or mobile signs that are capable of being readily moved or relocated shall be allowed only under the provisions for temporary signs in accordance with the provisions in Section 17.4.2. This section is specifically intended to prohibit permanent signs displayed on trailers, vehicles, carts, or other wheeled or easily moveable displays that do not otherwise meet the specifications of other sections of this By-law. Any sign displayed on any chassis, trailer, or other unregistered vehicle is not permitted. For the purposes of this section only, registered commercial vehicles actively used in the day-to-day operation of the business and conforming to this paragraph shall not count toward the total number of allowable signs on the property.



#### *17.4.3.5 Off-Site Directional Signs*

Off-site directional signs shall be allowed only with the permission of the property owner (private or town) and approval of the Building Inspector. The Building Inspector will permit signs 9" x 48" in area, blue in color, white lettering, and not more than 6 feet in height. The signs must be reasonably necessary to direct visitors as to the location of the business. Each business may have no more than two off-site signs.

The Building Inspector will approve the general location of the sign. If the sign is to be placed on private property the applicant must submit with the permit application 1) a notarized statement from the owner of the lot on which the sign will be placed allowing its placement on that lot, and 2) a notarized Right of Entry form allowing the Highway Department to enter on to the property to install the sign.

All signs and poles must be ordered through the Building Inspector's office. All costs of the sign(s) and pole shall be pre-paid by the applicant(s). The cost of the pole will be paid by the first business(es) to receive a permit(s) for any location.

Installation of off-site signs will be done by the Hubbardston Highway Dept. The Highway Department will determine the exact location of the sign to ensure that its placement does not create a safety hazard or hindrance to pedestrian or vehicular traffic.

Any required repairs to any off-site signs will be done by the Town at the expenses of the businesses shown on that sign.

### **17.5 SIGNS ALLOWABLE IN RESIDENTIAL DISTRICTS**

The following signs located within residential zoning districts are permitted in accordance with this section, unless otherwise modified by or provided for in Section 17.3. The number of signs allowed in Residential Districts must comply with the provisions of Section 17.3.4.

#### ***17.5.1 Exempt Signs in accordance with Section 17.4.1***

#### ***17.5.2 On-Site Directional Signs***

On-Site Directional Signs not exceeding two (2) square feet identifying entrances, exits and parking areas on properties containing multiple residential units or home offices may be permitted.

#### ***17.5.3 Off-Site Directional Signs***

Off-Site Directional Signs shall be allowed in accordance with 17.4.3.5.

#### ***17.5.4 Home Occupation Sign (See definition in Article 2.12 in Article 2 Definitions)***

One sign in addition to that allowed by Section 17.4.1.3 identifying a home occupation, or accessory use may be permitted upon a finding by the Building Inspector that the sign is in keeping with the neighborhood and identifies the non-residential use of the property. Such sign may not exceed eight (8) feet in height and four (4) square feet in area.

#### ***17.5.5 Permanent Farm Stand Signs***

Farm stands offering produce or other products grown on properties may be allowed one sign at such property, with a permit granted by the Building Inspector, to advertise the Farm. The sign may include permanent or changeable copy where the items available change from time to time, provided that such sign shall be located at least ten (10) feet from the property line. Permanent Farm stand signs may be allowed in addition to other signs that would otherwise be permitted on the property under the provisions of this By-law, including temporary farm stand signs.

### **17.6 SIGNS ALLOWABLE IN NON-RESIDENTIAL DISTRICTS**

In all non-residential districts, in which a sign is desired to advertise or otherwise identify the user of the property, the following standards shall apply. The number of signs allowed must comply with the provisions of Section 17.3.4.

#### ***17.6.1 Commercial and Light Industrial Districts***

For the purpose of this section, objects and articles of business inventory shall not be construed as a sign.

##### *17.6.1.1 Exempt Signs in Accordance with Section 17.4.1*

##### *17.6.1.2 Freestanding Signs*

Freestanding Signs may be permitted by the Building Inspector following site plan approval. Free-standing signs shall not exceed ten (10) feet in height, nor twenty-four (24) square feet in area. In no case shall there be more than one (1) free-standing sign per property in the Commercial and Light Industrial District.

#### *17.6.1.3 Monument Signs*

A Monument Sign consistent with this section may be constructed in place of the permitted Freestanding Sign on a commercial or light industrial property. Monument Signs shall also be permitted only by the Building Inspector following site plan review. Monument signs shall not exceed five (5) feet in height, or thirty-two (32) square feet in area. Monument signs shall not be located closer than ten (10) feet from any property line.

#### *17.6.1.4 Projecting Signs*

Projecting signs shall not exceed twenty-four (24) square feet in area. If affixed to, suspended from, or incorporated as part of a building, a projecting sign shall not extend more than four (4) feet from the building.

Sign construction drawings/specifications shall be submitted with the permit application and shall be stamped by a Professional Engineer.

#### *17.6.1.5 Awnings*

Permanent signs identifying a business or facility may be allowed on cloth or fabric structures such as awnings, flags or banners attached to the building, provided that the requirements below and in section 17.3 herein are satisfied. A sign painted on or attached to the cloth or fabric of an awning attached to the building must be painted on or attached flat against the surface of the awning, but may not extend beyond the valance or be attached to the underside. Lettering on awning signs shall not exceed twelve (12) inches in height. The awning must be located a minimum of seven (7) feet above sidewalk level to allow for pedestrian access. The awning sign area shall not exceed 25% of the total awning square footage. The sign is not to exceed thirty two (32) square feet.

#### *17.6.1.6 Wall and Window Signs*

One sign affixed to, suspended from, or incorporated as part of a building wall shall be allowed so long as the total area of the sign does not exceed 10 percent (10%) of the area of the wall or six (6) square feet, whichever is larger but in no case exceeds thirty two (32) square feet. The area of wall covered shall be calculated to include the area covered by both wall and window signs (i.e. total area of building face covered by sign).

Window sign(s) shall not cover greater than forty percent (40%) and in no case shall exceed thirty-two (32) square feet of the window area, including "open/closed", hours of operation and credit card signs. Of the forty percent (40%), not more than twenty percent (20%) shall be used as a permanent sign for store or business name. The remaining twenty percent (20%) shall be reserved for temporary signs advertising special events or sales. Temporary advertising signs shall not be displayed for a period longer than six weeks at which time they should be removed.

#### *17.6.1.7 Multi-tenant and Place Name signs*

Where the property comprises multiple non-residential users, such as in a village plaza or industrial park, the following standards apply: One monument or freestanding sign identifying the place name and/or the tenants located on the property may be permitted, provided the maximum area of the sign is sixty-four (64) square feet and maximum height is ten (10) feet. Such sign may be located in a safe and convenient location.

Where a multi-tenant sign is permitted, discretion is left to the applicant to subdivide the areas of the multi-tenant sign for tenant signage, however no single tenant may have more than twenty four (24) square feet.

Additionally, each individual occupant is permitted one wall sign in accordance with section 17.6.1.6 where the cumulative sign coverage of any contiguous wall area does not exceed ten percent (10%).

Notwithstanding the provisions of this section, the owner of a multi-tenant property may provide a directory sign within the property in accordance with section 17.4.3.1, Signs Internal to a Property.

#### *17.6.1.8 Flags*

Flags made of fabric and hung from a single pole or flown from a single edge of the fabric that identify the user of the property by name or logo shall be allowed provided they do not exceed fifteen (15) square feet, are maintained in good repair and only following approval by the Building Inspector. This section shall not apply to the American flag.

#### *17.6.1.9 Off-Site Directional Signs*

Off-Site Directional Signs shall be allowed in accordance with 17.4.3.5.

#### *17.6.1.10 On-Site Directional Signs*

On-Site Directional Signs not exceeding two (2) square feet identifying entrances, exits and parking areas on properties containing multiple businesses shall be allowed upon a finding by the building inspector that they do not distract from the streetscape and are reasonably necessary.

**17.7 NON-RESIDENTIAL SIGNS IN THE TOWN CENTER DISTRICT**

The Town Center District is intended to retain a residential character for all properties whether used for residential or non-residential purposes. Therefore, the following signs shall be allowed in the Town Center District. For non-residential signs within the Town Center District, these standards are in place of the provisions for the underlying Residential District permitted by Section 17.5. The number of signs allowed in the Town Center District must comply with the provisions of Section 17.3.4.

**17.7.1 Exempt Signs in accordance with Section 17.4.1****17.7.2 Residential Signs in accordance with Section 17.5****17.7.3 Freestanding Signs**

Freestanding signs shall be allowed. Such sign may not exceed eight (8) feet in height and six (6) square feet in area.

**17.7.4 Monument Signs**

Monument signs shall be allowed. Such sign may not exceed eight (8) feet in height and six (6) square feet in area.

**17.7.5 Flags**

Flags shall be allowed in accordance with section 17.6.1.8.

**17.7.6 Multi-tenant and place name signs**

In the event that more than one business occupies a structure in the Town Center District, one sign not exceeding eight (8) square feet may be permitted to identify the group.

**17.7.7 On-Site Directional Signs**

On-Site Directional Signs not exceeding two (2) square feet identifying entrances, exits and parking areas on properties containing multiple businesses upon a finding of the Building Inspector that the Signs are in keeping with the neighborhood, do not distract from the streetscape.

**17.8 PROCESS**

This section shall apply to all signs except those signs that are:

1. Exempt under the provisions of Section 17.4.1, or
2. Allowed without a permit by conforming to the criteria for temporary signs set forth in section 17.4.2, or
3. Entitled to a permit from the Building Inspector as provided in Section 17.4.3.

**17.8.1 Permit from Building Inspector Required**

- No sign shall be erected, re-erected, constructed or altered, except as provided by this by-law, and after application has been made and a permit issued by the Building Inspector.
- An application shall be deemed submitted on the day in which a complete application, as described in Section 17.8.2 below, and associated fee has been received by the Building Inspector.
- All signs on sites undergoing site plan approval shall also be reviewed by the Planning Board (see 17.8.3.2. also).
- If a site is not undergoing site plan approval, the following signs require review (with the conditions noted) only by the Building Inspector:

- Signs described in section 17.5.2 (on-site directional signs in residential districts)
- Signs described in section 17.5.3 (off-site directional signs in residential districts)
- Signs described in section 17.5.4 (Home Occupation signs)
- Signs described in section 17.5.5 (Permanent Farm signs)
- Signs described in section 17.6.1.2 (freestanding signs)
- Signs described in section 17.6.1.3 (monument signs)
- Signs described in section 17.6.1.4 (projecting signs)
- Signs described in section 17.6.1.5 (awnings)
- Signs described in section 17.6.1.6 (Wall and Window signs)
- Signs described in section 17.6.1.7 (Multi-tenant and Place Name signs)
- Signs described in section 17.6.1.8 (Flags)
- Signs described in section 17.6.1.9 (Off-Site Directional Signs)
- Signs described in section 17.6.1.10 (On-Site Directional Signs)

**17.8.2 Submission Requirements**

Six (6) copies of all required documents shall be provided to the Building Inspector.

1. Permit Application Form;

2. Scaled drawings or sketch plan of sign, including height, width, lettering and other features, footings or other supporting features and proposed landscaping at sign, as applicable;
3. Description, location and type of lighting, if applicable;
4. Plot plan or scaled sketch including sign location in relation to lot boundaries, building(s), grade elevation, streets, structures, vegetation, walks, parking area. If not adequate, a tape or instrument survey may be required by the building inspector to properly establish boundary lines.
5. Proposed construction specifications;
6. Any sign under site plan review, must include a detailed description incorporating the conditions and requirements set forth by the Planning Board.
7. Application fee

#### **17.8.3 Review by the Building Inspector**

The proposed sign shall be reviewed and comments shall be offered to the applicant, who may revise the proposal based on conditions or modifications requested in compliance with the intent of the by-law.

1. The Building Inspector shall render comment and approval or disapproval based compliance with this by-law within 30 days of receipt of the application as defined in section 17.8.2. The Building Inspector shall review each sign, for by-law compliance, and its compliance with Massachusetts Building Codes. In making its determination, the Building Inspector will consider the following;
  - Materials;
  - Design and graphics;
  - Orientation;
  - General location and compatibility with its surroundings;
  - Frequency and proximity of other streets, signs and structures, in the immediate area
  - Unanticipated circumstances in accordance with section 8.4.1.

Approval or disapproval is not dependent upon the applicant's following of recommendations and will solely be based upon By-law and Massachusetts Building Code compliance.

2. If the site is under site-plan review, the granting of the sign approval with or without conditions by the Planning Board shall be part of the permit issued by the Building Inspector.

#### **17.8.4 Waivers**

The Building Inspector is given discretion in unanticipated signs.

##### *17.8.4.1 Unanticipated Signs*

Any sign that is clearly not anticipated by this by-law may be proposed for review and approval, consistent with the intent of this by-law, by submitting an application and request for opinion to the Building Inspector. If the Building Inspector determines that the type of sign is not anticipated by this by-law, he or she shall, in accordance with the provisions herein, seek review by the Planning Board. The Planning Board shall consider the sign in accordance with Section 17.8.3 and render its findings to the Building Inspector prior to issuance of a permit.

#### **17.9 PRE-EXISTING SIGNS (GRANDFATHERING)**

Any signs lawfully existing on the effective date of this By-law and lawfully existing signs which will become non-conforming on the effective date of this By-law may be continued.

Non-conforming signs, restoration of non-conforming signs and abandonment of signs will be treated according to sections 17.2.2 of this sign By-law. Proof of grandfathering is the responsibility of the site owner.

#### **17.10 ENFORCEMENT AND FINES**

The Building Inspector shall have the authority to enforce this section. Upon written request of the Planning Board, Zoning Board of Appeals, Board of Selectmen, or any resident, the Building Inspector shall investigate and respond to complaints related to conformance with this By-law. Violations of the by-law will be issued a first offense written warning, after 14 days of non-compliance for the purposes of this section, each day of non-action shall constitute a new violation.

- A fine of twenty-five dollars (\$25) shall be imposed after notification by the Building Inspector for failure to remove a temporary sign within the time allowed for removal, following the completion of work, end of event or other time period provided by section 17.3.2.
- A fine of fifty dollars (\$50) shall be imposed for failure to repair, maintain or remove a sign for which the Building Inspector has given written notice of necessary repair or maintenance in accordance with section 17.3.2.
- A fine of fifty dollars (\$50) shall be imposed for failure to remove any sign determined to be abandoned by the Building Inspector. Compliance shall be the responsibility of the site owner.

- A fine of fifty dollars (\$50) shall be imposed for failure to remove any sign determined to be illegal and/or are in non-compliance by the Building Inspector. Compliance shall be the responsibility of the site owner.

**17.11 SEVERABILITY**

If any provision of this By-law is held to be invalid, for whatever reasons, the remainder of the By-law shall not be affected. The invalidity of any section or sections or parts of any section or sections of this By-law shall not affect the validity of the remainder of the Town's By-laws.

**17.12 APPEALS PROCESS**

Any sign By-law appeal will be held in accordance with Article 11 of the Hubbardston Zoning By-laws.

All signs are subject to the provisions of Sections 17.2, 17.3 and 17.8; All allowable signs other than Exempt signs and some Temporary signs require a permit from the Building Inspector and some also require approval of the Zoning Board of Appeals or the Planning Board.

<b>Type of Sign</b>	<b>Residential District</b>			<b>Business/ Industrial Dist</b>	<b>Light District</b>	<b>Town Center District</b>	<b>Approving Body</b>
<b>Existing Signs</b>							
Sign approved and erected prior to adoption of this By-law and conforming to the zoning in place at the time of erection, but not conforming with this By-law	<u>See Section 17.2.2 Non-conforming Signs</u>						None
Existing sign without the benefit of a prior approval and not conforming with this By-law	<u>See Section 17.2.2 Non-conforming Signs</u>						<u>Not Applicable</u>
<b>Exempt Signs</b>							
Historic and Cultural Signs	<u>No permit required if compliant with Section 17.4.1.1</u>						<u>None</u>
Residential Identification Signs	<u>No permit required if compliant with Section 17.4.1.2</u>						<u>None</u>
Home Occupation Identification Sign	<u>See Section 17.4.1.3 and see 17.5.4</u>						None
Multi-tenant Sign	<u>See Section 17.4.1.4</u>						None
Residential Entrance Signs	See Sect. 17.4.1.5	<u>Not Applicable</u>					None
Seasonal Farm Stand Signs	<u>No permit required if compliant with Section 17.4.1.7</u>						<u>None</u>
<b>Prohibited Signs</b>							
Internally Illuminated Signs	<u>Prohibited in all Districts– see Section 17.2.3.7, 17.3.3, but see 17.8.4 for exceptions</u>						<u>Building Inspector</u>
<b>Type of Sign</b>	<b>Residential District</b>			<b>Business/ Industrial Dist</b>	<b>Light District</b>	<b>Town Center District</b>	<b>Permitting Body</b>
Flashing Signs	<u>Prohibited in All Districts – see Section 17.2.3.1, 17.3.3</u>						<u>N/A</u>
Billboards	<u>Prohibited in All Districts – see Section 17.2.3.2</u>						<u>N/A</u>
Signs Exceeding Size Limits herein	<u>Prohibited in All Districts – see Section 17.2.3.3.</u>						<u>N/A</u>
Neon Signs	<u>Prohibited in All Districts – see Section 17.2.3.4</u>						<u>N/A</u>
<b>Temporary Signs</b>							
Election Signs	<u>Allowed without a permit in accordance with Section 17.4.2.1</u>						<u>None</u>
Message Signs	<u>Allowed without a permit in accordance with Section 17.4.2.2</u>						<u>None</u>
Yard Sale Signs	<u>Allowed without a permit in accordance with Section 17.4.2.3</u>						None
Sandwich Boards	<u>Allowed without a permit in accordance with Section 17.4.2.4</u>						None

Contractors or For Sale or Lease Signs	<i>Allowed without a permit in accordance with Section 17.4.2.5</i>				None	
Banner Signs	<i>Allowed without a permit in accordance with Section 17.4.2.6</i>				None	
<b><i>Special Types of Signs</i></b>						
Signs Internal to a Property	<u>See Section 17.4.3.1</u>				Building Inspector	
Directional Signs for Public Benefit	<u>See Section 17.4.3.2</u>				Building Inspector	
Municipal Signs	<u>See Section 17.4.3.3</u>				Building Inspector	
Moveable, Portable, Mobile Signs	<u>Prohibited, See Sections 17.2.3.6, 17.4.3.4</u>				N/A	
<b><i>Residential Signs</i></b>						
On-Site Directional Sign	<u>See Section 17.5.2</u>				Building Inspector	
<b>Type of Sign</b>	<b>Residential District</b>			<b>Business/ Light Industrial Dist</b>	<b>Town Center District</b>	<b>Permitting Body</b>
Additional Home Occupation Sign	<u>See Section 17.5.4 for additional sign with Planning Board approval</u>				Building Inspector	
Exempt Residential Signs	<u>See Section 17.4.1</u>				None	
<b><i>Non-Residential Signs</i></b>						
Freestanding Signs	<u>N/A</u>	<u>See section 17.6.1.2</u>		<u>See section 17.7.3</u>	Building Inspector	
Monument Signs	<u>N/A</u>	<u>See section 17.6.1.3</u>		<u>See section 17.7.4</u>	Building Inspector	
Projecting Signs	<u>N/A</u>	<u>See section 17.6.1.4</u>		<u>N/A</u>	Building Inspector	
Awnings	<u>N/A</u>	<u>See section 17.6.1.5</u>		<u>N/A</u>	Building Inspector	
Wall and Window Signs	<u>N/A</u>	<u>See section 17.6.1.6</u>		<u>N/A</u>	Building Inspector	
Multi-tenant and Place Name Signs	<u>N/A</u>	<u>See Section 17.6.1.7; up to 80SF/10 foot height</u>		See section 17.7.6	Building Inspector	
Flags	<u>N/A</u>	<u>See Section 17.5.3</u>		<u>N/A</u>	None	
On-Site Directional Signs	<u>See sect. 17.5.2</u>	<u>See sections 17.6.1.10</u>		<u>See Section 17.7.7</u>	Building Inspector	
Off-Site Directional Signs	<u>See section 17.5.3</u>			<u>N/A</u>	Building Inspector	
Permanent Farm Stand	<u>See Section 17.5.5 in Residential Districts; otherwise in accordance with other sign requirements for the district in which it is located.</u>				Varies	

**Article 18**  
**WIRELESS COMMUNICATION FACILITY**<sup>69</sup>

Section

- 18.1 Definition
- 18.2 Purpose and Intent
- 18.3 Wireless Communications Overlay District
  - 18.3.1 Purpose
  - 18.3.2 Relation to Other Districts
  - 18.3.3 Location of Overlay District and Map
- 18.4.1 Structure Type
- 18.4.2 Location and Setbacks
- 18.5 General Requirements
  - 18.5.1 Purpose
  - 18.5.2 Requirements
- 18.6 Application Process
  - 18.6.1 Process
  - 18.6.2 Filing Requirements

18.1 DEFINITION Wireless Communications Facility: any tower, pole, antenna or appurtenant structure designed to facilitate personal wireless services, as defined in the Telecommunications Act of 1996.

1. Above Ground Level (AGL). A measurement of height from the natural grade of a site to the highest point of a structure.
2. Antenna. The surface from which wireless radio signals are sent and received by a personal wireless service facility.
3. Camouflaged. A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure is considered "camouflaged".
4. Carrier. A company that provides wireless services.
5. Co-location. The use of a single mount on the ground by more than one carrier (vertical co- location) and/or several mounts on an existing building or structure by more than one carrier.
6. Cross-polarized (or dual-polarized) antenna. A low mount that has three panels flush mounted or attached very close to the shaft.
7. Elevation. The measurement of height above sea level.
8. Environmental Assessment (EA). An EA is the document required by the Federal Communication Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.
9. Equipment Shelter. An enclosed structure, cabinet, shed or box at the base of the mount within which are housed batteries and electrical equipment.
10. Fall Zone. The area on the ground within a prescribed radius from the base of a personal wireless service facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
11. Functionally Equivalent Services. Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.
12. Guyed Tower. A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.
13. Lattice Tower. A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.
14. Licensed Carrier. A company authorized by the FCC to construct and operate a commercial mobile radio services system.
15. Monopole. The type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top.
16. Mount. The structure or surface upon which antennas are mounted, including the following four types of mounts:
  - a) Roof-mounted. Mounted on the roof of a building.
  - b) Side-mounted. Mounted on the side of a building.
  - c) Ground-mounted. Mounted on the ground.
  - d) Structure-mounted. Mounted on a structure other than a building.
17. Omnidirectional (whip) antenna. A thin rod that beams and receives a signal in all directions.
18. Panel Antenna. A flat surface antenna usually developed in multiples.
19. Personal Wireless Service Facility. Facility for the provision of personal wireless services, as defined by the Telecommunications Act.
20. Personal Wireless Services. The three types of services regulated by this Model Bylaw.
21. Radiofrequency (RF) Engineer. An engineer specializing in electrical or microwave engineering, especially the study of radiofrequencies.
22. Radiofrequency Radiation (RFR). The emissions from personal wireless service facilities.

<sup>69</sup> Adopted 2/12/2001



23. Security Barrier. A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.
24. Separation. The distance between one carrier's array of antennas and another carrier's array.

18.2 **PURPOSE AND INTENT:** The Town recognizes the existence of Wireless Communications systems as defined in the Federal Telecommunications Act of 1996 and finds these regulations necessary to:

- a. Minimize adverse impacts of all communication structures and equipment on residential neighborhoods.
- b. Regulate the type, height, amount and location of all communication structures and equipment.
- c. Maintain and protect all ecological, aesthetic, historical and recreational features of the town.

### 18.3 WIRELESS COMMUNICATIONS OVERLAY DISTRICT

18.3.1 **Purpose.** The Wireless Communications Overlay District is intended to provide for the construction, erection and installation of wireless communication towers, personal wireless service facilities and their accessory structures in a manner which meets the requirements of the Telecommunications Act of 1996, and balances the following needs:

- Protection of the town from the effects of the uncontrolled proliferation and placement of wireless communication towers, personal wireless service facilities and their accessory structures with resultant impact on its landscape and character;
- The legitimate desire of residents of the town to access and utilize new technologies as such become available; and
- The right of businesses to provide necessary and marketable services.

The Wireless Communications Overlay District is intended to effectuate the purposes described in Section 18.2 and identifies sites designed to meet the above described needs.

18.3.2 **Relation to Other Districts.** The Wireless Communications Overlay District shall be considered to be superimposed over any other existing districts of the zoning bylaw and, in the event any provision of this district is in conflict with regulations of any other district, the more restrictive regulation shall take precedence.

18.3.3 **Location of the Overlay District and Map.** All land in the Town Center District shall be included in the Wireless Communications Overlay District. In addition, the following parcels of land shall be included in the Wireless Communications Overlay District: Map 1, Parcel 47; Map 2, Parcel 33; Map 3, Parcel 7; Map 3, Parcel 27 A; Map 3, Parcel 57; Map 3, Parcel 73; Map 3, Parcel 75; Map 3, Parcel 76; Map 8C, Parcel 33; Map 8C, Parcel 36; Map 8C, Parcel 37; Map 11, Parcel 1; Map 11, Parcel 2; Map 12, Parcel 5. The District is shown on a map entitled "Wireless Communications Overlay District".

#### 18.4.1 Structure Type

- a. If artificial lighting is required by the FAA or FCC for any wireless communication tower, it shall be constructed and installed in such a manner that lighting will be shielded from view from any point on the ground within the Town of Hubbardston.<sup>70</sup>
- b. New structures may be of the monopole or lattice type, no greater than 150 (One Hundred Fifty) feet in height, designed for maximum co-location. All unmanned equipment and/or shelters shall be no more than 12 (Twelve) feet wide, and 30 (Thirty) feet long.<sup>71</sup>
- c. The Town will accept and prefer new structures camouflaged in nature such as flagpoles, evergreens, and any other design which minimizes the adverse visual impact of the wireless communications facility.
- d. Only sector and whip type antennas will be accepted.

### 18.4 REGULATIONS

#### 18.4.2 Location and Setbacks

- a. All communication facilities shall be located in the Wireless Communications Overlay District. See Section 18.3.
- b. The Town prefers that all communications facilities be located on existing structures, including buildings, water towers, existing communications facilities, utility poles and towers, provided that such installations preserve the character and integrity of those structures and the height of those structures is not increased by more than 10 (Ten) feet.
- c. If the Applicant demonstrates that compliance with Section 18.4.2.b. is not feasible, then any proposed communications facilities must be of the monopole type and camouflaged to the greatest extent possible using artificial screening, new landscaping and/or existing tree buffer.
- d. All communications facilities must be set back from all property lines and buildings for a distance at least equal to the height 110% of the monopole, including any lightning rod, to insure the safety of all abutters. This setback will be referred to as the "Fall Zone".

A waiver of these conditions may be granted by the Planning Board during the Special Permit process if deemed appropriate. In requesting such a waiver, the applicant must demonstrate that: the proposed tower location will provide the same degree of public safety as would have been available with the full fall zone requirement; and that the proposed

<sup>70</sup> Amended: 6/2/2015

<sup>71</sup> Amended: 6/2/2015

tower and related facilities will have a visual buffer from surrounding properties to a degree comparable to the visual buffer that would have been achieved with the full fall zone requirement.

- e. All communication facilities must be a minimum of 500 (Five Hundred) feet away from any municipal water supply areas. A waiver of this condition may be granted by the Planning Board during the Special Permit process if deemed appropriate. In requesting such a waiver, the applicant shall demonstrate that the reduced setback will have no adverse effect on municipal water supplies.

## 18.5 GENERAL REQUIREMENTS

18.5.1 Purpose: This section will cover all requirements not listed in the previous sections.

### 18.5.2 Requirements

- a. Applicant must perform a balloon test after a desired site location has been determined, unless the Planning Board determines it inappropriate or unnecessary with respect to Section 18.4.2.b. The balloon test shall be conducted continuously for 24 hours. The date, time, and location of this test must be advertised in a newspaper of general local circulation, 14 days prior to the test. In addition a mailer will be sent to each residence at the expense of the applicant, 14 days prior to the test.
- b. Applicant must prepare and perform a construction control certification. All submittals, dates and times of inspections, reports and discrepancies must be reported to the Building Inspector and the Planning Board. Failure to adhere to this requirement could significantly delay occupancy permits.
- c. Existing vegetation shall be preserved to the maximum extent possible.
- d. Any fencing used for a communications facility shall be a minimum of 8 (Eight) feet in height and shall be of the wood stockade type.
- e. All access roads to a communications facility shall be twelve 12 (Twelve) feet to 15 (Fifteen) feet in width, depending upon terrain, and shall be composed of 12 (Twelve) inches of compacted gravel over which is laid down a 3 (Three) inch layer of crushed stone.
- f. All drainage issues as a result of a communications facility must adhere to Section 7.10 of the Rules and Regulations Governing the Subdivision of Land in Hubbardston, Massachusetts, Dated 1988.
- g. All utility installations as a result of a communications facility must adhere to Section 7.07 of the Rules and Regulations Governing the Subdivision of Land in Hubbardston, Massachusetts, Dated 1988.
- h. All drainage issues as a result of a communications facility must adhere to Section 7.10 of the Rules and Regulations Governing the Subdivision of Land in Hubbardston, Massachusetts, Dated 1988.<sup>72</sup>
- i. All utility installations as a result of a communications facility must adhere to Section 7.07 of the Rules & Regulations Governing the Subdivision of Land in Hubbardston, Massachusetts, Dated 1988.
- j. An application shall be made by a licensed carrier or shall include documentation establishing that a licensed carrier has committed to locating antennae on the tower.<sup>73</sup>
- k. A special permit as defined in zoning bylaw 7.1 -7.5 and an environmental impact study 8.1- 8.4.

## 18.6 APPLICATION PROCESS

### 18.6.1 Process

- a. Every special permit application for a new and co-located communications facility shall be made and filed on the applicable application form available from the Planning Board, which shall be the special permit granting authority for all wireless communications facilities. Because a special permit will be required for all wireless communications facilities, approval will be based on applications that are in accordance with Article 18, and all other applicable regulations located in the Town of Hubbardston Zoning Bylaws.

### 18.6.2 Filing Requirements

- a. General:
  - 1. Name, address and telephone number of Property Owner, Applicant, Co-applicants and Agents.
  - 2. Original signatures from the Property Owner, Applicant, Co-applicants and Agents applying for the special permit.
- b. Design (New and Co-Location Applications)
  - 1. Both the zoning and construction drawings will need to be approved by the Planning Board.
  - 2. Plot Plan at a 1"= 40' scale showing: property lines of subject property with bearings and distances, all property lines and abutter information within 500 (Five Hundred) feet of subject property, vegetative cover within subject property, and an outline of all existing structures within 500 (Five Hundred) feet of subject property .
  - 3. Proposed location of antennas, mounts, shelter, etc.
  - 4. Locus plan to scale, showing all roads, public and private within 500 (Five Hundred) feet of subject property.
  - 5. Contours at 10 (Ten)-foot intervals of subject property.

<sup>72</sup> Amended:6/18/2002

<sup>73</sup> Amended:6/18/2002

6. Site detail plan showing the communications facility at a 1"= 10' scale, including all structures and equipment to be used.
  7. Architectural and structural details of all structures, equipment, antennas, mounts, electrical and grounding applications.
  8. All proposed grade changes, tree removal, road construction and locations for restoration (if applicable).
  9. Photo rendition of a "before communications facility" and "after communication facility" placed on a mount for public hearing.
  10. Specifications of all equipment, antennas, shelters, electrical and grounding application to be used.
  11. Monopole foundation drawings and specifications stamped by a Professional engineer licensed in the Commonwealth of Massachusetts.
  12. Specifications on any paint, artificial stealth applications and landscape techniques. All aesthetic applications shall be clear in the photo rendition.
  13. Landscape Plan, if applicable, showing areas to be demolished and areas to be restored stamped by a Registered Landscape Architect.
  14. Either on the survey plot plan or separate, a FAA 2C-Certification stamped by a Professional Surveyor licensed in the Commonwealth of Massachusetts.
  15. If within 100 (One Hundred) feet of wetlands, in addition to filing with the Conservation Commission, show all wetland limits with numbered flags and their setbacks to the communications facility on the plot plan.
  16. Applicant must file an Environmental Assessment and NEPA checklist with FCC prior to beginning operations for a communications facility proposed in or involving wilderness areas, wildlife preserves, endangered species habitat, historical site, Indian religious site, flood plain and wetlands.
  17. Submit a copy of the Environmental Assessment to the Planning Board following acceptance by the FCC.
  18. Submit an approval letter to the Planning Board from the Massachusetts Department of Public Health confirming the proposed filing meets their requirements of Regulation 105 CMR 122.00 for communication facilities with respect to emissions.
- c. Construction<sup>74</sup>
1. The Building Inspector will not grant an occupancy permit until he and the Planning Board receive a Construction Control Certification that is stamped by a Professional Engineer licensed in the Commonwealth of Massachusetts. This certifies that the communication facility was built in accordance with the Planning Board approved construction plans and specifications as contained in the application and the special permit, conditions, if any, granted by the Planning Board.
  2. After construction is completed the Town Building Inspector and Planning Board will inspect the site to verify that all requirements in this Article were met.
  3. An Occupancy Permit will be issued if and when both the Building Inspector and Planning Board agree that all requirements in this Article have been met.
  4. Applicant must give the Town a signed letter agreeing to notify the Town 90 (Ninety) days prior to discontinuance. The Applicant must remove the facility within 90 (Ninety) days of the giving of said notice. If the Applicant does not notify the town of discontinuance, but ceases using the facility, after 90 (Ninety) days of non-use, the Planning Board, after a hearing with prior notice to the applicant, may declare the facility to be abandoned. If the applicant fails to remove the facility within 90 (Ninety) days of discontinuance or abandonment, then the Town may remove the facility at the cost of the Applicant or Owner. Any special permit issued under this section shall include a condition stating the above requirement and further stating that, in accepting the special permit the Applicant and Owner grant the Town permission to enter the property for the purpose of removing an abandoned or discontinued facility. An Occupancy Permit will not be granted if this signed letter is not given to the Town.
  5. The Special Permit for a communications facility over 50 (Fifty) feet in height in the Town of Hubbardston. Massachusetts is valid for no more than 5 (Five) years. At the end of that time period, the personal wireless service facility shall be removed by the carrier or a new special permit shall be required. The height required for personal wireless services will be reevaluated and any height no longer justified shall be removed.
  6. A cash surety of \$25,000.00 (Twenty-Five Thousand and 00/100 Dollars) shall be made payable to the Treasurer, Town of Hubbardston.

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<sup>74</sup> Amended 6/5/2018

**Article 19**  
**SENIOR RESIDENTIAL DEVELOPMENT (SRD)**<sup>75</sup>

Section

- 19.1 Purpose
- 19.2 Special Permit
- 19.3 Development Standards
- 19.4 Minimum Tract Size
- 19.5 Building and Dwelling Requirements
- 19.6 Common Land
- 19.7 Maintenance
- 19.8 Additional Design Criteria
- 19.9 Special Permit Application and Procedures
- 19.10 Planning Board Action
- 19.11 Special Permit Conditions
- 19.12 Rules and Regulations

19.1 Purpose.

The purposes of this section are:

- a. To provide for housing options for a maturing population that reduce maintenance costs and are more affordable than traditional single-family dwellings.
- b. To provide for a type of housing development that reduces demands on municipal and educational services.
- c. To promote development that is in harmony with the Town's natural features and resources, its traditional landscapes, the existing and probable future use of adjacent land and the general intent of the Zoning Bylaw.
- d. To establish flexible residential development standards and procedures that will support these objectives.

19.2 Special Permit.

- a. **General Provision:** In the residential – agricultural district and commercial district, the Planning Board may grant a special permit for a Senior Residential Development (SRD) as an alternative to conventional subdivision.

19.3 Development Standards.

**Occupancy Restriction:** The following provisions are intended to ensure that the dwelling units in an SRD are used as residences for persons of age 55 and older.

- a. Each unit in an SRD shall be occupied by at least one resident 55 years of age or older for whom the unit is a principal residence.
- b. Children under the age of 18 may not reside in a dwelling unit in an SRD for more than three (3) months in any twelve (12) month period.
- c. In the event of the death of the qualifying owner/occupant(s) of a unit, or foreclosure or other involuntary transfer of a unit in an SRD, a one-year exemption shall be allowed for the transfer of the unit to another eligible household.
- d. These restrictions shall be recorded on every unit or lot deed and shall be referenced in the special permit conditions. If the development is a subdivision, these restrictions shall be recorded prior to definitive plan approval.

19.4 Minimum Tract Size.

- a. The tract of land for an SRD must contain at least twenty (20) acres, and have at least two hundred (200) feet of continuous frontage on an existing town way.

19.5 Building and Dwelling Requirements.

Building types

- (1) Building units in an SRD may be attached or detached, or a combination of these types.
- (2) No building shall contain more than four (4) dwelling units.
- (3) Maximum amount of bedrooms per unit is limited to two bedrooms.

Building lot requirements

- (1) Building units within the SRD shall be setback from structures, ways, and boundaries as follows:
  - 75' from a public way or the boundary of the SRD
  - 50' from the common driveway within the SRD
  - 30' from the sidewalk within the SRD
- (2) Where the tract contains a pre-existing residential structure, the lot area for such structure after development of the SRD shall not be reduced below 80,000 square feet, and the frontage for such structure shall not be reduced below 200 feet.

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<sup>75</sup> Adopted 10/28/2002

#### Maximum Density

- (1) The residential density in an SRD shall not exceed 1.5 dwelling units per acre of developable land. The residential density in an Aquifer Favorability Protection District (AFPD) shall be no more than one residential dwelling unit per acre of developable land. For the purpose of this computation, the “developable” area shall be the total area of the tract, including the Common Land, but excluding all wetlands, 100-year floodplains and areas subject to existing valid open space restrictions.

#### Accessory Buildings and Structures

- (1) Accessory buildings and structures for the use of residents of the SRD and their guests may be permitted, including garages, clubhouses, swimming pools, tennis courts, cabanas, and storage and maintenance structures.
- (2) Accessory buildings and structures may be constructed on individual parcels within the SRD, or on land owned in common by the owners of the dwelling units in the development, or by an organization or entity owned and controlled by such dwelling unit owners.
- (3) Accessory buildings and structures shall be shown on the development plan and may not be constructed within the Common Land except as provided in Section 19.6 below.
- (4) Accessory buildings and structures shall conform to the setback requirements set forth in Section 19.5 b.(1).

#### Streets and Utilities

- (1) All streets or roadways and related drainage facilities constructed as part of a Senior Residential Development shall be designed and built in conformance with the construction standards included in the Town of Hubbardston Subdivision Rules and Regulations in effect at the time of application. The Planning Board may waive such requirements only upon written request of the applicant and then only if the Board determines that such waiver(s) are in the best interest of the Town or if the applicant, together with the owner and all others having any interest in the SRD and their successors and assigns, grants to the Town a covenant, which shall provide that such persons shall not petition the Board of Selectmen or successor executive body of the Town to lay out such way as a public way nor petition the Town Meeting or successor legislative body of the Town to accept such way as a public way unless at the time of such petition the street or roadway and related drainage facilities comply with the construction standards included in the Town of Hubbardston Subdivision Rules and Regulations at the time of such petition, and the Planning Board is hereby authorized to accept and record such covenants on behalf of the Town. All other utilities, including water, sewerage and fire protection shall be designed and constructed in compliance with the Town of Hubbardston Subdivision Rules and Regulations, Board of Health requirements and any applicable requirement of the by-laws of the Town of Hubbardston.

### 19.6 Common Land.

#### a. Dimensional Requirements

In an SRD, at least thirty percent (30%) of the total tract area shall be set aside as Common Land for the use of SRD residents or the general public. The following additional requirements shall apply:

- (1) The minimum required area of Common Land shall not contain a greater percentage of wetlands, as defined in M.G.L. Chapter 131, Section 40, or 100-year floodplains than the percentage of wetlands or floodplains found in the overall tract of land on which the SRD is located.
- (2) Common Land shall be planned as large, contiguous parcels whenever possible. Strips or narrow parcels of Common Land shall be permitted only when necessary for access, or if the Planning Board finds that a vegetated buffer strip along the site's perimeter is appropriate and consistent with the purpose of SRD development.
- (3) Common Land may be set aside in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses.
- (4) The Common Land shall include adequate upland access from a way or street, at least 40 feet wide.

#### b. Use of the Common Land

- (1) The Common Land shall be dedicated and used for conservation, recreation, park purposes, outdoor education, agriculture, horticulture or forestry, or for any combination of such uses. No other uses shall be allowed in the Common Land, except as follows:
  - (i) A portion of the Common Land may be used for the construction of leaching areas associated with septic disposal systems serving the SRD or for water supply wells serving the SRD, if the Planning Board determines that such use will enhance the specific purpose of Senior Residential Development and promote better overall site planning, and if such leaching areas or wells are approved by the Board of Health. Septic disposal easements shall be no larger than reasonably necessary. If any portion of the Common Land is used for the purpose of such leaching areas or wells, the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the dwelling unit owners within the SRD.
  - (ii) A portion of the Common Land may be used for ways serving as pedestrian walks, bicycle paths and emergency access or egress to the SRD or adjacent land, if the Planning Board determines that such a use will enhance the specific purpose of Senior Residential Development and promote better overall site planning, and if the Planning Board finds that adequate assurances and covenants exist to ensure proper maintenance of such facilities by the owner of the Common Land.

- (iii) A portion of the Common Land may be used for utility and drainage facilities serving the Senior Residential Development or adjacent parcels, and may be subject to easements for the construction, maintenance, and repair of such facilities.
  - (2) The minimum required area of Common Land shall remain unbuilt upon, provided that an overall maximum of five (5) percent of such land may be subject to pavement and structures accessory to the dedicated use or uses of the Common Land.
  - (3) Unless otherwise designated in the Special Permit, the residual open land left unbuilt after development, if not in agriculture or forestry, shall be mowed at least once annually.
  - (4) The proposed use of the Common Land shall be specified on a Land Use Plan, and appropriate dedications and restrictions shall be part of the deed to the Common Land.
  - (5) The Planning Board shall have the authority to approve or disapprove particular uses proposed for the Common Land in order to enhance the specific purposes of Senior Residential Development.
  - (6) No owner shall apply to the Assessors for classification of any common land as forest land under M.G.L. Chapter 61, agricultural land under M.G.L. Chapter 61A or recreation land under M.G.L. Chapter 61B.
- c. Ownership of Common Land
- (1) The Common Land is to be conveyed to a corporation or trust owned or to be owned by the owners of the dwelling units within the Senior Residential Development. The Planning Board shall approve the form of ownership of the Common Land.
  - (2) A perpetual restriction, approved by the Planning Board and enforceable by the Town of Hubbardston, shall be imposed on the use of such land, providing in substance that the land be kept in its open or natural state and that the land provisions of an SRD as set forth herein and, if applicable, as further specified in the decision of the Planning Board governing the individual SRD be complied with.
  - (3) The proposed ownership of all Common Land shall be shown on the Land Use Plan for the SRD.
  - (4) At the time of its conveyance, the Common Land shall be free of all encumbrances, mortgages or other claims (including pre-existing conservation easements or restrictions), except as to easements, restrictions and encumbrances required or permitted by this bylaw.

#### 19.7 Maintenance.

The owners of the dwelling units within the SRD shall be responsible for the maintenance of all common elements and facilities owned by and serving the residents of the SRD; and an organization of the owners shall be established to carry out these maintenance responsibilities.

#### 19.8 Additional Design Criteria.

In addition to the standards set forth above, the SRD shall be designed in accordance with the following objectives, in order of priority:

- a. Buildings and streets shall be placed on the least fertile soils for agricultural uses, and in a manner, which maximizes the usable area remaining for such agricultural use.
- b. Buildings shall be sited within any woodland contained in the parcel or along the edges of the open fields adjacent to any woodland, so as to reduce any impact upon agriculture, to provide summer shade and shelter from winter wind, and to enable new construction to be visually absorbed by the natural landscape features.
- c. Buildings shall be sited in locations least likely to interrupt scenic vistas, as seen from the public roadways.
- d. Buildings shall be sited in locations where the greatest number of units can be designed to take maximum advantage of solar heating opportunities.
- e. Buildings shall be sited to avoid sensitive environmental features, including wildlife habitat, wetlands, water bodies, steep slopes or other important site features.
- f. In the vicinity of existing historic structures on public roads, new buildings may be sited in clusters close to the road to reflect the traditional locations, patterns and setbacks of nearby existing historic buildings. Such roadside clusters shall be compatible with the scale of the surrounding neighborhood and shall maintain at least 75% of the existing undeveloped road frontage in conservation. Architectural design of new buildings (proportions, roof pitches, exterior materials and fenestration) shall reflect the character of nearby existing structures.
- g. The Planning Board shall generally be guided by the standards of the Americans with Disabilities Act and regulations thereunder, provided that such standards shall be applied with the goal of achieving practical accessibility with due consideration that the dwelling units and common facilities are neither public facilities nor subject to the Americans with Disabilities Act as a matter of law.

#### 19.9 Special Permit Application and Procedures.

- a. In addition to the Special Permit requirements set forth in Article 7, the following shall be submitted as part of the SRD application:
  - (1) An "Overall Land Use Plan" (at a scale of not less than 1" = 200') showing the location, ownership, and uses of the proposed Common Land; the areas of residential use, the maximum number of residential units proposed, and the

maximum number of bedrooms; any amenity or recreation areas serving the residential uses; and the general layout of all roads and access ways.

- (2) "Concept Plans" for the proposed SRD (at a scale of not less than 1" = 100') showing the proposed location of each residential building, accessory structure and facility; the proposed location of all roads and access ways, and approximate finished grades; the proposed location of all recreational areas, proposed improvements and structures on the Common Land; and methods for providing water and sewerage facilities.
- (3) A plan or plans showing the proposed grading of the tract and the proposed locations, dimensions, materials and types of construction of streets, common drives, parking areas, walks, paved areas, utilities, emergency access ways, and the locations and outlines of all proposed buildings and structures including, but not limited to dwellings, garages, and any accessory structures thereto. If the proposed SRD is to be constructed in separate phases, this plan or plans shall clearly indicate the construction phases proposed.
- (4) A plan or plans showing the proposed use of the Common Land (whether public or private), including all improvements proposed to be constructed thereon.
- (5) A tabulation indicating the total area, wetlands area and percentage of wetlands for the entire tract, the Common Land, and all lots to be created in the SRD.
- (6) A tabulation of proposed buildings by type (i.e., number of units per building, and number of bedrooms per unit).
- (7) Copies of all instruments to be recorded with the Senior Residential Development special permit, including but not limited to the proposed deed(s) for the Common Land, the articles of organization and bylaws of any corporation or trust to be organized to own the land and the language of all restrictions to be imposed on the land.
- (8) A Management Plan for the Common Land to be incorporated in deed covenants to be executed with purchasers of land or other interests in the SRD.

#### 19.10 Planning Board Action.

- a. In evaluating the proposed SRD, the Planning Board shall consider:
  - (1) the general purpose and objectives of this bylaw;
  - (2) the existing and probable future development of surrounding areas;
  - (3) the appropriateness of the proposed layout of streets, ways, lots and structures;
  - (4) the proposed layout and use of the Common Land in relation to the proposed dwelling units in the SRD, the topography, soils and other characteristics of the tract of land in question; and
  - (5) the degree to which the proposed development would contribute to the supply of affordable housing in the Town.
- b. The Planning Board may grant a special permit for an SRD if it finds that the SRD:
  - (1) complies with the requirements of this Section, other applicable requirements of the Zoning Bylaws and, where applicable, the construction and design standards of the Hubbardston Subdivision Rules and Regulations.
  - (2) is consistent with the purposes of this section;
  - (3) is sited on soil types that will support the proposed density of development; and
  - (4) is in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhood.

#### 19.11 Special Permit Conditions.

- a. As a condition of approval, the Planning Board may require such changes in the proposed development plans and additional application materials and may impose such conditions and safeguards as it deems necessary to secure the objectives of this bylaw, and to protect the health, safety and welfare of the inhabitants of the neighborhood and of the Town of Hubbardston. Such conditions shall include the occupancy restrictions adopted under Section 19.3 and the permanent location, ownership and use of the Common Land approved under Section 19.6.
- b. As a condition of approval, the Planning Board may establish other special conditions as necessary to mitigate the impacts of the SRD on Town services, such as (but not limited to): the arrangement for private disposal of solid waste without use of Town facilities for such disposal or arrangements for the private maintenance of roads within the SRD.
- c. No change in the location or use of the Common Land shall be permitted. No change in any aspect of the approved SRD site plan shall be permitted unless approved in writing by the Planning Board. A new or amended special permit will be required if the Planning Board determines any proposed change to be substantial.
- d. No land for which a special permit for a Senior Residential Development has been granted shall be further subdivided, unless such special permit lapses or is rescinded.
- e. No owner shall apply to the Assessors for classification of any common land as forest land under M.G.L. Chapter 61, agricultural land under M.G.L. Chapter 61A or recreation land under M.G.L. Chapter 61B.

#### 19.12 Rules and Regulations.

The Planning Board may adopt and amend reasonable rules and regulations for the administration of this section. Such regulations shall include a schedule of fees and owner/occupancy reporting requirements to satisfy compliance with the age restriction, as well as such other items as the Board deems necessary.

**Article 20**  
**USE OF LARGE-SCALE SOLAR PHOTOVOLTAIC INSTALLATIONS<sup>76</sup>**

**SECTION**

- |     |                             |
|-----|-----------------------------|
| (a) | <b>Purpose</b>              |
| (b) | <b>Definitions</b>          |
| (c) | <b>General Requirements</b> |

**20.1 Purpose**

The purpose of this bylaw is to promote the creation of new large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations, which standards address public safety and minimize impacts on scenic, natural and historic resources and providing adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

**20.1.1 Applicability:** This section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

**20.2 Definitions**

**20.2.1 Siting, Construction, Regulation, Development, Generating and Distribution of Large Scale Photovoltaic Installations:** All installations shall be regulated by the Planning Board through Article 7-Special Permits, Article 8-Environmental and Community Impact Analysis, and Article 9-Site Plan Approval of the Town of Hubbardston Zoning Bylaws.<sup>77</sup>

**20.2.2 Building Inspector:** The inspector of buildings, building commissioner, or local inspector, or person or board designated by local ordinance or bylaw charged with the enforcement of the Town's Zoning Bylaws

**20.2.3 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 Town's Zoning Bylaws, which include those provisions governing ground-mounted large-scale solar photovoltaic installations.

**20.2.4 Designated Location:** Large scale ground mounted solar photovoltaic installations may be sited by Special Permit in all zoning districts in the Town of Hubbardston.<sup>78</sup>

**20.2.5 Large-Scale Ground-Mounted Solar Photovoltaic Installation:** A solar photovoltaic system that is structurally mounted on the ground or a roof, with solar panels covering 20,000 square feet or more on one lot or minimum nameplate capacity of 250kW DC.<sup>79</sup>

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

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

**20.2.8 Site Plan Review:** review by the Site Plan Review Authority to determine conformance with the Town's Zoning Bylaws.

**20.2.9 Site Plan Review Authority:** For purposes of this bylaw, Site Plan Review Authority refers to the Planning Board.

**20.2.10 Solar Photovoltaic Array:** an arrangement of solar photovoltaic panels.

**20.2.11 Zoning Enforcement Authority:** The person or board charged with enforcing the zoning ordinances or bylaws.

**20.2.12 Lot Size:** A minimum of 80,000 square feet will be required for lots to have large solar ground mounted panels facilities placed on them. Lots must conform to zoning setbacks for each district they are located in. A minimum of one contiguous acre (43,560 square feet) must be available for siting. No dwelling or other structures – except those structures that

<sup>76</sup> Adopted 6/1/2010

<sup>77</sup> Amended: 6/2/2015

<sup>78</sup> Amended 6/5/2018

<sup>79</sup> Amended 6/5/2018



are part of the facility are allowed on designated parcel. The aggregation of parcels in order to create a parcel of sufficient size to construct a qualifying facility will be considered.

### 20.3 General Requirements

The following requirements are common to all solar photovoltaic installations to be sited in designated locations:

#### 20.3.1 Compliance with Laws, Ordinances and Regulations

The construction and operation of all large scale solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

#### 20.3.2 Building Permit and Building Inspection

No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

#### 20.3.3 Fees

**20.3.3.1.** The application for a building permit for a large scale solar photovoltaic installation must be accompanied by the fee required for a building permit.

**20.3.3.2** The large Scale Solar Photovoltaic Installation Fee shall be \$2,000.00 which shall include the fees for the Special Permit and SitePlan Review applications.<sup>80</sup>

**20.3.3.3** All engineering fees, legal fees, publication fees, etc. incurred by the Planning Board during the application process and the Site Plan Review will be paid for by the applicant.

#### 20.3.4 Site Plan Review

Large scale solar photovoltaic installations shall undergo site plan review by the Site Plan Review Authority, as set forth in this Section and Article 9 of the Zoning Bylaws prior to construction, installation or modification as provided in this section.<sup>81</sup>

##### 20.3.4.1 General

All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.

##### 20.3.4.2 Required Documents

Pursuant to the site plan review process, the project proponent shall provide the following documents:

- (a) A site plan showing:
  - i. Property lines and physical features, including roads, for the project site;
  - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
  - iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
  - iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
  - v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
  - vi. Name, address, and contact information for proposed system installer;
  - vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
  - viii. The name, contact information and signature of any agents representing the project proponent; and
- (b) Documentation of actual or prospective access and control of the project site (see also Section 3.5);
- (c) An operation and maintenance plan (see also Section 3.6);
- (d) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- (e) Proof of liability insurance; and

<sup>80</sup> Amended: 6/2/2015

<sup>81</sup> Amended 6/5/2018

(f) Description of financial surety that satisfies Section 3.12.3.

(g) Decommissioning Plan<sup>82</sup>

The Site Plan Review Authority may waive documentary requirements as it deems appropriate.

#### **20.3.5 Site Control**

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation. Any special permit submitted under this section shall include a condition stating the above requirement and further stating that, in accepting the special permit the Applicant and Owner grant the Town permission to enter the property for the purpose of assessing and removing an abandoned or discontinued facility. This letter shall be signed and notarized by the applicant and owner.<sup>83</sup>

#### **20.3.6 Operation & Maintenance Plan**

The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

#### **20.3.7 Utility Notification**

No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Site Plan Review Authority that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

#### **20.3.8 Dimension and Density Requirements**

##### **20.3.8.1 Setbacks**

For large-scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:

(a) Front yard: The front yard depth shall be distance allowed in zoning districts.

(b) Side yard. Each side yard shall have a depth at least 50 feet.

(c) Rear yard. The rear yard depth shall be at least 50 feet.

##### **20.3.8.2 Solar Panels and Appurtenant Structures<sup>84</sup>**

All appurtenant structures to large-scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, 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. All structures will be hidden from view whenever reasonable by vegetation and/or joined or clustered to avoid adverse visual impacts. All Solar Panels shall be screened from view by vegetation and in place prior to issuing the Certificate to Generate for the system. Such screening shall be provided in the required setback areas where existing vegetation setbacks is insufficient for year-round screening. Screens shall consist of evergreen vegetation 1.5 times the height of the highest solar panels. Berms or other methods to adequately screen the facility, depending on site specific conditions may be considered. Screen shall be maintained and replaced as necessary by the owner/operator of the solar energy system.

#### **20.3.9 Design Standards**

##### **20.3.9.1 Lighting**

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. All lighting on the premises shall be by motion activated devices and no all night lighting will be allowed unless so allowed by Planning Board. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

##### **20.3.9.2 Signage**

Signs on large-scale ground-mounted solar photovoltaic installations shall comply with the Town's Zoning Bylaws, Article 17-Signs. A sign consistent with a municipality's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number.

Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

##### **20.3.9.3 Utility Connections**

Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and

<sup>82</sup> Added 6/2/2015

<sup>83</sup> Amended 6/5/2018

<sup>84</sup> Amended 6/5/2018

topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

### **20.3.10 Safety and Environmental Standards**

#### **20.3.10.1 Emergency Services**

The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

#### **20.3.10.2 Land Clearing, Soil Erosion, Habitat Impact, Screening Requirements<sup>85</sup>**

- (a) Land clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the solar energy systems or otherwise prescribed by applicable laws, regulations and bylaws. Existing vegetation shall remain in required setback areas except where such vegetation would shade the solar energy system. However, in no event shall clearing of existing vegetation in setbacks exceed half the required setback width. Adequate erosion control measures shall be provided for all proposed land clearing.
- (b) Protection of Natural Resources and Habitat - Large-scale ground-mounted solar energy systems 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. Access driveways shall be constructed to minimize grading, removal of stone walls or roadside trees, and to minimize impacts to environmental or historic resources.
- (c) Screening/Buffering: Large-scale ground-mounted solar energy systems shall be screened year round from all adjoining properties in all zoning districts and from public and private ways. Screening will be in place prior to issuing the Certificate to Generate in all zoning districts. Such screening shall be provided in the required setback areas and where existing vegetation in setbacks is insufficient for year-round screening purposes. The screen shall consist of dense evergreen vegetative screening 1.5 times the height of the highest solar panels. Berms or other methods to adequately screen the facility, depending on site specific conditions may be considered. Screen shall be maintained and replaced as necessary by the owner/operator of the solar energy system.

### **20.3.11 Monitoring and Maintenance**

#### **20.3.11.1 Solar Photovoltaic Installation Conditions**

The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

#### **20.3.11.2 Modifications**

All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Site Plan Review Authority.

### **20.3.12 Abandonment or Decommissioning**

#### **20.3.12.1 Removal Requirements**

Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has reached the end of its useful life consistent with Section 3.12.2 of this bylaw shall be removed. 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 Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal. Removal 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.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

#### **20.3.12.2 Abandonment**

Absent notice of a proposed date of decommissioning and removal or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than six months without the written consent of the Site Plan Review Authority. If the owner or operator of the large-scale ground-

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<sup>85</sup> Amended 6/5/2018

mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 120 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

**20.3.12.3 Financial Surety<sup>86</sup>**

Proponents of large-scale ground-mounted solar photovoltaic projects shall provide surety in the form of cash or certified bank check, held by and for the Town of Hubbardston in an interest bearing account to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. This surety will be due and payable at the issuance of the building permit. Proof of payment in the form of a receipt from the Town Treasurer will be shown to the Building Inspector before the permits are issued. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation. As a condition of approval, an applicant shall bind itself to grant the necessary license or easement to the Town to allow entry to remove the structure. The Town shall have the right, but not the obligation to remove the facility.

**20.4 Certificate to Generate<sup>87, 88</sup>**

No solar facility may sell or distribute generated power until all conditions of the issued permit and requirements of this bylaw are approved and certified at a meeting of the Planning Board, and the "Certificate to Generate" is issued and recorded in the Worcester Registry of Deeds.

The Planning Board may revoke the "Certificate to Generate" for cause after a public hearing.

**20.5 Reporting Requirements<sup>89</sup>**

The owner of the solar installation shall provide a report to the Planning Board in January of each calendar year with the following information: total amount of electricity generated, major maintenance performed; planned or actual major system modifications; change of ownership; changes to bond amounts.

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<sup>86</sup> Amended: 6/2/2015

<sup>87</sup> Added 6/2/2015

<sup>88</sup> Amended 6/5/2018

<sup>89</sup> Added 6/5/2018

**Article 21**  
**TEMPORARY MORATORIUM ON NON-MEDICAL MARIJUANA ESTABLISHMENTS<sup>90</sup>**

A. **Purposes.** On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana for persons at least twenty-one years of age took effect on December 15, 2016 and (as amended on December 30, 2016; Chapter 351 of the Acts of 2016) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses by April 1, 2018.

The law authorizes municipalities to adopt ordinances or bylaws regulating the time, place and manner of operations of marijuana establishments. Further it authorizes municipalities to enact bylaws and hold local ballot questions to impose additional limitations regarding the types and number of Marijuana Establishments to be allowed in a community and whether to allow for marijuana cafes for the consumption of marijuana and marijuana products on the premises where they are sold.

Currently under the Zoning Bylaw, a non-medical Marijuana Establishment (hereinafter, a "Non-Medical Marijuana Establishment"), as defined in G. L. c. 94G §1 is not specifically addressed. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulations of Non-Medical Marijuana Establishments. The regulation of Non-Medical Marijuana Establishments raises novel and complex legal, planning, and public safety issues. The Town needs time to study and consider the regulation of Non-Medical Marijuana Establishment and address such issues. Questions and concerns have been raised regarding the timeline for implementation, local control mechanisms, regulation of marijuana products, amount of tax, licensing of non-medical marijuana establishments, and additional matters. The Town needs to consider 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 Non-Medical Marijuana Establishments.

The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Non-Medical 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 bylaws in a manner consistent with sound land use planning goals and objectives.

B. **Definitions.** As used in this Sub-Section, the following term shall have the following meaning:

**Non-Medical Marijuana Establishment:** A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of marijuana-related business as defined by G.L. c. 94G.

C. **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 Non-Medical Marijuana Establishments and other uses related to personal use of marijuana. The moratorium shall be in effect through June 30, 2018 or until such time as the Town adopts Zoning Bylaw amendments that regulate Non-Medical Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to consider how the Town will address the potential impacts of Non-Medical Marijuana Establishments in the Town, and to consider the Cannabis Control Commission's regulations regarding Non-Medical Marijuana Establishments, and shall consider amending the Zoning Bylaw in response to these new issues. This temporary moratorium shall not affect in any way the use of land or structures for Registered Marijuana Dispensaries.

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<sup>90</sup> Adopted June 6, 2017

**Article 22**  
**COMMERCIAL MARIJUANA ESTABLISHMENTS<sup>91</sup>**

**Sections**

- 22.1 Purpose
- 22.2 Definitions
- 22.3 General Requirement
- 22.4 General Zoning Districts
- 22.5 Procedure for Obtaining a Marijuana Establishment

**22.1 Purpose**

The purpose of this bylaw is to ensure safe access to the growing, distribution, and sale of Marijuana in the Town of Hubbardston. No Marijuana establishment shall impinge on any property owner's right to freedom of noise, odor, light pollution, or to the natural, scenic, historic and aesthetic qualities of their property.

**22.2 Definitions**

All definitions in MGL Chapter 94G Sections 1 Definitions and 935CMR 500.000 Adult Use of Marijuana Section 500.002 Definitions are made part of this bylaw.

**22.3 General Requirements**

All Marijuana Establishments including cultivating, retail sales, product manufacturing, independent testing laboratory, or any other type of marijuana type establishment shall be in conformance with Massachusetts General Law 94G, 935 CMR 500.00 Adult use of Marijuana. The Planning Board shall be the permit granting authority. The enforcement authority of this bylaw shall be the Building Inspector and or Planning Board.

**22.4 General Zoning Districts for Marijuana Establishment**

Marijuana Establishments as described in MGL 94G and 935 CMR 500.00 shall be allowed in the following districts after the applicant has been approved by the Cannabis Control Commission.

**22.4.1 Marijuana Establishment allowed by Special Permit in Residential District:**

Outdoor Marijuana cultivation establishments licensed for Tier 1 (up to 5,000 sf).

**22.4.2 Marijuana Establishment allowed by Special Permit in Residential District:**

Outdoor Marijuana cultivation establishments licensed for Tier 2 (between 5001 and 10,000 sf) by Special Permit.

**22.4.3 Marijuana Establishment allowed by Special Permit in the Town Center District**

Outdoor Marijuana cultivation establishments licensed for Tier 1 (up to 5,000 sf) by Special Permit.

**22.4. Marijuana Establishment allowed in the Commercial District by Special Permit.**

All Marijuana Establishments as defined by MGL 94G are allowed by Special Permit.

**22.5 Procedure for obtaining any Marijuana Establishment Licenses****22.5.1 Conduct a Community Outreach Hearing**

**22.5.1.1** The Planning Board will hold a joint Community Outreach Hearing with Hubbardston Board of Selectmen. All costs associated with this hearing shall be paid for by the applicant.

**22.5.1.2** The Outreach Hearing shall be advertised twice in (14) days period prior to the hearing in the Gardner News and posted on the town website.

**22.5.1.3** A copy of the notice filed with the Town Clerk, Planning Board, Board of Selectmen, Board of Health, building inspector and Police Chief.

**22.5.1.4** A copy of hearing notices must be sent to abutters within 300' of the proposed Marijuana Establishment by registered mail.

**22.5.1.5** The content of the hearing shall include discussion of type of Marijuana establishment to be located, security information, steps taken by applicant to prevent diversion to minors, plan for positive community impact, information to demonstrate location will not be a nuisance.

**22.5.1.6** The applicant is required to answer questions from the community members.

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<sup>91</sup> Adopted June 5, 2018

**22.5.2 Enter into Host Community Agreement. (HCA)**

After the hearing the applicant shall make application to the Board of Selectmen for a Host Community Agreement with the Town of Hubbardston. The HCA will follow MGL 94G and 935CMR 500.000 Adult Use of Marijuana.

**22.5.3 Certify compliance with local zoning, including buffer zone requirement.**





After the Host Agreement has been executed between the Board of Selectmen the applicant will meet with Planning Board to review a general site plan to show that the proposal conforms to the zoning and buffer zone requirements. If the zoning and buffer zone requirements are in compliance with Town of Hubbardston Zoning the Planning Board will vote to send letter to Cannabis Control Commission that the proposed Marijuana establishment is in compliance with zoning and buffer zone requirement.

**22.6 Final Approval**

After Cannabis Control Commission has contacted the town that the application is complete the applicant, if required by zoning, must apply to the Planning Board for a Special Permit for Marijuana Establishment per Articles 7, 8, 9 and 21 of the Hubbardston Zoning Bylaw.

# TOWN OF HUBBARDSTON, MA

DECEMBER 1992

-  Light Industrial District
-  Commercial District
-  Town Center District
-  Residential/Agricultural District

